



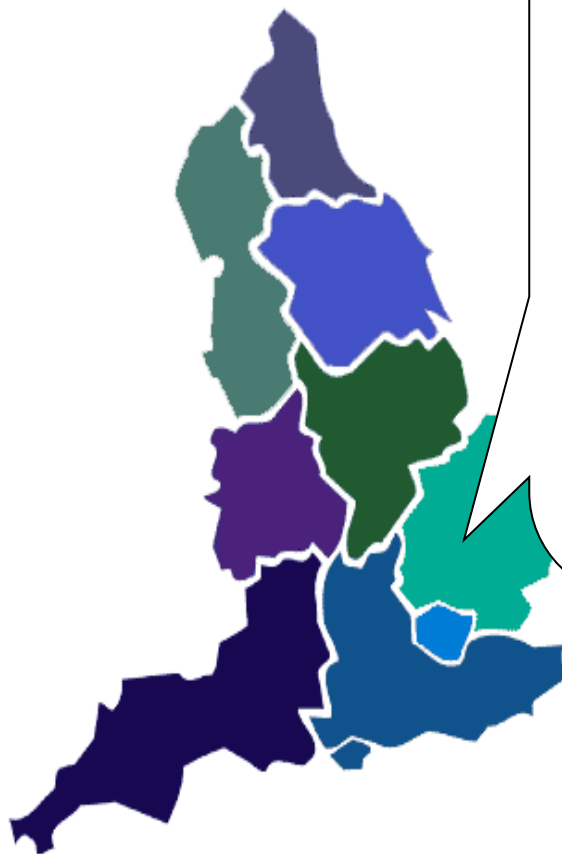
Eastern Region

ADASS East Contract (v5.9)

TERMS AND CONDITIONS OF CONTRACT

For adult social care services in the East of England

2024



East of England Councils with Social Services Responsibilities:

- ➔ Bedford Borough Council
- ➔ Cambridgeshire County Council
- ➔ Central Bedfordshire Council
- ➔ Essex County Council
- ➔ Hertfordshire County Council
- ➔ Luton Borough Council
- ➔ Norfolk County Council
- ➔ Peterborough City Council
- ➔ Southend-on-Sea Borough Council
- ➔ Suffolk County Council
- ➔ Thurrock Borough Council

This Document has been approved by the Directors of Adult Social Services
- Eastern Branch.

Suffolk County Council version 3

**PROVISION OF [INSERT TITLE]
FOR SUFFOLK COUNTY COUNCIL
CONTRACT REF: [INSERT CONTRACT REF]**

1. FORM OF AGREEMENT

THIS DEED AGREEMENT dated the xxxxxxxx

is made between

Suffolk County Council of Endeavour House, Russell Road, Ipswich, Suffolk, IP1 2BX (“the Council” or “We” or “Us” or “Our”)

and

[Insert Provider’s full registered name], ([Company/Charity] Registration Number []) situate at [XXX] (“the Provider” or “You” or “Your” or “Yourself”)

together referred to as “the Parties”.

Relating to Services provided at the following location / s:

- (i) Name of service / address of service / CQC reference
- (ii) Name of service / address of service / CQC reference
- (iii) Name of service / address of service / CQC reference
- (iv) Name of service / address of service / CQC reference
- (v) Name of service / address of service / CQC reference

IT IS AGREED THAT:

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

Conditions of Contract

Schedule 1 - Specification

Schedule 2 - Performance Monitoring and KPIs

Schedule 3 - The Council's Policy Statements

Schedule 4 - Price and Payment Schedule

Schedule 5 – Tender Response Document – **NOT USED**

Schedule 6 – Copy Contract Award Letter & Other Relevant Correspondence – **NOT USED**

Schedule 7 – Parent Company Guarantee – **NOT USED**

Schedule 8 – Performance Bond – **NOT USED**

Schedule 9 – Exit Plan

Schedule 10 – TUPE and Pensions Schedule – **NOT USED**

Schedule 11 – Safeguarding Policy

Schedule 12 – Commissioning Order Form – **NOT USED**

Schedule 13 – Serious Incident Report

Schedule 14 – Data Processing Schedule

Schedule 15 – DBS Risk Assessment

Schedule 16 – Social Value

Schedule 17 – Electronic Monitoring – **NOT USED**

Schedule 18 – National Capacity Tracker

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

IN WITNESS of which this Agreement is executed as a deed on the date set out above:

Please refer to the document “**Deed of Variation ASC**” for seal and signatures

CONDITIONS OF CONTRACT

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 - 2. INTERPRETATION OF THIS CONTRACT
- B. THE SERVICES AND PERSONNEL
- 3. DURATION OF CONTRACT
- 4. THE SERVICES
- 5. PROVIDER'S WARRANTIES, RESPONSIBILITY AND KNOWLEDGE
- 6. THE COUNCIL'S CONTRACT MANAGER
- 7. THE PROVIDER'S AUTHORISED REPRESENTATIVE
- 8. STAFF
- 9. SAFEGUARDING
- 10. PROVIDER'S EQUIPMENT
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- C. FINANCIAL ARRANGEMENTS
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- 18. INTELLECTUAL PROPERTY RIGHTS
- 19. ICT AND COMPUTER SYSTEMS
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- 21. RECORDS
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CONDITIONS OF CONTRACT

A. DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

“Action Plan”	has the meaning set out in Clause 36.11;
“Admission Agreement”	means the agreement governing admission to the LGPS made between the Council and the Provider as required under Schedule 10 and substantially in the form set out in Annex Three to Schedule 10;
“Affected Party”	means a party affected by a Force Majeure Event;
“Appropriate Pension Provision”	<p>in respect of Eligible Employees, either:</p> <ul style="list-style-type: none">(a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or(b) membership or eligibility for membership of a pension scheme, which is certified by the GAD as being broadly comparable to the terms of their Legacy Scheme;
“Authorisation”	means an authorisation given by the Council after completion of the statutory assessment process in relation to a Service User, giving lawful authority to deprive a person of their liberty;
“Basic Disclosure”	means a Basic Disclosure check carried out through DBS or Disclosure Scotland, which is required where a Provider is engaged in a position of trust but is not eligible for a Standard Disclosure check, Enhanced with Barred List Check or Enhanced without Barred List Check;
“Best Value Duty”	means the duty imposed on the Council by Part 1 of the Local Government Act 1999 (“1999 Act”) (as may be amended from time to time) and under which the Council is under a statutory duty continuously to improve the way its functions are exercised having regard to a combination of economy efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Public Sector Audit Appointments Limited and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation;
“Bribery Act”	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any related guidance or codes of practice issued by the relevant government department;
“Business Continuity Plan”	means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;

“Change in Control”	any change in control as defined by section 416 of the Income and Corporation Taxes Act 1988;
“Commencement Date”	means the date of this Contract
“Commissioning Order or Order”	means an order under which one or more Individual Placements may be ordered via a Commissioning Order Form;
“Commissioning Order Form”	means an order form based upon the pro forma set out in Schedule 12 under which one or more Individual Placements may be ordered;
“Competent Body”	means anybody that has authority to issue standards or recommendations with which either party must comply;
“Conditions of Contract”	means these terms and conditions of contract;
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data; as defined in the Data Protection Legislation
“Continuous Improvement Plan”	means the plan at Clause 4.6;
“Contract”	means these Conditions of Contract, the form of agreement to which they are attached and all attached schedules;
“Contract Manager”	means the representative appointed by the Council or that representative’s delegate appointed under Clause 6;
“Contract Period”	means the Initial Term and any extensions
“Contract Standard”	means that standard set out in Clause 4.1;
“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”	take the meanings given in the UK GDPR, subject to any amendment made under the provisions of the DPA 2018;
“Council”	has the meaning attributed to it in the form of agreement to which these Conditions are attached;
“Council Data”	means <ul style="list-style-type: none"> (i) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Provider or provided to the Provider for processing under this Contract which at all times shall

remain the property of the Council which shall include without limitation copies of any retention schedule produced by the Provider in order to comply with Data Protection Legislation; or

- (ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever media;

“Council’s Equipment”

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

“Council’s Policy Statements”

means those Policy Statements of the Council set out in Schedule 3

**“Council’s Premises” or
“Council Premises”**

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

“Council’s System”

the Council's computing environment as at the Commencement Date (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council or the Provider in connection with this Contract which is owned by or licensed to the Council by a third party which interfaces with the Provider’s System or which is necessary for the Service Users(s) and/or Council to receive the Services;

“Criminal Records Checks”

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

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

“CQC”

means the Care Quality Commission;

“CQC Regulations”

means the Care Quality Commission (Registration) Regulation 2009;

“Critical Performance Default”

means a Performance Default which significantly or materially affects the Provider’s provision of the Services to the Contract Standard or undermines the fundamental purpose of the Contract;

“Data Loss Event”

means any event that results, or may result, in unauthorised access to Personal Data held by either Party under this Contract and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract including any Personal Data Breach.

“Data Processing Schedule”

means the schedule which sets out the processing the Party or Parties are authorised to undertake under the Contract and which is set out in Schedule 14;

“Data Protection Impact Assessment”

means an assessment by Us of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation”

means the UK GDPR, the DPA 2018 and any other data protection and privacy laws in force in the UK from time to time, as amended, extended, re-enacted or replaced from time to time

Data Subject Access Request”

means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“DBS Check(s)”

means a Criminal Records Check(s) on individuals carried out through the DBS;

“DBS Update Service”

means a service available through the DBS, where an individual has subscribed for the update service for free, instant online checks to be carried out by an employer on individuals to see if any new information has come to light since the criminal records certificate was first issued in respect of an individual;

“Default Notice”

means a notice issued under Clause 36.5;

“Deprivation of Liberty”/”DoL”

means the framework of safeguards set out in Schedule A1 of the Mental Capacity Act 2005 (as amended, updated and/or replaced from time to time) including by the Liberty Protection Safeguards framework introduced under the Mental Capacity (Amendment) Act 2019;

**“Disclosure & Barring Service”
 (“DBS”)**

means the Non-Departmental Public Body which helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups, including children and vulnerable adults;

“Disclosure Scotland”

is an executive agency of the Scottish Government, providing criminal records disclosure services by way of a Basic Disclosure check for employers and voluntary sector organisations;

"Directive(s)"

means the EC Acquired Rights Directive 2001/23/EC (as amended, updated and/ or replaced from time to time);

“Dispute Resolution Procedure”

means the procedure set out in Clause 40 of this Contract;

“DPA 2018”

means the Data Protection Act 2018

“Eastern Region ADASS Members”

means those local authorities who are members of ADASS (Association of Directors of Adult Social Services in England), namely as at the Commencement Date (but may vary during the life of the Contract): Bedford Borough Council, Cambridgeshire County Council, Central Bedfordshire Council, Essex County Council, Hertfordshire County Council, Luton Borough Council, Norfolk County Council, Peterborough City Council, Southend Borough

Council, Suffolk County Council and Thurrock Borough Council;

“Eligible Employees”

means the Transferring Employees and/or Transferring Original Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer as cited in the Admission Agreement;

“Enhanced Disclosure With Barred List Check”

means a type of Criminal Records Check, which includes a check of the DBS barred list and any additional information held by the police that is reasonably considered relevant to the role being applied for and includes roles that do not work with children or vulnerable adults specifically but potentially both and should be used for jobs that involve caring for, supervising or being in sole charge of children and/or vulnerable adults;

“Enhanced Disclosure without a Barred List Check”

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

“Equalities Legislation”

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

“Expiry Date”

means the end of the Initial Term, or as extended in accordance with clause 3 Duration of Contract

“Exit Plan”

means the exit plan set out in Schedule 9;

“Fellow Provider”

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

“Force Majeure Event”

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

“Former Provider”	means the provider previously appointed by the Council to provide all or any of the services which are substantially similar to any of the services prior to the appointment of the Provider;
“GAD”	means the Government Actuary Department;
“Good Practice”	means the exercise of reasonable skill, care, prudence, efficiency, foresight and timeliness which would be expected from a reasonably and suitably skilled, trained and experienced person performing the relevant obligations with due regard for evidence-based guidelines;
“Index”	means the Consumer Prices Index (CPI) published by the Office of National Statistics;
“Individual(s)” or “Individual Accessing Services”	means the [eligible] beneficiary or recipient of the Services, [including without limitation any member of the public];
“Individual Placement Contract” or “IPC” or “CPLI”	means a contract for Individual Placements entered into between the Council and the Provider;
“Individual Placement”	means a single package of care which is provided for one or more Service Users by the Provider
“Information to Service Provider” or “ISP”	means the information issued to the Service Provider prior to the placement of a Service User which details information of the Service User’s needs on which the Service Provider assesses whether it is able to meet the Service User’s needs;
“Infringement”	has the meaning attributed to it in Clause 18;
“Initial Term”	means the period from the Commencement Date to the Expiry Date (excluding any extension)
“Intellectual Property Rights” or “IPR”	means all intellectual and industrial property rights including patents, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;
“IR35”	means the off-payroll working rules which apply to a worker providing services through an intermediary;
“Key Performance Indicators” or “KPI”	means the key performance indicators as defined and set out in Schedule 2;

“Law”	means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bylaw, regulatory policy, guidance or industry code, judgment of a UK court or the European Court of Justice, or directives or requirements of any Regulatory Body of which the Provider is bound to comply. Any reference to “Legislation” shall be construed accordingly;
“Legacy Scheme”	means the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer date;
“LGPS”	means Local Government Pension Scheme made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 (as amended);
“LGPS Regulations”	means the relevant LGPS pension regulations in force at the time this Contract is entered into;
“MCA”	means the Mental Capacity Act 2005 (as amended and updated from time to time);
“Mobilisation Period”	means the period from the Mobilisation Commencement Date to the Commencement Date
“Mobilisation Services”	means the Services to be provided pursuant to this Contract during the Mobilisation Period as set out in clauses 3.10 – 3.13
“NHS Risk Management Scheme”	means any risk pooling mechanism run by a NHS body and shall include, but not be limited to, the Liabilities to Third Party (LTPS) scheme and the NHS Litigation Authority (NHSLA) scheme;
“Non-Critical Performance Default”	has the meaning set out in Clause 36;
“Ombudsman”	means a local commissioner (known as the Local Government and Social Care Ombudsman) who is responsible for conducting investigations for the Commission for Local Administration in England (CLAE), which is a body of commissioners established under the Local Government Act 1974 and which, has the power to investigate complaints about councils (and certain other bodies) in England;
“PAMMS”	means the web-based regional provider assessment and market management solution application;
“PAMMS Assessment”	means an assessment of the Provider’s performance undertaken by or on behalf of the Council in line with PAMMS;

“Parent Company Guarantee”	means a parent company guarantee, the pro forma for which is set out at Schedule 7;
“Party”	means a party to this Contract and “Parties” shall be construed accordingly;
“Pension Bond”	means the bond required for the Admission Agreement in accordance with Schedule 10 and one of the forms of surety as required under the Local Government Pensions Scheme Regulations 2013;
“Performance Bond”	means a performance bond, the pro forma for which is set out at Schedule 8;
“Performance Default”	<ul style="list-style-type: none"> • any negligent act or omission; and/or • any breach of contract; and/or • any failure by the Provider properly to perform any of the obligations, terms and Clauses of the Contract including (without limitation) any failure to perform the Services to the Contract Standard;
“Performance Mechanism”	means that document set out at Schedule 2;
“Performance Targets”	means any specified targets (including those identified as part of any PAMMS Assessment) or the Key Performance Indicators against which the Provider’s performance in providing the Services shall be measured and which are set out in the Performance Mechanism or the Specification;
“Pre-Existing IPR Rights”	means any Intellectual Property Rights vested in or licensed to the Council or the Provider prior to or independently of the performance by the Council or the Provider prior to or independently of the performance by the Council or the Provider of their obligations under the Contract and in respect of the Council includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
“Price”	means the price for the Services as set out in Clause 12 and Schedule 4;
“Prohibited Act”	has the definition at Clause 26.4;
“Property Rights”	has the meaning attributed to it in Clause 18;
“Provider”	means the party identified as such in the form of agreement to which these Conditions are attached;
“Provider Portal”	means the web based provider portal within PAMMS.
“Provider’s Authorised Representative”	means such person nominated in writing by the Provider to act as the Provider’s representative in relation to this Contract and approved by the Contract Manager;
“Provider’s Equipment”	has the meaning set out in Clause 10.1;

“Provider’s Premises”	means any premises owned by the Provider or for which the Provider has legal responsibility;
“Provider’s System”	any computer or IT system used in the provision of the Services;
“Public Portal”	means the web based public portal within PAMMS;
“Regulatory Body”	means any body (other than CQC) carrying out regulatory functions in relation to the Provider and/or for to which the Provider owes a legal duty
“Relevant Transfer”	means a relevant transfer for the purposes of the TUPE Regulations;
“Replacement Provider”	means any third party appointed by the Council from time to time to provide all or any of services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party;
“Request”	shall have the meaning specified in Clause 23;
“Review Date”	means the date three (3) months before an anniversary of the Commencement Date in each year of the Contract Period.
“Run-off Insurance Cover”	means insurance to cover losses occurring from previous insurance policy years where claims made policies (or membership of a NHS Risk Management Scheme) ceases to continue uninterrupted (or transfers to a losses occurring basis) leaving a gap in insurance;
“Serious Incident Report”	means the report of a serious incident as outlined in Schedule 13;
“Service(s)”	means the Services (and shall include [(i) the Mobilisation Services for the Mobilisation Period] [and (ii) all services provided to one or more Service Users under Individual Placement Contract(s)]] to be provided pursuant to this Contract, more particularly described in the Specification and any reference to “Service” shall be construed accordingly;
“Service User(s)”	means the eligible beneficiary or recipient of the Services.
“Significant Decision”	means a decision that needs to be made relating to serious medical treatment or change of accommodation of a Service User in circumstances in which there are no friends or family who it would be appropriate to consult on the decision;
“Specification”	means the description of the Services to be provided under this Contract appearing in Schedule 1;

“Staff”	means all persons employed or engaged by the Provider to perform this Contract together with the Provider’s servants, suppliers, agents, volunteers and Sub-Providers used in the performance of this Contract and/or the provision of the Services;
“Standard Disclosure”	means a type of Criminal Records Check for spent and unspent convictions, cautions, reprimands and final warnings, which is required where the role is included in the list of eligible roles detailed in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and the role does not required an enhanced DBS check;
“Sub-Contract”	means a contract between the Provider and a Sub-Provider;
“Sub-Contractor”	means an organisation appointed by the Provider or with whom the Provider contracts to provide part of the Services and any of that organisation’s contractors who may be providing any of the Services;
“SVG”	means the Safeguarding Vulnerable Groups Act 2006 (as amended under the Protection of Freedoms Act 2012);
“Tender Response Document”	means the Provider’s proposal to meet the Specification setting out the methods to be used by the Provider to provide the Services under this Contract as set out in Schedule 5;
“Transferring Employees”	<p>means the employees listed in Annex One to Schedule 10 and are:</p> <ul style="list-style-type: none"> (i) all employees who immediately prior to the Commencement Date are assigned to the organised grouping of resources and employees to the Services and which are the subject of transfer in accordance with the Regulations and who shall transfer by the virtue of the application of the Regulations to the Provider; (ii) all employees who immediately prior to the Service Transfer Date are assigned to the organised grouping of resources and employees to the Services and which are the subject of transfer in accordance with the Regulations and who shall transfer by the virtue of the application of the Regulations to the Replacement Provider;
“Transferring Original Employees”	means the employees listed in Annex Two who previously transferred to the employment of the Former Provider and who will transfer to the employment of the Provider as a result of the application of the TUPE Regulations in relation to this Contract;
“TUPE Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or modified from time to time).
“UK GDPR”	means the UK General Data Protection Regulations;

“VAT”	means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function;
“Variation”	means any change to: <ul style="list-style-type: none"> (i) the terms and Conditions of Contract or Schedules; (ii) the Services or any part of them; and/or (iii) the standard of performance required of a Party materially over and above that expressly stated or provided for under this Contract;
“Warning Notice”	has the meaning attributed to it in Clause 36.14; and
“Working Day”	means Monday to Friday excluding public and bank holidays in England and Wales.

2. INTERPRETATION OF THIS CONTRACT

- 2.1. Except as otherwise expressly provided, the documents comprising this Contract are to be taken as mutually explanatory of one another.
- 2.2. Any references to any Act of Parliament or other Law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force.
- 2.3. Headings are included for ease of reference only and shall not affect the construction or interpretation of any provision to which they refer.
- 2.4. The expression ‘person’ used in this Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- 2.5. In this Contract, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- 2.6. References to Clauses or Schedules shall be to Clauses and Schedules of this Contract.
- 2.7. Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the control of the Provider.
- 2.8. Any reference to a month or day shall unless otherwise specified shall be to a calendar month or day respectively.
- 2.9. Words preceding “include”, “includes” or “including” shall be construed without limitation to the words which followed those words.
- 2.10. In the event of any inconsistency or conflict between the main body of this Contract and the Schedules, the order or precedence as set out below shall prevail:
 - (a) the Conditions of this Contract;
 - (b) Schedule 1 (Specification);

- (c) the remaining Schedules of this Contract with the exception of Schedule 5 if used (Tender Response Document) and];
- (d) Schedule 5 (Tender Response Document) if used, including any clarification questions issued by the Council and responses provided by the Provider) save that where Schedule 5 contains any higher or more onerous commitments, standards or obligations in which case those commitments, standards or obligations will prevail.

B. THE SERVICES AND PERSONNEL

3. DURATION OF CONTRACT

- 3.1. Contract shall commence on xxx ("the Commencement Date").
- 3.2. The Provider shall provide the Services to the Contract Standard from the Commencement Date until 1st April 2045 ("Expiry Date"), the "Initial Term"; unless the Contract is terminated in accordance with its terms or otherwise terminated.
- 3.3. The Council shall be entitled at its absolute discretion to extend the Initial Term for a further period or periods of up to a total of up to twenty four (24) months, upon giving the Provider written notice of its intention no later than six (6) months prior to the end of the Initial Term upon which the Contract Period is so extended and the Provider has consented to the extension.
- 3.4. In the event the Contract Period is extended pursuant to Clause 3.3 above, the definition of Contract Period shall be amended to include the further term, and all the other terms of the Contract shall continue to apply un-amended for the remainder of the Contract Period
- 3.5. The Provider shall execute the Contract promptly and shall not, save unless and to the extent that it may be expressly authorised in advance in writing by the Council, commence the provision of the Services or to be entitled to any part of the Price(s) or any remuneration whatsoever until it has so executed the Contract.

Pre-Commencement Date Obligations

- 3.6. The Provider shall liaise with the Former Provider(s) and Fellow Providers to ensure that any handover and contract mobilisation is carried out successfully and to the best of their ability. In addition, the Provider shall arrange and attend as many meetings with the Council, the Former Provider(s) and any Fellow Provider as are reasonably necessary for the successful handover and mobilisation of the Services.
- 3.7. To the extent that the Provider has not already done so, the Provider shall carry out, or provide to the Council's satisfaction, as soon as reasonably practicable after the Commencement Date:
 - 3.7.1. proof of insurances held;
 - 3.7.2. measures to ensure that the Provider, its Sub-Contractors, Staff and agents are fully familiar with the provisions of the Contract, their obligations under the Contract, the Council's computer systems (if applicable) and the identities of all relevant Fellow Provider;
 - 3.7.3. actions necessary to comply with its obligations under TUPE (if applicable); and

3.7.4. the identities, positions and responsibilities and contact details of all relevant Staff including, in particular the Provider's Authorised Representative and authorised delegates.

3.7.5. The Provider shall comply in full with the Council's Accreditation Process, and maintain all conditions and standards outlined in the Council's Accreditation documentation and the Provider's return of this.

3.8. The Council shall as soon as possible after the Commencement Date:

3.8.1. notify to the Provider in writing the name and contact telephone number of the Contract Manager as at the Commencement Date and any persons holding such other positions as may be specified in the Specification; and

3.8.2. provide the Provider with such Council Data and information as the Provider may, in the Council's opinion, reasonably require in order for it to commence the Services on the Services Commencement Date.

3.9. Not Used

Mobilisation Obligations

3.10. The Provider shall provide the Mobilisation Services to the Contract Standard from the Mobilisation Commencement Date for the Mobilisation Period.

3.11. The Provider shall ensure the smooth, seamless and successful transition of the Services from any Former Provider(s) to the Provider on the Service Commencement Date; this shall include ensuring that handover and contract mobilisation is carried out successfully in accordance with:

3.11.1. the terms of this Contract;

3.11.2. the Specification;

3.11.3. the Provider's mobilisation plan;

3.11.4. the reasonable instructions of the Council.

3.12. Within sufficient time to ensure that the Provider can comply with its obligations under this clause 3 and/or be ready to provide the Services to the Contract Standard from the Commencement Date, the Provider shall arrange a mobilisation meeting which shall be attended by senior representatives of the Provider (including the Provider's Authorised Representative), any of the Sub-Contractors (or proposed Sub-Contractors) in so far as the same will be directly providing any Services, representatives of the Council, representatives of the Former Provider(s) (if applicable) and representatives of such Fellow Provider, if any, as the Council shall determine necessary.

3.13. At the pre-commencement meeting the Parties shall agree a plan for the implementation of the Services and handover necessary for the smooth, seamless and successful transition of the Services from any Former Provider(s) to the Provider on the Commencement Date. Such a plan shall be agreed in writing by the Contract Manager and the Provider's Authorised Representative.

4. THE SERVICES

4.1. The Provider shall provide the Services throughout the Contract Period in accordance with the following ("the Contract Standard"):

- 4.1.1. this Contract and in particular the Specification, which forms part of the Contract;
- 4.1.2. in co-operation with Fellow Providers and any other Council contractors as required to perform the Services;
- 4.1.3. in a manner that does not damage the Council's reputation;
- 4.1.4. in accordance with Law;
- 4.1.5. in accordance with Good Practice and national guidelines where available;
- 4.1.6. in accordance with the Council's Policy Statements and the Council's policies;
- 4.1.7. using all due skill care and diligence as would a competent provider carrying out services of the same scope or nature as the Services;
- 4.1.8. as a minimum, meeting (and with the aim of exceeding) the minimum thresholds (targets) of the KPIs;
- 4.1.9. where applicable, and subject to the Council's prior written consent, in accordance with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
- 4.1.10. respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
- 4.1.11. consider and respond to the recommendations arising from any audit, death
- 4.1.12. comply with the recommendations issued from time to time by a Competent Body;
- 4.1.13. in accordance with the Council's Policy Statements and the Council's Policies;
- 4.1.14. using all due skill care and diligence as would a competent contractor carrying out services of the same scope or nature as the Services; and
- 4.1.15. in accordance with the reasonable written instructions of the Contract Manager pursuant to or in connection with the Contract.

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

- 4.2. The Provider shall discharge its obligations under this Contract by deploying appropriate, competent, qualified and trained Staff. Except as otherwise specified in this Contract, the Provider shall provide all Staff and a sufficient number of Staff, the Provider's Equipment, information and data and anything else whatsoever required for the provision of the Services within the Contract Price to the standards in Clause 4.1.
- 4.3. The Provider shall provide the Services in a manner that conserves energy, water, wood, paper and other resources to reduce waste and phases out the use of ozone depleting

substances and minimises the release of greenhouse gases volatile organic compounds and other substances damaging to health and the environment.

- 4.4. In recognition of the Best Value Duty, the Parties to this Contract shall work together to identify how the Services can be continuously improved. Reviews shall be conducted in accordance with Clause 17 (Performance Monitoring and Contract Review) and these Conditions of Contract generally. The Provider agrees to co-operate fully and assist the Council at no extra charge in any manner reasonably required by the Council in connection with the Council's performance of this duty. The Provider shall observe and facilitate the Council's request of cost savings. Where appropriate, a Variation shall then be made in accordance with Clause 16 (Variations and Change Control), provided that such Variation does not constitute a material change to the Contract.
- 4.5. The Provider shall not undertake any act or omission which has or could reasonably be expected to have an adverse impact upon the security of any of the Services or the Council's System, the Council's Equipment or services of the Council.

Continuous Improvement Plan

- 4.6. The Council may at its absolute discretion request at any time and/or frequency throughout the Contract Period a continuous improvement plan and the Provider shall provide a continuous improvement plan for the approval of the Council which has the objective of securing continuous improvement in the way in which the Services are provided and shall be reviewed by the Council in accordance with the provisions specified in Schedule 2.

Withholding and/or Discontinuation of Service

- 4.7. Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:
- 4.7.1. who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
 - 4.7.2. who displays abusive, violent or threatening behaviour unacceptable to the Provider (acting reasonably and taking into account the mental health of that Service User);
 - 4.7.3. in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
 - 4.7.4. where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.
- 4.8. If the Provider proposes not to provide or to stop providing a Service to any Service User under Clause 4.7:
- 4.8.1. where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Working Days);
 - 4.8.2. the Provider must tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;

- 4.8.3. the Provider must inform the Council in writing without delay and wherever possible in advance of taking such action;

Provided that nothing in this Clause 4.8 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

- 4.9. If the Provider gives a notification of a death or other incident to the CQC or any other Regulatory Body which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council within five (5) Working Days.

Efficiency Gain Plan

- 4.10. Not Used

Exclusivity

- 4.11. This Contract shall not be exclusive, and the Council reserves the right to place work constituting all or any part of the Services with a third party at any time during the Contract Period or to carry out that work itself. The Council offers no warranties, guarantees or assurances in relation to the volume or value of any work to be carried out by the Provider under the Contract. The Council also reserves the right to omit any part or parts of the Services pursuant to the variation provisions in Clause 16.

Individual Placements

- 4.12. At any time during the Contract Period the Council shall be entitled to place a request for an Individual Placement for one or more Service Users in accordance with clauses 4.12 to 4.16.
- 4.13. The provider will confirm if it accepts the request for Individual Placement within the time period agreed at the time of request.
- 4.14. An Individual Placement under this Contract shall commence upon acceptance of a request by the Provider and shall, subject to the terms of the Individual Placement Contract (IPC), survive expiry of this Contract but be subject to clause 4.17 below.
- 4.15. The terms applicable to each Individual Placement shall comprise of the terms of this Contract, the and the relevant IPC.
- 4.16. In the event of the Council terminating this Contract then it shall be entitled to give written notice to the Provider that the Provider shall continue to provide the Services in accordance with an Individual Placement, as varied in accordance with any instructions set out within the Council's written notice, and the Provider shall be obliged to act in accordance with the written notice. Both Parties can terminate an Individual Placement Contract in accordance with the Specification.
- 4.17. The Council may terminate a request at any time without liability to the Provider by giving to the Provider written notice having effect immediately or after such period as the Council may determine. The Provider shall provide reasonable assistance at no cost to the Provider to assist in the transfer of the Service User to alternative care or support.
- 4.18. The Council offers no assurances, representations, warranties or guarantees in relation to the number of requests (if any) that may be placed with the Provider under this Contract.

5. PROVIDER'S WARRANTIES, RESPONSIBILITY AND KNOWLEDGE

5.1. The Provider warrants, undertakes and represents that:

- 5.1.1. it has the full capacity power and authority and all necessary consents to enter into and perform this Contract;
- 5.1.2. it is not and has not been in the three (3) years prior to the Commencement Date in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal accounting or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract;
- 5.1.3. it has not committed a Prohibited Act at all in connection with the Tender Response Document or generally within the five (5) years immediately before the Commencement Date;
- 5.1.4. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Provider in connection with the tendering process, and this Contract are true, complete and accurate in all respects;
- 5.1.5. [it has in all respects complied with the conditions of tendering set out in the invitation to tender, including, without limitation, not doing any of the acts or matters prohibited by such conditions of tendering] [Not used];
- 5.1.6. it has made its own enquiries and has satisfied itself as to the accuracy and adequacy of any information whatsoever supplied to it by or on behalf of the Council and all other matters relating to the Contract including, without limitation, any employment issues and/or the application of TUPE and the Price and in each case the Provider is not reliant on such information;
- 5.1.7. it is of sound financial standing and is not aware of any circumstances (other than such circumstances as expressly disclosed by the Provider when submitting the Tender Response Document) that may adversely affect such financial standing in the future;
- 5.1.8. it has or has made arrangement to ensure that it will have sufficient working capital, skilled Staff, equipment, machinery and other resources available to it in order to carry out the Services in accordance with the Contract Standard;
- 5.1.9. it has obtained or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the Contract Period obtain and maintain all further and necessary consents, licences and permissions to enable it to carry out the Services in each case at its own expense;
- 5.1.10. it has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Services so as to assess the full scope and volume of the work involved in performing the Services to the Contract Standard;

- 5.1.11. it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract; and
- 5.1.12. it will not at any time during the Contract Period or at any time thereafter claim or seek to enforce any lien, charge or encumbrance over any property of whatever nature aimed or controlled by the Council and which is for the time being in the possession of the Provider.
- 5.1.13. The provider will comply with requirements to complete the National Capacity Tracker or any successor requirements from the Department of Health & Social Care see Schedule 18

- 5.2. The Provider shall be responsible for the accuracy of all drawings, documentation and information or anything else supplied to the Council by the Provider and the Provider shall pay the Council any extra costs incurred by the Council as a result of any discrepancies, errors or omissions therein.
- 5.3. The Provider shall alert the Council to the risk or the existence of any reason which may prevent the Provider from performing the Services as required in whole or in part as long in advance (and as fully) as reasonably practicable in the circumstances.

Financial Disclosure

- 5.4 Notwithstanding Clause 5.3 above, the Provider shall notify the Council immediately in writing if any one or more of the events listed in this Clause 5.4 occurs:
 - 5.4.1 if the Provider fails to submit statutory accounts before any statutory deadline;
 - 5.4.2 a court judgment is made against the Provider for a sum greater than or equal to [1%] of the Provider's annual turnover and that debt is not settled in full within 28 days;
 - 5.4.3 the Provider makes a loss exceeding 5% of annual turnover;
 - 5.4.4 NOT USED
 - 5.4.5 in respect of any Premises which are essential to the delivery of the Services, any landlord or freeholder makes an application to court to recover unpaid rent or for the forfeiture of the lease;
 - 5.4.6 any person holding a mortgage or other charge over any Premises which are essential to the delivery of the Services makes an application to the court to recover unpaid loan obligations, for possession of the Premises or for any similar order;
 - 5.4.7 the Provider has committed a material breach of covenants to its lenders;
 - 5.4.8 NOT USED
 - 5.4.9 the Council has reasonable grounds to believe that any of the events in this Clause 5.4 has occurred or will occur Clause 5.5 shall apply.
- 5.5 If Clause 5.4 applies or if the Council believes Clause 5.4 applies, the Council may request clarification, seek further information and request documents from the Provider. The Provider will provide such information and documents in a timely fashion and within

reasonable timescales set by the Council. Such documents can include but are not limited to:

- 5.5.1 a copy of the Provider's latest management accounts;
- 5.5.2 a cash flow forecast and/or business plan for such future timeframe that the Council considers appropriate;
- 5.5.3 a reference from the Provider's bank; and
- 5.5.4 such other evidence that the Council requests to demonstrate that the Provider is a going concern.

5.6 The financial disclosure clauses (Clause 5.4 - 5.7) apply to the Provider and any Essential Sub-Contractor as defined in the Tender Response Document.

5.7 Upon communication with the Provider and on considering the evidence provided in Clause 5.5 the Council may direct the Provider to follow one or more of the following options:

- 5.7.1 attend meetings with the Council and regularly discuss with the Council the Provider's financial position and its ability to meet the Service and remain a going concern;
- 5.7.2 provide a plan within 10 Working Days or such other time period as directed by the Council setting out how the event in Clause 5.4 can impact the Service provision and performance;
- 5.7.3 to provide regular updates on its financial position including but not limited to up to date evidence specified in Clause 5.5, a turnaround plan, a plan to improve liquidity ratio and such other plans and information to improve the Provider's financial position
- 5.7.4 NOT USED
- 5.7.5 reduce, amend and/or scale back the Service provided by the Provider under this Contract as directed by the Council following consultation with the Provider; or
- 5.7.6 such other courses of action that the Council considers reasonable to ensure the continued performance and delivery of the Service is provided by the Provider in accordance with this Contract.

5.8 The Provider shall be deemed to have examined the documents constituting the Contract, including the Conditions of Contract, the Specification and the other Schedules and to have satisfied itself before tendering as to the correctness and sufficiency of its tender submission to cover all its obligations under this Contract and for all matters and things necessary for the proper completion of the Services.

6. THE COUNCIL'S CONTRACT MANAGER

6.1. The Council shall appoint a Contract Manager to administer this Contract and act as its representative. The Council may from time to time replace the Contract Manager and shall notify the Provider in writing of this change.

6.2. The Contract Manager shall upon written notice to the Provider be entitled to delegate their role to other persons as they see fit.

- 6.3. Where this Contract authorises the Contract Manager to instruct the Provider, the Provider shall comply with these instructions.

7. THE PROVIDER'S AUTHORISED REPRESENTATIVE

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

8. STAFF

- 8.1. The Provider shall ensure that the Staff shall be sufficient in number, be properly and suitably qualified, competent, skilled, honest, instructed, trained, experienced and supervised and shall at all times exercise due care in the execution of their duties as well as procuring that such Staff shall:
- 8.1.1. comply with the relevant provisions of the Contract;
 - 8.1.2. comply with all relevant Law, national guidelines, policies, codes, rules, procedures and standards of the Provider and all relevant rules, codes, policies, procedures and standards of the Council, notified to the Provider by the Contract Manager from time to time; and
 - 8.1.3. enable the Provider to perform its obligations under the Contract during periods of absence of staff due to sickness, parental leave, holidays, training or otherwise; and
 - 8.1.4. comply with the rules, regulatory and statutory requirements in relation to health and safety at work.
- 8.2. The Provider shall be liable for all costs relating to its Staff and any acts, omissions or defaults of its Staff howsoever arising in connection with the Services.
- 8.3. If and when directed by the Council, the Provider shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with this Contract to any of the Council's Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Council may reasonably desire.
- 8.4. The Council reserves the right under this Contract to refuse to admit or withdraw permission to remain on the Council's Premises any Staff member whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- 8.5. The Provider shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Provider by the Council for entry to any Council Premises and shall only permit such keys, passes and other means of access to be used in accordance

with the Contract Manager's instructions and then only to the extent required for the purposes of providing the Services.

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

Pre-Employment Checks

The Provider shall carry out appropriate pre-employment checks prior to the appointment of an individual in connection with the Services (including but not limited to references, medical clearance, proof of right to work in the UK, professional registration/qualifications and the issuing of a satisfactory Disclosure and Barring Certificate by the Disclosure and Barring Service, where relevant). Prior to making any offer of employment, the Provider shall carry out a risk assessment in a form equal to or exceeding the risk assessment form found using the Schedule 15: in relation to any non-UK citizen and any UK citizen who requires a Criminal Records Check and who has lived abroad for six (6) months or more in the five (5) year period prior to being considered for appointment in connection with the Services.

- 8.12. The Provider shall obtain consent prior to the commencement of any work by any Staff member employed to work in connection with this Contract, to carry out all necessary checks under this Clause 8 and shall obtain consent of the Staff member to provide evidence upon the request of the Council that such checks have been carried out.

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

Offer of Employment

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

Status of Staff

- 8.16. This Contract constitutes a contract for the provision of services and not a contract of employment.
- 8.17. For the avoidance of doubt, the Parties do not intend Staff working on or for this Contract to be off-payroll working through an intermediary for the purposes of IR35. The Provider must promptly notify the Council in writing if the status of any Staff changes in the case where they fall within IR35.
- 8.18. The Council may at its absolute discretion request from the Provider or Sub-Contractor at any time throughout the Contract Period until six (6) years after the Contract has been terminated, information in order to determine whether Staff fall within IR35. The Provider or Sub-Contractor shall provide the requested information promptly and in sufficient detail to the satisfaction of the Council.
- 8.19. The Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council for and in respect of:
- 8.19.1 any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where recovery is not prohibited by law;
 - 8.19.2 all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
 - 8.19.3 any liability arising from any employment related claim or any claim based on worker status or IR35 (including reasonable costs and expenses) brought by the Provider or Sub-Contractor against the Council arising out of or in connection with the provision of the Services.

TUPE and Pensions

- 8.20 Both Parties shall comply with their respective obligations in accordance with the provisions specified in Schedule 10 (TUPE and Pensions Schedule).

9. SAFEGUARDING

- 9.1. The Provider shall maintain and keep up to date appropriate policies on child protection and the protection of adults at risk. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health guidelines, Suffolk Safeguarding Adults Board, and also with policies, procedures and guidelines issued by the Council (or the ICB, as applicable to the Services). The Provider shall ensure that these policies, procedures and guidelines are communicated to Staff and that appropriate training in line with Adult Safeguarding: Roles and Competencies for Health Care Staff (2018) and Safeguarding Children and Young People: Roles and Competencies for Healthcare Staff (2019).’ or other social service competency framework is provided to Staff in relation to them.

- 9.1. The Provider shall comply with the safeguarding obligations in accordance with the provisions specified in Schedule 1, Schedule 11.

- 9.2. The Provider shall have in place comprehensive procedures for reporting of and managing allegations against Staff which demonstrates the promotion of the safety and welfare of children and/or adults at risk and are compliant with statutory requirements. The Provider must be able to evidence safe and robust recruitment procedures and practice for all Staff working with children and/or adults at risk. The Provider shall ensure that Staff know about and comply with the requirements to make accurate, factual and contemporaneous records to ensure compliance with this Clause 9. The Provider shall comply with the Council’s Adult and Child Safeguarding procedures in relation to this Clause 9, details of which are available using the following link and may be amended from time to time and notified to the Provider:

<https://suffolksp.org.uk/working-with-children-and-adults/adults/policies-procedures-and-guidance-adults/>

- 9.3. The Provider shall fulfil its legal obligations in relation to carrying out Criminal Records Checks and checking Staff through the DBS or Disclosure Scotland (as appropriate) and the relevant national or local safeguarding authority, where necessary and appropriate and complete a risk assessment form in respect of each Staff member when making decisions in relation to convictions revealed by the Criminal Records Check, using a form equivalent to or exceeds the risk assessment form which can be found in Schedule 15. The Provider is required to pay the full cost of any such registration and related costs. The Provider acknowledges that the Council has legal responsibilities under the SVG and that the Provider must check the Protection of Children list and the Protection of Vulnerable Adults list and comply with all other relevant Law in relation to safeguarding children and/or vulnerable adults and shall provide such evidence of compliance with this Clause 9 as the Council shall reasonably require. It is a requirement of the Contract for Staff members to be registered with the DBS Update Service, the Provider shall be responsible for ensuring that the Staff member maintains their annual subscription of the DBS Update Service. The Provider shall ensure all staff are registered and complete checks specified in this Clause 9.3 every year.
- 9.4. The Provider shall nominate and name a designated senior officer or manager and make arrangements during the provision of the Services under this Contract to ensure that it complies with the provisions of the SVG.

- 9.5. The designated senior officer or manager referred to in Clause 9.4 above shall comply with the provisions of "*Working together*" for safeguarding children, young people and adults in dealing with allegations of abuse made against the Provider's employees who work with children, young people and adults. The Provider shall have in place a safeguarding policy, which is equal to or exceeds the Council's safeguarding policy (except where a conflict arises between the Council's safeguarding policy with the Conditions and/or the Specification, in which case the order of precedence of documents specified in Clause 2 of the Contract shall apply).
- 9.6. The Provider shall be entirely responsible for the employment and conditions of service of its Staff and all obligations relating thereto. In addition to the pre-employment checks to be carried out under this, the Provider shall ensure that suitable references reflecting the Staff member's suitability to work with children and/or vulnerable adults are taken up as part of the recruitment process. All Staff members proposed for the Service shall be subject to an appropriate Criminal Records Check, which should be carried out and results obtained prior to the Staff member being employed in connection with the Service. Should a sufficiently serious and relevant adverse entry be revealed as a result of the Criminal Records Check and/or should any convictions including those that would otherwise be spent under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 be revealed, the Provider shall notify the Contract Manager of these immediately. The Council shall have a right to veto the employment or engagement of any Staff member proposed for the Service as a result of an adverse entry/convictions, but not unreasonably or vexatiously.
- 9.7. The Provider shall use one of the following methods for the advice, processing and storage of each Criminal Records Check:
- 9.7.1. by the Provider directly (if DBS registered); or
 - 9.7.2 through an external DBS umbrella body.
- 9.8. The Provider shall comply with and observe all relevant Law in relation to Criminal Records Checks and follow all recommendations and general guidance issued including by any Central Government Department on Criminal Records Checks and carrying out Criminal Records Checks in relation to any person engaged in a role that meet the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations, when deciding whether the outcome of the Criminal Records Check is satisfactory and whether the individual concerned is suitable to carry out the role in connection with the Services.
- 9.9. The Provider shall maintain and disclose to the Council a record of the outcome of the Criminal Records Check, in relation to each Staff member where a Criminal Records Check is required, setting out the disclosure number, level of Criminal Records Check and the date the disclosure was made. The Provider shall store the record of the disclosure securely within the Provider's organisation in accordance with Data Protection Legislation and DBS Code of Practice. The Provider warrants, undertakes and represents to the Council that each disclosure number will be unique and can, if necessary, be reconciled against a Staff member's name engaged or appointed in connection with the Services.
- 9.10. If visits are taking place as part of the recruitment process, potential staff of the Provider must be accompanied by a member of Staff at all times and the checks specified in Clause 9 shall have been completed by the Provider prior to such visits taking place.
- 9.11. The Provider must have a robust system which evidences when Staff are suspended or dismissed that safeguarding children and/or vulnerable adults guidance including government guidance is followed and relevant professional bodies informed in the event of non-compliance. The Provider will ensure that it has appropriate procedures in place that support:

- 9.11.1. the immediate reporting to the Contract Manager of concerns and details of any incidents and/or convictions in relation to Staff members; and
 - 9.11.2. other action necessary to support the Council's policies, including the possible mandatory participation in child protection meetings and actions.
- 9.12. The Provider shall have codes of conduct in place for all Staff that set out clear standards of conduct especially in relation to personal and sexual relationships between Staff and Service Users or other children and/or vulnerable adults.
- 9.13. The Provider must provide evidence of robust and effective complaints and whistle-blowing policies including a guarantee to Staff and Service Users that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.
- 9.14. If abuse of an individual is taking or has taken place or is suspected the Provider must comply with the "duty to refer" by immediately notifying the Contract Manager and the safeguarding children and safeguarding adults teams of the Council as well as the Provider's safeguarding children and vulnerable adults lead and should consider suspension of the Staff member(s) and take emergency measures (for example, inform police/seek medical assessment/treatment (as appropriate)). The Provider must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Council's Safeguarding Team, unless this investigation activity is to mitigate an imminent risk. The Provider must also notify the DBS and/or Disclosure Scotland (as appropriate) if a Staff member is dismissed or removed from working in connection with the Services for the reasons described in the "Duty to Refer" section of the DBS website.
- 9.15. The Provider shall seek the consent of each Service User to forward the Service User's records to the Replacement Provider(s) and/or one or more third parties determined by the Council on termination or expiry of the Contract. For the avoidance of doubt, the consent should be sought by the Provider from each Service User during the life of the Contract but the transfer(s) of these records shall (if required by the Council) be effected by the Provider (at no cost to the Council or the ICB) as part of the exit and handover arrangements in accordance with Clause 38.2.14.

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

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

10. PROVIDER'S EQUIPMENT

- 10.1. Notwithstanding the provisions of this Clause 10, the Provider shall ensure that throughout the Contract Period it supplies or makes available and maintains in good condition and in working order and within the Prices all such resources and equipment as may be necessary for the proper provision of the Services to the Contract Standard including, without limitation, Staff, labour, machinery, equipment, materials, transport and delivery facilities, consumables, premises, software, hardware and vehicles (the "Provider's Equipment").

- 10.2. The Provider shall ensure that all licence fees, consent fees, maintenance fees and royalties relevant to the provision of the Services are paid and up to date throughout the Contract Period and that the Provider's Equipment is properly maintained and replaced when necessary.
- 10.3. Any vehicles used in the performance of the Contract shall be maintained by the Provider in a safe condition, must be fully insured and must be certified as roadworthy.
- 10.4. Any specialist equipment used in the performance of the Contract shall be maintained by the Provider in accordance with the manufacturer's instructions, and must not be used or modified in such a way as to negate or diminish any insurance cover which may relate to the equipment or create an additional risk to users of that equipment.
- 10.5. The Provider shall be responsible for the security, insurance and storage of the Provider's Equipment and the Council shall be under no liability in respect thereof including where the Provider's Equipment is used and/or stored on Council Premises save where any damage or loss is caused to the Provider's Equipment by the acts or omissions of the Council.
- 10.6. The Provider shall ensure that any hired or leased equipment is clearly marked with the name of the hirer or owner or that this information is provided to the Contract Manager.
- 10.7. The Provider shall keep all hazardous Provider's Equipment provided for use by the Provider under proper control and safekeeping and shall ensure that all Provider's Equipment is properly and clearly labelled.
- 10.8. Should the Provider engage, use or rely upon the equipment or resources of a Fellow Provider or other party then this shall be an arrangement between the Provider and that other party and the Provider shall be responsible for that equipment or resource as part of the Provider's Equipment and the risk of engaging, using or relying upon such equipment or resources shall for the purpose of this Contract be entirely the Provider's.

11. USE OF COUNCIL PREMISES/ COUNCIL EQUIPMENT

- 11.1. The Provider may be permitted access to some of the Council's Premises from time to time in connection with the provision of the Services at the Council's sole discretion. The Council is under no obligation to provide access to the Council Premises. If permitted by the Council, the Provider will use the Council's Premises only in connection with the proper performance of the Services and will ensure that its Staff and Sub-Contractors and agents use the Council Premises, only for such purpose.
- 11.2. The Provider shall ensure that the Council Premises it uses are left clean and tidy at all times.
- 11.3. Access to or use of any of the Council Premises by the Provider or any of its Staff will not create a tenancy of any nature whatsoever in favour of the Provider or its Staff or agents.
- 11.4. The Provider shall vacate the Council Premises on the Expiry Date, earlier termination or abandonment of this Contract.
- 11.5. The Provider shall ensure that it complies with all Laws relating to the health and safety and welfare of all persons using or employed on or about the Council Premises (including for the avoidance of doubt Service Users and other visitors), including ensuring that all relevant documents relating to the Council Premises are placed in the health and safety file at the same premises and made available at any time to the Council upon request.
- 11.6. In the event that, and to the extent that, the Provider is to provide all or any part of the Services from its own premises, the Provider shall ensure that such premises are safe, secure and suitable for the provision of the Services. Any Council Equipment or Council Data situated at the Provider's premises shall be clearly marked as the property of the

Council. The Provider shall afford the Council access upon reasonable notice to inspect the Provider's premises including any security, fire protection and disabled access systems. The Provider shall not provide all or any part of the Services nor store any Council Data at any premises which have not been approved by the Contract Manager.

- 11.7. The Provider shall use the Council Equipment solely in connection with the provision of the Services and shall make good any damage to the Council Equipment caused by the Provider, its Sub-Contractors, Staff, servants or agents. Any damage shall be remedied by the Provider in accordance with the reasonable instructions of the Contract Manager and all costs incurred in complying with this Clause shall be borne by the Provider. The Provider shall inform the Contract Manager immediately of any act of vandalism or damage to the Council Equipment observed by the Provider or its Staff or Sub-Contractors and the Provider shall use its reasonable endeavours to ensure that the vandalism or damage ceases and to ascertain the identity of the perpetrators and to inform the Contract Manager immediately and the police or fire brigade, if appropriate, of the same.
- 11.8. The Council does not guarantee, warrant or give any assurances as to the age or state of repair or suitability for use in the Service of any item of Council Equipment and the Provider hereby acknowledges that it has carried out its own due diligence including inspections of such equipment and has satisfied itself as to the condition and suitability of each item of such equipment for use in the provision of the Service and accordingly the Provider shall not be relieved from any liability in relation to any failure to provide the Service or any part of it where such failure is caused by a failure in of or the unsuitability of any Council Equipment.
- 11.9. The Provider shall be responsible for the maintenance of the Council Equipment at its own expense except where it is stated in this Contract that any such maintenance shall be carried out at the Council's expense. In such circumstances, and for the avoidance of doubt, the Council shall be entitled to cease to maintain any item of Council Equipment when it considers, in its absolute discretion that such Council Equipment has reached the end of its useful life and is no longer economically viable to maintain.
- 11.10. Unless expressly stated to the contrary in this Contract, the Council shall not be obliged to replace any item of Council Equipment and if it does not replace any such item the Provider shall make such arrangements as are necessary including the provision of Provider's Equipment to provide the Service in accordance with this Contract without the relevant piece of Council Equipment.
- 11.11. The Council's Equipment shall remain the property of the Council and shall be delivered up to the Council at the end of the Contract Period or earlier termination except insofar as it has reached the end of its useful life and has been disposed of. Any item of equipment which was not Council Equipment shall remain the property and responsibility of the Provider or relevant third party and shall not, unless expressly provided to the contrary in the Contract, be delivered up to the Council at the end of the Contract Period.

C. FINANCIAL ARRANGEMENTS

12. PRICES AND PAYMENT

- 12.1. Subject to the Provider fulfilling its obligations under the Contract and in consideration of the Provider properly performing the Services, the Council shall pay to the Provider the Price in accordance with this Clause 12 and Schedule 4, which shall be exhaustive of any amounts due to the Provider in respect of its provision of the Services and performance of its obligations under this Contract.
- 12.2. NOT USED
- 12.3. Payment of the Price shall be made within 30 (thirty) calendar days as per Schedule 4 by automated payment mechanism (BACS). Payment is deemed to have been made when the

Council transmits payment for processing to its BACS Bureau and the Provider accepts that if a non-working day falls near the transmission of payment, this may extend the period before the payment will arrive in the Provider's account.

- 12.4. In addition to the Provider's obligations under clause 4.4, and in recognition of the Best Value Duty, the Council may request, and the Provider shall provide within ten (10) Working Days, such financial and other information as required by the Council, including a breakdown of its costs, to enable the Council to assess and assure itself that it is receiving value for money (efficiency, effectiveness and economy) from the Contract. The Provider agrees to co-operate fully and assist the Council at no extra charge in any manner reasonably required by the Council in connection with this clause 12.4.

General Invoicing and Payment Provisions

- 12.5. All invoices or claims for payment submitted by the Provider shall specify the relevant rate or rates and the quantity of service provided during the period or periods to which the invoice relates. Invoices shall be uniquely numbered and shall contain all appropriate references including the Council's official order number and a detailed breakdown of the Mobilisation Services if used or the Services and shall be supported by any other documentation reasonably required to substantiate the invoice.
- 12.6. The Council will endeavour to identify to the Provider any claims for payment it disputes and considers to be incorrect (and the reasons why this is the case), in which case the Provider shall submit a replacement correct claim as soon as practicable. It shall however be the entire responsibility of the Provider to submit a correct and undisputed payment claim in a timely fashion in accordance with this Clause 12, and the Council shall bear no responsibility or liability for any losses the Provider may incur as a result of its failure in respect of this responsibility. The Council shall not have any obligation to pay any incorrect or undisputed claims, in whole or in part under this Clause 12.
- 12.7. The Council may withhold payment of any disputed amount pending agreement or determination of the Provider's entitlement to the disputed amount. The Provider shall not suspend the provision of the Services for failure by the Council to pay disputed charges in connection with this Contract.
- 12.8. In the event of any dispute regarding a payment claim which has been notified to the Provider, the Provider shall issue a new claim for the disputed amount and a new separate invoice (if appropriate) for the undisputed amount.
- 12.9. Without prejudice to any other rights or remedies of the Council whether in contract, tort, or under statute, or otherwise, the Council shall be entitled to withhold or reduce, or make deductions from, the Price:
- 12.9.1. pursuant to Clause 36;
 - 12.9.2. where the Provider has been overpaid by the Council by virtue of an error or fraudulent conduct by a Council employee, agent or Fellow Provider; or
 - 12.9.3. where the Council has suffered financial loss by virtue of the Provider overpaying a third party including, without limitation, where the Provider in the course of carrying out its obligations under the Contract makes an overpayment of salary or makes duplicate credit payments.

- 12.10. Any disputes in relation to whether or not a KPI has been achieved, or in relation to any invoice, payment or reduction may be referred to the Dispute Resolution Procedure as set out in Clause 40.

VAT

- 12.11. All sums payable under this Contract are exclusive of VAT or any tax replacing it.
- 12.12. If this Contract or anything in it gives rise to a taxable supply for Value Added Tax purposes by the Provider to the Council under Law from time to time in force, on the production of a valid Value Added Tax invoice, the Council will pay the Provider a sum equal to that Value Added Tax in addition to the Price or any other consideration.
- 12.13. The Provider shall provide to the Council any information reasonably requested in relation to the amount of VAT chargeable in accordance with this Contract.
- 12.14. A VAT invoice will not be valid for the purposes of charging VAT if more than forty-eight (48) months have elapsed since the time of supply.
- 12.15. It is agreed that neither Party shall be liable for any penalties or interest arising from the accounting nor the failure of the other to account to HM Revenue and Customs at the correct time for any VAT correctly due in relation to the consideration referred to in this Clause. The Provider shall be liable to the Council for any losses, costs, expenses the Council incurs as a result of the Provider accounting nor the failure of the other to account to HM Revenue and Customs at the correct time for any VAT correctly due in connection with this Contract.

13 PRICE THROUGHOUT THE CONTRACT PERIOD

- 13.1 The Price may be reviewed on an annual basis in consultation with relevant stakeholders and/or trade associations. Such Price review shall be carried out in accordance with Clauses 13.2 to 13.6
- 13.2 The Service Provider may request an adjustment to the Price provided that:
- 13.2.1 There is a maximum of one (1) request per annum;
 - 13.2.2 Any request is made in writing;
 - 13.2.3 Documentary evidence is presented to support such a request;
 - 13.2.4 The change to Price does not constitute a material change to the Contract.
 - 13.2.5 The request follows the formula specified in Clause 13.6 or follows a formula specified in the Tender Response Document and subsequently agreed in writing by the Council;
- 13.3 NOT USED
- 13.4 NOT USED
- 13.5 The Council shall be entitled, acting reasonably, to reject in whole or in part the Provider's request submitted under Clause 13.2 and if the Provider does not accept this decision, it may be referred to the Dispute Resolution Procedure.
- 13.6 When considering a request under Clause 13.2 the Council will have regard to the following:
- 13.6.1 The general level of competitiveness of the market at the time of request as any price adjustments agreed during the Contract Period should result in prices equally competitive in the current situation as at the time of tender;
 - 13.6.2 NOT USED

13.6.3 Any formula submitted as part of the Tender Response Document and subsequently agreed in writing by the Council;

13.6.3 NOT USED

13.7 NOT USED

14. RECOVERY OF SUMS DUE

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

D. CONTROL OF THIS CONTRACT

15. ASSIGNMENT AND SUBCONTRACTING

- 15.1. The Provider shall not sub-contract the whole of the Services. The Provider shall not sub-contract a part of the Services without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).
- 15.2. If the Provider should sub-contract the provision of any part of the Services to any person, neither that nor the Council's consent to that sub-contracting under Clause 15.1 above shall relieve the Provider from any liability or obligation under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-Contractor or agents in all respects as if they were the acts, defaults or neglect of the Provider.
- 15.3. Where the Council has consented to the use of a Sub-Contractor or Sub-Contractors, such Sub-contract(s) shall reflect the same terms of this Contract and for the avoidance of doubt the Sub-Contract(s) shall not contain any terms which are incompatible and/or conflict with this Contract.
- 15.4. The Council may, as a condition of giving its consent under Clause 15.1 require the Provider to procure from that Sub-Contractor any direct warranties, indemnities or guarantees from that Sub-Contractor in relation to their provision of the Service and performance of their obligations under the Sub-Contract. For the avoidance of doubt, this may also include a requirement for the Sub-Contractor to grant licences or sub-licences in favour of the Council in respect of any land, premises, Intellectual Property Rights or software which are necessary to provide or which benefit from the Services.
- 15.5. The Provider shall not be entitled to assign, novate or otherwise transfer the Contract or its rights and obligations thereunder without the prior written consent of the Council and such consent shall be at the absolute discretion of the Council.

- 15.6. The Provider shall not without the prior written consent of the Council change or replace any Sub-Contractor that it has appointed to provide any part of the Services. Any consent required from the Council in accordance with this Clause may be withheld at the Council's absolute discretion.
- 15.7. Any breach by the Provider of Clauses 15.1 to 15.6 shall constitute a substantial and material breach of Contract by the Provider.
- 15.8. The Council may, in its absolute discretion, novate or assign this Contract or any part thereof and will give written notice of any such novation or assignment to the Provider. This Clause in this Contract executed by the Provider shall stand as the Provider's consent to any such novation or assignment.
- 15.9. In the event the Council consents to any assignment, Sub-Contracting, novation or other arrangement under this Clause 15, it shall be entitled to require and the Provider shall pay the reasonable administrative and legal costs to the Council of formalising this change, including without limitation relating to the new contractual relationship between the Council and the Provider or any third party. For the avoidance of doubt, any such costs may be set-off pursuant to Clause 14 from sums due to the Provider.

16. VARIATIONS AND CHANGE CONTROL

- 16.1. Subject to Clause 16.2 no Variation shall be effective unless it is recorded in writing and signed by duly authorised representatives of the Council and the Provider. Neither the Council nor the Provider shall implement a variation other than one which is in accordance with this Clause 16.1.

Council Variations

- 16.2. The Council may by notice in writing to the Provider, from time to time, require minor and/or non-substantial changes to the Services, the way the Services are provided or any of the Contract Documents; such changes shall not be / nor be considered to be a Variation to this Contract nor shall the Prices be affected thereby.
- 16.3. The Council may propose a Variation by giving written notice to the Provider ("the Council Variation Notice").
- 16.4. The Council Variation Notice shall:
- 16.4.1. set out the Variation required in sufficient detail to enable the Provider to calculate and provide an estimate of any adjustment to the Prices in accordance with Clause 16.6 below (the "Estimate");
 - 16.4.2. state the date on or by which the Council wishes the Variation to be implemented.
- 16.5. The Council shall consult with the Provider with respect to the Variation, and the Provider shall provide the Council on or before the date falling ten (10) Working Days after the date of the Council Variation Notice with a reasonable Estimate of the increase or reduction in the Prices (if any), or proposal of other changes to the terms set out herein, which it believes should occur as a result of the changes set out in the Council Variation Notice.

The Estimate

- 16.6. The Estimate shall be accompanied by a reasonably detailed breakdown of the manner in which the Estimate is calculated and shall include details of any redundancy costs which are reasonably expected to be incurred by reason of the proposed change together with any information which the Council may reasonably require including without limitation breakdowns of price and supporting material for the purpose of satisfying the Council that the proposed revised price is fair and reasonable.

- 16.7. To the extent it is possible to do so the Estimate shall be calculated:
- 16.7.1. using the rates and prices in the Tender Response Document (as they may have been revised in accordance with this Contract);
 - 16.7.2. or, where it is not possible to calculate the adjustment using such rates and prices] based on rates and prices that represent the market price current at the date on which the Council Variation Notice is issued.
- 16.8. The Estimate shall include a statement of the Provider's opinion on:
- 16.8.1. any impact on the provision of the Services;
 - 16.8.2. any amendment required to the Contract as a result of the change in the Services; and
 - 16.8.3. any capital expenditure that is required or no longer required as a result of the change in the Services.
- 16.9. As soon as practicable after the Council receives the Estimate, the Parties shall discuss and attempt to agree the issues set out in the Estimate. In such discussions the Council may:
- 16.9.1. agree the Estimate in which case the Variation shall be implemented in accordance with the Council Variation Notice; or
 - 16.9.2. modify the Council Variation Notice in which case the Provider shall as soon as practicable and in any event not more than ten (10) days after receipt of such modification, notify the Council of any consequential changes to the Estimate.
- 16.10. If the Parties cannot agree on the effects and consequences of the Estimate then the dispute will be resolved in accordance with the Dispute Resolution Procedure.
- 16.11. As soon as practicable after the effects and consequences of the Estimate have been agreed or otherwise determined pursuant to Clause 16.10 the Council shall:
- 16.11.1. confirm in writing the Estimate (as modified); or
 - 16.11.2. withdraw the Council Variation Notice.
- 16.12. If the Council does not confirm in writing the Estimate (as it may have been modified) within twenty (20) days of the Estimate being agreed in accordance with Clause 16.9 or determined pursuant to Clause 16.10 above then the Council Variation Notice shall be deemed to have been withdrawn.

Provider Variations

- 16.13. If the Provider wishes to introduce a Variation to the Services it must serve a notice on the Council ("the Provider Variation Notice").
- 16.14. The Provider Variation Notice must:
- 16.14.1. set out the proposed Variation in sufficient detail to enable the Council to evaluate it in full;
 - 16.14.2. specify the Provider's reasons for proposing the Variation;
 - 16.14.3. request the Council to consult with the Provider with a view to deciding whether to agree to the Variation and, if so, what consequential changes the Council requires as a result;
 - 16.14.4. include an Estimate in accordance with Clauses 16.6 and 16.7; and
 - 16.14.5. indicate if there is any date by which a decision by the Council is critical.
- 16.15. As soon as reasonably practicable after the Council receives the Provider Variation Notice the Parties shall meet to discuss the issues in such notice. During such discussions either Party may propose modifications to the proposed Variation.

- 16.16. If the Council accepts the Provider Variation Notice (with or without modification) the relevant Variation shall be implemented by any date specified in the Provider Variation Notice or in the event that it is not practicable for any reason to implement the Variation by such date it shall be implemented by such other date as the Parties acting reasonably may agree.
- 16.17. If the Council rejects the Provider Variation Notice it shall not be obliged to give its reasons for such a rejection.
- 16.18. Unless the Council's acceptance of the Provider's proposed Variation specifically agrees to an increase in the Prices, there shall be no increase in the Prices as a result of a Variation proposed by the Provider.
- 16.19. If the Variation proposed by the Provider causes or will cause the Provider's costs or those of one of its Sub-Contractors to decrease, there shall be a corresponding decrease in the Prices.
- 16.20. Neither Party shall be entitled to reject any Variation which has been proposed to enable the provision of the Services to conform to a change in law.

17. PERFORMANCE MONITORING AND CONTRACT REVIEW

- 17.1. Contract review meetings will be held between the Provider's Authorised Representative and the Contract Manager at regular intervals specified in advance by the Council and monitoring visits shall also take place in order to monitor the Provider's performance both on this Contract as a whole and against any Performance Targets.
- 17.2. The Council may undertake monitoring visits with other strategic partners including other Eastern Region ADASS Members and local Integrated Care Boards (ICB) The Council shall also be entitled to share information on the Provider's performance and other aspects of the Provider's delivery of the Services with other strategic partners.
- 17.3. The Council shall wherever possible provide five (5) Working Days' notice of monitoring visits but reserve the right to make unannounced monitoring visits at any time (in which circumstances the Council shall respect the rights of any Service Users who may be receiving Services at the time of an unannounced visit).
- 17.4. The Provider shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews (including procuring the attendance of the Provider's Authorised Representatives at such meetings), monitoring visits (including PAMMS Assessments) and any further reasonable methods which the Council undertakes to assess the Provider's performance and contract compliance. The Provider shall provide all reasonable cooperation, facilitation and information required at no additional cost to the Council.
- 17.5. The Provider shall monitor and report to the Council its performance against any Performance Targets and provide all information required therein in the format required. This includes the requirement for the Provider to use PAMMS to prepare and update Actions Plans in Clause 36.
- 17.6. The Council shall be entitled to make deductions or other adjustments to the Contract Price as a consequence of the Provider's performance against the Performance Targets and as provided for in the Performance Mechanism.
- 17.7. The Council may elect, at its own cost, to undertake its own performance monitoring at any stage for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract. The Provider will use its reasonable endeavours to assist the Council in such an exercise. The Council shall notify the Provider of the outcome of the performance monitoring exercise, and (without prejudice to the Council's other rights under

this Contract) the Provider shall have due regard to the Council's findings in relation to the future provision of the Services.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1. The Provider hereby expressly acknowledges that the Council alone has (subject to such third party rights as may at any time be notified to the Provider by the Council) exclusive ownership and ultimate control of:
- 18.1.1. the format and content of the documentation comprising the Contract;
 - 18.1.2. the Council's logos, insignia and letter heads;
 - 18.1.3. Council Data however and wherever stored and processed by the Provider; and
 - 18.1.4. any Intellectual Property Rights pertaining to any of the above.
- (collectively the "Property Rights").
- 18.2. Any goodwill pertaining to or arising from the use of the Property Rights shall at all times ensure and accrue to the exclusive benefit of the Council absolutely.
- 18.3. The Provider shall at the request of the Council promptly execute such documents and take or desist from such action as the Council may require in order to assure to the Council the full benefit of its Property Rights and/or to confirm the Council's title thereto.
- 18.4. The Council hereby licences the Provider to use the Property Rights solely:
- 18.4.1. to the extent and upon the terms provided by this Contract; and
 - 18.4.2. for the purposes of performing the Services for the Council.
- 18.5. The Provider shall notify the Council on becoming aware of:
- 18.5.1. any information prejudicial to, and/or actual, threatened or suspected complaint or proceedings brought by any third party (including, without limitation, by any user or recipient of the Services) in any way connected with the Services and relating to the Council, the Provider or its Sub-Contractors or any Fellow Provider; or
 - 18.5.2. any actual, threatened, attempted or suspected infringement by any third party of any of the Property Rights including (without limitation) any seizure of or other interference with Council Data (an "Infringement").
- 18.6. The Provider shall use its best endeavours to assist, co-operate with and follow the instructions of the Council in relation to any Infringement, including (without limitation) in protecting and/or defending the Property Rights against any infringing party and, at the Council's request or the request of the Council's insurers, the Provider shall entrust the conduct of any proceedings in relation to any such Infringement to the Council.
- 18.7. Save for any Pre-Existing Intellectual Property Rights owned by the Provider, all Intellectual Property Rights in any data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or developed by the Provider in connection with provision of the Services shall vest in and be the property of the Council and the Provider hereby assigns all such Intellectual Property Rights to the Council provided that in the event that any such Intellectual Property Rights do not vest in the Council by operation of law, the Provider shall execute or cause to be executed, including by any employee or agent of its any and all deeds, documents and acts required to assign such Intellectual Property Rights to the Council.
- 18.8. Neither Party shall acquire Pre-Existing IPR Rights of the other Party.
- 18.9. Subject to clause 18.8, the Council may wish to use the Provider's logos and insignia in relation to the Services, including the promotion and reporting of. The Council will seek the Provider's written consent before such usage.

Intellectual Property Rights Indemnity

- 18.10. The Provider warrants, undertakes and represents to the Council that:
- 18.10.1. it has not given and will not give permission to any third party to use any of the material to which Clause 18.1 relates nor any of the Intellectual Property Rights in such material; and
 - 18.10.2. neither the provision of the Services by the Provider nor its receipt by the Council will infringe the Intellectual Property Rights of any third party.
- 18.11. The Provider agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any claim by any third party that their Intellectual Property Rights have been infringed by the provision of the Services or anything supplied, created or done by the Provider in connection with such provision.
- 18.12. The Provider waives any moral rights in relation to any materials it creates in connection with the provision of the Services to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such material or other materials, infringes the Provider's moral rights.

19. ICT AND COMPUTER SYSTEMS

- 19.1. In relation to any computer system which the Provider uses in connection with its provision of the Services, the Provider shall ensure that the Provider's System(s) is at all times throughout the Contract Period such as to enable the Provider to comply with its obligations under the Contract and in particular (but without limitation) to perform the Services to the Contract Standard. On the reasonable instructions of the Council, the Provider shall ensure that the Provider's System is capable of being rendered compatible with and is in all respects capable of interfacing with the Council's System and, where reasonably practicable, the relevant computer systems of other partners of the Council and Fellow Providers.
- 19.2. The Provider shall ensure that at all times during the Contract Period (and until any computerised Council Data has been returned to the Council in accordance with the provisions of the Contract) it has in place adequate and robust business continuity and disaster recovery procedures that are in accordance with good data management and security practice and that shall include as a minimum undertaking a full back up of all Council Data at least once per day so that in the event of the partial or total failure of the Provider's computer system the Provider shall be able to continue to provide the Services without interruption and comply with its remaining obligations under this Clause 19.
- 19.3. The Provider shall ensure through internal auditing and testing of data, that any licences in relation to the software used in connection with the provision of the services are conducive to the effective provision of the services under this contract before used operationally by the Provider.
- 19.4. The Provider shall ensure that at all times during the Contract Period it has in place a good quality robust firewall and virus protection software so as to guard against any virus, worm, Trojan horse, logic bomb, time bomb, back door, trap, disabling device, malicious code, or other contaminants or similar form of code intended (or having that effect) to cause harm, damage, or to prevent or restrict the use of the Council Data, the Council's System or any other computer system relevant to this Service (together, "Contaminants"). The Provider warrants, undertakes and represents that it shall not introduce any Contaminants into the Council's System, nor any systems of Collaboration Partners, Fellow Providers or other systems which the Provider is provided access to for the purpose of performing the Services.

- 19.5. The Council shall, free of charge, either in hard copy or in computerised form (as appropriate) provide the Provider with such Council Data as is necessary in the Council's opinion for the Provider to perform the Services.
- 19.6. The Provider shall at all times ensure that the Staff use the Council's System and Council's Equipment in accordance with the terms and conditions of this Contract and the Provider shall be solely responsible for any of the Staff's breach of this Contract.
- 19.7. The Provider shall indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, arising out of or in connection with the Staff's use of the Council's System and/or the Council's Equipment.

20. AUDIT AND MONITORING RIGHTS

- 20.1. The Provider shall permit or procure permission for any authorised representative of the Council (including such other nominated officer and/or the Council's internal auditors and external auditors) and representatives of the Council's partners (at the Council's request), to have reasonable access for audit and monitoring purposes to information, documents, data, systems, the Provider's Premises or the Provider's Equipment used in the provision of the Services and any information, documents, reports, Sub-Contractors and their staff, assets or information, or anything else reasonably required for inspection by the Council and/or its authorised representatives.
- 20.2. Access shall include (without limiting the generality of the foregoing):
- 20.2.1. reasonable access to the Staff who are engaged in the provision of the Services;
 - 20.2.2. inspection of the materials, premises and arrangements being made by the Provider to comply with its obligations under this Contract;
 - 20.2.3. access to the Provider's Premises and any other locations where the Services are being provided; and
 - 20.2.4. access to such financial and other records kept as part of the provision of the Services by the Provider as may be reasonably required from time to time by the Council to enable the Council to verify the sums due and payable under the terms of this Contract and how the Services are being provided. The Provider shall keep and maintain for a period of twelve (12) years after the end of the Contract Period, or a longer period as may be agreed between the Parties, full and accurate records of this Contract including Services provided under it, all expenditure reimbursed by the Council and all payments made by the Council. For the avoidance of doubt this Clause 20 is in addition to any legal requirement and does not negate the need for any such retention of records. If the Council's audit of financial records reveals that the Council has overpaid all or part of the Price then the Provider shall immediately pay the Council the balance of such overpayment and the reasonable cost of such audit.
- 20.3. Access may be at any time without notice, provided there is good cause for access without notice, and provided that the Contract Manager shall comply with all reasonable requirements of the Provider for the purpose of protecting the confidentiality of the information of third parties, and no information will be divulged to any third party save in pursuance of statutory or other legal obligations.
- 20.4. The Council reserves the right to jointly with the Provider audit or monitor the performance of a Sub-Contractor.

21. RECORDS

- 21.1. The Provider shall maintain current and accurate records of all work carried out in the provision of the Services and shall ensure that these records shall be available for inspection by an authorised representative of the Council at all reasonable times in accordance with Clause 20. Such records shall be Council Data and shall be provided to the Council in such searchable and identifiable form as the Council may request at any stage during the Contract Period.
- 21.2. The Provider shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of records irrespective of the storage media which are under the Provider's control as part of the Services including the Council Data.
- 21.3. The Provider shall ensure that access to records is only provided to Staff as is necessary in connection with the provision of Services. The Provider shall, prior to providing such access, ensure that those Staff members are made aware of the obligations upon the Provider in their dealings with the records, including the safeguards the Staff members must comply with.
- 21.4. If any records are accidentally or wilfully destroyed otherwise than by the Council or on the authorisation of the Council and in the event that the Provider does not have in place a method for reinstatement or replacement of such records, within five (5) Working Days of receipt of a notice from the Council and without prejudice to the Council's other rights at law, the Provider shall reimburse the Council's reasonable costs in restoring such records and/or the Council Data such costs are to be accounted for during the term of this Contract by way of rebate in subsequent invoices for the sums paid pursuant hereto.

22. PUBLICITY

- 22.1. Except with the prior written approval of the Council, the Provider shall not make any press announcements or responses or publicise this Contract or any part thereof in any way.
- 22.2. Where requested, the Provider shall comply with the Council's local brand policy and guidelines, as revised, updated or re-issued from time to time.
- 22.3. The Provider shall take reasonable steps to ensure the observance of the provisions of this Clause 22 by all of its Staff.
- 22.4. The Council shall have the right to publish the results of the Provider's ratings on the Public Portal and elsewhere and to publicly share information in relation to these ratings (and the Provider acknowledges that such information is not confidential information).

E. FREEDOM OF INFORMATION CONFIDENTIALITY AND DATA PROTECTION

23. FREEDOM OF INFORMATION

- 23.1. The Provider acknowledges that the Council is subject to the requirements under the Freedom of Information Act 2000 ("FOIA") and the Environment Information Regulations 2004 ("EIR") and shall cooperate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements and any requests for information under the FOIA and/or EIR ("Request(s)").
- 23.2. The Provider shall give reasonable assistance to the Council to comply with the FOIA and EIR. The Provider shall not do any act either knowingly or recklessly that would cause the Council to be in breach of the FOIA and/or the EIR.

- 23.3. In particular, the Provider shall supply all such information to the Council (together with reasonable assistance to locate the same) which is needed by the Council to comply with its obligations under the FOIA and EIR within a timescale to be agreed on a case by case basis, but in any event, not to exceed the timescale that the Council must comply with as specified in the FOIA and/or EIR (as appropriate).
- 23.4. The Provider shall advise the Council of any requests for information received by the Provider where the information requested is subject to the Services provided under this Contract and shall follow the Council's access procedures in fulfilling the request.
- 23.5. The Provider shall be required to follow all Council processes and procedures that provide for compliance with the FOIA and EIR where information held is subject to the Services.
- 23.6. Without prejudice to the generality of its obligations under this Clause 23, the Provider shall:
- 23.6.1. transfer all Requests for Information that it or its sub-contractor receive, to the Contract Manager of the Council as soon as practicable after receipt and in any event within two (2) Working Days following receipt of the Request;
 - 23.6.2. provide the Council with a copy of all information in its or its Staff members' possession or power that the Council reasonably considers relevant to the Request and in the form that the Council requires as soon as practicable and in any event within five (5) Working Days following receipt of the Council's request for that information (and any follow-up information required by the Council thereafter within two (2) Working Days following receipt of the Council's follow-up request); and
 - 23.6.3. provide all necessary assistance as reasonably requested by the Council to respond to the Request for information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.
- 23.7. In the event that the Council or the Provider receiving a request for information pursuant to Clause 23.6 reasonably believes that any information required to be disclosed by the Council is exempt from the provisions of the FOIA the Provider may notify the Council accordingly, specifying the reasons for the belief that the information is exempt, such notification to be given within two (2) Working Days of the date on which the Request for information is received.
- 23.8. In the event that the Provider notifies the Council in accordance with Clause 23.7 the Council shall acting in good faith consider the reasons given by the Provider and following such consideration shall either:
- 23.8.1. withdraw its request in the event that it agrees the information is exempt; or
 - 23.8.2. confirm its request in which case the Provider shall provide the information so requested within such period as may reasonably be specified by the Council.
- 23.9. Subject to the provisions of Clause 24 the Council shall have the discretion to disclose any information which is the subject of this Contract to any person who makes a request under the FOIA and/or EIR and which, in the opinion of the Council, it has to disclose to discharge its responsibilities under the FOIA and/or EIR.
- 23.10. When exercising its right under Clause 23.9, the Council shall consult the Provider and may take account of any reasonable suggestions made by the Provider, however the final

decision as to whether any information shall be withheld or disclosed shall lie with the Council.

24. CONFIDENTIALITY

- 24.1. The Parties to this Contract each agree to keep confidential all information that ought to be considered as confidential that is shared between them (however it is conveyed or on whatever media it is stored) in relation to the Services and any Service Users.
- 24.2. Each Party:
- 24.2.1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - 24.2.2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 24.3. The Provider shall ensure that in the event its Staff are in receipt of any of the Council's Confidential Information, such Staff are under the same legal obligations and undertakings in respect of such Confidential Information as those imposed on the Provider under this Clause.
- 24.4. The Provider and/or its Staff shall not use any Confidential Information it receives from the Council otherwise than in providing the Services in accordance with this Contract.
- 24.5. The foregoing restriction set out in Clause 24.2 relating to Confidential Information shall not apply to:
- 24.5.1. information which at the time of disclosure is generally available to the public other than by breach of this Clause 24 by the Council and/or Provider;
 - 24.5.2. information which is in possession of the disclosing party (without restrictions) before the date on which the disclosing party received that information as a result of or in connection with this Contract;
 - 24.5.3. information which is required to be disclosed by Law and/or compliance with a Court order; and
 - 24.5.4. information which is reasonably required by any person engaged in the performance of their obligations in relation to the Contract for the performance of those obligations.
- 24.6. The Council shall not disclose information, which has been forwarded to it by the Provider and designated by the Provider as confidential, including, but not limited to, technical or trade secrets or the confidential aspects of the Tender Response Document.
- 24.7. Clause 24.6 is without prejudice to -:
- 24.7.1 any other provision in Regulation 21 of Public Contract Regulations 2015, including the obligations relating to the advertising of awarded contracts and the provision of information to candidates and tenderers set out in Regulations 50 and 51 of the Public Contracts Regulations 2015 respectively;

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

- 24.8. The Provider shall take all necessary steps to enable the Council to comply with its obligations under the Re-Use of Public Sector Information Regulations 2005 and at the Provider's own expense.

25. DATA PROTECTION

- 25.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, We are the Controller and You are the Processor for the Personal Data within scope of the Contract. The only processing of Personal Data that You are authorised to do is listed in the Data Processing Schedule by Us and may not be determined by You.
- 25.2 Each Party, including their sub-contractors and their staff, shall comply with all applicable requirements of the Data Protection Legislation. The provisions in this clause are in addition to, and do not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. You shall give Us all reasonable assistance necessary to enable Us to comply with Our obligations under the Data Protection Legislation and to meet Our duties in the commissioning and delivery of the services. Each Party shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach, of the Data Protection Legislation.
- 25.3 You shall notify Us immediately if You consider that any of Our instructions infringe the Data Protection Legislation.
- 25.4 You shall provide all reasonable assistance to Us in the preparation of any Data Protection Impact Assessment prior to commencing any processing and during the term of this Contract. Such assistance may, at Our discretion, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

25.5 You shall, in relation to any Personal Data processed in connection with Your obligations under this Contract:

(a) process that Personal Data only in accordance with the Data Processing Schedule, unless You are required to do otherwise by Law. If it is so required, You shall promptly notify Us before processing the Personal Data unless prohibited by Law;

(b) ensure that You have in place Protective Measures that comply with the Data Protection Legislation, which have been reviewed and approved by Us as appropriate, to protect against a Data Loss Event, having taken account of the:

i. nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

We reserve the right to review the Protective Measures at any point and You shall facilitate such review. Where the Protective Measures do not comply with the Data Protection Legislation, You shall implement any remedial changes to the Protective Measures requested by Us at your expense.

(c) ensure that:

(i) the Staff do not process Personal Data except in accordance with this Contract (and in particular the Data Processing Schedule);

(ii) You take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:

are aware of and comply with Your duties under this clause;

are subject to appropriate confidentiality undertakings with You or any Sub-processor;

are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by Us or as otherwise permitted by this Contract; and

have undergone adequate training in the use, care, protection and handling of Personal Data

(d) not transfer Personal Data outside of the EEA or the UK unless Our prior written consent has been obtained and the following conditions are fulfilled:

(i) We or You have provided appropriate safeguards in relation to the transfer (in accordance with UK GDPR Article 46) as determined by Us;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) You comply with Your obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if You are not so bound, use Your best endeavours to assist Us in meeting Our obligations under the Data Protection Legislation); and

(iv) You comply with any reasonable instructions notified to You in advance by Us with respect to the processing of the Personal Data.

(v) at Our written direction, delete or return Personal Data (and any copies of it) to Us on termination of the Contract unless You are required by Law to retain the Personal Data.

25.6 Subject to clause 25.7, You shall notify Us immediately if You:

(a) receive a Data Subject Access Request (or purported Data Subject Access Request); and you shall follow our central process for the Personal Data within scope of this Contract in the Data Processing Schedule;

(b) receive a request to rectify, block or erase any Personal Data;

(c) receive any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receive any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

(e) receive a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) become aware of a Data Loss Event.

25.7 Your obligation to notify under clause 25.6 shall include the provision of further information to Us in phases, as details become available.

25.8 Taking into account the nature of the processing, You shall provide Us with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 25.6 (and insofar as possible within the timescales reasonably required by Us) including by promptly providing:

(a) Us with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by Us to enable Us to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) Us, at Our request, with any Personal Data You hold in relation to a Data Subject;

(d) assistance as requested by Us following any Data Loss Event;

(e) assistance as requested by Us with respect to any request from the Information Commissioner's Office, or any consultation by Us with the Information Commissioner's Office;

- 25.9 You shall maintain complete and accurate records and information to demonstrate Your compliance with this clause. This requirement does not apply where You employ fewer than 250 staff, unless:
- (a) We determine that the processing is not occasional;
 - (b) We determine the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - (c) We determine that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 25.10 You shall allow for audits of Your Data Processing activity by Us or Our designated auditor.
- 25.11 You shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 25.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, You must:
- (a) notify Us in writing of the intended Sub-processor and processing;
 - (b) obtain Our written consent;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - (d) provide Us with such information regarding the Sub-processor as We may reasonably require.
- 25.13 You shall remain fully liable for all acts or omissions of any Sub-processor.
- 25.14 The Parties agree to take account of any ruling and/or guidance issued by the Information Commissioner's Office.
- 25.15 We may in complying with a statutory obligation or any guidance issued by the Information Commissioner's Office on not less than thirty (30) Working Days' notice, revise this clause by amending, revising or replacing it with any provisions which are compliant and/or any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 25.16 The provisions of this clause shall survive expiry or termination of the Contract.

F. ADDITIONAL STATUTORY OBLIGATIONS AND REGULATIONS

26. BRIBERY, CORRUPTION AND FRAUD

- 26.1 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the

Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

- 26.1. The Provider shall take all reasonable steps to prevent any fraudulent activity (including but not limited to the submission of inaccurate, incomplete, misleading or falsified management information) by the Staff, the Provider (including its shareholders, members and directors) and/or any of the Provider's Sub-Contractors or suppliers, and including in connection with the receipt of monies from the Council.
- 26.2. The Provider shall not, and shall procure that its Staff shall not, in connection with this Contract commit a Prohibited Act as defined in Clause 26.4 below.
- 26.3. The following constitute a Prohibited Act:
- 26.3.1 directly or indirectly to offer, promise or give any person:
 - 26.3.2 working for or engaged by the Council a financial or other advantage;
 - 26.3.3 induce that person to perform improperly a relevant function or activity;
or
 - 26.3.4 reward that person for improper performance of a relevant function or activity;
 - 26.3.5 directly or indirectly to request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
 - 26.3.6 committing any offence:
 - 26.6.3.1 under the Bribery Act;
 - 26.6.3.2 under legislation creating offences concerning fraudulent acts;
 - 26.6.3.3 at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
 - 26.6.3.4 defrauding, attempting to defraud or conspiring to defraud the Council.
- 26.4. The Provider shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency for the purpose of compliance with the Bribery Act.
- 26.5. The Provider shall have an anti-bribery policy.
- 26.6. If any breach of this Clause 26 is suspected or known, the Provider must notify the Council immediately.

27. EQUALITY

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

- 27.2.1. not discriminate against any person or for any reason within the meaning and scope of Equalities Legislation;
- 27.2.2. promote equality, diversity and inclusion and comply with any official guidance and codes of practice in relation to promoting equality in employment and the provision of services;
- 27.2.3. have an equal opportunities policy that covers employment and the services provided under this Contract approved by the Council or shall have adopted the Council's own equal opportunities policy and procedures which is available as may be amended from time to time and notified to the Provider;

<https://www.suffolk.gov.uk/council-and-democracy/our-aims-and-transformation-programmes/the-councils-equality-and-inclusion-commitment-to-you/>

- 27.2.4. take all reasonable steps to secure the observance of this Clause 27 by its Staff employed in connection with the Contract; and
- 27.2.5. provide such information as the Council may reasonably require for the purpose of assessing the Provider's continued compliance with this Clause 27 and to assist in the Council's reporting obligations in respect of equal opportunities.

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

- 27.3.1. have a right to terminate the Contract pursuant to Clause 37; or
- 27.3.2. shall be entitled to require all reasonable steps from the Provider to mitigate such risks and ensure that any repetition of the circumstances leading to the finding does not occur.

28. HEALTH AND SAFETY

- 28.1. The Provider shall at all times comply with the Health and Safety at Work etc Act 1974 and all other Law relating to the health and safety of Staff and others who may be affected by the Provider's acts or omissions in providing the Services under this Contract.
- 28.2. The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work etc. Act 1974 and all relevant Law relating to health and safety and provisions within this Clause 28.
- 28.3. The Provider shall notify the Council in writing if any method or practice set out in any method statement within Schedule 5 (Tender Response Document) shall be or shall become an unsafe method of practice and shall propose and implement such steps as are necessary to improve or rectify such unsafe methods of practice as soon as possible.

29. WHISTLEBLOWING

- 29.1. The Provider confirms that the Provider' Authorised Representative is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 ("PID Act") and declares that any of its Staff making a protected disclosure (as defined by PID Act) shall not be subjected to any detriment and the Staff will be made aware of this provision. The Provider further declares that any provision in any contract purporting to preclude a member of its Staff from making a protected disclosure is void.
- 29.2. The Provider shall review its whistleblowing policy and procedure on an annual basis and discuss and review with the Contract Manager on request and shall reflect in its own policy the Council's Whistleblowing Procedure and Guidance which can be found here:

[Whistleblowing Policy - December 2023 \(suffolk.gov.uk\)](https://www.suffolk.gov.uk/whistleblowing-policy)

30. ADDITIONAL SPECIFIC STATUTORY OBLIGATIONS

Human Rights Act 1998

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

Modern Slavery Act 2015

- 30.2. The Provider undertakes, warrants and represents that:
- 30.2.1 neither the Provider nor any of its Staff, agents or Sub-Contractors has:
- 30.2.1.1 committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");
 - 30.2.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - 30.2.1.3 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 30.2.2 it shall comply with the Modern Slavery Act 2015 and any relevant legislation, regulations and codes of practice relating to slavery and trafficking at all times;
- 30.2.3 its responses to any Council modern slavery and human trafficking due diligence questionnaire are complete and accurate;
- 30.2.4 it shall maintain a complete and accurate set of records to trace the supply chain of Services provided under this Contract; and
- 30.2.5 it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it or any of its Staff, agents or Sub-Contractors have breached or potentially breached any of Provider's obligations under this Clause including being the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding

slavery and trafficking. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations.

- 30.3. Any breach of clause 30.2 by the Provider shall be deemed a material breach of the Contract and shall entitle the Council to terminate the Contract in accordance with Clause 37.

Mental Capacity Act and Deprivation of Liberty Safeguards

- 30.4 In relation to the Mental Capacity Act 2005 (as amended) ("MCA"):

- 30.4.1 the Provider, including all Staff, shall comply with the provisions set out in the MCA when delivering Services;
- 30.4.2 the Provider shall have a clear written policy approved by the Council on its approach to the MCA. The policy may be reviewed by the Council from time to time and shall ensure that any reasonable amendments requested by the Council are incorporated into its equality/ diversity policy within twenty one (21) days of request by the Council;
- 30.4.3 all Staff must be trained at induction to follow the reporting procedures specified in the policy and that training should be updated at least annually; and
- 30.4.4 the Provider shall notify the Council immediately where a Service User may lack capacity and a Significant Decision is to be made.

- 30.5 In relation to the Deprivation of Liberty Safeguards:

- 30.5.1 the Provider shall have regard to the MCA Code of Practice including the supplementary DoL Safeguards Code of Practice in its role as a Managing Authority;
- 30.5.2 the Provider shall have a clear written policy approved by the Council and reviewed from time to time on its approach to the DoL, which shall follow national guidelines and includes but is not limited to the following:
 - 30.5.2.1 a clear procedure for the recording of information;
 - 30.5.2.2 the process for applying for an Authorisation to the Council;
 - 30.5.2.3 the process once a Authorisation request has been made; and
 - 30.5.2.4 the process once an Authorisation has been granted for review and ensuring compliance with any condition attached to the Authorisation.
- 30.5.3 the Provider shall appoint a lead contact to act on behalf of the Provider for all purposes connected with the MCA and DoL. The Provider shall notify the Council of the lead contact details prior to the Commencement Date;
- 30.5.4 the Provider shall forthwith give notice in writing to the Council of any change in the identity or contact details of the person appointed as lead contact; and
- 30.5.5 the Provider shall give maximum possible notice to the Council before changing its lead contact.

G. INSURANCE AND INDEMNITY

31. INSURANCE

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

Public Liability Insurance

- 31.1.1. Public liability insurance of a minimum of **Ten Million Pounds (£10,000,000)** in respect of each and every claim; and

Employers Liability Insurance

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

Professional Indemnity Insurance

- 31.1.3. Professional indemnity insurance of a minimum of **Two Million Pounds (£2,000,000)** in respect of aggregate claim and which insurance shall continue in place throughout the Contract Period and for a period of twelve (12) years from the final date on which the Services are provided under this Contract; and

Medical Malpractice Insurance (as most appropriate to the service)

- 31.1.4 Medical Malpractice insurance cover of a minimum of **Two Million Pounds (£2,000,000)** in respect of each and every claim and which insurance shall continue in place throughout the Contract Period and for a period of twelve (12) years from the final date on which the Services are provided under this Contract; and

Care and Treatment Insurance (as most appropriate to the service)

- 31.1.5 Care and Treatment Insurance cover of a minimum of **Two Million Pounds (£2,000,000)** in respect of each and every claim and which insurance shall continue in place throughout the Contract Period and for a period of twelve (12) years from the final date on which the Services are provided under this Contract; and

Sexual Abuse and Molestation Insurance

- 31.1.6 Sexual abuse and molestation insurance cover of a minimum of **Two Million Pounds (£2,000,000)** in respect of any one claim.
- 31.1.7 Professional indemnity insurance, medical malpractice insurance and/or sexual abuse and molestation insurance may be covered by the Providers' public liability insurance policy and evidence of such will need to be provided to the Council. Where these insurances are not covered by the public liability insurance or are not covered to a sufficient level, the Provider will ensure that separate insurance is taken out to meet the requirements of this Clause 31.

- 31.2 In the event that such insurance cover required by this Clause 31 ceases to be available to the Provider at all or on commercially reasonable rates, the Provider shall notify the Council immediately and the Parties shall acting reasonably consider alternative arrangements. In the event that there are no alternative arrangements that are acceptable to the Council, the Council shall be entitled to terminate the Contract under Clause 37.
- 31.3 The Provider shall supply to the Council at the Commencement Date forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming that the Provider's insurance policies comply with each of the insurance requirements set out in Clauses 31.1.
- 31.4 Where this is possible for the type of insurance cover, the insurance policies shall contain an indemnity to principal clause in favour of the Council.
- 31.5 If the Provider fails to comply with the requirements of this Clause 31, then without prejudice to the Council's other rights under this Contract in respect of such breach, the Council shall be entitled to obtain equivalent insurance cover for the Services on behalf of the Provider and shall be entitled to recover from the Provider as a debt those reasonable costs of obtaining and maintaining such cover.
- 31.6 If the Provider complies with its obligations in Clause 31.1.4 via a NHS Risk Management Scheme then the Provider shall take out and maintain throughout the Contract Period as a minimum Run-Off Insurance Cover in the event that the Provider's membership of a NHS Risk Management Scheme ceases at any time during the Contract Period or at any time up to twelve (12) years from the final date on which the Services are provided under this Contract.

32 LIABILITY AND INDEMNITY

- 32.1 Neither Party shall exclude or limit its own liability for:-
- 32.1.1 death or personal injury caused by its negligence, or that of its own personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors);
 - 32.1.2 acts of fraud or fraudulent misrepresentation by it or its personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors);
 - 32.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 32.1.4 any other matter where such limit or exclusion is not permitted under Legislation.
- 32.2 The Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its employees and agents against all liabilities, demands, proceedings, actions, damages, costs (including legal costs), losses, fines, monetary penalty notices, claims, charges, expenses and any other liabilities whatsoever in any way arising out of or in connection with the Services and/or this Contract and including but not limited to:
- 32.2.1 any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any

other loss which is caused directly or indirectly by any act or omission of the Provider;

32.2.2 the Provider's failure to provide all or any part of the Services in accordance with the Contract or at all;

32.2.3 any breach by the Provider of any of the provisions of the Contract;

32.2.4 the use or occupation by the Provider of any of the Council's Premises;

32.2.5 the use by the Provider of the Council's Equipment; and

32.2.6 any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Provider.

32.3 The liability set out in Clause 32.2 shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services so far as the management of, or instructions issued to, such third parties is the responsibility of the Provider.

32.4 NOT USED

H. REMEDIES FOR POOR PERFORMANCE AND TERMINATION

33 FORCE MAJEURE

33.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and for that reason it is prevented from carrying out all or a material part of its obligations under this Contract by that Force Majeure Event.

33.2 On the occurrence of a Force Majeure Event, the Party affected shall notify the other Party within twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

33.3 Within forty-eight (48) hours of the Force Majeure Event, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

33.4 If the Force Majeure continues for more than twenty one (21) days the Council shall be entitled to terminate this Contract under Clause 37.

33.5 This Clause 33 does not affect the Council's other rights to terminate this Contract set out in Clause 37.

34 BUSINESS CONTINUITY

34.1 The Provider shall provide no later than sixty (60) Working Days after the Commencement Date a Business Continuity Plan capable of acceptance by the Council which shall ensure that the Provider can restore or regenerate full business activity in the event of an internal or external threat within a reasonable period of time as specified by the Council.

34.2 The Business Continuity Plan shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of a major failure of the Services or any

part thereof, such content shall be agreed and / or determined by the Contract Manager as appropriate.

- 34.3 The Provider shall review and assess the Business Continuity Plan, which shall include the identification and testing of the critical elements of the Business Continuity Plan, every twelve (12) months and produce a report to the Council within ten (10) Working Days of the success or failure thereof. If the Council is not at that time satisfied with the Business Continuity Plan provided by the Provider, the Provider shall be required to take all reasonable steps to improve the Business Continuity Plan to the Council's satisfaction.
- 34.4 Any costs incurred in the preparation and implementation of the Business Continuity Plan shall be the responsibility of the Provider.

35 COMPLAINTS

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

36 DEFAULTS AND REMEDIES

Remedies Available to the Provider:

Interest

- 36.1 In the event that any undisputed invoice correctly rendered by the Provider remains unpaid by the Council after thirty (30) days the Provider shall notify the Council in writing giving the Council fifteen (15) further calendar days to pay such an invoice. If the invoice remains unpaid, the Provider shall be entitled to charge interest from the date on which the fifteen (15) day period expired at a rate of two per cent (2%) above the base lending rate published by the Bank of England. The Parties agree that this Clause constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998.

Relief from Liability

- 36.2 The Provider shall not be liable to the Council for a Performance Default to the extent that it is directly caused by a breach of contract by the Council or Fellow Provider provided that the Provider has notified the Council in writing as soon as it has come to the Provider's attention that such an event has or will occur.

Termination by Provider

- 36.3 Without prejudice to the Provider's rights pursuant to this Clause 36, if the Council commits a repudiatory breach of contract, the Provider shall be entitled to terminate the Contract by notice in writing provided it first notifies the Council in writing of the breach of contract, stating its intention to issue a termination notice and giving the Council a period to remedy the breach, such period being reasonable in the circumstances and, in any event not less than twenty (20) Working Days or such other

longer period as may be reasonable in the circumstances having regard to the nature and effect of the breach. If the Council remedies the breach within such period the Provider shall not be entitled to accept the repudiation and/or terminate the Contract.

Remedies available to the Council:

For the avoidance of any doubt, the following remedies set out in Clause 36.5 through 36.16 shall be without prejudice to the other rights and remedies of the Council.

Suspension

- 31.2. If the Council determines the Provider to be in breach of the standards specified in Schedule 1 and Schedule 2 of this contract, it may enact a suspension of new placements to one or more of the named service locations in 1. Form of Agreement. The Provider will be notified of this action within three (3) working days. The Council will also communicate this outcome to local partner agencies. This will be reviewed and lifted entirely at the discretion of the Council.

Performance Defaults

- 36.4 In the event of a Performance Default the Council shall issue a Default Notice to the Provider which shall state on its face whether, in the reasonable opinion of the Contract Manager, the Performance Default is either a Critical Performance Default or Non-Critical Performance Default. For the avoidance of doubt, a single Default Notice covering more than one Performance Default may be issued validly under this Cause 36.5 and further a PAMMS Assessment finding of “poor” for the Provider is a Critical Performance Default and a finding of “requires improvement” is a Non-Critical Performance Default and this Clause 36 shall be applied accordingly.
- 36.5 If the Provider disputes whether a Performance Default is a Critical Performance Default, the matter shall be referred to the Dispute Resolution Procedure and if the dispute remains unresolved, to the Courts.

Critical Performance Defaults

- 36.6 In the event that a Default Notice states that a Performance Default is a Critical Performance Default, it shall also state how and by when the Provider, at its own expense, shall remedy, make good or mitigate the Performance Default. Such action and time period shall be fair, reasonable and commensurate with the nature of the Critical Performance Default and the effect that such Critical Performance Default had or continues to have on the provision of the Services and the services provided by Fellow Providers. For the avoidance of doubt in the event that a Provider receives an overall rating of ‘poor’ following a PAMMS assessment the report published in the Provider Portal shall be considered to be a Default Notice as issued by the Council under Clause 36.5.
- 36.7 On receipt of a Default Notice stating that the Performance Default is a Critical Performance Default, or following a PAMMS assessment where the Provider receives an overall rating of ‘poor’ the Provider shall take the action required by the Default Notice / PAMMS report at its own cost and expense within the time period set out in the Default Notice and/or the PAMMS report and as agreed in any subsequent Action Plan. The Provider shall, in addition, attend a meeting with the Contract Manager to discuss the Performance Default and the Provider shall give an assurance in writing to the Contract Manager.
- 36.8 If the Provider considers that the time and/or measures stated in the Default Notice to remedy, make good or mitigate a Critical Performance Default are unreasonable or impossible to comply with, the Provider shall notify the Contract Manager within

twenty-four (24) hours of receipt of the Default Notice and the Parties shall attend a meeting at a chief officer and director level to discuss the matter and to agree a time period in which and measures by which the Critical Performance Default shall be remedied, made good or mitigated. Thereafter, if unresolved, the matter shall be referred to the Dispute Resolution Procedure that the Critical Performance Default shall be remedied, made good or mitigated within the time scale set out in the Default Notice.

- 36.9 If the Provider fails to remedy a Critical Performance Default within the time period set out in the Default Notice (or subsequently agreed or determined), or in the case of a PAMMS assessment and poor rating fails to submit a sufficiently robust Action Plan via the Provider Portal within ten (10) working days then the Council may serve a Warning Notice in accordance with Clause 36.14 below.

Non-Critical Performance Defaults

- 36.10 If a non-critical default has been identified the Provider will follow one of the two processes as set out below:

Non-Critical Defaults identified via a PAMMS Assessment

36.10.1 Following a PAMMS assessment where a Provider is rated 'requires improvement', the Provider shall prepare a plan (an "Action Plan") using the PAMMS Provider Portal, and in accordance with 36.11.2, setting out the steps which the Provider shall take to ensure that each area identified within the PAMMS report as either requires improvement and / or poor ("Performance Default") is remedied, and does not occur again. The Provider shall set out the reasonable timescale within which the Action Plan shall be implemented identifying who shall be responsible for each of the action(s). The Provider shall prepare and submit the Action Plan via the PAMMS Portal to the Council within ten (10) Working Days of the report being published on the Provider's Portal, or such other time limit as specified by the Council.

36.10.2 The Action Plan for both Critical and Non-Critical Performance Defaults identified following a PAMMS assessment shall be submitted to the Contract Manager for his approval via PAMMS. The Contract Manager shall be entitled to specify and make amendments to the Action Plan which the Provider shall incorporate. If the amendments required are significant, then the Provider shall pay to the Council the reasonable costs of preparation of any such amendments made by the Council or the costs of preparation of the Action Plan itself or any parts of it in the event that the Action Plan is not submitted (or only submitted partially) by the Provider within the timescale specified by the Council. The Provider shall implement the approved Action Plan and performance by the Provider will be monitored and measured in accordance with the Action Plan by both parties via PAMMS.

- 36.11 Any other non-critical Performance Default:

36.11.1 If a Default Notice states that a Performance Default is a Non-Critical Performance Default ('Non-Critical Default Notice'), the Provider shall, if requested to do so, prepare a plan (an "Action Plan") setting out the steps which the Provider shall take to ensure that the Performance Default is remedied, and does not occur again, and the reasonable timescale within which the Action Plan shall be implemented. The Provider shall prepare and submit the Action Plan to the Council within ten (10) Working Days, or such other time limit as specified by the Council, of receipt of the Default Notice.

36.12.2 The Action Plan for Critical Performance Defaults and Non-Critical Performance Defaults shall be submitted to the Contract Manager for his approval which shall

not be unreasonably withheld or delayed. The Contract Manager shall be entitled to specify amendments to the Action Plan which the Provider shall incorporate. The Provider shall pay to the Council the costs of preparation of any such amendments made by the Council or the costs of preparation of the Action Plan itself or any parts of it in the event that the Action Plan is not submitted (or only submitted partially) by the Provider within the timescale specified by the Council. The Provider shall implement the approved Action Plan and performance by the Provider will be monitored and measured in accordance with the Action Plan by both parties.

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

Escalation

- 36.14 If:

36.14.1 the Provider fails to remedy a Non-Critical Performance Default in accordance with an Action Plan;

36.14.2 the Provider fails to remedy a Critical Performance Default in accordance with the Default Notice ('Critical Default Notice') or as subsequently agreed or determined;

36.14.3 any Critical Performance Default having been remedied, occurs again; or

36.14.4 NOT USED

- 36.15 In the event that the Contract Manager serves more than [two (2)] Warning Notices within any continuous [twelve (12) month] period or the Provider fails to remedy a Warning Notice within the specified timescales, the Council shall be entitled to terminate the Contract in whole or in part in accordance with the provisions of Clause 37 ("Termination").

Other Remedies

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

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

36.16.2 require the Provider to suspend performing the Services (whether in full or in part) without compensation until the Provider has remedied or mitigated the Performance Default as stated in a Default Notice or Warning Notice;

36.16.3 stop entering into any new Individual Placements for Service Users with the Provider until satisfactory resolution of the Performance Default in accordance with this Clause 36;

36.16.4 terminate existing Individual Placements of Service Users with the Provider either permanently or temporarily until satisfactory resolution of the Performance Default

in accordance with this Clause 36 where, in the sole opinion of the Council, it is most appropriate for the care of the Service User to do so;

36.16.5 deduct from any future payment to the Provider or from any future instalment of the Price or recover as a debt due any reasonable, justifiable and demonstrable losses, costs and expenses of the Council or any Fellow Provider suffered directly as a result of the Provider's Performance Default together with an administration charge of ten per cent (10%) of such sum or sums. If there is any dispute between the Council and the Provider as to the amount of such deduction, the matter shall be referred to the Dispute Resolution Procedure; and

36.16.6 remedy the Performance Default itself or engage a third party to do so and to recover from the Provider by way of deduction from the Price or otherwise the reasonable cost that the Council incurs in so doing.

37 TERMINATION

37.1 The Council may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Contract in whole or in part if any one of the events set out in Clause 37.2 occurs.

37.2 The events are:

37.2.1 if the Provider commits a Prohibited Act or otherwise breaches Clause 26;

37.2.2 if an express right to terminate has arisen within Section F (Clauses 26 to 30);

37.2.3 if an express right to terminate has arisen under Clause 36;

37.2.4 if the Provider:

37.2.4.1 ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services;

37.2.4.2 undergoes a Change in Control;

37.2.4.3 suffers one or more of the following:

37.2.4.3.1 the appointment of a liquidator, receiver, administrative receiver or administrator;

37.2.4.3.2 insolvency or winding up within the meaning of relevant Legislation;

37.2.4.3.3 having substantial distress attachment execution or other legal process levelled enforced, sued or threatened upon any of its property;

37.2.4.3.4 the suspension of any publicly offered equities;

37.2.4.3.5 the freezing of substantial assets; or

37.2.4.3.6 any other event of incapacity rendering the Provider unable or potentially unable to carry out its obligations under the Contract and/or to meet any liability which

may arise through the Providers negligence or breach of contract

37.2.4.4 has a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of the Provider's affairs approved in accordance with the Insolvency Act 1986;

37.2.4.5 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge

37.2.4.6 commits a serious and material breach of contract;

37.2.4.7 fulfils those conditions under the Performance Mechanism which entitle the Council to terminate the Contract;

37.2.4.8 commits a serious breach of Clauses 8 (including the commission of any act by Staff contrary to Clause 8.9), 24, 25 or 28;

37.2.4.9 loses any statutory licence or certification which is required for the performance of the Services or as otherwise required by the Contract;

37.2.4.10 commits an act or omission which means it would now be excluded from the procurement process for this Contract on a mandatory exclusion ground as specified in Regulation 57(1) of the Public Contracts Regulations 2015;

37.2.4.11 the majority of shares carrying a right to vote in the Provider or its holding or parent company are acquired by a person who is not at the Commencement Date a majority shareholder and the Council has reasonable concerns that it may suffer damage to its reputation as a result of any contractual association; and

37.2.4.12 fails to comply with the safeguarding provisions of Clause 9;

37.2.4.13 is unable to provide alternative arrangements that are acceptable to the Council under Clause 31.2;

37.2.4.14 fails on repeated occasions to work with the Council in relation to the PAMMS Assessment or other performance management process;

37.2.4.15 commits a serious breach of Clause 24 (Confidentiality) or Clause 25 (Data Protection) and Schedule 14 (Data Protection- Data Sharing Agreement);

37.2.4.16 does not meet the requirements of the Care Act 2014 (as amended) or and/or is in breach of any other Law; or

37.2.5 the Council has reasonable grounds to consider the Provider or Sub-contractor working on this Contract to fall within the scope of IR35 off-payroll working through an intermediary rules;

37.2.6 the Force Majeure continues for more than twenty (20) Working Days [./;]

37.2.7 (without prejudice to Clause 37.2.4.9.) if any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable.

37.3 If the Contract is determined in part, the Price shall be adjusted to reflect fairly the Services which remain and if the Parties are unable to agree such adjustment, the matter shall be

referred to the Dispute Resolution Procedure. For the avoidance of doubt the Provider shall not be entitled to recover through the adjusted Price any profit that, but for the termination, would have accrued to the Provider in respect of the terminated Services.

- 37.4 The rights of the Council under this Clause 37 and Clause 38 below are in addition and without prejudice to any right that either Party may have for prior breach and to any right the Council may have against the Provider for the breach, default, negligence or event leading to the termination.
- 37.5 The remedies of the Council under this Clause (and Clause 38 below) may be exercised successively in respect of any one or more defaults by the Provider.

Termination where the Court Declares this Contract Ineffective

- 37.6 In the event that this Contract is subject to a bona fide and substantive legal challenge of any nature relating to the process by which the Provider was awarded this Contract (a "Legal Challenge"), then the Parties shall co-operate in good faith to determine the best way to mitigate the impact of the Legal Challenge, which may include varying some or all of the Contract and/or terminating the Contract in whole or in part.
- 37.7 In the event that this Contract is declared ineffective by a court of competent jurisdiction:
- 37.7.1 this Contract shall be terminated and the provisions of Clause 39 shall apply; and
 - 37.7.2 the Council shall pay to the Provider all sums lawfully due to the Provider in consideration of its proper performance of the Services up until the date and time of the declaration of ineffectiveness. The Council shall pay such sums within thirty (30) days of the receipt by it of a correct invoice for the same from the Provider.
- 37.8 The sums paid to the Provider by the Council under Clause 37.7.2 above shall be in full and final settlement of the Council's liability for any loss and/or expense incurred by the Provider as a result of the Court declaring this Contract ineffective. The Council shall have no further liability to the Provider, including without limitation, in relation to any loss of profit of the Provider.
- 37.9 The Council shall also be entitled to terminate this Contract in the event:
- 37.9.1 this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015; or
 - 37.9.2 the Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;

in which case the provisions of Clause 37.7.2 and Clause 37.8 shall apply.

37.10 Break Clause

- 37.10.1 In addition to its rights of termination under the Contract, either Party shall be entitled to terminate this Contract, without breach, in whole or in part by giving not less than 3 three months advance notice to that effect, in which case the provisions of Clause 38 shall apply. No further compensation or remedy shall be available to the Provider.

37.11 Individual Placements

An Individual Placement can be terminated:

- 37.11.1 Upon expiry of this Contract, or in anticipation thereof, the Council shall notify the Provider of the impact of this upon any Individual Placement(s) in place at that time and the Provider shall provide the Council with all information which the Council shall reasonably require in order for it to make decisions. The Council shall decide, and the Provider shall comply with such a decision, as to whether the Provider shall continue to provide Services to the Service User in accordance with the Individual Placement(s) or whether the Individual Placement is varied or terminated in accordance with the provisions of this Contract or the Individual Placement.
- 37.11.2 Upon written notice by the Council to terminate this Contract and/or any Individual Placement, the Provider shall continue to provide the Services in accordance with the terms of the Contract and/or any Individual Placement for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the Council Data in respect of that Service User to be successfully migrated to the Council's System or the systems of a third party. The Provider shall give all such assistance as is reasonably required by the Council and third party to ensure a smooth, successful and seamless transition of the Services and conversion and migration of the Council Data. Insofar as such assistance is required after the Contract has expired, the Council shall pay the Provider's reasonable costs and expenses (the Council shall not pay should the Contract have been terminated in accordance with Clause 37).
- 37.11.3 Service packages shall terminate immediately on the death of the Service User. Where the Provider is not immediately notified of the death, the Council shall pay for one abortive visit only
- 37.11.4 The Council may terminate an individual place in the Services on giving not less than 28 day' notice to the Service Provider unless mutually agreed otherwise on a case by case basis
- 37.11.5 The Service Provider may terminate an individual place in the Services on giving not less than 28 day's notice to the appropriate Care Manager and to the Authorised Officer unless mutually agreed on a case by case basis.
- 37.11.6 The Service User or their beneficiary exercises their right to choice under the Care Act 2014 (as amended).

38 CONSEQUENCES OF TERMINATION OR EXPIRY

- 38.1 If the Contract expires or is terminated, the provisions of this Clause 38 and the Exit Plan shall apply.
- 38.2 Notwithstanding the provisions of the Exit Plan, upon termination or expiry:
 - 38.2.1 the Provider shall forthwith cease to provide the Services (subject to clause 4.16);
 - 38.2.2 the Provider shall submit to the Council within five (5) Working Days of termination or expiry at the Provider's own cost a comprehensive status report which shall be current as at the date of submission relating to the Services;

- 38.2.3 the Provider shall cease to use the Council's Data and hand over to the Council a complete and uncorrupted version of all Council Data and all records, information, documents howsoever held and including any media used to store such data including, without limitation, correspondence with Staff, the Council's service departments, any users of the Services and any other relevant third party and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Council (in which event the Council shall reimburse to the Provider the Council's reasonable data conversion expenses) whether such Council Data is on hard copy or on a disk or on any computer systems;
- 38.2.4 the Provider shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with the specific instructions issued by the Council; for the avoidance of doubt, Personal Data shall include but not be limited to that data which is Personal Data and for which the Council retains its Data Controller responsibilities;
- 38.2.5 the Provider shall cease to use and return any Council Equipment (and in the event the Provider fails to comply, the Council may recover possession thereof and the Provider grants a licence to the Council and its authorised representatives to enter (for the purposes of such recovery) any of the Provider's Premises where any such items may be held);
- 38.2.6 the Provider shall vacate any Council's Premises;
- 38.2.7 the Provider shall allow the Council and any new provider, reasonable right of access to the Provider's and Sub-Contractor's premises, systems, procedures and Staff, where appropriate; and
- 38.2.8 the Provider shall deliver to the Council upon request all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted Sub-Contractors, including any Council Data and in default of compliance with this provision, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter for the purpose of any such recovery any premises of the Provider or its permitted Sub-Contractors where any such documents, information or materials may be held. For the avoidance of doubt, this material identified by this Clause shall be in an identifiable and searchable format (and include metadata) and in such form and medium as the Council may reasonably request;
- 38.2.9 the Council shall immediately cease to be under any obligation to make further payment to the Provider until the costs, loss and/or damage to the Council resulting from or arising out of the termination shall have been calculated;
- 38.2.10 the Council shall have the option to purchase at book value any of the assets or equipment used by the Provider solely in performance of its obligations under this Contract. Where the Council wishes to exercise this option it shall notify the Provider in writing accordingly not less than twenty (20) Working Days following the date on which this Contract expires or is terminated;
- 38.2.11 the Provider shall promptly pay in full the cost of providing the Service or having the Service provided or any part thereof as would have been provided by the Provider during the remainder of the Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to the Provider for providing the Services if the termination is due to an act, omission, default, negligence or breach of the Provider or any of its Staff;

38.2.12 the Provider shall continue to make the Provider's System available to the Council for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the Council Data to be successfully migrated to the Council's System or the systems of one or more third parties. The Provider shall give all such assistance as is reasonably required by the Council and its Service Users to ensure a smooth, successful and seamless transition of the Services and Service Users and conversion and migration of the Council Data. Insofar as such assistance is required after the Contract has expired, the Council shall pay the Provider's reasonable costs and expenses (the Council shall not pay should the Contract have been terminated in accordance with Clause 37). For the avoidance of doubt, the Provider's compliance with the provisions of this Clause shall include, inter alia, assistance by the Staff, access to the Provider's System and the provision of information and documentation;

38.2.13 if the Contract is terminated early for any reason, the Provider shall immediately repay to the Council the full amount pre-paid by the Council in respect of the unexpired portion of the Contract [; and/.]

38.2.14 at the Council's written request, the Provider shall transfer the Service User records to the Replacement Provider(s) and/or one or more third parties as determined by the Council; such transfer may be in whole or in part, howsoever determined by the Council. [; and/.]

38.2.15 the Council shall be entitled to give written notice to the Provider in accordance with its right under clause 4.16 and the Provider shall comply with such notice.

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

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

38.5 Expiry or earlier termination of this Contract shall not affect the continuing rights and obligations of the Parties under Clauses 1, 2, 5, 8.21, 14, 18, 20, 21, 23, 24, 25, 31, 32, 37, 38 and 39 or under any other provision of this Contract that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination.

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

39 EXIT AND HANDOVER ARRANGEMENTS

- 39.1 On expiry or termination of this Contract the Exit Plan shall apply and the parties shall comply with the provisions of the Exit Plan. The Provider shall not charge the Council or any Replacement Providers for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this Clause 39 and the Exit Plan on expiry or earlier termination (or for complying with any other provisions in Clause 38 above upon termination or expiry).
- 39.2 The plan for the orderly handover of the Services to the Council or its Replacement Providers following termination or expiry of this Contract shall include compliance by the Provider of the provisions specified in Clause 38.
- 39.3 The Provider shall forthwith upon the request of the Contract Manager, supply to the Council any information reasonably specified by the Council as being necessary for the re-tendering of this Contract.
- 39.4 On giving written notice to the Provider and after twelve (12) months of the date of the expiry or earlier termination of this Contract unless the individual is responding to a job advert the Council shall have the right:
- 39.4.1 to offer any of the Staff who has previously been involved in performing the Services employment or a contract for services with the Council and the Provider agrees that if such person accepts such offer the Provider shall release such person from any contractual restriction with it which such acceptance may otherwise contravene; and
- 39.4.2 to require the Provider to provide for a period of four (4) months following the date of expiry or termination such advice assistance and co-operation as the Council may reasonably require to enable the Council to provide the Services in-house or to procure their provision by a Replacement Provider.

TUPE Compliance on Termination (where TUPE rights legally apply)

- 39.5 During the twelve (12) months prior to the expiry of the Contract or after the Council has given notice to terminate this Contract and within ten (10) Working Days of being requested to do so, the Provider shall fully and accurately disclose to the Council any and all information in relation to all persons engaged in providing the Service including:
- 39.5.1 a list in electronic format of each employee employed by the Provider in the provision of the Service including each employee's start date;
- 39.5.2 a list of agency workers, agents and independent contractors engaged by the Provider in the provision of the Services;
- 39.5.3 the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of each employee included in the list to be provided under Clause 39.5.1; and
- 39.5.4 the terms and conditions of employment of each Transferring Employee; their age and identity; the information that must be included in the employee's written statement of employment particulars under s.1 of the Employment Rights Act 1996; information on any disciplinary procedure taken in relation to the employee or grievance procedure taken by the employee within the previous two (2) years in relation to which the ACAS code of practice on disciplinary and grievance procedures applies; information on any Court or tribunal claim brought by the employee against the transferor within the previous two (2) years and any potential

claim against the transferee arising out of the employee's employment with the transferor; information about any collective agreements that will have effect after the transfer in relation to the Transferring Employee.

39.6 During the twelve (12) months prior to the expiry of the Contract or where notice to terminate this Contract for whatever reason has been given, the Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:

39.6.1 vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;

39.6.2 materially increase or decrease the number of employees employed in connection with the Services;

39.6.3 increase the remuneration of employees;

39.6.4 assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services; or

39.6.5 otherwise improve terms and conditions of employment of any of its employees without economic justification towards the end of the Contract Period.

I. GENERAL PROVISIONS

40 DISPUTE RESOLUTION PROCEDURE

40.1 The Parties shall each use reasonable endeavours to resolve any dispute by means of prompt bona fide discussion first between the Contract Manager and the Provider's Authorised Representative. Failure to agree a settlement within five (5) Working Days shall result in the dispute being escalated to both Parties' managerial level appropriate to the dispute in question. In the event that such a dispute is not resolved within five (5) Working Days, thereafter it shall be escalated to each Parties' appropriate director for resolution. The respective directors shall meet within five (5) Working Days to resolve the dispute. Failure to reach a settlement shall invoke the rest of this Clause 40.

40.2 Nothing in this Clause 40 shall prevent the Parties from seeking from any Court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

40.3 If the dispute cannot be resolved by the Parties pursuant to Clause 40.1 the dispute may be referred to mediation pursuant to the procedure set out in Clause 40.5.

40.4 The performance of this Contract by the Provider shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its Staff shall comply fully with the requirements of this Contract at all times.

40.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

40.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he/she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;

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

41 THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

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

42 LEGAL PROCEEDINGS

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

43 OMBUDSMAN

- 43.1 In the event of a complaint to the Ombudsman involving activities the subject of this Contract, the Provider shall at its own expense give to the Council and to the Ombudsman every assistance in the investigation of the complaint.
- 43.2 Where any investigation by the Ombudsman takes place the Provider shall:

- 43.2.1 provide any information requested in the timescale specified;
- 43.2.2 attend any meetings as required and permit its Staff to attend;
- 43.2.3 promptly allow access to an investigation of any documents deemed to be relevant to the investigation and/or the complaint;
- 43.2.4 allow itself and any Staff deemed to be relevant to be interviewed;
- 43.2.5 allow itself and any of its Staff to appear as witness in any ensuing proceedings; and
- 43.2.6 co-operate fully and promptly in every way required by the Ombudsman during the course of that investigation.

43.3 Where any financial redress, compensation or award is recommended by the Ombudsman in the course of or following any investigation, or is agreed to by the Council following a complaint to the Ombudsman, and which investigation or complaint arises directly or indirectly out of the provision of the Services or any other action or omission by the Provider and/or its Staff then the Council shall be entitled to recover the cost of that financial redress, compensation or award from the Provider.

44 AGENCY

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

45 ENTIRE AGREEMENT

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

46 CONFLICT OF INTEREST

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

47 LIEN OR ENCUMBRANCE

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

48 SEVERANCE

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

49 WAIVER

- 49.1 The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 49.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 50.
- 49.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

50 NOTICES

- 50.1 Except as otherwise expressly provided within this Contract, no notice from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
- 50.2 Any notice which is to be given by either Party to the other shall be given by letter (sent by hand or signed for special delivery post); such letters shall be addressed to the other Party in the manner referred to in Clause 50.3. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was hand delivered or posted or sooner where the Party acknowledges receipt of such letters. Notices under the Contract may not be sent or received by email.
- 50.3 For the purposes of Clause 50.2, the address of each Party shall be as follows:

50.3.1 The Council:

[INSERT TITLE OF POST]

[INSERT POSTAL ADDRESS FOR SERVICE]

50.3.2 The Provider:

[INSERT TITLE OF POST]

[INSERT POSTAL ADDRESS FOR SERVICE]

Either Party may change its address for service by serving a notice on the other Party in accordance with this Clause 50.

51 LAW AND JURISDICTION

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

J. CONTRACT SPECIFIC CONDITIONS

52 PARENT COMPANY GUARANTEE – NOT USED

- 52.1 For the purposes of this Clause 52, the parent company guarantee shall be in the form as set out in Schedule 7 (“the Parent Company Guarantee”).
- 52.2 The Provider shall provide the Parent Company Guarantee executed by its ultimate parent company or its parent company with substantial UK assets no later than ten (10) Working Days after the Commencement Date or the date of request by the Council in the event that during the Contract Period the Provider becomes a subsidiary company of another organisation or in the event that the parent company of the Provider which has previously entered into the Parent Company Guarantee with the Council changes.
- 52.3 For the avoidance of doubt, in the event the Council waives its requirements under Clause 52.2 above, the Council reserves the right to request that the Provider provides a Parent Company Guarantee at a later stage during the Contract Period, upon which the Provider shall deliver an executed Parent Company Guarantee within ten (10) Working Days of such a request.
- 52.4 The Council shall be entitled to withhold [insert percentage in works (number%)] of any sums due under this Contract in the event the Provider fails to comply with this Clause 52 and for such time as the Provider continues to fail to comply.

53 PERFORMANCE BOND – NOT USED

- 53.1. For the purposes of this Clause 53, the performance bond shall be a bond in the form as set out in Schedule 8 (“the Performance Bond”). The Provider shall provide the Performance Bond from a bank or insurer strong enough to carry the Performance Bond.
- 53.2. The Provider shall provide the executed Performance Bond to the Council no later than ten (10) Working Days of the Commencement Date (or later date if requested in writing by the Council) and failure to do this shall entitle the Council to withhold [insert percentage in works (number%)] of any sums due under the Contract for such time until the Provider provides the Performance Bond.
- 53.3. In the event the Performance Bond expires before the end of the Contract Period, the Provider shall arrange for a replacement Performance Bond or Bonds which shall be effective from the expiry date of the initial Performance Bond. The Provider of any replacement Performance Bond shall be of equivalent financial strength and reputation as the Provider of the initial Performance Bond.

54 FLUENCY DUTY

- 54.1 The Provider shall:
- 54.1.1 comply with the requirements of Part 7 of the Immigration Act 2016 (“IA”) as if it were a “Public Authority” within the meaning of the IA and where necessary, comply with any modifications to this Contract to enable the Parties to comply with such obligations;

- 54.1.2 give all reasonable assistance to the Council necessary to enable the Council to comply with its obligations under the IA;
- 54.1.3 comply with all reasonable directions given by the Council which the Council deems necessary to comply with its obligations under the IA; and
- 54.1.4 not do or omit to do any act that that would put or would be likely to put the Council in breach of the IA,

In each case at all times, at the Provider's sole expense, and in connection with the provision of the Services.

55 PREVENT DUTY

55.1 The Provider shall:

- 55.1.1 comply with the requirements of the Counter-Terrorism and Security Act 2015 ("CTA") as if it were a "Public Authority" within the meaning of the CTA and where necessary, comply with any modifications to this Contract to enable the Parties to comply with such obligations;
- 55.1.2 give all reasonable assistance to the Council necessary to enable the Council to comply with its obligations under the CTA;
- 55.1.3 comply with all reasonable directions given by the Council which the Council deems necessary to comply with its obligations under the CTA; and
- 55.1.4 not do or omit to do any act that that would put or would be likely to put the Council in breach of the CTA, in each case at all times, at the Provider's sole expense, and in connection with the provision of the Services.

56 SERIOUS INCIDENTS PROTOCOL

- 56.1 The Provider shall comply with the Serious Incidents Protocol set out in Schedule 13 at all times throughout the Contract Period.
- 56.2 If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
- 56.3 If the Provider gives a notification to the CQC or any other Regulatory Body under clause 54 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council within five (5) Working Days or within the timescale set out in Schedule 11.
- 56.4 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the lessons learned from Serious Incidents, and non-Service User safety incidents that are agreed between the Provider and the Council and set out in Schedule 11.
- 56.5 Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this clause 56 and Schedule 13.

57 USE OF COUNCIL PREMISES/ COUNCIL EQUIPMENT

- 57.1 Any Council Premises made available to the Provider by the Council in connection with this Contract shall be made available to the Provider and shall be used by the Provider solely for the purpose of performing its obligations under this Contract.
- 57.2 In accordance with this Contract, Schedule 1 and Schedule 5 (where agreed by the Council and subject to the exclusion of the security of tenure provisions of the Landlord and Tenant Act 1954 (as amended) and the necessary declaration by the Provider as tenant to that effect where applicable) the Provider shall have the use of the Council's Premises subject to the Provider entering into a property related document prepared by the Council and the Provider shall at its own cost and expense enter into such documentation required by the Council to give up any rights in or occupation of the Council Premises and (where applicable) to effect the surrender of any lease, under lease, or tenancy held or vested in the Provider in relation to the Council Premises:
- 57.2.1 where the Council owns the freehold, the Provider shall have use of the Council's Premises as lessee and shall vacate the same on completion, termination or abandonment of this Contract;
- 57.2.2 where the Council has a leasehold interest, the Provider shall have use of the Council's Premises as under-lessee (notwithstanding that prior agreement shall be sought by the Council from the landlord of the freehold estate for any such grant of a lease) and shall vacate the same on completion, termination or abandonment of this Contract;
- 57.2.3 where the Council has user rights, the Provider shall have use of such Council's Premises as the nominated agent of the Council and will have the same user rights as the Council, and shall vacate the same on completion, termination or abandonment of this Contract.
- 57.3 Should the Provider require modifications to the Council's Premises, such modifications shall be subject to the prior written approval of the Council (and, where applicable, the landlord's permission), and shall be carried out by the Council at the Provider's expense. Ownership of such modifications shall rest with the Council.
- 57.4 The Provider shall ensure that its Staff observe and comply with such rules and regulations as may be determined at any time by the Council for the use of the Council's Premises.
- 57.5 The Provider shall pay for the cost of making good any damage caused by the Provider and its Staff other than fair wear and tear. For the avoidance of doubt damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 57.6 The Parties agree that (unless expressly agreed to the contrary) there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Provider or its Staff and that no such tenancy has or shall come into being. Access to or use of any of the Council Premises by the Provider or any of its Staff will not create a tenancy of any nature whatsoever in favour of the Provider or its Staff or agents.
- 57.7 Notwithstanding any rights granted pursuant to this Contract, the Council retains the right at any time to use Council Premises in any manner the Council sees fit.
- 57.8 Access to the Council Premises shall not be exclusive to the Provider but shall be limited to such Staff as are necessary to perform of the Services concurrently with the execution of work by others. The Provider shall co-operate free of charge with such others on the Council's Premises as the Council may reasonably require.

- 57.9 The Council reserves the right under this Contract to refuse to admit or withdraw permission to remain on the Council's Premises any Staff member whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- 57.10 The Provider shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Provider by the Council for entry to any Council Premises and shall only permit such keys, passes and other means of access to be used in accordance with the Contract Manager's instructions and then only to the extent required for the purposes of providing the Services.
- 57.11 The Provider shall ensure that the Contract Manager is informed as soon as reasonably practicable of the loss of any keys, passes and other means of access to or around the Council's Premises and shall reimburse to the Council any cost of replacement and/or any reasonable security measures implemented as a direct or indirect result of such loss.
- 57.12 The Provider shall vacate (at the Provider's sole cost) the Council Premises on the Expiry Date, earlier termination or abandonment of this Contract.
- 57.13 The Provider may be permitted access to some of the Council's Premises from time to time in connection with the provision of the Services at the Council's sole discretion. The Council is under no obligation to provide access to the Council Premises. If permitted by the Council, the Provider will use the Council's Premises only in connection with the proper performance of the Services and will ensure that its Staff and Sub-Contractors and agents use the Council Premises, only for such purpose.
- 57.14 The Provider shall ensure that the Council Premises it uses are left clean and tidy at all times.
- 57.15 The Provider shall ensure that it complies with all Laws relating to the health and safety and welfare of all persons using or employed on or about the Council Premises (including for the avoidance of doubt Service Users and other visitors), including ensuring that all relevant documents relating to the Council Premises are placed in the health and safety file at the same premises and made available at any time to the Council upon request.
- 57.16 In the event that, and to the extent that, the Provider is to provide all or any part of the Services from its own premises, the Provider shall ensure that such premises are safe, secure and suitable for the provision of the Services. Any Council Equipment or Council Data situated at the Provider's premises shall be clearly marked as the property of the Council. The Provider shall afford the Council access upon reasonable notice to inspect the Provider's premises including any security, fire protection and disabled access systems. The Provider shall not provide all or any part of the Services nor store any Council Data at any premises which have not been approved by the Contract Manager.
- 57.17 The Provider shall use the Council Equipment solely in connection with the provision of the Services and shall make good any damage to the Council Equipment caused by the Provider, its Sub-Contractors, Staff, servants or agents. Any damage shall be remedied by the Provider in accordance with the reasonable instructions of the Contract Manager and all costs incurred in complying with this Clause shall be borne by the Provider. The Provider shall inform the Contract Manager immediately of any act of vandalism or damage to the Council Equipment observed by the Provider or its Staff or Sub-Contractors and the Provider shall use its reasonable endeavours to ensure that the vandalism or damage ceases and to ascertain the identity of the perpetrators and to inform the Contract Manager immediately and the police or fire brigade, if appropriate, of the same.
- 57.18 The Council does not guarantee, warrant or give any assurances as to the age or state of repair or suitability for use in the Service of the Council's Premises or any part of them or of any item of Council Equipment. The Provider hereby acknowledges that it has carried out its own due diligence including inspections of such premises, services, facilities and equipment and has satisfied itself as to the condition and suitability of each item of such

equipment for use in the provision of the Service. Accordingly the Provider shall not be relieved from any liability in relation to any failure to provide the Service or any part of it where such failure is caused by a failure in of or the unsuitability of any Council Equipment or the Council Premises.

- 57.19 The Provider shall be responsible for the maintenance of the Council Equipment at its own expense except where it is stated in this Contract that any such maintenance shall be carried out at the Council's expense. In such circumstances, and for the avoidance of doubt, the Council shall be entitled to cease to maintain any item of Council Equipment when it considers, in its absolute discretion that such Council Equipment has reached the end of its useful life and is no longer economically viable to maintain.
- 57.20 Unless expressly stated to the contrary in this Contract, the Council shall not be obliged to replace any item of Council Equipment and if it does not replace any such item the Provider shall make such arrangements as are necessary including the provision of Provider's Equipment to provide the Service in accordance with this Contract without the relevant piece of Council Equipment.
- 57.21 The Council's Equipment shall remain the property of the Council and shall be delivered up to the Council at the end of the Contract Period or earlier termination except insofar as it has reached the end of its useful life and has been disposed of. Any item of equipment which was not Council Equipment shall remain the property and responsibility of the Provider or relevant third party and shall not, unless expressly provided to the contrary in the Contract, be delivered up to the Council at the end of the Contract Period.