

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

Pure Physiotherapy

CONTRACT FOR THE PURCHASE OF

Physiotherapy Services – Health Growth Accelerator

CONTRACT PARTICULARS

Parties	<p>1. Barnsley Metropolitan Borough Council of Town Hall, Barnsley, South Yorkshire, S70 2TA ("Council").</p> <p>2. Pure Physiotherapy (Company number 05895719) whose registered office is at Premex House, Futura Park, Horwich, Bolton, England, BL6 6SX ("Provider").</p>
Commencement Date	1 st December 2025
End Date	31 st March 2026
Expected Total Value	£30,750
Extension Periods (per Clause 2.2)	N/A
Council Representative (including contact details)	<p>Name: Alasdair Parker Position: Projects and Contracts Manager Correspondence Address: Barnsley Metropolitan Borough Council PO Box634 Barnsley S70 9GG Email: alasdairparker@barnsley.gov.uk</p>
Provider Representative (including contact details)	<p>Name: Kay Atkin Position: Clinics Operations Lead Correspondence Address: Pure Physiotherapy, Haywood House, Hydra Business Park, Nether Lane, Sheffield, S35 9ZX Email: kay.atkin@purephysiotherapy.co.uk</p>
Council's Data Protection Officer (Schedule 2)	<p>Name: Thomas Grierson Position: Info, Gov & Security Incident Analyst) Email: ThomasGrierson@barnsley.gov.uk</p>
Provider's Data Protection Officer (Schedule 2)	<p>Name: Steven Briscoe Position: Data Protection Officer Email: Steven.briscoe@examworks.co.uk</p>

EXECUTION

The Parties, acting through their authorised representatives, hereby indicate their unqualified assent to the terms of this Agreement

Signed for and on behalf of **BARNSELY METROPOLITAN BOROUGH COUNCIL**



Authorised Signatory:

Name: Tom Smith

Position: Head of Employment + Skills

Date: 02/12/25

Signed for and on behalf of **Pure Physiotherapy**



Authorised Signatory:

Name: **K a y A t k i n**

Position: National Operation and Performance Lead

Date:
2/12/2025

TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION

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

Abuse	a single or repeated act, or lack of appropriate action, occurring within a relationship where there is an expectation of trust which causes or is likely to cause harm or distress to a Service User including but not limited to physical, emotional, verbal, financial, sexual or racial abuse, neglect of, or cruelty towards, Service Users or abuse through misapplication of drugs.
Agreement	these terms and conditions inclusive of all Schedules attached hereto and the Contract Particulars.
Authorised Representatives	the persons respectively designated as such by the Council and the Provider as detailed in the Contract Particulars
Best Industry Practice	the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them.
Charges	the fees payable for the Services as set out in Schedule 1.
Commencement Date	the date on which the Agreement is effective and from which the Services commence, as set out in the Contract Particulars
Contract Particulars	the specific details regarding the provision of Services under this Agreement which are attached to the front of these terms and conditions
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	take the meanings given in the Data Protection Legislation.
Council Assets	if applicable, any materials, plant or equipment owned or held by the Council and provided by the Council for use in provision of the Services.
Council's Premises	if applicable, the premises which may be made available for use by the Provider for the provision of the Services
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018, as amended, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the Data Protection, Privacy and Electronic Communications (Amendment) (EU Exit) Regulations 2019 (SI 2019/419
Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Subject Access Request	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
DPA2018	Data Protection Act 2018
DBS	the Disclosure and Barring Service established under the Protection of Freedoms Act 2012
Dispute Resolution Procedure	the procedure set out in Clause 9
Employment Checks	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity

	checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks
Enhanced DBS & Barred List Check	means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (child & adult) (as appropriate)
Enhanced DBS & Barred List Check (child)	means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list
Enhanced DBS & Barred List Check (child & adult)	means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's and adult's barred list
Enhanced DBS Check	means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for
Enhanced DBS Position	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted.
EIR	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
End Date	the date on which the Agreement will automatically expire as set out in the Contract Particulars, and which may be extended by the Council under Clause 2.2.
FOIA	the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
Force Majeure Event	<ul style="list-style-type: none"> a) acts of God, flood, drought, earthquake or other natural disaster; b) mandatory UK government-imposed restrictions on movement or trading activities in connection with an epidemic or pandemic; c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; d) nuclear, chemical or biological contamination or sonic boom; e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; f) collapse of buildings, fire, explosion or accident; g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); or h) interruption or failure of utility service.
Goods	Means any physical items, materials, products, or artefacts to be provided by the Provider to the Council, installed or exhibited on Council Premises, or otherwise utilised, in the delivery of the Services
Improper Conduct	<p>means any action that may reasonably be considered to be to the detriment of a Service User's welfare or to the delivery of the Service - either by positive action or by omission. Such action shall include but is not limited to:</p> <ul style="list-style-type: none"> (a) Abuse (b) fraud and theft from Service Users

	<ul style="list-style-type: none"> (c) sexual misconduct or sexual exploitation (d) improper inducements, including inducements offered to employees of the Council (e) conspiracy with officer or officers of the Council to defraud or disadvantage Service Users (f) financial malpractice
Information	has the meaning given under section 84 of FOIA
Intellectual Property	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites
Law	any UK law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or requirements with which the Provider is bound to comply as may be amended or updated from time to time
Necessary Consents	means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Services. Without limiting the foregoing, where the Provider is utilising migrant workers in the delivery of the Services, any licence or permission required for the continuing recruitment, sponsorship or employment of such workers shall be considered a Necessary Consent.
Protective Measures	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it
Provider's Personnel	all employees, staff, other workers, agents, sub-contractors and consultants of the Provider who are engaged in the provision of the Services from time to time
Provider's Tender or Quotation	The Provider's Tender or Quotation as set out in Schedule 1
Regulated Activity	In relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Request for Information	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR
Sub-processor	any third Party appointed to process Personal Data on behalf of the Provider related to this Agreement.
Term	the contract period commencing on the Commencement Date and expiring on the End Date
Termination Date	the date of expiry or termination of this Agreement
Services	the Services (inclusive of any Goods) to be delivered by or on behalf of the Provider under this Agreement, as more particularly described in the Specification at Schedule 1
Service User	the person to whom the Services are provided

Standard DBS Position	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)
UKGDPR	has the meaning defined in Regulation 2 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419)
Working Day	Monday to Friday, excluding any public holidays in England and Wales

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4. The schedule (if any) forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedule.
- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.

2. TERM

- 2.1. This Agreement shall take effect on the Commencement Date and shall continue for the Term.
- 2.2. The Council may at its sole option extend the End Date by the period(s) specified in the Contract Particulars, by providing the Provider with advance written notice no later than 30 days prior to the End Date.
- 2.3. The Provider shall continue the uninterrupted provision of the Services for the extended Term.
- 2.4. The Provider may apply for an increase in the Charges to cover the period of any extension option exercised by the Council under Clause 2.2. Any such increase which may be agreed by the Council will be based solely on the actual cost increases to materials and labour evidenced by the Provider to the Council's reasonable satisfaction, but shall not exceed the% increase in the UK national living wage for the preceding annual period.

3. SUPPLY OF SERVICES

- 3.1. The Provider shall provide the Services to the Council with effect from the Commencement Date in accordance with the provisions of this Agreement.
- 3.2. The Provider warrants that at all times it shall provide the Services, or procure that they are provided:
 - 3.2.1. with reasonable skill and care and in accordance with Best Industry Practice;
 - 3.2.2. in accordance with all applicable Laws;
 - 3.2.3. on the dates and times as specified in the Specification (if applicable); and
 - 3.2.4. in accordance with the requirements of the Specification and the Provider's Tender or Quotation
- 3.3. The Provider shall at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Provider shall also undertake, or refrain from undertaking,

such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

- 3.4. The Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or any law, enactment, order or regulation relating to discrimination in employment and the Provider shall comply with the Council's Equality Policy.

4. HEALTH AND SAFETY

- 4.1. The Provider shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Agreement. The Council shall promptly notify the Provider of any health and safety hazards that may exist or arise at the Council's Premises and that may affect the Provider in the performance of the Agreement.
- 4.2. While on the Council's Premises the Provider shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Council's Premises.
- 4.3. The Provider shall notify the Council immediately in the event of any incident occurring in the performance of the Agreement on the Council's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 4.4. The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Council's Premises in the performance of the Agreement.
- 4.5. The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request

5. PREMISES AND ASSETS

- 5.1. If the Provision of the Services requires the Provider to have access to Council's Premises the Council shall provide the Provider (and the Provider's Personnel) with access to such parts of the Council's Premises as the Provider reasonably requires for the purposes only of properly providing the Services.
- 5.2. Where the Services are to be provided at the Council's Premises the Council shall provide the Provider with such accommodation, facilities and Council Assets as is specified in or which is otherwise agreed by the parties from time to time.
- 5.3. The Provider shall ensure that:
 - 5.3.1. where using the Council's Premises and or any Council Assets they are kept properly secure and it will comply and cooperate with the Council's Representative's reasonable directions regarding the security of the same;
 - 5.3.2. only those of the Provider's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so;
 - 5.3.3. any Council Assets used by the Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Council's Premises unless expressly permitted under this agreement or by the Council's Representative.
- 5.4. The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Provider or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Provider as a debt.
- 5.5. The Provider shall notify the Council immediately on becoming aware of any damage caused by the Provider, or the Provider's Personnel to any property of the Council, to any of the Council's

Premises or to any property of any other recipient of the Services in the course of providing the Services.

6. PAYMENT

- 6.1. The Provider shall invoice the Council for payment of the Charges monthly in arrears. All invoices must contain the Council's relevant purchase order number. The Provider must ensure that it has received a valid order form or purchase order number prior to commencing any manufacture or supply of any goods or the provision of any Services. The Council shall have no obligation to make any payment unless the purchase order number is stated on the Provider's invoice.
- 6.2. The Charges will be stated in Schedule 1. Any Provider travel and subsistence charges must be agreed in writing with the Council before the Services take place.
- 6.3. The Council shall pay the Charges which have become payable within 30 days of receipt of a valid undisputed VAT invoice from the Provider.
- 6.4. Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 9. The Council shall have no obligation to make payment for Services which are not performed in accordance with the requirements of the Specification and the warranties provided in Clause 3.2 of this Agreement.
- 6.5. The Charges are stated exclusive of **VAT**, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this Agreement.
- 6.6. The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Agreement. Such records shall be retained for inspection by the Council for 6 years from the end of Term.
- 6.7. Where the Provider enters into a Sub-Contract with a Provider or subcontractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract that requires payment to be made of undisputed sums by the Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

7. PERSONNEL

- 7.1. At all times, the Provider shall ensure that:
 - 7.1.1. each of the Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 7.1.2. there is an adequate number of Provider's Personnel to provide the Services properly;
 - 7.1.3. only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - 7.1.4. all of the Provider's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.
- 7.2. The Council may refuse to grant access to, and remove, any of the Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 7.3. The Provider shall ensure that if any of the Services (or anything ancillary to the Services) provided fall within the definition of a Regulated Activity it shall:
 - 7.3.1. prior to engaging or employing any person in the provision of any Regulated Activity carry out Employment Checks and such other checks as required by the DBS as are set out in clause 38 (Safeguarding);
 - 7.3.2. warrant that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of a Regulated

Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time;

7.3.3. notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 7.3 have been met; and

7.3.4. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Regulated Activity

8. VARIATION

8.1. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives)

9. DISPUTE RESOLUTION

9.1. If any dispute arises in connection with these terms and conditions or delivery of the Services, the Authorised Representatives of the Council and the Provider shall, within 10 Working Days (or such other time as the parties may agree in writing) of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

9.2. If the dispute is not resolved at that meeting, the parties will attempt to settle it by referring the matter to the relevant senior officers at the Council and the Provider who will meet in a good faith effort to resolve the matter within 20 Working Days of referral.

9.3. If the dispute is not resolved by the parties referred to in clause 9.2, the parties will attempt to settle it by referring the matter to the parties respective directors (or equivalent) who will meet in a good faith effort to resolve the matter within 20 Working Days of referral.

9.4. If the matter is not resolved through negotiation either Party may refer the matter to mediation under the Centre for Dispute Resolution (CEDR) Model Mediation Procedure (MMP).

10. SUB-CONTRACTING AND ASSIGNMENT

10.1. The Provider shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the Council, neither may the Provider sub-contract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Council.

10.2. The Council shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

11. INDEMNITIES

11.1. Subject to Clause 12.5, the Provider shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:

11.1.1. the Provider's breach or negligent performance or non-performance of this Agreement;

11.1.2. any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Provider or Provider Personnel

12. LIMITATION OF LIABILITY

12.1. Subject to clause 12.2 and 12.5, neither party shall be liable to the other party for any economic loss, special or consequential loss, loss of profit, loss of revenue or contracts, loss of anticipated savings, loss of goodwill or loss of business opportunities whether arising directly or indirectly in connection with the Agreement.

12.2. The Provider acknowledges that the Council may, amongst other things, recover from the Supplier the following losses incurred by the Council to the extent that they arise as a result of a default by the Supplier:

12.2.1. any charges arising out of default which are due and payable to the Council

- 12.2.2. any additional operational and/or administrative costs and expenses incurred by the Council, including costs relating to time spent by or on behalf of the Council in dealing with the consequences of the default;
- 12.2.3. any wasted expenditure or charges;
- 12.2.4. the additional cost of procuring replacement Goods and/or Services for the remainder of the contract period, which shall include any incremental costs associated with such replacement Goods and/or Services above those which would have been payable under this Agreement;
- 12.2.5. any compensation or interest paid to a third party by the Council;
- 12.2.6. any fine, penalty or costs incurred by the Council pursuant to Law.
- 12.3. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 12.4. Subject to clause 12.5, the Provider's total liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract, breach of statutory duty, the law of equity, or otherwise under or in connection with this Agreement shall in no event exceed the greater of £1,000,000 or (where such loss is required to be insured in accordance with the policy cover required under Clause 13.1) the limit of such insurance cover, in relation to any one claim or series of connected claims.
- 12.5. Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:
 - 12.5.1. fraud or fraudulent misrepresentation;
 - 12.5.2. death or personal injury caused by its negligence;
 - 12.5.3. breach of any obligation as to title implied by statute; or
 - 12.5.4.** any other act or omission, liability for which may not be limited under any applicable Law.
- 12.6. Subject to clause 12.5, the Council's total liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract, breach of statutory duty, the law of equity, or otherwise under or in connection with this Agreement shall in no event exceed the total Charges paid to the Provider under this Agreement.

13. INSURANCE

- 13.1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
 - 13.1.1. public liability insurance (including, where applicable, any product liability associated with the provision of Goods under the Agreement) with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of connected claims;
 - 13.1.2. employers Liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of connected claims;
 - 13.1.3. professional indemnity insurance with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of connected claims;
- 13.2. The cover referred to in 13.1 shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 13.3. The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the required insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 13.4. If, for whatever reason, the Provider fails to give effect to and maintain the required

insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

- 13.5. The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement.
- 13.6. The Provider shall hold and maintain the required insurances for a minimum of six years following the expiration or earlier termination of the Agreement.

14. FREEDOM OF INFORMATION

- 14.1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 14.2. The Provider shall and shall procure that its sub-contractors shall:
- 14.2.1. transfer the Request for Information to the Council as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
 - 14.2.2. provide the Council with a copy of all Information in its possession or power in the form that the Council requires within 5 Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - 14.2.3. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 14.2.4. The Council shall be responsible for determining at its absolute discretion whether any Information:
- 14.2.4.1. is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or
 - 14.2.4.2. is to be disclosed in response to a Request for Information.
- 14.3. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 14.4. The Provider acknowledges that the Council may be obliged under the FOIA or the EIR to disclose Information:
- 14.4.1. without consulting with the Provider; or
 - 14.4.2. following consultation with the Provider and having taken its views into account

provided always that where clause 14.5(b) applies the Council shall, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- 14.5. Notwithstanding any other term of this agreement, the Provider consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that the Council considers is exempt from disclosure in accordance with the provisions of the FOIA and EIR. The Council shall have the final decision on the manner and form of publication in its absolute discretion. The Provider shall assist and co-operate with the Council to enable the Council to publish this agreement.
- 14.6. The Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

15. DATA PROTECTION

- 15.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in the Schedule 2 to this Agreement by the Council and may not be determined by the Provider.

- 15.2. The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 15.3. The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- 15.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 15.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 15.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 15.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.4. The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 15.4.1. process that Personal Data only in accordance with Schedule 2, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - 15.4.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - 15.4.2.1. nature of the data to be protected;
 - 15.4.2.2. harm that might result from a Data Loss Event;
 - 15.4.2.3. state of technological development; and
 - 15.4.2.4. cost of implementing any measures;
 - 15.4.3. ensure that:
 - 15.4.3.1. the Provider's Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 2);
 - 15.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Provider's Personnel who have access to the Personal Data and ensure that they:
 - 15.4.3.2.1. are aware of and comply with the Provider's duties under this clause;
 - 15.4.3.2.2.** are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - 15.4.3.2.3. 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 the Council or as otherwise permitted by this Agreement; and
 - 15.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 15.4.3.2.5. do not transfer Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - 15.4.3.2.5.1. the Council or the Provider has provided appropriate safeguards in relation to the transfer in accordance with the Data Protection Legislation (UK GDPR Article 46 and Sections 17A, 17B or 17C of the Data Protection Act 2018) as determined by the Council;
 - 15.4.3.2.5.2. the Data Subject has enforceable rights and effective legal remedies;

- 15.4.3.2.5.3. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - 15.4.3.2.5.4. the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
 - 15.4.3.2.5.5. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.
- 15.5. Subject to clause 15.6, the Provider shall notify the Council immediately if it:
- 15.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 15.5.2. receives a request to rectify, block or erase any Personal Data;
 - 15.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 15.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 15.5.5. receives 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
 - 15.5.6. becomes aware of a Data Loss Event.
- 15.6. The Provider's obligation to notify under clause 15.5 shall include the provision of further information to the Council in phases, as details become available.
- 15.7. Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 15.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- 15.7.1. the Council with full details and copies of the complaint, communication or request;
 - 15.7.2. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 15.7.3. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 15.7.4. assistance as requested by the Council following any Data Loss Event;
 - 15.7.5. assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 15.8. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- 15.8.1. the Council determines that the processing is not occasional;
 - 15.8.2. the Council determines 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
 - 15.8.3. the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 15.9. The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 15.10. The Provider shall designate a data protection officer if required by the Data Protection Legislation.

- 15.11. Before allowing any Sub-processor to process any Personal Data related to this agreement, the Provider must:
- 15.11.1. notify the Council in writing of the intended Sub-processor and processing;
 - 15.11.2. obtain the written consent of the Council;
 - 15.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 15 such that they apply to the Sub-processor; and
 - 15.11.4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 15.12. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 15.13. The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with 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 Agreement).
- 15.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Provider amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

16. CONFIDENTIALITY

- 16.1. The provisions of this clause do not apply to any Confidential information which:
- 16.1.1. is or becomes available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause);
 - 16.1.2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - 16.1.3. was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - 16.1.4. the parties agree in writing is not confidential or may be disclosed;
 - 16.1.5. is disclosed by the Council on a confidential basis to any central government or regulatory body.
- 16.2. Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- 16.2.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement ("Permitted Purpose"); or
 - 16.2.2. disclose such Confidential information in whole or in part to any third party, except as expressly permitted by this Clause 16
- 16.3. A party may disclose the other party's Confidential information to those of its representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 16.3.1. it informs such representatives of the confidential nature of the Confidential Information before disclosure; and
 - 16.3.2. it procures that its representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement and
 - 16.3.3. at all times, it is liable for the failure of any representatives to comply with the obligations set out in this Clause 16
- 16.4. A party may disclose Confidential Information to the extent such Confidential

Information is required to be disclosed by law (including under the FOIA or EIRs), by any governmental or other

regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.

16.5. The provisions of this Clause 16 shall survive for a period of 10 years from the End Date.

17. AUDIT

17.1. Subject to clause 15 the Provider shall keep and maintain until 6 years after this Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of this Agreement including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records as may be required by the Council in connection with the Agreement.

18. INTELLECTUAL PROPERTY

18.1. All Intellectual Property created by the Provider or any employee, agent or sub-contract of the Provider in the course of performing the Services or for the purpose of performing the Services shall vest in the Council on creation.

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

19. TERMINATION FOR BREACH

19.1. Without affecting any other right or remedy available to it, the Council may terminate this Agreement with immediate effect by the service of written notice on the Provider in the following circumstances:

19.1.1. if the Provider is in material breach of this Agreement, where "material breach" means:

19.1.1.1. a breach of the Provider's obligations under clauses 4, 5, 7, 10, 14, 15, 16, 22, 24, 30, 32, 33, 34, 38, 39, 40, 41, 42, 43, or 44 of this Agreement;

19.1.1.2. a failure to provide the goods and services in accordance with the Specification which

19.1.1.2.1. has a financial impact on the Council; or

19.1.1.2.2. denies, delays or diminishes the benefits expected to be received by the Council or the intended beneficiaries of the Services under this Agreement; or

19.1.1.2.3. any other breach of this Agreement by the Provider which the Provider fails to remedy to the Council's reasonable satisfaction following receipt of a notice by the Council stating, at the Council's sole discretion, the required remedial action and period for compliance

19.1.2. if a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;

19.1.3. if the Provider ceases or threatens to cease to carry on business in the United Kingdom;

19.1.4. if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Provider to which the Council reasonably objects

19.1.5. if there is in the reasonable opinion of the Council a material change in the financial or economic standing of the Provider which is likely to adversely affect performance. In this regard the Council may be entitled to take as conclusive evidence of such a material change

circumstances including but not limited to:

- 19.1.5.1. substantial reductions in workforce, or the loss of key members of skilled staff who had been cited by the Provider when evidencing capability within their quotation, offer or tender
 - 19.1.5.2. the loss of key premises or equipment required for satisfactory completion of the Agreement
 - 19.1.5.3. a delay or failure to make salary or other payments due to staff
 - 19.1.5.4. indications of financial distress such as taking emergency loans or making requests for expedited payments
 - 19.1.5.5. a consistent failure to commit sufficient resource and time to the fulfilment of the Agreement; or
 - 19.1.5.6. demands by the Provider to delay or to limit the scope of the Services or to increase the Charges for reasons connected to the wider performance or profitability of the Provider's organisation
- 19.2. If this Agreement is terminated by the Council under this Clause 19, such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination.

20. TERMINATION ON NOTICE

- 20.1. The Council may terminate this Agreement at any time by giving 14 calendar days' written notice to the Provider. In such circumstances the Provider shall be entitled to payment for costs reasonably and directly incurred in relation to work fully and satisfactorily performed up to the date of termination, provided such anticipated costs are notified to the Council in an itemised termination liability schedule within 14 calendar days of receiving the notice of termination or a request for such information by the Council. The Provider shall in no circumstances be entitled to compensation for the types of loss set out in Clause 12.1, and compensation shall in no event exceed the amount of the outstanding Charges to be paid under the Agreement.

21. FORCE MAJEURE

- 21.1. Subject to the remaining provisions of this clause 21, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is directly due to a Force Majeure Event.
- 21.2. In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall
- 21.2.1. give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - 21.2.2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement, including but not limited to the prior preparation and maintenance of business continuity plans and the prompt and effective execution of such plans with respect to the Force Majeure Event; and
 - 21.2.3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 21.3. A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 21.4. The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- 21.5. As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this

agreement. Where the Provider is the affected party, it shall take and/or procure the taking of all

steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

21.6. The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

21.7. The Council may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the Provider if a Force Majeure Event occurs that affects the delivery of the Services and which continues for more than 20 Working Days.

21.8. The Provider is responsible for assessing its needs and holding appropriate business interruption insurance to cover the full impact on its business associated with a Force Majeure Event, and shall not be entitled to request or pass onto the Council any cost, loss, damage, charge, price increase, or claim associated with the Force Majeure Event.

22. PREVENTION OF BRIBERY

22.1. The Council may terminate this Agreement by written notice with immediate effect, and recover from the Provider all losses resulting from such termination, if the Provider, or any of its employees, agents or sub-contractors (in all cases whether or not acting with the Provider's knowledge):

22.1.1. directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to;

22.1.2. induce that person to perform improperly a relevant function or activity; or

22.1.3. reward that person for improper performance of a relevant function or activity;

22.1.4. directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

22.1.5. commits any offence:

22.1.5.1. under Section 117(2) of the Local Government Act 1972;

22.1.5.2. under the Bribery Act 2010;

22.1.5.3. under legislation creating offences concerning fraudulent acts; or

22.1.5.4. at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council.

22.1.6. defrauds, attempts to defraud, or conspires to defraud the Council.

22.2. Any termination under clause 22.1 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

23. CONSEQUENCES OF TERMINATION

23.1. On termination of this Agreement the Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Provider's Representative shall certify full compliance with this clause.

23.2. The provisions of clause 11 (Indemnities), clause 12 (limitation of liability) clause 13 (Insurance), clause 14 (Freedom of Information), clause 15 (Data Protection), clause 17 (Audit), clause 19 (Termination for Breach) and this clause 23 (Consequences of termination) shall survive termination or expiry of this Agreement.

24. NON-SOLICITATION

24.1. Neither party shall (except with the prior written consent of the other) during the term of this Agreement solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Agreement or any significant part

thereof either as principal, agent, employee, independent Provider or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

25. WAIVER

25.1. No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Provider in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Provider of its obligations to deliver the Services in accordance with the provisions of this Agreement.

26. CUMULATION OF REMEDIES

26.1. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

27. SEVERABILITY

27.1. If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

28. PARTNERSHIP OR AGENCY

28.1. Nothing in this Agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.

29. THIRD PARTY RIGHTS

29.1. No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

30. PUBLICITY

- 30.1. The Provider shall not undertake any activity, including any public statement in either online or offline channels, which will bring the reputation of the Council into disrepute.
- 30.2. The Provider shall notify the Council with immediate effect as soon as it becomes aware of any activity or information provided by it which, may adversely affect the Council's involvement in this Agreement; or the reputation of the Council.
- 30.3. The Provider shall not make or consent to the making of any public statement or announcement, or engage in any promotional or marketing activity (whether through online or offline channels - including, but not limited to, posters, leaflets, flyers, media activity, websites, social media sites, signage and events), concerning this Agreement without the Council's consent.
- 30.4. Any use of the Council's logo must be approved by the Council's Communications and Marketing Team. Use of the Council's logo must comply with the Council's brand guidelines which will determine its position and size in relationship to any partner/other logos. The appropriate version of the Council's logo shall be supplied by the Council's Communications and Marketing team who will ensure the relationship with the Council is made clear (e.g. 'working in partnership with').

31. NOTICES

31.1. Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in the Contract Particulars. Notices may be delivered by hand or be sent by first-class mail or by electronic mail. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 48 hours after posting.

32. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

32.1. The Parties acknowledge and agree that this Agreement constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Provider's Personnel (or any of them) as an employer of the Provider's Personnel and/or any liability or responsibility to HM Revenue or Customs as an employer of the Provider's Personnel whether during the Term or arising from termination or expiry of this Agreement.

33. TRANSPARENCY

33.1. In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council is required to publish information on its website detailing any item of expenditure over £500 and any contract with a value that exceeds £5,000. The information published will include the Provider's details and the Charges to be paid. The Parties acknowledge that this information is not Confidential Information or Commercially Sensitive Information.

33.2. The parties acknowledge that, except for any information which is exempt from disclosures in accordance with the provisions of the FOIA, the content of this agreement is not Confidential Information or Commercially Sensitive Information. The Council shall be responsible for determining at its absolute discretion whether any of the content of this agreement is for disclosure in accordance with the FOIA. Notwithstanding any other term of this agreement, the Provider hereby gives their consent for the Council to publish the agreement in its entirety (but with any information which is exempt from disclosure in accordance with the FOIA redacted) including from time to time agreed changes to the Agreement, to the general public.

34. MODERN SLAVERY

34.1. To the extent that the Modern Slavery Act 2015 may apply to the Provider, the Provider:

34.1.1. represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Provider nor any of its officers, employees, agents. Subcontractors or other persons associated with it:

34.1.1.1. have been convicted of any offence involving slavery and human trafficking anywhere in the world;

34.1.1.2. have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body anywhere in the world regarding any offence or alleged offence of or in connection with slavery and human trafficking.

34.1.2. shall implement and maintain throughout the term of any contract with the Council due diligence procedures for its own Providers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

34.1.3. shall report to the Council any breach or alleged breach of the Provider's anti-slavery and human trafficking policies and procedures or those of its Providers, sub-contractors and other participants in its supply chain and shall provide reasonable assistance to the Council to allow the Council to carry out any audit of the Provider's anti-slavery and human trafficking policies and procedures or those of any Providers, sub-contractors and other participants in its supply chains.

35. ENTIRE AGREEMENT

35.1. This Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties

relating to that subject matter.

35.2. Any conflict, inconsistency or ambiguity within the documents forming this Agreement shall be resolved in accordance with the order of precedence listed below:

- The Contract Particulars
- The Terms and Conditions for Goods and Services
- The Specification in Schedule 1
- The Charges and Payment Terms in Schedule 1
- The Data Protection Schedule 2
- The Provider's Tender in Schedule 1

36. COUNTERPARTS

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

37. GOVERNING LAW AND JURISDICTION

37.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of England.

37.2. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

38. SAFEGUARDING

38.1. This Clause 38 applies only where the Provider is a Regulated Activity Provider with responsibility for the management and control of a Regulated Activity provided under this Agreement.

38.2. Before the Provider commences the provision of the Services, or any activity related to, or connected with, the provision of the Services, the Provider must complete

- 38.2.1. the Employment Checks; and
- 38.2.2. such other checks as required by the DBS.

38.3. The Provider may not engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) prior to satisfactory completion of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate).

38.4. The Provider must:

- 38.4.1. obtain a full employment history and 2 satisfactory references for all applicants prior to the commencement of employment. The references should be one satisfactory employment reference from the applicant's preceding employer and one satisfactory and independent character reference, validated and checked. Where the applicant has no previous employment, two satisfactory independent character references must be obtained validated and checked. The Provider will make the references available to the Council for purposes of inspection and audit. If a prospective employee is currently or has previously been employed by the Council at any time, the Provider must seek a reference from the Council, regardless of whether or not the Council are the preceding employers and in addition to other references sought;
- 38.4.2. confirm the applicants legal right to work in the UK;
- 38.4.3. notify the Council immediately if any member of Provider's Personnel who, subsequent to his/her commencement of employment as a member of Provider's Personnel, receives a conviction or whose previous convictions become known to the Provider (or any employee of a Sub-Contractor involved in the provision of the Services);
- 38.4.4. have in place a regularly updated workforce development plan that includes appropriate competencies for Provider's Personnel in relation to all competencies and training requirements; and

- 38.4.5. comply with any other reasonable requirement of the Council.
- 38.5. For the avoidance of doubt, the Parties acknowledge that Provider's Personnel shall have no contractual or agency relationship with the Council and the Provider agrees to indemnify and keep indemnified the Council in respect of any claim made by Provider's Personnel arising from the performance of its obligations under this Agreement.
- 38.6. Any proven Improper Conduct on the part of the Provider or Provider's Personnel shall be considered to be a material breach of contract.
- 38.7. All Provider's Personnel shall be notified and instructed by the Provider about the Provider's obligations under the terms of this agreement and at Law.
- 38.8. The Provider shall at all times comply with its obligations pursuant to Law relating to employment.
- 38.9. The Provider shall:
- 38.9.1. Have a procedure approved by the Council for dealing with allegations or suspicions of Abuse;
- 38.9.2. Ensure that all Provider's Personnel are trained at induction in the proactive prevention of Abuse, in the identification of relevant incidents, in following the reporting procedures and training should be updated at least annually;
- 38.9.3. Maintain a proactive approach to prevent Abuse;
- 38.9.4. Have in place a workforce development plan that includes appropriate competencies for Provider's Personnel in relation to safeguarding children and vulnerable adults work;
- 38.9.5. Adhere to rigorous recruitment practices to deter those who actively seek vulnerable people to exploit or abuse;
- 38.9.6. Have robust systems in place so that Provider's Personnel are familiar with and follow the safeguarding children and vulnerable adults policy and procedure of the Council;
- 38.9.7. Address issues around bullying and have in place an anti-bullying policy which should be linked to their safeguarding procedures as appropriate. It is expected that Provider's Personnel and Service Users will be made aware of this policy and that relevant training will be given to Provider's Personnel.

39. EQUAL OPPORTUNITIES

- 39.1. The Provider shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation (the Protected Characteristics) and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 39.2. The Provider shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the execution of the Agreement.
- 39.3. The Provider shall take all reasonable steps to secure the observance of Clauses 39.1 and 39.2 by all servants, employees or agents of the Provider and all Providers and sub-contractors employed in the execution of the Agreement.
- 39.4. The Provider shall demonstrate to the Council that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 39.1 and 39.2.
- 39.5. If there should be any findings of unlawful discrimination made against the Provider by any court or employment tribunal, or an adverse finding in a formal investigation by the Equality and Human Rights Commission, the Provider shall take appropriate steps to prevent repetition of the unlawful discrimination.

39.6. The Council reserves the right to test the Provider's equality performance through the life of the Agreement. The Provider shall cooperate with the Council regarding the provision of any data and/or access for site visits as reasonably required by the Council

40. WARRANTIES

40.1. The Provider represents and warrants that:

40.1.1. It has full capacity and authority to enter into and to perform its obligations under this Agreement;

40.1.2. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under this Agreement;

40.1.3. it has not done, and in performing its obligations under this Agreement, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations and it has maintained and monitored, and will maintain and monitor, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Bribery Act 2010 and related applicable Laws; and

40.1.4. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

40.2. The Provider represents and warrants that as at the Commencement Date and during the Term

40.2.1. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

40.2.2. it has obtained all Necessary Consents;

40.2.3. all information contained in the Provider's Tender or Quotation remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the Commencement Date; and

40.2.4. it shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence.

Each of the representations and warranties set out in Clauses 40.1 to 40.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

41. SOCIAL VALUE

41.1. The Provider shall use all reasonable endeavours to assist the Council to improve the economic, social and environmental well-being of the Metropolitan Borough of Barnsley and shall support the Council in meeting its obligations under the Public Services (Social Value) At 2012 as may be amended or replaced from time to time.

41.2. In the event that the Provider fails:

41.2.1. to meet the performance measures or milestones in respect of the social value elements set out in the Specification or the Provider's Tender or Quotation

41.2.2. to submit the quarterly Social Value monitoring spreadsheet to the Council (where required); or

41.2.3. to provide to the Council any data, management information or records in respect of the social value element of the Provider's Tender or Quotation as reasonably required by the Council;

the Council may serve upon the Provider a notice ("Default Notice") setting out the nature of the default and the date by which the Provider is required to cure the default.

41.3. If the Provider fails to cure the default by the date set out in the Default Notice, the Council may:

41.3.1. suspend the contract for such period as the Council notifies to the Provider in writing; or

41.3.2. terminate the contract for the provision of the goods, services or works with immediate effect.

42. COMPLIANCE WITH LAWS

42.1. The Provider shall at all times comply with the Law and shall ensure that all Necessary Consents are obtained and maintained in the performance of this Agreement.

43. GOVERNMENT FUNDING

43.1. As a public body, the Council may have obligations to an external funding body ("Funding Body") with respect to the funds used in the purchase of the Services. Such obligations may include conditions in respect to the proper use of the funds, key objectives, project outcomes, project management, schedule, conditions of payment, inspection, monitoring and reporting, record-keeping and audit ("Grant Funding Agreement").

43.2. Upon request of the Council, the Provider agrees to make reasonable endeavours to support the Council in ensuring compliance with the conditions of the Grant Funding Agreement as applicable to this Agreement, including but not limited to:

43.2.1. Responding promptly to any reasonable requests for information made by the Council and the Funding Body

43.2.2. Creating, retaining, and providing promptly upon request all documentary records relating to planning, execution, risk management, finance and taxation, and performance under the Agreement and any assets or materials acquired in the performance of the Agreement

43.2.3. Facilitating upon reasonable notice any audits, inspections, site visits or monitoring required by the Council and the Funding Body

43.2.4. Promptly communicating any delay or anticipated delay or barrier in the progress of the Agreement and providing detailed mitigations and remedial plans to the satisfaction of the Council and the Funding Body

43.2.5. Following all publicity and branding guidelines which may be issued with respect to the Agreement and supporting any reasonable requests to engage in publicity and marketing opportunities

43.2.6. Providing evidence as reasonably required to support any requests by the Council and the Funding Body for the release of funds

43.2.7. Reasonable attendance at any meetings with the Council and the Funding Body

44. SUPPLY OF GOODS

44.1. This Clause 44 applies where the Provider is delivering Goods to the Council as part of the Services.

44.2. The provision of Goods is a part of the Services to be provided under the Agreement, and accordingly the conditions of this Agreement shall apply to the supply of such Goods, including the specific provisions set out in this Clause 44

44.3. The Provider warrants and shall ensure that the Goods:

44.3.1. correspond with their description and the Specification;

44.3.2. are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Provider or made known to the Provider by the Council, including

the provision of the Services, and in this respect the Council relies on the Provider's skill and judgement;

- 44.3.3. where they are manufactured products, are free from defects in design, materials and workmanship and remain so for 24 months from the End Date;
 - 44.3.4. comply with all applicable Laws relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
 - 44.3.5. are provided to the Council with full and good title and are free from any liens, charges, third party rights, equitable interests, or incumbrances.
- 44.4. The Provider shall deliver to the Council, along with any Goods, any information and data required for the safe and proper use and maintenance of the Goods, including but not limited to
- 44.4.1. copies of the manufacturer's instructions and manuals for handling, maintenance, operation, use and disposal; and
 - 44.4.2. any data, notices or information required by Law (including relating to environmental sustainability, safety, hazardous materials, waste and disposal)
- 44.5. The Council may inspect and test the Goods at anytime before delivery. The Provider shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Provider's obligations under the Contract.
- 44.6. If following such inspection or testing the Council considers that the Goods do not comply or are unlikely to comply with Clause 44.3 the Council shall inform the Provider and the Provider shall immediately take such remedial action as is necessary to ensure compliance. The Customer may conduct further inspections and tests after the Provider has carried out its remedial actions.
- 44.7. The Provider shall ensure that:
- 44.7.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 44.7.2. each delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 44.7.3. if the Provider requires the Council to return any packaging material to the Provider, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Provider at the cost of the Provider.
- 44.8. The Provider shall deliver the Goods:
- 44.8.1. on the date and delivery location specified in the Specification; and
 - 44.8.2. during Business Hours or as instructed by the Council
- 44.9. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the delivery location. Title and risk in the Goods shall pass to the Council on completion of delivery.
- 44.10. If the Provider fails to deliver the Goods by the date required in the Agreement the Council shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
- 44.10.1. to terminate the Agreement with immediate effect by giving written notice to the Provider;
 - 44.10.2. to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Provider attempts to make;
 - 44.10.3. to recover from the Provider any costs incurred by the Council in obtaining substitute goods or services from a third party;

- 44.10.4. to require a refund from the Provider of sums paid in advance for Services that the Provider has not provided or Goods that it has not delivered; and
- 44.10.5. to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Provider's failure to meet such dates.
- 44.11. Any Goods that do not comply with the requirements of Clause 44.3 shall be repaired or replaced by the Provider (at the Council's option) with conforming Goods at the Provider's cost and expense, within no later than 30 calendar days of the non-compliance being notified to the Provider. The conditions in this Clause shall extend to any substituted or remedial services or repaired or replacement Goods supplied by the Provider.
- 44.12. Where Goods are delivered, exhibited or installed on a temporary basis as part of the delivery of the Services, at the end of the Term the Provider must at its own cost and expense disassemble, de-install, remove, collect and transport the Goods and make good to the Council's reasonable satisfaction any impact, loss or damage occurring in connection with the same.

Schedule 1 - Specification, Provider's Tender, Charges and Payment Terms

Part A) Specification

[Pure Physio Health Growth Accelerator 25-26 Specification.docx](#)

Part B) Provider's Proposal

[Pure Physio Proposal HGA.docx](#)

Part C) Charges and Payment terms - Covered in Part A

Schedule 2 - Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Council, who may take account of the views of the Provider, however the final decision as to the content of this Schedule shall be with the Council at its absolute discretion.

1. The contact details of the Council's Data Protection Officer are as set out in the Contract Particulars
2. The contact details of the Provider's Data Protection Officer are as set out in the Contract Particulars
3. The Provider shall comply with any further written instructions with respect to processing by the Council.
4. Any such further instructions shall be incorporated into this Schedule.

Description	!Details
Subject matter of the processing	The subject matter of the Personal Data being processed will include Personal Data relating to Data Subjects who are employees of the Council or Service Users or recipients of the Services or in respect of any matter on which the Services are being sought by the Council or which is otherwise relevant to the provision of the Services.
Duration of the processing	The processing of Personal Data by the Provider will be carried out for the period during which the Services are required and any period during which the Provider is required to maintain records in accordance with this Agreement and any regulatory and legal requirements.
Nature and purposes of the processing	<p>The processing of Personal Data will include the transmission of Personal Data relating to Data Subjects required in order for the Provider to effectively provide the Services. It may involve being processed on systems of the Provider for the purposes of delivering the Services.</p> <p>The nature of the processing means any operation such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p>
Type of Personal Data	Personal Data may include Special Categories of Personal Data dependent on the Services being provided and the nature of the Personal Data required to be processed in order for the Services to be provided, including but not limited to, name, address, date of birth, contacts details, national insurance number, health or biometric data etc of the Data Subject
Categories of Data Subject	Any employee of the Council (including volunteers, agents, and temporary workers), and/or any Service User who is the recipient of the Services and their Parent/Guardian or carer where applicable
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Any Personal Data of Data Subjects shall be retained by the Provider only for as long as is necessary for the performance of the Services and/or in compliance with the management information retention provisions (if applicable) set out in this Agreement. All Personal Data shall be either destroyed or returned to the Council on termination of the Services.

5. Further details or instructions about the processing of Personal Data may be further specified by the Council in writing, which may include additional instructions in relation to the processing of Personal Data and may require, amongst other things that the Parties enter into an Information Sharing Agreement in relation to the processing of Personal Data for the purposes of the Services.
6. Clause 15 (Data Protection) and this Schedule 2 set out the provisions for the sharing of Personal Data when the Council discloses Personal Data to the Provider, in order for the Provider to supply services to the Council or its Service Users.
7. To the extent that the Provider receives requests for services directly from Service Users, the Provider shall be a Controller of any Personal Data, and it shall comply with its obligations pursuant to Data Protection Legislation.

