



DATED *27<sup>th</sup> October* 2025

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THE BOROUGH COUNCIL OF CALDERDALE

and

PSYCHOLOGY DIRECT LIMITED

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CONTRACT

for the provision of an

EDUCATIONAL PSYCHOLOGY SERVICE

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*The Borough Council of Calderdale  
Legal Services  
3rd Floor  
Princess Buildings  
Princess Street  
Halifax  
HX1 1TS  
DA/1012689*

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THIS CONTRACT is dated

27<sup>th</sup> October

2025.

**BETWEEN:**

1. **THE BOROUGH COUNCIL OF CALDERDALE** whose principal place of business is The Town Hall, Halifax, HX1 1UJ (the "**Council**"); and
2. **PSYCHOLOGY DIRECT LIMITED** a company incorporated and registered in England & Wales with company number **07008023** whose registered offices are at **156 South Street, Dorking, England, RH4 2HF** (the "**Provider**"),  
each a "**Party**" to and collectively the "**Parties**" to this Contract.

**BACKGROUND**

- A. The Council has a requirement for the provision of an Educational Psychology service, by a suitably qualified and experienced provider, in order to discharge its statutory duties.
- B. The Council placed a contract notice 2025/S 000-019805 on 8<sup>th</sup> May 2025 in the Find a Tender Service advertising the contract opportunity and inviting prospective providers to bid for the provision of an Education Psychology Service.
- C. The detailed educational psychology services required are set out in the Service Specification annexed at Schedule 1 and incorporated into this Contract ("**Services**").
- D. On the basis of the Provider's response to the advertisement and subsequent tender process, the Council selected the Provider to provide the services, and the Provider is willing and able to provide such services in accordance with the terms of this contract.
- E. Accordingly, the parties have agreed to enter into a contract for the provision of the Services (as defined below) on the terms and conditions of this contract.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

**Achieved KPIs:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in paragraph 5.3 of Schedule 1).

**Authorised Officer:** means the representative(s) of the Council, detailed in Schedule 12, and as may be replaced or delegate his functions from time to time;

**Best Value:** means the duty imposed on the Council by Part 1 of the Local Government Act 1999 and under which the Council is under a statutory duty to continuously 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 Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the Local Government Act 1999 ;

**Bribery Act:** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**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, having regard to factors such as the nature and size of the parties, the KPIs, the Term, the pricing structure and any other relevant factors.

**Business Continuity Event** means a critical failure or disruption of the Services.

**Business Continuity Plan:** means the Provider's plan referred to in Schedule 7 which sets out the detailed procedures and processes to be followed and actions to be taken if there is a critical failure or disruption to the Services;

#### **Catastrophic Failure**

- a) a failure by the Provider for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms on the occurrence of a Business Continuity Event.
- b) any action by the Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Council's Authorised Representative has or may cause significant harm to the reputation of the Council.

**Change:** any change to this agreement including to any of the Services.

**Change Control Note:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**Change Control Procedure:** the procedure for changing this agreement, as set out in Schedule 11.

**Change in Law:** any change in any Law which impacts on the performance of the Services and which comes into force after the Commencement Date.

**Charges/Price:** means the charges/fees which shall become due and payable by the Council to the Provider in respect of the Services in accordance with the provisions of this Contract, as such charges are set out in Schedule 3 as amended in accordance with the Contract;

**Commencement Date:** 1<sup>st</sup> October 2025.

**Commercially Sensitive Information:** the information listed in Schedule 13 comprising the information of a commercially sensitive nature relating to the pricing of the Services, the Provider's intellectual property rights or the Provider's business operations which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Provider significant commercial disadvantage or material financial loss.

**Conditions:** means the terms and conditions set out in this document and any other special terms and conditions agreed in writing between the Provider and the Council;

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, contractors or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (b) any information developed by the parties in the course of carrying out this agreement;
- (c) Personal Data
- (d) any Commercially Sensitive Information.

**Contract:** means this agreement

**Consistent Failure:** means the Provider repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

**Contract Year:** means 12 months from the Commencement Date and every 12 months thereafter;

**Controller:** as defined in the Data Protection Legislation.

**Council:** means The Borough Council of Calderdale;

**Council Premises:** means any premises made available to the Provider by the Council to allow the Provider to provide the Services (which term includes, for the avoidance of doubt, all educational premises – whether community school premises or otherwise);

**Criminal Conviction:** means any criminal conviction whether or not under United Kingdom law and in any country,

**Data Breach:** has the meaning set out in the Data Protection Legislation.

**Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;

**DBS Checks:** means checks which the Provider and any Sub-Contractor shall carry out on employees and volunteers in line with regulations from the Disclosure and Barring Service;

**Default:** means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or Sub-Contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other;

**Dispute Resolution Procedure:** the procedure set out in clause 44.

**Domestic law:** the law of the United Kingdom or a part of the United Kingdom.

**EIRs:** 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.

**Eligible Employees:** means the Transferring Employees (or employees of Third-Party Employers) who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Commencement Date, or any other individuals nominated by the Provider or Provider Party (as appropriate);

**Employee Liability Information:** means the Information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE;

**Employees:** means those employees employed or engaged by the Provider upon or in connection with the delivery of the Services including apprentices and shall

include the Provider's servants, agents and any Sub-Contractor properly appointed and its employees and any other person properly acting on its behalf (including any volunteers and whether paid or unpaid) in accordance with the provisions of this Contract in the delivery of the Services;

**Environmental Liability:** means all costs, expenses, liabilities, claims, damages, penalties, or fines arising from any criminal or civil liability under any Law or any obligation under any Law to take, or to pay for, remedial action or to prevent pollution of the environment;

**Equipment:** means any or all vehicles, plant, equipment or machinery (including any necessary computer system) to be provided by the Provider to allow the Provider to provide the Services;

**Extension:** has the meaning set out in clause 2.2 of the Contract;

**FOIA:** the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure Event:** any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) 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 action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; and
- (f) collapse of buildings, fire, explosion or accident;
- (g) any event or circumstance which is both beyond the control of whichever Party is affected and which could not have been predicted with the exercise of prudent and reasonable foresight.

but excluding any labour or trade dispute, strikes, industrial action or lockouts

relating to the Provider or the Provider Staff or any other failure in the Provider's or a Sub-Contractor's supply chain.

**Future Provider:** means any person contracted to provide a service to the Council which is the same as or similar to the Service at any time in substitution of the Provider or any Sub-Contractor (in whole or part), whether or not after expiry or termination of this Contract;

**Health and Safety Policy:** the health and safety policy of the Council being one of the Mandatory Policies.

**General Change in Law:** a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

**Good Industry Practice:** means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Provider under the same or similar circumstances at the relevant time for such exercise;

**Information:** has, for the purposes of clause 30, the meaning given under section 84 of FOIA.

**Initial Term:** means the duration of the contract starting at 00.01 am on the Commencement Date and ending at 11.59 pm on the day before the third anniversary of the Commencement Date.

**Insolvency Event:** where:

- a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of that other party;
- c) the Provider applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company, partnership or limited liability partnership);
- f) the holder of a qualifying floating charge over the assets of the Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- g) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- i) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in a) to h) (inclusive); or
- j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**KPIs:** the key performance indicators for all and each part of the Services as specified in paragraph 5.3 of Schedule 1.

**Law:** means the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Provider is bound to comply.

**Mandatory Policies:** the Council's and the Provider's policies referenced in Schedule 1, as amended by notification to the Provider from time to time.

**Necessary Consents:** means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time

for the performance of the Service including without limitation all planning permissions and waste management licences;

**Personal Data:** as defined in the Data Protection Legislation.

**Processing:** as defined in the Data Protection Legislation.

**Prohibited Act:** the following constitute Prohibited Acts:

- k) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- l) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- m) committing any offence:
  - i) under the Bribery Act 2010;
  - ii) under legislation or common law concerning fraudulent acts;
  - iii) of defrauding, attempting to defraud or conspiring to defraud the Council.
- n) any activity, practice or conduct which would constitute one of the offences listed under l) above, if such activity, practice or conduct had been carried out in the UK.

**Provider:** means the legal entity that supplies or agrees to supply services to the Council;

**Provider Manager:** means the representative of the Provider with status as per Clause 23 as initially listed in the Schedule 12, and as may be replaced from time to time;

**Provider Party:** means the Provider's agents and providers, including each Sub-Contractor;

**Provider Staff:** means all employees, other workers, agents, and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time (including any volunteers and whether paid or unpaid);

**Provider Premises:** means any premises provided by the Provider to allow the Provider to provide the Services;

**Provider's Tender:** the tender submitted by the Provider and other associated documentation set out in Schedule 2.

**Quality Standard:** means an appropriate and current British Standards Specification or British Standard Code of Practice issued by the British Standard Institution or any similar European Union standard applying to goods or Service relating to the Service or equivalent;

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Regulatory Body:** means government Departments and agencies, the European Commission or any other regulatory authority or body (other than the Council) including any health and safety enforcement agency, with power to regulate the Service and their respective successors and substitutes;

**Relevant Employees:** means those employees who are the subject of a Relevant Transfer;

**Relevant Requirements:** all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

**Relevant Transfer:** means a relevant transfer for the purposes of TUPE in relation to the delivery of the Services including upon or as a result of termination of this Contract;

**Relevant Transfer Date:** means the date on which an Eligible Employee transfers to the Provider and or/ Sub-contractor pursuant to a Relevant Transfer;

**Remediation Notice:** a written notice given by the Council to the Provider pursuant to clause 40 to initiate the Remediation Plan Process.

**Remediation Plan:** the plan agreed in accordance with clause 40 for the resolution of a Provider's default in complying with its obligations under this contract.

**Remediation Plan Process:** the process for resolving certain of the Provider's defaults as set out in clause 40.

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this contract, whether those services are provided by the Council internally or by any Replacement Provider.

**Replacement Provider:** any third party supplier of Replacement Services appointed by the Council from time to time.

**Representative:** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors.

**Request(s) for Information:** shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;

**Service:** means the Services to be provided by the Provider under the Contract as more particularly described in the Specification and any Variation thereto made in accordance with this Contract;

**Service Transfer Date:** means the Commencement Date or if an Employment Tribunal or some other court of competent jurisdiction shall determine that the transfer date for the purposes of TUPE is some other date, then that such other date shall apply;

**Service User:** means the person receiving the Services provided by the Provider and includes their legal guardian where appropriate;

**Service Specification:** means the detailed description of the Services to be provided as detailed in Schedule 1;

**Service Failure:** a shortfall or failure by the Provider to deliver any part of the Services in accordance with any Target KPI.

**Sub-Contract:** any contract or agreement, or proposed contract or agreement, between the Provider and a third party pursuant to which that third party agrees to provide to the Provider the Services or any part of the Services.

**Sub-Contractor:** a person with whom the Provider enters into a Sub-Contract, and any third party with whom that third party enters into a subcontract or its servants or agents.

**Target KPI:** the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in paragraph 5.3 of Schedule 1.

**Term:** the period of the Initial Term as may be varied by:

- a) any extension pursuant to clause 2.2; or
- b) the earlier termination of this contract in accordance with its terms.

**Termination Date:** the date of expiry or termination of this contract.

**Termination Notice:** any notice to terminate this contract which is given by either party in accordance with clause 40 or clause 42.

**Transferring Employees:** means an employee of the Council whose Contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Contract between the Council and the Provider, a Contract of employment with someone other than the Council;

**Transferring Original Employee:** means a former employee of the Council whose Contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Contract between the Council and the Provider, a Contract of employment with someone other than his existing employer.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**UK Data Protection Legislation:** Means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**VAT:** means Value Added Tax or any similar tax from time to time replacing it or performing a similar fiscal function.

**Variation:** means a variation of the Service or the Contract in accordance with the Contract.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

**Working Hours:** the period from 9.00am to 5.00pm on any Working Day.

- 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).
- 1.4 The schedules form 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 schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.

- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 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.
- 1.11 A reference to this agreement or to the Contract or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.14 If there is an inconsistency between the Clauses of the Contract or the Schedules, the provisions of the Clauses shall prevail.
- 1.15 Where the consent of a Party is required under this Contract then such consent shall not be unreasonably withheld or delayed

## **2. COMMENCEMENT AND DURATION OF CONTRACT**

- 2.1 This contract shall take effect on the Commencement Date and (unless terminated earlier in accordance with any provisions within the Contract) will remain in force for the Initial Term at the end of which it will expire automatically unless extended in accordance with Clause 2.2.
- 2.2 No later than three (3) months before the end of the Initial Term the Council may (at its sole discretion) extend the Term for a further period or periods of up to 3 years/36 months by giving written notice to the Provider of its wish to extend the Contract and the required length of such extension (an "**Extension**"). Any such Extension shall be on the same terms and conditions of this Contract.
- 2.3 On the expiry or termination of this Contract any liability of the Council to make payment to the Provider under this Contract shall, (unless the terms otherwise provide) terminate at that time.

## **3. NON EXCLUSIVITY**

The Provider acknowledges that, in entering this Contract, no form of exclusivity or volume guarantee has been given by the Council for the Services required from the Provider and the Council at all times is entitled to enter into other Contracts and arrangements with other Providers for the provision of any or all Services which are the same as or similar to the Services under this Contract.

#### **4. PRE-CONDITIONS**

- 4.1 On or before the Commencement Date, the Provider shall produce to the Council, for inspection, documentary evidence that the required insurances are properly in place, adequate and valid.
- 4.2 On or before the Commencement Date, the Provider shall produce to the Council, for inspection, documentary evidence of a current DBS Adult and Child Check (Enhanced or Enhanced and DBS Barred List (child & adult)) for each of the Provider Staff engaged in the provision of the Services.
- 4.3 On or before the Commencement Date, the Provider shall produce to the Council, for inspection, documentary evidence that any required accreditations for the delivery of the Services are properly in place and valid.
- 4.4 Failure by the Provider to comply with its obligations under this Clause may be regarded as a fundamental breach of this Contract.

#### **5. CONTRACT DOCUMENTS**

- 5.1 Where there is any conflict or inconsistency between the provisions of this Contract, any such conflict or inconsistency shall be resolved according to the following order of priority:
  - (a) these Conditions of Contract;
  - (b) Schedule 1 (Service Specification);
  - (c) the documents listed in Schedule 4 (Tender Clarification Documents);
  - (d) all other Schedules attached to these Conditions of Contract, except the Schedule listed at Clauses 5.1(c) and 5.1(e);
  - (e) Schedule 2 (Provider's Tender); and
  - (f) the Council's Contract Procedure Rules.

#### **6. WARRANTIES AND REPRESENTATIONS**

- 6.1 The Provider warrants, represents and undertakes that:
  - (a) it has the full capacity; it has taken all steps and obtained all approvals to enable it to lawfully enter into and perform its obligations under this Contract;

- (b) the Council has delivered or made available to the Provider all of the information and documents that the Provider considers necessary or relevant for the performance of its obligations under this contract;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 6.1(b);
- (d) this Contract is executed by duly authorised representatives of the Provider;
- (e) there are no actions, proceedings or regulatory investigations pending or threatened against or affecting the Provider before any Court, Regulatory Body or Mediation Tribunal which may affect the ability of the Provider to meet and carry out its obligations under this Contract;
- (f) there are no material facts or circumstances in relation to the financial position or operational constitution of the Provider which have not been fully and fairly disclosed to the Council and which if disclosed might reasonably be expected to affect the decision of the Council to enter into this Contract with the Provider;
- (g) it will perform and procure the performance of its obligations under this Contract in compliance with all applicable Laws;
- (h) it holds and will continue to hold, all consents and regulatory approvals necessary to provide the Services;
- (i) it shall discharge its obligations under this Contract using personnel of the required skill, experience and qualifications and the personnel will deliver the Services with all due skill, care, and diligence; and
- (j) all information and statement made by the Provider as part of the procurement process and in respect of the delivery of the Services, including without limitation the Provider's tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate, complete and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement.
- (k) 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 which materially and adversely affects its ability to perform the Services.

6.2 The Provider shall not be entitled to recover any additional costs or charges from the Council arising as a result of, nor be relieved from any of its obligations under this contract on the ground of, any matters or inaccuracies notified to the Council by the Provider in accordance with clause 6.1(k) save where such additional costs or adverse effect on performance have been

caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider may recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

- 6.3 The Provider warrants that to the best of its knowledge, information, and belief (after having made appropriate enquiries, checks and registrations), at the Commencement Date there are no individuals working or involved in the delivery of the Services (in any capacity), whether as employer, employee, or volunteer whom the Provider would be required under this Contract to remove from the delivery of the Services.
- 6.4 No representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

## **7. COMPLIANCE WITH APPLICABLE LAW AND CHANGE IN LAW**

### **Change in Law or Policy Affecting the Provider**

- 7.1 In performing its obligations under this contract, the Provider shall at all times comply with:
- (a) all applicable Law;
  - (b) the Mandatory Policies.

The Provider shall (at no additional cost to the Council) maintain such records as are necessary pursuant to Applicable Laws and Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Council (or its' Authorised Officers).

- 7.2 Without limiting the generality of the obligation under clause 7.1, the Provider shall (and shall procure that the Provider Staff shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with all applicable Law regarding health and safety.
- 7.3 Without limiting the general obligation set out in clause 7.1, the Provider shall (and shall procure that the Provider Staff shall):
- (a) perform its obligations under this contract (including those in relation to the Services) in accordance with:

- (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - (ii) all applicable employment law (whether in relation to national minimum wage regulations or working time regulations, and the Provider shall be deemed to have made full allowance in any tender or pricing schedule to ensure compliance with such Regulations. No claim will be entertained for additional payments in respect of any costs arising from the National Minimum Wages rates or any amendment or re-enactment of the same);
  - (iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law;
  - (iv) all applicable human rights law; and
- (b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

7.4 The Provider shall monitor and shall keep the Council informed in writing of any changes in Law which may impact the Services and shall provide the Council with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Provider shall only implement such changes in accordance with the Change Control Procedure.

7.5 The Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract, nor be entitled to an increase in the charges as the result of a General Change in Law.

7.6 Without prejudice to this Clause, the Provider shall use all reasonable endeavours to minimise any disruption caused by any change in Applicable Law that is introduced.

## **8. PROVISION OF THE SERVICES**

8.1 The Provider shall provide the Services to the Council with effect from the Commencement Date for the duration of the Term in accordance with the provisions of this agreement, including without limitation Schedule 1 and the Provider's Tender.

8.2 In providing the Services, the Provider shall at all times:

- (a) act with all reasonable care and skill, prudence, and foresight and in accordance with the provisions of the Contract, all applicable Laws, Best Industry Practice, the Quality Standard, and all

reasonable instructions of the Authorised Officer, acting in good faith and in accordance with the Contract;

- (b) obtain, maintain, and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Council);
- (c) allocate sufficient resources to provide the Services in accordance with the terms of this Contract;
- (d) ensure that any of the Provider's Staff who are engaged in the delivery of any of the Services shall, (if required by the Council) attend such meetings at Council Premises (or elsewhere) as may be reasonably required by the Council;
- (e) provide such reasonable co-operation and information in relation to the Services to such of the Council's other providers or agents of the Council as the Council may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that the Council may reasonably require;
- (f) provide all the equipment that is necessary for the delivery of the Services and shall maintain all items of equipment necessary for the delivery of the services in a safe, serviceable, and clean condition. Any equipment that is to be provided by the Council or any Service User shall be listed in the Service Specification at Schedule 1;
- (g) not deliver any equipment nor begin any work in Council Premises without obtaining prior approval from the Authorised Officer;
- (h) take appropriate steps to ensure that neither the Provider nor any of its Representatives is placed in a position where, (in the reasonable opinion of the Council), there is, or may be an actual conflict, or a potential conflict between the pecuniary or personal interests of the Provider and the duties it owes to the Council under the provisions of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest that may arise;
- (i) maintain accreditation with any relevant Regulatory Body throughout the Term; and
- (j) take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of the Council, its Employees or any other Provider employed by the Council.

### **Complaints and Compliments Procedure**

- 8.3 The Provider shall draw up a complaint's procedure (if it does not already have one) and shall operate it from the Commencement Date and shall provide the Council with a copy upon request. The system dealing with complaints and the steps taken by the Provider to deal with any complaints

in relation to the delivery of the Services shall be made available upon request to the Authorised Officer for review.

- 8.4 The Provider's complaints procedure will comply with the requirements of any Regulatory Body to which the Provider is subject, including any changes in such requirements, or shall be approved by the Council (and the Council must not be unreasonable or delay in giving its approval).
- 8.5 The Provider shall immediately investigate any complaint it receives in relation to the delivery of the Services and take appropriate corrective action.
- 8.6 The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services (i.e. the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 <http://www.legislation.gov.uk/ukxi/2009/309/contents/made>).
- 8.7 The Provider must make all Service Users/family/carers aware of its complaints procedure and shall take all reasonable steps to fully investigate any complaint in line with its own internal complaints procedure, ensuring that it meets the necessary deadlines for acknowledging and responding to all complaints. The Provider must provide a written confirmation of its investigation into the complaint to the complainant together with full details of and reasons for the outcome of such investigation to the complainant. The Provider must also make the complainant aware of their right to refer the complaint to the Council in the event the complainant is not satisfied with either the manner in which the complaint has been handled by the Provider or the outcome of the Provider's investigation.
- 8.8 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract or the performance of any Sub-contractor, then the Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, relevant Sub-contractor, CQC or/and any Regulatory Body. Without prejudice to any other rights the Council may have under this Contract, the Council may, in its sole discretion, uphold the complaint and take such action specified to rectify this as may be determined by the Council.
- 8.9 The Provider's complaints procedure should clearly set out the process by which Provider Staff will manage and investigate complaints received from Service Users and/or their representative (Carer/family). The Provider will ensure that the Service User and/or their representative are aware of the process to lodge a complaint with the Provider.
- 8.10 The Provider will ensure that there is a written complaint procedure making it clear:

- a) Who to complain to;
- b) What the organisation will do;
- c) Timescales;
- d) How to escalate a complaint and appeal in the case of dissatisfaction, e.g. Contact details of the Council's Complaints and Compliments Unit and the Local Government Ombudsman. <https://www.calderdale.gov.uk/council/corporatecomplaints/feedback>

8.11 The Provider shall record compliments about the Service and make them available to the Council upon request.

### **Contingencies and Inability to Perform**

8.12 The Provider shall (as soon as practicable and at least within forty-eight (48 hours) notify the Authorised Officer of any issue which might prejudice the Provider's ability to deliver the Services (whether temporarily or permanently).

8.13 Subject to Clause 38 (**Force Majeure**), where the Provider is unable to perform any of its obligations under this Contract then the Council may employ another provider to provide that part of the Services and recover the additional costs (if any) reasonably and properly incurred by the Council in doing so from the Provider.

8.14 This Contract does not prevent the Council from instructing another provider to undertake any part of the Service, in particular where the Provider is unable to respond for any reason, or the Council is entitled to suspend the delivery of the Services by the Provider in accordance with this Contract.

### **9. KPIS**

9.1 Where any Service is stated in paragraph 5.3 of Schedule 1 to be subject to a specific KPI, the Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.

9.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within paragraph 5.3 of Schedule 1.

9.3 The Provider shall provide quarterly reports summarising the Achieved KPIs as provided for in clause 28, and KPIs will be measured using the data from the quarterly and annual reports.

### **10. NECESSARY CONSENTS**

The Provider shall ensure that all Necessary Consents are in place to provide the Services, and the Council will not (unless otherwise agreed) be liable to meet any additional costs associated with enabling the Provider to obtain, maintain or comply with the same.

## **11. PROVIDER STAFF**

11.1 The Provider shall provide sufficient management and supervisory staff to ensure that the Provider Staff:

- 11.1.1 are suitably qualified, adequately trained and capable of providing the Services in respect of which they are engaged in accordance with the Service Specification;
- 11.1.2 are sufficiently trained and instructed with regard to all relevant policies, rules, procedures, and standards of the Provider;
- 11.1.3 are sufficiently trained, instructed and assessed to meet the common induction standards of the Provider (or any amendments to those standards) within three (3) weeks of their appointment;
- 11.1.4 are sufficiently trained and instructed with regard to all relevant rules and procedures concerning health and safety at work legislation and are able to identify risks or potential safety hazards;
- 11.1.5 are sufficiently trained and instructed in the use of any specialist equipment required for the delivery of the Services and in the moving and handling of equipment and people;
- 11.1.6 deliver the Services with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper delivery of the Services;
- 11.1.7 at all times are appropriately attired for the duties they are undertaking, including (where necessary) wearing protective clothing and footwear;
- 11.1.8 shall on request, disclose their identity to Council staff or any Third Party whilst on Council Premises;
- 11.1.9 (other than as permitted by the Contract), shall not solicit or act in such a manner as to induce payment for the delivery of the Services;

- 11.1.10 shall act in a courteous and considerate manner and do not use foul or offensive language, bring offensive materials into, consume intoxicating liquor, take illegal drugs, or smoke whilst on Council Premises when delivering the Services; and
- 11.1.11 do not bring animals, or unauthorised persons onto the Council Premises, except as expressly authorised by the Authorised Officer.
- 11.2 The Provider shall assume full responsibility for the Provider Staff and for the actions of the Provider Staff while delivering the Services and shall be solely responsible for their supervision, daily direction and control, payment of income and statutory deductions including income tax, national insurance contributions, emoluments and deductions or levies of any kind, arising out of their employment or engagement ("**Personnel Liabilities**"), and shall fully indemnify the Council in respect of any liability in respect thereof.
- 11.3 The Provider shall maintain up-to-date personnel records on the Provider Staff (including in respect of the Personnel Liabilities) and shall provide such information to the Council as the Council reasonably requests on the Provider Staff. The Provider shall ensure at all times that it has the right to provide these records in compliance with the Data Protection Legislation.
- 11.4 The Provider shall ensure that there is an adequate number of Provider Staff to provide the Services properly and only those people who are authorized by the Provider are involved in providing the Services.
- 11.5 The Council may refuse to grant access to, and remove immediately, any of the Provider Staff involved in the delivery of the Services who do not comply with any of the Mandatory Policies, or whose involvement is considered by the Council to be detrimental to the best interests of the Council (or any Service User as the case may be), or if they otherwise present a security threat, and the Provider shall promptly provide a suitable replacement. Such persons shall not again be employed in the delivery of the Services without the written permission of the Authorised Officer. The Council shall under no circumstances be liable either to the Provider or any Provider Staff in respect of any liability, loss, or damage occasioned by the removal of any Provider Staff from the delivery of the Services and the Provider shall fully indemnify the Council against any such claim as may be made by any member of the Provider Staff.
- 11.6 On request and on reasonable demand the Provider shall supply the Authorised Officer with a list of all persons employed in the delivery of the Services.

## 12 PREMISES

- 12.1 The Provider will be granted access to and given ability to use the Council Premises only to the extent as set out in Schedule 1 (or as otherwise agreed in writing with the Authorised Officer). The Provider and its Representatives shall

not enter any Council Premises which are excluded in respect of the delivery of the Services.

- 12.2 The Provider shall comply with all reasonable directions of the Authorised Officer or Representatives of the Council regarding e.g., emergency procedures, security arrangements, vehicle access arrangements, parking instructions and/or procedures to be observed while working within Council Premises (this list is indicative and in no way is it exhaustive).
- 12.3 The Provider shall only make use of the utility services within Council Premises to a reasonable extent (and if necessary such extent shall be determined by the Authorised Officer). Any unreasonable or excessive use of utilities shall give a right for the Council to charge the Provider accordingly for such utility costs as well as levy any administration costs incurred by the Council.
- 12.4 The Council shall be responsible for any Environmental Liability arising from or in relation to Council Premises except to the extent that such liability arises from any act, omission, default or negligence of the Provider.
- 12.5 The Council or its Representatives shall be entitled to refuse entry or evict from the Council Premises any vehicle or persons where it reasonably considers that such vehicles and/or persons are unsafe or are likely to cause damage or injury to or constitute a breach of Law or the Council's health & safety policy.
- 12.6 The Provider shall ensure that:
  - 12.6.1 when using Council Premises and equipment provided by the Council they are kept properly secure and will comply and cooperate with the Authorised Officer's reasonable directions regarding the security of the same;
  - 12.6.2 only its Representatives who are authorised to enter the Council Premises for the purposes of delivering the Services, do so; and
  - 12.6.3 any materials, plant or equipment owned by the Council or by its Representatives (excluding the Provider) ("**Council Assets**") and used by the Provider are maintained (or restored at the Termination Date) in the same or similar condition as at the Commencement Date (subject to fair wear and tear) and are not removed from Council Premises unless expressly permitted under the Contract or by the Authorised Officer.
- 12.7 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 (subject to fair wear and tear), any damage to or loss of Council Assets shall give a right for the Council to charge the Provider accordingly for such damage or loss as well as levy any administration costs incurred by the Council.

- 12.8 The Provider shall immediately inform the Authorised Officer of any defects, loss or damage appearing in or occurring to any Council Assets.
- 12.9 Where the Provider is provided with keys or security cards ("**Keys**"), a designated person must retain the Keys, and the contact details of such designated person must be provided to the Authorised Officer.
- 12.10 The Provider shall be responsible for the safe custody of the Keys and shall ensure that they are returned to the Authorised Officer at the end of the Term, or as reasonably requested.
- 12.11 The Provider shall immediately report the loss or misplacement of any Keys to the Authorised Officer. Where the Provider loses or damages any Keys, the Council may replace such Keys (and if necessary shall arrange for the replacement of locks and subsequent replacement of doors/gates (as appropriate)). Any damage to or loss of Keys shall give rise to a right for the Council to charge the Provider accordingly for such damage or loss as well as levy any administration costs incurred by the Council.

### **13. COUNCIL'S LIABILITY**

- 13.1 Subject to Clause 13.2, the Provider acknowledges that the Council and its Representatives shall not be liable to the Provider in Contract, Tort (including negligence or breach of statutory duty), Statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a Party to the Contract or not).
- 13.2 Clause 13.1 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of the Contract, which was induced by fraud, for which the remedies available shall be all those available under Law.

### **14. LIMITATION OF LIABILITY**

- 14.1 References to liability in this clause 14 include every kind of liability arising under or in connection with this contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.2 Nothing in this clause 14 shall limit the Council's payment obligations under this contract.
- 14.3 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 Contract.
- 14.4 Nothing in this clause 14 shall limit any liability under:

- (a) clause 26 (IPR indemnity)
  - (b) the indemnities in Schedule 6 (TUPE)
  - (c) breach of clause 24 (Prevention of Bribery); or
  - (d) breach of clause 29 (Data Protection).
- 14.5 Nothing in this agreement limits any liability which cannot legally be limited, including for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.6 Subject to clause 14.4 and clause 14.5 the Provider's total aggregate liability to the Council in respect of all claims, losses or damages arising in each Contract Year shall not exceed 100% of the contract value in any one Contract Year.
- 14.7 Subject to clause 14.2, clause 14.4 and clause 14.5, the Council's total aggregate liability in respect of all claims, (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable), losses or damages arising in each Contract Year shall not exceed 100% of the contract value in any one Contract Year.
- 14.8 Subject to clause 14.2, clause 14.4 and clause 14.5, clause 14.8(b) identifies the kinds of loss that are not excluded. Subject to that, clause 14.8(a) excludes specified types of loss.
- (b) Types of loss wholly excluded:
    - (i) Loss of profits.
    - (ii) Loss of sales or business.
    - (iii) Loss of agreements or contracts.
    - (iv) Loss of anticipated savings.
    - (v) Loss of use or corruption of software, data or information.
    - (vi) Loss of or damage to goodwill.
    - (vii) Indirect or consequential loss.
  - (c) Types of loss and specific losses are not excluded:
    - (i) Sums paid by the Council to the Provider pursuant to the agreement in respect of any Services not provided in accordance with the agreement.

- (ii) Wasted expenditure.
- (iii) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the agreement. These include consultancy costs, additional costs of management time; or
- (iv) Losses incurred by the Council arising out of or in connection with any third-party claim against the Council which has been caused by the act or omission of the Provider. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by Sub-Contractors, the Provider's Staff, regulators and customers of the Council.

14.9 The Provider has given commitments as to compliance of the Services with relevant specifications in clause 8. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

14.10 Unless a party notifies the other party that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become aware of its having grounds to make a claim in respect of the event and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## **15. RIGHTS OF ACCESS**

15.1 The Council and its Representatives shall be entitled to access all Provider Premises where the Services are delivered, and shall be entitled to access the Provider Premises at all normal opening times during the Term for the purpose of:

- (a) monitoring and inspecting work being performed in delivery of the Services;
- (b) interviewing Provider Staff engaged in connection with the delivery of the Services; and
- (c) inspecting the Provider Equipment, Council Assets and the systems and procedures used by the Provider to deliver the Services.

## **16. INDEMNITIES**

16.1 The Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses, damages and expenses whatsoever, incurred by the Council, whether arising in tort

(including negligence), default, or breach of Contract, including but without limitation:

- (a) 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 Staff;
- (b) any claim arising out of or in connection with the Provider's breach or negligent performance or non-performance of its obligations as set out in the Contract;
- (c) any claim made against the Council for actual or alleged infringement of a Third Party's Intellectual Property Rights arising out of or in connection with this Contract;
- (d) the enforcement of this Contract;
- (e) any breach of Law or Necessary Consents; or
- (f) to the extent that any such loss or claim is due to the breach of Contract, negligence, wilful default, or fraud of itself or of its employees or of any of its Representatives or Sub-Contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of Contract or Law by the Council or its Representatives (excluding the Provider).

16.2 If any Third Party makes a Claim, or notifies an intention to make a Claim, against the Council which may reasonably be considered likely to give rise to a liability under this indemnity (a "**Relevant Claim**"), the Council shall:

- (a) as soon as reasonably practicable, give written notice of the Relevant Claim to the Provider, specifying the nature of the Relevant Claim in reasonable detail;
- (b) not make any admission of liability, agreement, or compromise in relation to the Relevant Claim without the prior written consent of the Provider, provided that the Council may settle the Relevant Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Provider, but without obtaining the Provider's consent) if the Council reasonably believes that failure to settle the Relevant Claim would be prejudicial to it in any material respect;
- (c) subject to the Provider providing security to the Council to the Council's reasonable satisfaction against any claim, liability, costs, expenses, damages, or losses which may be incurred, take such action as the Provider may reasonably request to avoid, dispute, compromise or defend the Relevant Claim.

- 16.3 If a payment due from the Provider under this Clause is subject to tax (whether by way of direct assessment or withholding at its source), the Council shall be entitled to receive from the Provider such amounts as shall ensure that the net receipt, after tax, to the Council in respect of the payment is the same as it would have been where the payment not subject to tax.
- 16.4 Nothing in this Clause shall restrict or limit the Council's general obligation at Law to mitigate a loss which it may incur as a result of a matter giving rise to a Claim.

## 17. BUSINESS CONTINUITY, TRAINING AND PLANNING

The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. The Provider shall have in place (prior to the Commencement Date), a robust Business Continuity Plan that sets out in writing how the Provider would be able to continue delivery of the Services following an emergency or disruptive occurrence. The Provider's Business Continuity Plan shall set out the procedures and the actions to be taken if a disruptive event occurs that affects the Services, and the Provider shall comply with the procedures set out in Schedule 7.

## 18. DISCLOSURE AND BARRING SERVICE CHECKS

It is deemed necessary that DBS checks are required for this Contract (and this will be stated accordingly in the Specification) and the Provider will follow the procedures set out in Schedule 5.

## 19. RECORDS, INFORMATION AND SERVICE MANAGEMENT

- 19.1 In addition to the information to be supplied in accordance with the Service Specification and in relation to payments, throughout the Term the Provider shall also keep and maintain such necessary data and information and shall complete or provide such assistance as the Council may reasonably be required to enable the Council to complete all official returns, including, but without limitation the following:
- (a) returns or certifications to any Government body or properly authorised agency of the Government;
  - (b) information required by any statutory body or in compliance with any statute or statutory instrument; and
  - (c) information required pursuant to Clause 33 (***Equity of Access, Equality and No Discrimination***), provided in each case that the nature of such data and information and the format for the same has been agreed by the Parties or is specified by Law.

- 19.2 The Provider shall compile and maintain such information as the Council may reasonably require so that the Council is able to monitor and evaluate the delivery of the Services.
- 19.3 The Provider shall have in place robust financial management systems and shall adopt sound accounting and other financial procedures to ensure effective and efficient running of its business and its continued financial viability.
- 19.4 The Provider shall operate an open book accounting system for the Services so that specific accounting and other data is easily accessible to the Council at the agreed frequency and in the agreed format.
- 19.5 The Provider shall notify the Council if:
- (a) there is to be a change in who controls the majority of the shares in, or the voting rights amongst shareholders or members of its organisation;
  - (b) the Provider intends to merge with another organisation;
  - (c) the Provider intends to transfer its engagements to another organisation;
  - (d) the Provider intends in any way to transfer its business to another organisation;
  - (e) as a result of any misconduct or mismanagement on its part a Regulatory Body directs an inquiry into, or makes an order of any kind in relation to its affairs; or
  - (f) any registration or consents which the Provider must maintain in order to provide any of the Services is to be withdrawn or cancelled or is threatened to be withdrawn or be cancelled.
- 19.6 The Provider shall warrant to the Council that any records or information disclosed to the Council in accordance with this Clause are accurate.
- 19.7 The Parties agree that any reasonable administrative costs incurred by the Council in correcting matters in having to deal with disclosure which fails to comply with Clause 19.6 can be levied against the Provider and the Council shall be entitled to deduct such sum from the Provider's monthly statement.
- 19.8 The Provider shall retain all information held by it during the Term on behalf of the Council in connection with the Contract for a period of six (6 years following expiry or termination of the Contract and shall allow the Council access during this six (6 year period on reasonable request and shall permit the Council to take copies (subject to the Council meeting reasonable photocopying costs). At

- the end of the six (6) year period the Provider shall offer the Council such information prior to destroying it.
- 19.9 The Provider must at all times during the term of this Contract have a Caldicott Guardian and shall notify the Council of their identity and contact details prior to the Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this Contract, it shall promptly notify the Council of the identity and contact details of such replacements.
- 19.10 The Provider shall comply with the below principles (Caldicott Principles) when processing information:

**Principle 1: Justify the purpose(s) for using confidential information**

Every proposed use or transfer of personally identifiable information within or from an organisation should be clearly defined and scrutinised and documented, with continuing uses regularly reviewed by the appropriate guardian.

**Principle 2: Use confidential information only when it is absolutely necessary**

Confidential information should not be included unless it is necessary for the specified purpose(s) for which the information is used or accessed. The need to identify individuals should be considered at each stage of satisfying the purpose(s) and alternatives used where possible.

**Principle 3: Use the minimum necessary confidential information**

Where the use of confidential information is considered to be necessary, each item of information must be justified so that only the minimum amount of confidential information is included as necessary for a given function.

**Principle 4: Access to confidential information should be on a strict need-to-know basis.**

Only those who need access to confidential information should have access to it, and then only to the items that they need to see. This may mean introducing access controls or splitting information flows where one flow is used for several purposes.

**Principle 5: Everyone with access to confidential information should be aware of their responsibilities.**

Action should be taken to ensure that those handling confidential information understand their responsibilities and obligations to respect the confidentiality of patient and service users.

**Principle 6: Comply with the law**

Every use of confidential information must be lawful. All those handling confidential information are responsible for ensuring that their use of and access to that information complies with legal requirements set out in statute and under common law.

**Principle 7: The duty to share information for individual care is as important as the duty to protect patient confidentiality**

Health and social care professionals should have the confidence to share confidential information in the best interests of patients and service users within the

framework set out by these principles. They should be supported by the policies of their employers, regulators and professional bodies.

**Principle 8: Inform patients and service users about how their confidential information is used**

A range of steps should be taken to ensure no surprises for patients and service users, so they can have clear expectations about how and why their confidential information is used, and what choices they have about this. These steps will vary depending on the use: as a minimum, this should include providing accessible, relevant and appropriate information- in some cases, greater engagement will be required.

**20. PRICING AND PAYMENT**

20.1 The Council shall pay the Charges to the Provider in accordance with Schedule 3.

20.2 The Charges:

- (a) shall remain fixed for the first year of the Term and shall be reviewed in accordance with clause 20.3; and
- (b) are the entire price payable by the Council to the Provider in respect of the Services and include, without limitation, any royalties, consents, licence fees, supplies and all consumables used by the Provider, travel costs, accommodation expenses and the cost of Provider Staff.

20.3 The Charges shall be reviewed on an annual basis with effect from April 2027 at the Council's sole discretion. On each annual review, the decision on whether or not there will be an increase to the Price shall be at the Council's sole discretion and will, in part, depend on the availability of funding for the Contract.

20.4 The maximum amount by which the Council may increase the Charges on each annual review (if it decides to implement an increase) shall be 10% of the annual Price payable immediately prior to the review in question. If the Council decides there will be no increase to the Price, that decision will be final, and the Price shall remain unchanged until the next review.

20.5 After carrying out each review of the Charges, the Council will communicate its decision to the Provider. That decision will include the amount by which the Price will increase (if any) and the date the increase will apply from (if applicable).

20.6 Except as otherwise provided in this agreement, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this agreement.

20.7 The Provider shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable in accordance with Schedule 3. All

invoices shall be directed to the Council's Authorised Officer and shall contain such information as the Council may inform the Provider from time to time.

- 20.8 Where the Provider submits an invoice to the Council in accordance with clause 20.7, the Council will consider and verify that invoice within 14 days. Where the Council fails to do so, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 20.9, 21 days after the date on which it is received by the Council.
- 20.9 The Council shall pay the Provider any Charges due under any invoice submitted to it by the Provider within 30 days of receipt of an undisputed invoice.
- 20.10 Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 20.8 and clause 20.9 of this contract; and
  - (b) a provision requiring the counterparty to that Sub-Contract to include in any subcontract which it awards provisions having the same effect as clause 20.8 to clause 20.10 of this contract.
- 20.11 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 44. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until seven days after resolution of the dispute between the parties.
- 20.12 Subject to clause 20.11, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this contract in accordance with clause 20.7. The Provider shall not suspend the supply of the Services if any payment is overdue.
- 20.13 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.
- 20.14 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 contract. Such records shall be retained for inspection by the Council for six years from the end of the Contract Year to which the records relate.

- 20.15 The Council may at any time, set off any liability of the Provider to the Council against any liability of the Council to the Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this contract. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 20.16 Each party shall pay interest on any sum due under this contract, calculated as follows:
- (a) Rate: 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
  - (b) Period: From when the overdue sum became due, until it is paid.

## **21. SET OFF AND RECOVERY OF SUMS DUE**

- 21.1 The Council reserves the right to reclaim from the Provider any monies that have been wrongly claimed by the Provider under this Contract. The Council also reserves the right to reclaim any monies that have been paid for the Services where the Provider has failed to deliver or complete the Services to the level required by this Contract.
- 21.2 Wherever under this Contract any sum of money is recoverable from or payable by the Provider (including any sum that the Provider is liable to pay to the Council in respect of any breach of this Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under this Contract or under any other Contract with the Council.
- 21.3 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 a valid Court Order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 21.4 Exercise by the Council of its rights under this Clause shall be without prejudice to any other rights or remedies available to the Council whether under this Contract or otherwise or for breach of Contract.

## **22. DISPUTED SUMS**

- 22.1 Where any Party disputes any sum to be paid by it then a payment equal to the sum that is not in dispute shall be paid and the amount that remains in dispute and unpaid shall then be dealt with in accordance with Clause 44 (**Dispute Resolution**).
- 22.2 Interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the Parties, or upon receipt of

the decision of the Adjudicator in accordance with Clause 44 (**Dispute Resolution**).

### **23. AUTHORISED OFFICER AND PROVIDER MANAGER**

- 23.1 The Provider shall at all times properly manage and monitor the delivery of the Services.
- 23.2 The Provider shall appoint a person to exercise its rights and powers under this Contract, called the "**Provider Manager**". The Provider Manager shall hold a senior position within the Provider organisation and shall be able to make decisions under the Contract without the need for the matter to be escalated in the organisation. This will not limit in any way any other of the Provider's rights or obligations.
- 23.3 The Council shall appoint a person to exercise its rights and powers under this Contract, called the "**Authorised Officer**". The Authorised Officer shall be a senior Officer within the Council who can make decisions under the Contract without the need for the matter to be escalated in the Council. This will not limit in any way any other of the Council's rights or obligations.
- 23.4 If the Authorised Officer has reasonable grounds to believe that the Provider Manager appointed is not of the appropriate level, ability, or skill to perform this function, then he or she shall be replaced at the Provider's own expense. Any replacement appointment shall be subject to approval of the Authorised Officer (such approval not to be unreasonably withheld or delayed).
- 23.5 Details of the person the Provider has appointed to act as Provider Manager, from the Commencement Date, (telephone number, fax number, e-mail address and postal address) are set out in Schedule 12. If no such details are set out, then the Provider Manager will be the person who signs this Contract on the Provider's behalf and the Provider will supply the Council with the Provider Manager's details within five (5) Working Days of the date of this Contract.
- 23.6 Details of the person the Council has appointed to act as Authorised Officer and Responsible Officer from the Commencement Date, (e-mail address and postal address) are set out in Schedule 12.
- 23.7 Each party shall use all reasonable endeavours to ensure that the same person acts as its Authorised Officer or Provider Manager throughout the Term, but may, following 60 working days' notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business.

### **24. PREVENTION OF BRIBERY**

- 24.1 The Provider represents and warrants that neither it, any Provider Staff:

- (a) has committed a Prohibited Act;
  - (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
  - (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 24.2 The Provider shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 24.1 at the relevant time.
- 24.3 The Supplier shall (and shall procure that its Provider Staff shall) during the Term:
- (a) not commit a Prohibited Act;
  - (b) not do or omit to do anything to be done that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
  - (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
  - (d) notify the Council (in writing) if it becomes aware of any breach of clause 24.3(a) or clause 24.3(b) or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this agreement.
- 24.4 The Provider shall maintain appropriate and up to date records showing all payments made by the Provider in connection with this contract and the steps taken to comply with its obligations under clause 24.3.
- 24.5 The Provider shall allow the Council and its third party representatives to audit any of the Provider's records and any other relevant documentation in accordance with clause 25.
- 24.6 If the Provider is in default under this clause 24 the Council may by notice:
- (a) require the Provider to remove from performance of this agreement any Provider Staff whose acts or omissions have caused the default; or
  - (b) immediately terminate this agreement.

24.7 Any notice served by the Council under clause 24.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this agreement shall terminate).

## **25. AUDIT, INSPECTION AND REVIEW**

25.1 Except where an audit is imposed on the Council by a Regulatory Body, the Council may, (not more than twice in any Contract Year and for a period of twelve (12) months following the expiry or termination of this Contract) conduct an audit for the following purposes:

25.1.1 to verify the accuracy of the Service Charges (and any proposed or actual variations to them) in accordance with this Contract;

25.1.2 to review the integrity, confidentiality and security of the Council data;

25.1.3 to review any records created in respect of the delivery of the Services;

25.1.4 to review any books of account kept by the Provider in connection with the delivery of the Services;

25.1.5 to carry out an examination pursuant to section 6(1) of the National Audit Act 1983, sections 43 and 45 of the Audit Commission Act 1998 of the economy, efficiency, and effectiveness with which the Council has used its resources; or

25.1.6 to verify the accuracy and completeness of any management information delivered or required by this Contract.

25.2 Notwithstanding anything stated in Clause 25.1, the Council may at any time and as often as is necessary conduct an audit to review the Provider's compliance with its obligations under the Contract and compliance with any of the Provider's policies or the Standards and Policies.

25.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the delivery of the Services.

25.4 Subject to the Council's obligations of confidentiality, the Provider shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

(a) all information requested by the Council within the permitted scope of the audit;

- (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the delivery of the Services; and
  - (c) access to the Provider Staff.
- 25.5 The Council shall provide (but is not obliged to where an urgent need is identified) at least fifteen (15) days' notice of its intention to conduct an audit.
- 25.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, (unless the audit identifies a material Default by the Provider, in which case the Provider shall be liable to reimburse the Council the Council's reasonable costs incurred in the course of carrying out the audit and remedying the material Default).
- 25.7 If an audit identifies that:
- (a) the Provider has failed to perform its obligations under this Contract in any material manner; the Parties shall agree and implement a remediation plan in accordance with Clause 40 (**Remediation Plan Process and Increased Monitoring**). If the Provider's failure relates to a failure to provide any information to the Council about the Charges or the Provider's costs, then the remediation plan shall include a requirement for the provision of all such information;
  - (b) the Council has overpaid any charges; the Provider shall pay to the Council the amount overpaid within twenty-one (21) days of a demand by the Council for payment. The Council may deduct the relevant amount from the Service Charges if the Provider fails to make this payment; or
  - (c) the Council has underpaid any charges; the Council shall pay to the Provider the amount of the under-payment (less the cost of audit incurred by the Council if this was due to a default by the Provider in respect of its invoicing processes) within twenty-one (21) days of receipt of a valid invoice from the Provider.

## 26. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 26.1 In the absence of any prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Provider or any employee, agent or Sub-contractor of the Provider in the course of performing the Services or exclusively for the purpose of performing the Services, shall vest in the Council upon creation.
- 26.2 Where such Intellectual Property Rights include documentation or other property subject to copyright, the Provider hereby assigns absolutely to the

- 27.6 The Council (in line with the Government's ongoing drive to open up the activities of the Public Sector to greater scrutiny), has adopted a transparency agenda and the Provider hereby agrees that (notwithstanding anything set out in this Clause, or elsewhere in this Contract), the Council shall be entitled to publish the details of this Contract award in whole or in part (including from time to time any agreed changes to the Contract), in whatever form the Council may decide. The Provider further agrees that the Council may publish any payments that are made by the Council to the Provider under this Contract.
- 27.7 On termination of this Contract, each Party shall:
- (a) return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the other Party's Confidential Information;
  - (b) erase all the other Party's Confidential Information from its computer systems (to the extent that is possible); and
  - (c) certify in writing to the other Party that it has complied with the requirements of this Clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating, or based on the other Party's Confidential Information to the extent required by Law or any applicable governmental or regulatory authority.
- 27.8 Failure by the Provider to comply with its obligations under this Clause may be regarded as a fundamental breach of this Contract.
- 27.9 The provisions of this Clause shall survive for a period of six (6) years from termination of this Contract.

## **CONTRACT MANAGEMENT**

### **28. REVIEW AND MONITORING**

- 28.1 The Authorised Officer and the Provider Manager shall meet at not less than quarterly intervals to monitor and review the performance of this contract, including the achievement of the Target KPIs. Such meetings shall be minuted by the Council's Authorised Officer and copies of those minutes shall be circulated to and approved by both parties.
- 28.2 Without prejudice to any other reports required under this contract, in advance of each meeting to be held in accordance with clause 28.1:
- (a) the Provider shall provide the Council with written quarterly report including quantitative and qualitative data which shall include the information listed in Appendix C of Schedule 1 of this Contract, plus any additional information requested by the Council.

- (b) The Provider's quarterly report shall detail its performance against each of the KPIs and identifying any issues regarding the performance of the agreement for discussion at the meeting; and
- (c) the Council shall notify the Provider of any concerns it has regarding the performance of the agreement for discussion at the meeting.
- (d) The Provider shall also provide the Council with written annual report summarising relevant quantitative and qualitative data from the year, which shall include the information listed in Appendix C of Schedule 1 plus any additional information requested by the Council.

28.3 At the meeting, the parties shall agree a plan to address any problems identified in the performance of the contract. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in clause 40 shall apply. Progress in implementing the plan shall be included in the agenda for the next scheduled meeting.

28.4 The Council may increase the extent to which it monitors the performance of the Services if the Provider fails to meet the Target KPIs or fails to fulfil its other obligations under this agreement. The Council shall give the Provider prior notification of its intention to increase the level of its monitoring. The Provider shall bear its own costs in complying with such enhanced monitoring as is conducted by the Council pursuant to this clause 28.4.

28.5 The Provider shall submit any other management reports to the Council as specified in Schedule 1, which for the avoidance of doubt includes the data collection and reporting requirements detailed in Appendix C of Schedule 1.

28.6 The Council may on reasonable notice, change Appendix C of Schedule 1 dependent on the requirements of the Council and funding partners. The provider will be consulted about any proposed changes.

## **29. DATA PROTECTION**

29.1 The Parties shall at all times comply with the provisions of **Schedule 9**.

29.2 The Provider shall permit the Council or its Authorised Officer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit in accordance with any further audit requirements set out in this Contract (where applicable), the Provider's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or to procure that the Provider is in full compliance with its data protection obligations under this Contract.

29.3 In addition to its obligations in Clause 39 (Insurance) the Provider shall take out insurance sufficient to cover any payment that may be required if it breaches this Clause 29 or Schedule 9.

### **30. FREEDOM OF INFORMATION**

30.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**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.

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

- (a) transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
- (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- (c) 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.

30.3 The Council shall be responsible for determining (at its absolute discretion) whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; or
- (b) is to be disclosed in response to a Request for Information.

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

30.5 The Provider acknowledges that the Council may be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Provider, or
- (b) following consultation with the Provider and having taken its views into account;

provided always that where Clause 30.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps (where appropriate), to give the Provider advanced notice, or failing that, shall draw the disclosure to the Provider's attention after any such disclosure.

30.6 The Provider shall ensure that all Information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

30.7 The Provider acknowledges that any lists or Schedules provided by it in respect of this Contract which outlined Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this Clause.

### **31. QUALITY ASSURANCE AND CHANGE CONTROL**

31.1 The Provider shall operate a self-regulatory system of quality assurance and quality measures relevant to this Contract which ensure that the Services are provided in accordance with the requirements of this Contract. The Provider's quality management system will incorporate as a minimum the terms set out in Schedule 1 (Service Specification).

31.2 Any requirement for a Change shall be subject to the Change Control Procedure.

31.3 The Provider shall throughout the Term seek ways to derive efficiencies with respect to delivery of the Services and use all reasonable endeavours to ensure that the Council receives the benefit of any such efficiencies.

31.4 Where the Provider identifies a potential efficiency:

(a) it shall promptly inform the Council and shall advise the Council whether, in the Provider's professional opinion, the implementation of any change necessary to enable the Council to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price); and

(b) if the Council concludes that the implementation of the necessary change is desirable, the Provider shall implement the change.

31.5 Where the achievement of the benefit by the Council would necessitate the making of a Change Control Note, the Change Control Procedure shall apply but the Provider shall not be entitled to object to the proposed change. Any benefits arising from any such change as is referred to in this clause 31 (including any consequent reductions in the Charges) shall accrue solely to the Council.

### **32. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

32.1 The Provider shall ensure that (if in delivering of the Services Provider Staff are brought into contact with children and/or vulnerable adults) it shall comply with the Safeguarding Vulnerable Groups Act 2006 in respect of all staff, volunteers and other persons engaged in the delivery of the Services.

32.2 Pursuant to its statutory safeguarding duties, (including, without limitation, s11 Children Act 2004 and s26 Counter-Terrorism and Security Act 2015) the Council requires that:

- (a) where delivering the Services brings Provider Staff into contact with children or young people, the Provider shall comply with Calderdale Safeguarding Children's Board policies, procedures, and standards for safeguarding and promoting the welfare of children (including all local multi-agency safeguarding arrangements) from time to time (<https://safeguarding.calderdale.gov.uk/professionals/safeguarding-children/>)
- (b) where delivering the Services brings Provider Staff into contact with adults, the Provider shall comply with The West Yorkshire, North Yorkshire & York Multi-Agency Safeguarding Adults policy and procedures published April 2018 (PDF): from time to time;
- (c) where delivering the Services brings Provider Staff into contact with children, young people or adults, the Provider shall work in accordance with all 'Prevent' duty programmes, policies, initiatives and best practice adopted by the Council and ensure that none of the Provider Staff who have contact with children, young people or vulnerable adults are engaged in any extremist activity or espouse extremist views (i.e. "extremist" as contemplated by HM Government's Revised (16<sup>th</sup> July 2015) Prevent Duty Guidance); and,
- (d) the Provider shall comply with any specific safeguarding requirements for the Services as may be set out in the Service Specification.

32.3 Without prejudice to the generality of Clause 32.2, the Provider shall:

- (a) have in place and implement robust up-to-date procedures for protecting against and responding to actual or suspected physical, sexual, racial, psychological, financial or other discriminatory abuse; acts of neglect or omission; and, acts of exploitation, and such procedures shall be reviewed at least annually;
- (b) have in place a robust safeguarding training program for all staff (including volunteers) that is appropriate to their level of responsibility, with records of training maintained for audit purposes (which will, as a minimum standard reflect the outcomes identified for the relevant safeguarding courses in the Council training programme);
- (c) undertake case reviews when requested by the Local Safeguarding Children's Board (LSCB)

(<https://safeguarding.calderdale.gov.uk/professionals/safeguarding-children/>);

- (d) work in partnership within the framework of multi-agency public protection arrangements;
- (e) have a comprehensive training and development strategy to support staff in the discharge of their obligations under the guidance;
- (f) ensure governance and audit arrangements to assure the quality of services commissioned and provided; and
- (g) undertake appropriate DBS checks for all staff.

32.4 The Provider shall provide the Council with the following regular reports in connection with the Provider's obligations at Clauses 32.2 and 32.3:

- (a) case reviews i.e., routine, concern, serious;
- (b) DBS checks;
- (c) governance/audit plan with outcomes for completed audits; and
- (d) training and development of staff.

32.5 The Council may treat any failure by the Provider to comply with its obligations under this Clause 32 as a fundamental breach of this Contract to which Clause 41 (**Termination of Contract**) applies.

### **33. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**

33.1 The Parties must not discriminate between or against Service Users, their family, or representative, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.

33.2 The Provider must (and shall procure that any Sub-contractor shall) provide appropriate assistance and make reasonable adjustments for Service Users, their family, or representative, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).

33.3 In performing this Contract, the Provider must (and shall procure that any Sub-contractor shall) comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:

- a). eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by the Equality Act 2010;
- b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
- c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

and for the avoidance of doubt this obligation shall apply whether or not the Provider (or any Sub-contractor) is a public authority for the purposes of section 149 of the Equality Act 2010.

33.4 As soon as reasonably practicable following any reasonable request from the Council, the Provider must provide the Council with a plan detailing how it will comply with its obligations under Clause 33.3.

33.5 The Provider warrants that:

- a) in delivering the services under this Contract it will comply with the law and with the relevant policy guidance, relating to Accessible Information Standard (<https://www.england.nhs.uk/about/equality/equality-hub/patient-equalities-programme/equality-frameworks-and-information-standards/accessibleinfo/>) and ensure that:
- b) Service Users are asked if they have any communication needs and how those needs can be met;
- c) the needs referred to above are clearly recorded and identified in the Service User's records with a clear description of how those needs can be met;
- d) providing that consent is given by the Service User share information with the NHS or other relevant services about their information and communication needs; and,
- e) take appropriate steps to ensure that Service Users receive information in a way that they can access and understand taking into consideration any communication needs and ensure that they receive communication support where it is needed.

33.6 The Provider must provide to the Council as soon as reasonably practicable, any information that the Council reasonably requires to:

- a) monitor the equity of access to the Services; and
- b) fulfil its obligations under the Law.

#### 34. HEALTH AND SAFETY

- 34.1 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 ("**HSA**") and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons in the delivery of this Contract.
- 34.2 The Provider shall have in place and comply with a health and safety policy and safe working procedures as well as appropriate risk assessments (the "**Safe Working Arrangements**") and such Safe Working Arrangements shall, once approved by the Council, form part of the Contract and the Provider shall be required to review and agree an update to the same with the Council from time to time.
- 34.3 The Provider shall nominate a suitably competent person to have overall responsibility for ensuring that all health and safety matters concerning the Contract are dealt with in accordance with:
- (a) the Providers health and safety policies; and
  - (b) the HSA and all other Laws pertaining to health and safety of employees and other affected persons.
- 34.4 The Provider shall be solely responsible for the proper supervision of the Services, provided that the Provider may refuse to provide the Services if it reasonably considers that the delivery of the Services will expose any person to a serious risk of danger. In such case, the Provider will be required to identify the risk and demonstrate to the satisfaction of the Authorised Officer that it has taken all reasonable steps to undertake the Services.
- 34.5 Without prejudice to Clause 41 (**Termination of Contract**), the Council shall be entitled to suspend the delivery of the Services where the Provider fails to comply with this Clause.
- 34.6 Where the Council has exercised its powers under Clause 34.5 the Provider shall not be permitted to resume delivery of the Services until the Authorised Officer is satisfied that such non-compliance has been rectified. The Council shall not incur any liability for any such suspension of the Services under Clause 34.5.
- 34.7 The Provider shall ensure that any information and data relevant to demonstrating its compliance with this Clause is made available to the Council on request.
- 34.8 The Provider shall notify the Council immediately in the event of any incident occurring in the delivery of the Services where that incident causes any personal injury or damage to property that could give rise to personal injury.

- 34.9 The Provider and any Sub-contractor shall co-operate with the Council in any investigation into any incident reported to the Council, including providing access to any location, item of equipment, information or individual necessary for an effective and thorough investigation.
- 34.10 Where the investigation into an incident identifies failings in compliance with health and safety legislation codes of practice and any matters set out in this Clause, the Provider shall take all steps necessary to fully address the failings.
- 34.11 The Provider shall inform the Council of any Health and Safety regulatory intervention that impacts on or relates to the delivery of the Services.
- 34.12 Whilst on the Council Premises the Provider shall ensure that its Representatives observe any local arrangements for fire, hygiene, safeguarding vulnerable groups, safety and security, and shall comply with the lawful requirements of the Authorised Officer.
- 34.13 As soon as practicable following a request by the Authorised Officer, the Provider shall provide substance data sheets setting out (as a minimum) details of any hazardous materials used in providing the Services and these will be added to this Contract as an appendix to Schedule 1 (Service Specification).
- 34.14 Failure by the Provider to comply with its obligations under this Clause may be regarded as a fundamental breach of this Contract.

## **35. EQUIPMENT**

- 35.1 All equipment and materials owned by or hired or leased by or on loan to the Provider (other than that provided by the Council) intended to be used in the delivery of the Services shall be deemed to be at the sole risk of the Provider and if prior permission is given by the Authorised Officer to store such equipment at any location owned by the Council it shall be stored at the sole risk of the Provider.
- 35.2 All equipment and materials owned by or hired or leased by or on loan to the Provider (other than that provided by the Council) and used in the delivery of the Services shall be serviced and maintained by the Provider in accordance with the manufacturer's recommendations and in any event such that the equipment is in a condition suitable for use in the delivery of the Services. Where appropriate, the Provider shall ensure that where there is a Statutory or other obligation to undertake testing of the equipment, such testing is carried out by suitably qualified and competent persons at regular intervals.

## **36. ASSETS**

- 36.1 Except as otherwise specified in Schedule 1 (Service Specification), the Provider shall be responsible at its own cost for providing all equipment,

vehicles, plant and materials necessary and/or used for the proper and efficient delivery of the Services during the Term (the "Provider's Assets").

- 36.2 The Provider shall maintain all Provider's Assets in a safe condition so that they are fit for the purpose of delivering the Services and as a minimum comply with the requirements of the Contract and any manufacturers' servicing and maintenance requirements.
- 36.3 The Provider shall keep, operate, prepare and use all Provider's Assets with due regard for fuel economy and energy saving, in a safe manner and under proper control, which shall include clearly and accurately labelling containers to indicate their contents and shall ensure that its Representatives are properly instructed in such matters.
- 36.4 The Provider shall:
- (a) use all reasonable endeavours to provide materials for the delivery of the Services which at least meet the standard indicated in the Provider's Tender and in particular the environmental Schedule included therein;
  - (b) be responsible for the security of all equipment and materials used by the Provider in connection with the delivery of the Services and the Council shall not (as far as permitted by Law) be liable for loss, damage or injury in respect of the same; and
  - (c) ensure that on the Termination Date (or as otherwise agreed) any of the Provider's Assets stored or remaining at the Council Premises are removed from the same.

### **37. PROVIDER STAFF CHECKS**

- 37.1 The Provider will ensure that all Provider Staff who are engaged in the delivery of the Services have received the following satisfactory clearances:
- (a) two (2) references, one (1) of which must be from the immediate past employer if possible (except in the case of the delivery of social care services when the Provider shall supply such references as the Authorised Officer shall reasonably require prior to engagement);
  - (b) a two (2) year employment history (except in the case of the delivery of social care services when this should be for a five (5) year period);
  - (c) an enhanced Disclosure and Barring Service check (if required in accordance with the provisions of Schedule 5 hereof);

- (d) under the lists maintained in respect of the Protection of Vulnerable Adults and under the Protection of Children Act 1999 or such other lists as shall replace the same;
- (e) an Occupational Health clearance or such other medical clearance as may be required by the Council;
- (f) a passport check and confirmation of eligibility of U.K. residence and valid working permits if appropriate;
- (g) verification of appropriate immigration status; and
- (h) such other clearances as the Council shall reasonably require from time to time.

37.2 All such Provider Staff will be exempt from the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 and will be expected to declare all convictions (including spent convictions), all Cautions and Bind overs.

37.3 The Provider will require any agencies to make any person applying to it aware of the checks it will be undertaking and inform him that this information may be passed to the Council. In every case this information, be available to the Council if requested prior to the commencement of the delivery of the Services by the person concerned and the Council may require the removal of any person from the delivery of the Services at any time. Compliance with this Clause shall be at the expense of the Provider.

37.4 The Provider shall provide such information as the Council may reasonably request for the purpose of assessing the Provider's compliance with the provisions of this clause.

## **38. FORCE MAJEURE EVENTS**

38.1 Subject to the remaining provisions of this clause 38, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

38.2 The corresponding obligations of the other party will be suspended, and its' time for performance of such obligations extended, to the same extent as those of the Affected Party.

38.3 On the occurrence of a Force Majeure Event, the affected Party shall as soon as practicable (and at least within three (3) working days) after the start of the Force Majeure Event, notify the other party in writing of the details of the Force Majeure Event, the date on which it started, it's likely or potential

duration, the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract, and the action proposed to mitigate its effect. If notice is not given in accordance with this sub-clause, then the failure may be regarded as simply a failure to deliver the Services by non-performance and the Council may invoke the Termination Clauses.

- 38.4 As soon as practicable following such notification, the Parties shall consult with each other in good faith and shall use all reasonable endeavours to agree appropriate terms to mitigate the impact of the Force Majeure Event and facilitate continued delivery of the Services.
- 38.5 If the Provider is the Affected Party, it shall not be entitled to claim relief to the extent that the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of service similar to the Services, or if they are the result of the Provider's failure to comply with the Business Continuity Plan (unless such failure is also due to a Force Majeure Event affecting the operation of the Business Continuity Plan).
- 38.6 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer delays or prevents the affected Party from complying with its obligations under the Contract. Following such notification (subject to termination under Clause 41), the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 38.7 For the avoidance of doubt Force Majeure shall not include any business continuity matter or any pre-notified labour dispute between the Provider and its staff, any other staffing problem, or the failure to provide the Services by any of its Sub-contractors.
- 38.8 If a Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [30 days], then (provided the notification requirements set out in this Clause 38 ("Force Majeure") have been met), without prejudice to any accrued rights or remedies under the Contract, the party not affected by the Force Majeure Event may terminate this Contract by giving 2 (two) weeks' notice in writing to the Affected Party.

## 39. INSURANCE

- 39.1 The Provider shall at its own cost effect and maintain with reputable insurance companies' insurance policies to cover its liabilities under this Contract and shall maintain all statutory required insurance policies, including providing as a minimum the levels of cover listed at Clause 39.3 (the "**Required Insurances**");
- 39.2 The levels of the Required Insurances referred to above are:

- (a) employer's liability insurance with a limit of at least ten million pounds (£10,000,000) in relation to any one claim or series of claims;
- (b) public liability insurance with a limit of indemnity of at least five million pounds (£5,000,000) in relation to any one claim or series of claims:
- (c) professional indemnity insurance with a limit of indemnity of not less than two million pounds (£2,000,000) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-contractors involved in the provision of the Services hold and maintain appropriate cover:

**(the Required Insurances)** The cover 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.

- 39.3 All Policies to include an indemnity of principals' provision, to cover the liability of the Provider in respect of any act or default for which it may become liable to indemnify the Council under the terms of this Agreement
- 39.4 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.
- 39.5 The Required Insurances must be effective in each case not later than the date on which the relevant risk commences, and the Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the agreement.
- 39.6 It is expressly provided that self-insurance shall not be accepted unless previously authorised in writing by the Authorised Officer.
- 39.7 The Council reserves the right at its sole discretion to reasonably require that the minimum insurance amounts be revised, on review, should this be deemed necessary or advisable to the Council.
- 39.8 The Provider will inform all its Employees, as appropriate, of their responsibility to arrange personal insurance cover in respect of their own belongings, for example, personal items and cars when used for business use.
- 39.9 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.

- 39.10 Neither Party shall take any action, or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy to which that Party is an insured, a co-insured or an additional insured person.
- 39.11 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.
- 39.12 Failure by the Provider to comply with its obligations under this Clause may be regarded as a fundamental breach of this Contract.

#### **40. REMEDIATION PLAN PROCESS AND INCREASED MONITORING**

- 40.1 The Authorised Officer shall investigate any case where the Provider may have or appears to have failed to deliver the Services in whole or in part in accordance with the provisions of the Contract.
- 40.2 Subject to clause 40.3 if the Provider is in default in complying with any of its obligations under this agreement and the default is capable of remedy, the Council may not terminate this agreement without first operating the Remediation Plan Process. If the Provider commits such a default, the Council shall give a Remediation Notice to the Provider which shall specify the default in outline and the actions the Provider needs to take to remedy the default.
- 40.3 The Council shall be under no obligation to initiate the Remediation Plan Process if it issues a notice to terminate in the circumstances set out in clause 41.1(a), clause 41.1(d), clause 41.1(e), clause 41.1(f), clause 41.1(g), clause 41.1(h), clause 41.1(i) and clause 41.1(j).
- 40.4 If the Council issues a Remediation Notice to the Provider, it shall specify the nature of the Default and set out the actions the Provider needs to take with respect to remedying the Default.
- 40.5 Within 10 working Days of receipt of a Remediation Notice, the Provider shall either:
- (a) remedy matters to the satisfaction of the Authorised Officer; or
  - (b) submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
  - (c) inform the Council that it does not intend to submit a Remediation Plan, in which event the Council shall be entitled to serve a Termination Notice.

- 40.6 If the Provider submits a draft Remediation Plan pursuant to clause 40.5(b), the Council shall either approve the draft Remediation Plan within 10 working Days of its receipt, or it shall inform the Provider why it cannot accept the draft Remediation Plan. In such circumstances, the Provider shall address all such concerns in a revised Remediation Plan, which it shall submit to the Council within 10 working Days of its receipt of the Council's comments. If no such notice is given, the Provider's draft Remediation Plan shall be deemed to be agreed.
- 40.7 The Council shall either approve the revised Remediation Plan within 10 working Days of its receipt, or it shall inform the Provider why it cannot accept the revised Remediation Plan.
- 40.8 Once agreed, the Provider shall immediately start work on the actions set out in the Remediation Plan.
- 40.9 The Authorised Officer will verify that a Remediation process has been properly implemented by the Provider and the Authorised Officer will put in writing that the Remediation Notice Process has been concluded to his satisfaction.
- 40.10 If, despite the measures taken by the Parties under clause 40.6, a Remediation Plan cannot be agreed within 10 working Days then the Council may elect to end the Remediation Plan process and serve a Termination Notice.
- 40.11 If a Remediation Plan is agreed between the parties, but the Provider fails to implement or successfully complete the Remediation Plan or revised Remediation Plan by the required completion date, the Council may:
- (a) terminate this contract by serving a Termination Notice;
  - (b) give the Provider a further opportunity to resume full implementation of the Remediation Plan; or
  - (c) refer the matter for resolution under the Dispute Resolution Procedure.
- 40.12 If, despite the measures taken under clause 40.10(b), the Provider fails to implement the Remediation Plan in accordance with its terms, the Council may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 40.13 The Council shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same default by the Provider as had previously been addressed in a Remediation Plan within a period of 6 months following the conclusion of such previous Remediation Plan. In such event, the Council may serve a Termination Notice.

#### **Increased Monitoring**

- 40.14 If the Provider receives a Remediation Notice, the Council may reasonably increase its monitoring of the Provider and delivery of the Services until such time as the Provider has demonstrated (to the reasonable satisfaction of the Council), that it will perform (and is capable of performing) its obligations fully under this Contract.
- 40.15 The Provider may not increase its Charges to take account of any additional monitoring under this Clause.
- 40.16 The Provider will be liable for any additional direct costs reasonably and necessarily incurred by the Council in respect of carrying out any such additional monitoring under this Clause and the Provider shall promptly reimburse the Council.

### **Termination**

## **41. TERMINATION OF CONTRACT**

- 41.1 Without affecting any other right or remedy available to it, and subject to clause 40, the Council may terminate this contract with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Provider if one or more of the following circumstances occurs or exists:
- (a) if the Provider is in material breach of this contract, which is irremediable;
  - (b) the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;
  - (c) the Provider fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;
  - (d) the circumstances referred to in clause 40.13 occur;
  - (e) a Consistent Failure has occurred;
  - (f) if a Catastrophic Failure has occurred;
  - (g) if there is an Insolvency Event;
  - (h) if the Council elects to terminate pursuant to clause 24.6; or
  - (i) if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Council reasonably objects, provided that the Council serves its Termination Notice within 3 months of the date on which the Provider informs the Council (by written notice) of the change of control or on which the Council otherwise becomes aware of the change of control.
  - (j) commits or causes the commission of any criminal offence in providing the Services (except for any minor offence or minor traffic offence);

- 41.2 Either party may, during the continuance of a Force Majeure Event, terminate this contract if the circumstances in clause 24.6 arise.

#### **Termination on Notice (Non-Fault Termination)**

- 41.3 Without affecting any other right or remedy available to it, the Council may terminate this Contract at any time by giving nine (9) months' written notice to the Provider. This power of termination is not to be used unreasonably.

### **42. EFFECT OF TERMINATION OR EXPIRY**

#### **Duty to Cooperate**

- 42.1 Following the service of a Termination Notice (for any reason), the Provider shall continue to provide and/or procure the delivery of the Services in accordance with this Contract and shall ensure that there is no degradation in the standards of the Services until the expiry of the termination period.
- 42.2 Upon termination or expiry of this Contract, the Provider shall:
- (a) repay to the Council within thirty (30) days of the date of termination or expiry any amount which it may have been paid in advance in respect of Services that have not been provided;
  - (b) within thirty (30) days of the date of termination or expiry return or transfer (as the case may be) to the Council ownership of any assets, capital or otherwise (whether tangible or not) purchased pursuant to this Contract using any part of the Charges;
  - (c) within thirty (30) days of the date of termination or expiry of this Contract, return to the Council any data (including Personal Data) and Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council, together with all other related documentation, and any other information and all copies thereof owned by the Council or developed by the Provider pursuant to this Contract and thereafter irretrievably delete any such information stored on any magnetic or optical disk or memory and all matter derived from such sources;
  - (d) if relevant, arrange the transfer to the Council or other Party nominated by the Council the remainder of any licence or agreement effected with any portion of the Term and required for the continued delivery of the Services by the Council or such other person appointed by the Council;
  - (e) provide access, during normal working hours, to the Council and/or the replacement Provider for up to six (6) months after the expiry or termination of this Contract to:

- i) such information relating to the Services as remains in the possession or control of the Provider; and
- ii) such members of the Provider Staff as have been involved in the design, development and delivery of the Services and who are still employed by the Provider, provided that the Council and/or the replacement provider shall pay reasonable costs to the Provider as are actually incurred in responding to requests for access under this sub-clause, unless this Contract has been terminated by the Council pursuant to Clause 24 (**Prevention of bribery**) and Clauses 41 (**Termination**) in which event such costs shall be borne by the Provider.

42.3 Such co-operation referred to at Clause 42.2 shall include (but are not restricted to):

- (a) liaising with the Council and/or a Future Provider, and providing reasonable assistance and advice concerning the Services and their transfer to the Council or to such Future Provider; and
- (b) subject to the provisions of Clause 27 ("**Confidentiality**"), providing to the Council and/or to a Future Provider all and any information concerning the Services which is required for the efficient transfer of responsibility for their performance.

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

42.5 The Provider shall (and shall procure that any Sub-contractors will) subject to Clause 27 (Confidentiality) and Clause 29 (Data Protection) comply with all reasonable requests of the Council to provide information relating to the Provider's costs of operating and maintaining the Services.

#### **43. SUSPENSION OF PROVIDER'S APPOINTMENT**

43.1 Without prejudice to any of the Council's rights to terminate this Contract, the Council (acting reasonably) may suspend the Provider's appointment to deliver the Services to the Council by giving notice in writing to the Provider with the reasons for suspension ("**Suspension Notice**").

43.2 If the Council serves a Suspension Notice in accordance with Clause 43.1 on the Provider then:

- (a) the Provider will cease in providing the Service set out in the Suspension Notice from the date specified in the Suspension Notice;
  - (b) the Council will be entitled either to provide some or all of the Services itself or to employ another person to do so on its behalf for as long as the Suspension Notice is in force;
  - (c) the Council will carry out an urgent investigation into whether it is appropriate to allow the Provider to resume supplying the Services or whether the contract be terminated.
- 43.3 The Council will ensure that any investigation carried out under sub-clause 43.2 (c) shall be carried out as quickly as is reasonably possible and will make available to the Provider a copy of the report of the investigating Officers findings as soon as possible after it has been made available to the Council.
- 43.4 If the Provider has been served with a Suspension Notice, then as soon as possible after the Council has received the report of the investigation it shall consider (acting reasonably) whether or not the Provider is to resume delivery of the suspended Services.
- 43.5 If the Council considers that the Provider should be entitled to resume provision of some, or all of the suspended Services then it will serve on the Provider a notice ("**Resumption Notice**") which shall set out the Services to be resumed and the date upon which they are to be resumed.
- 43.6 The Council will be entitled to set out in the Resumption Notice any conditions relating to the Provider's resumption of the Service as may be reasonable.
- 43.7 If the Council considers that the Provider is not to resume provision of some or all of the suspended Services, then the Council will be entitled to give the Provider notice terminating this Contract with immediate effect.
- 43.8 During any period of suspension, the Council will not be liable to pay the Provider the Charges. Payments shall only recommence if the Council gives the Provider a Resumption Notice in accordance with Clause 43.5.

#### **44. DISPUTE RESOLUTION**

- 44.1 If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Schedule 10 (**Dispute Resolution**), unless the Parties agree and set out an alternative dispute resolution process in which case the process in that process will prevail.

#### **45. NO PARTNERSHIP OR AGENCY**

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

45.2 Nothing in the Contract is intended to or shall be deemed to be construed as creating a partnership (within the meaning of the Partnership Act 1890), or as a contract of employment between the Provider and the Council.

**46. SUB-CONTRACTING, ASSIGNMENT AND OTHER DEALINGS**

46.1 The Council may at any time assign, novate, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Provider.

46.2 The Provider shall not assign, transfer, charge, mortgage, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this contract without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

46.3 If the Provider is considering taking action in accordance with Clause 46.1, the Provider shall enter into a written agreement with any such party, and such agreement shall be made available for inspection by the Council before the Council will give consideration to granting consent.

46.4 The Provider acknowledges that the Council giving the Provider consent to Sub-Contract will not relieve the Provider of its obligations under this Contract and that the Provider will be responsible for the acts, defaults and neglect of any Sub-Contractor or any employee, agent or servant of any such Sub-Contractor, as if they were the Provider's own acts, defaults and neglect. This will be the case even if as a condition of the Council giving consent, the Council requires the Sub-Contractor to agree directly that it will carry out all the Provider's obligations under this Contract.

46.5 With respect to any of the obligations that the Provider proposes to Sub-Contract, the Provider shall provide the Council with full details of:

- (a) the specific elements of the Services which it proposes to Sub-Contract;
- (b) the scope of the proposed Sub-Contract;
- (c) the identity (and to the extent known by the Provider) the qualifications, experience and financial standing of the proposed Sub-Contractor;
- (d) how such arrangements shall enable the Provider to meet its obligations to provide the Services in accordance with these terms of inclusion;

- (e) a written and signed Sub-Contractor's agreement between the Provider and Sub-Contractor; and
  - (f) such further information as the Council may reasonably request.
- 46.6 Where the Provider sub-contracts any of its obligations under this Contract, the Provider shall remain the Council's sole point of contact for all matters falling within the scope of this Contract and shall procure that each Sub-Contractor complies with and is bound by the requirements of this Contract as they apply to the Provider.
- 46.7 Where the Provider Sub-Contracts any of its obligations under this Contract the Council will not discuss issues relating to delivery of the Services with any Sub-contractor or make any payments directly to any Sub-Contractor.
- 46.8 Where, in the Council's reasonable opinion the performance of a Sub-Contractor is deficient or misrepresentations were made concerning the identity, qualifications, experience or financial standing of a Sub-Contractor at the time of the Council's approval, the Council shall notify the Provider of any concerns relating to such Sub-Contractor.
- 46.9 If notified in accordance with Clause 46.8, the Provider shall promptly investigate the matters notified by the Council and shall seek in good faith to address the Council's concerns. The Provider shall inform the Council of steps to be taken to address its concerns and if the Council, (acting reasonably) is unsatisfied with these steps it may require the Provider to remove the Sub-Contractor from the performance of the Services.
- 46.10 The Council may require the Provider to terminate a Sub-Contract where the acts or omission of the relevant Sub-Contractor have given rise to the Council's right of termination of this contract pursuant to clause 41.1 or if there is a change of control of a Sub-Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010) or the Sub-Contractor suffers an Insolvency Event.

## **47. ENTIRE AGREEMENT**

- 47.1 This Contract and any documents referred to in it constitute the whole agreement between the Parties and shall supersede and extinguish all previous and contemporaneous contracts, promises, Assurances and understandings between the parties, in relation to the subject matter of the Contract whether such prior agreement was written or oral.
- 47.2 Each Party acknowledges that, in entering into this Contract it does not rely on any statement, representation, assurance or warranty of any person (whether a Party to this Contract or not), whether made innocently or negligently, other than those expressly set out in this Contract.
- 47.3 Nothing in this Clause shall limit or exclude any liability for fraud.

**48. VARIATION**

48.1 No variation of this Contract shall be effective unless it is in writing and signed by the parties.

**49. WAIVER**

49.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

49.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**50. SEVERANCE**

50.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

50.2 If any provision or part-provision of this Contract is deemed deleted under clause 50.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieved the intended commercial result of the original provision.

**51. BEST VALUE AND CONTINUOUS IMPROVEMENT**

51.1 The Provider acknowledges that the Council is subject to a statutory duty pursuant to the Local Government Act 1999 to secure continual improvement in the way its functions are exercised having regard to a combination of economy, efficiency, and effectiveness ("***the Best Value Duty***").

51.2 The Provider, and any Sub-Contractor appointed hereof, at the Provider's own expense, shall throughout the Term fully co-operate with the Council and give such assistance as is necessary in any area relating to Best Value and any review initiated by the Council whether relating to the provisions of this Contract or otherwise and whether directly associated therewith or not and the Provider shall ensure compliance with this Clause by any such Sub-Contractor.

51.3 If the Provider is at any time required to take any action pursuant to Clause 51.2 it shall take such action fully in accordance with the instructions of the Authorised Officer and within such time as he shall specify.

51.4 Following any Best Value review carried out by the Council whether or not carried out in accordance with this Clause, the Provider shall if requested by the Authorised Officer implement any findings or proposals fully in accordance with those instructions, (subject to agreement with the Provider).

## **52. NOTICES**

52.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the Provider Manager for the Provider and the Head of Legal and Democratic Services for the Council and shall be:

(a) delivered by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) and for the avoidance of doubt, the Council's principal place of business is Town Hall, Crossley Street, Halifax, West Yorkshire, HX1 1UJ.

52.2 Any notice shall be deemed to have been received:

(a) If sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

52.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

52.4 A notice given under this agreement is not valid if sent by email.

## **53. THIRD PARTY RIGHTS**

No person, who is not a Party to this Contract (including without limitation any employee, Officer, agent, representative, or Sub-Contractor of either the Council or the Provider) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior consent in writing of both Parties, which consent should specifically refer to this Clause. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **54. TUPE AND INFORMATION ON RETENDERING**

54.1 Where the Council has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Council and in any event within 20 Working Days of that request (unless otherwise agreed in writing), provide the Council with all reasonably requested information on the Provider Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE including the Staffing Information pursuant to Schedule 6 (TUPE).

54.2 Without prejudice to the provisions of Schedule 6 (TUPE), the Provider shall indemnify and keep indemnified the Council and any Future Provider against any losses incurred by the Council and/or the Replacement Service Provider in connection with any claim or demand by any transferring employee under TUPE.

54.3 The Parties agree that the provisions of Schedule 6 (TUPE) shall apply to any Relevant Transfer (as defined by Schedule 6) for the purposes of TUPE under this Contract.

## **55. CONFLICT OF INTEREST**

55.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Provider Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The Provider shall disclose to the Council full particulars of any such conflict of interest which may arise.

55.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take any such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be actual conflict, or a potential conflict between the pecuniary or personal interest of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council

## **56. OBSERVANCE OF STATUTORY REQUIREMENTS**

The Provider shall comply with all statutory requirements applicable to the Service and shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising directly or indirectly from any failure by the Provider to comply with such requirements

## **57. LOCAL GOVERNMENT OMBUDSMAN**

57.1 Under the Local Government Act 1974, the Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 (SI 2007/1889) and the Local Government and Public Involvement in Health Act 2007, members of the public are entitled to complain to the Local Government Ombudsman ("**LGO Complaints**") in connection with the delivery of services by the Council.

57.2 In the event that an LGO Complaint is made in connection with the delivery of the Services:

- (a) the Provider shall give their full co-operation (at no additional cost to the Council) in addressing the LGO Complaint. Such cooperation shall include without limitation, promptly providing copies of all relevant documentation and making available any Provider Staff or Sub-Contractors who are in any way connected with the LGO Complaint; and
- (b) without prejudice to any other remedies under this Contract, the Provider shall indemnify the Council in respect of all costs, losses, claims, expenses and proceedings whatsoever which may be incurred as a direct consequence of an LGO Complaint, or any order, finding or recommendation made by the Local Government Ombudsman in respect of an LGO Complaint.

## **58. SURVIVAL OF TERMS**

- 58.1 Insofar as any of the rights and powers of the Council provided for in this Contract shall or may be exercised or exercisable after the termination or expiry of this Contract the provisions of this Contract conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 58.2 Insofar as any of the obligations of the Provider provided for in this Contract remain to be discharged after the termination or expiry of this Contract the provisions of this Contract imposing such obligations shall survive and remain in full force and effect notwithstanding such termination or expiry.

## **59. PUBLICITY**

- 59.1 The Provider shall not:
  - (a) make any press announcements or publicise this agreement or its contents in any way; or
  - (b) use the Council's name or logo in any promotion or marketing or announcement of orders,except as required by law, any government or regulatory Council, any court or other Council of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.
- 59.2 The Provider shall take all reasonable steps to ensure the observance of the provisions of Clause 60.1 by all the Provider Staff, agents, professional advisors, Sub-Contractors and consultants.
- 59.3 The provision of this Clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## **60. NO POACHING OF EMPLOYEES**

Neither Party shall make any offer of employment, directly or indirectly, nor attempt to entice any employee of the other Party who is employed by or who has been engaged in the delivery of the Services, away from the employment of the other Party. This obligation exists throughout the life of this Contract and shall persist for a period of twelve (12) months beyond its termination. If this Clause is breached, then damages shall be payable by the employing Party, and these shall be determined as being the cost of replacement of any such employee.

**61. RIGHTS AND DUTIES RESERVED**

Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

**62. COUNTERPARTS**

The Contract may be executed in one (1) or more counterparts and any Party may enter into the Contract by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all of the Parties shall constitute one and the same agreement and a full copy of the Contract for all purposes.

**63. GOVERNING LAW**

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Laws of England and Wales. The Parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

**64. JURISDICTION**

Each party irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

**SCHEDULE 1**



**ADULT SERVICES & WELLBEING  
AND  
CHILDREN & YOUNG PEOPLE'S SERVICES**

**EDUCATIONAL PSYCHOLOGY**

**SERVICE SPECIFICATION**

**DATE: 12<sup>th</sup> February 2025**

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## 1. Introduction

- 1.1 The Borough Council of Calderdale (the “Council”) is commissioning a Service that delivers educational psychology support for children and young people across Calderdale as is further described in this service specification (the “Service”). The Service will have a strong focus on supporting the Council to meet its statutory duties in relation to the provision of educational psychology.
- 1.2 In particular, the Service provided must;
- 1.2.1 Ensure the Council meets its statutory duties in relation to the provision of psychological advice and information to inform Education, Health and Care Plans, (“EHC Plans”) assessments and reviews as outlined in the 2015 Special Educational Needs and Disabilities Code of Practice (“Code of Practice”). The Code of Practice provides statutory guidance on duties, policies and procedures relating to Part 3 of the Children and Families Act 2014.
- 1.2.2 Improve the educational outcomes, emotional well-being and personal development of children and young people aged 0-25 years through the application of psychology in providing assessment, advice and recommendations.
- 1.2.3 Provide support to the Council where requested before an EHC Plan transfer and also where an education placement has broken down and there is a dispute about the next suitable placement, or a case is likely to go to Tribunal.
- 1.2.4 Be conducted professionally according to the Health and Care Professions Council Standards of Conduct, Performance and Ethics.
- 1.2.5 Undertake safe and effective practice in accordance with the Health and Care Professions Council Standards of Proficiency for Practitioner Psychologists.
- 1.2.6 This Service is being commissioned as an alternative to an in-house educational psychology Service and must ensure the Service provided fulfils

the Council's statutory duties in relation to the Code of Practice within the required timescales.

- 1.2.7 The contract will commence on 1<sup>st</sup> October 2025 for 3 years until 30<sup>th</sup> September 2028, with the option to extend for a further period or periods of up to 3 years/36 months.

## **2. Background**

### **2.1 Brief Summary of current service**

- 2.1.1 The current Educational Psychology provision was commissioned in 2017 in order to enable the Council to meet its statutory obligations in relation to carrying out assessment and reviews for EHC plans.
- 2.1.2 Due to an exponential rise in demand beyond the forecasted number of assessments in the original contract, a further additional capacity contract was commissioned in 2023 to allow for this demand to be met. Therefore, there are currently two educational psychology contracts in place which will cease on 30<sup>th</sup> September 2025.

### **2.2 Strategic context**

- 2.2.1 The 2015 SEND Code of Practice provides statutory guidance on duties, policies and procedures relating to Part 3 of the Children and Families Act 2014 and associated regulations and applies to England. It relates to children and young people with special educational needs and disabled children and young people ("SEND"). The SEND Code of Practice outlines the statutory duties which the Council must meet in relation to the provision of educational psychology advice and information for children and young people with SEND.
- 2.2.2 The Service will contribute to the Council's wellbeing strategy (2022-2027) and will help the Council to achieve the key priorities and aspirations of the starting and developing well strategies. The goal of starting well (for 0-5 year olds) is to ensure that children are ready for school and the goal for developing well (6-25 year olds) is to ensure every 15 year old has hope and aspiration. Further details can be found at: <https://new.calderdale.gov.uk/sites/default/files/2023-07/Health-and-wellbeing-strategy-2022-2027.pdf>
- 2.2.3 The Service will also contribute to achievement of the Council's strategic priorities for children and young people and the vision to ensure that all children in Calderdale are Healthy, Successful and Safe.
- 2.2.4 The Service will contribute to the Calderdale SEND and alternative Provision (AP) strategy 2025 to 2030. This is to support children and young people with specialist educational needs and/or disabilities (SEND) aged 0-25 years. For

children and young people, with or without a diagnosis, recognising the wide range and diversity of our children and young people with SEND. Further details can be found at:

<https://www.calderdalechildcare.org.uk/kb5/calderdale/fsd/advice.page?id=UN6v7MTqlyM>

2.2.5 The provider will contribute to the Council's response to National and local developments such as the SEND and Alternative Provision Improvement Plan 2023 and the new Ofsted and CQC inspection framework for joint inspections of local areas.

2.2.6 The Provider will be required to share these values as the basis for all work:

- Respect value, regard and reliability
- Inclusion belonging and involvement
- Integrity honesty, trust and fairness
- Commitment tenacity and courage

## 2.3 About Calderdale

2.3.1 The Borough Council of Calderdale is located in West Yorkshire, in the north of England within the Yorkshire and Humber region. It is located to the west of Leeds and Bradford and to the north-east of Greater Manchester. The M62 runs along the borough's southern and eastern boundaries.

2.3.2 Calderdale includes the towns of Halifax, Elland, Brighouse, Sowerby Bridge, Hebden Bridge and Todmorden, as well as a number of villages. Calderdale is one of the smallest districts in England in terms of population, but one of the largest in terms of area, with the lowest population density of any local authority in West Yorkshire. Calderdale has a mix of both rural and urban communities, made up of 17 wards.

2.3.3 Calderdale population is estimated to be 206,600 people (ONS 2021). The overall population has increased by around 1.4% since 2011. The main reasons were natural change due to people living longer followed by international migration (ONS annual mid-year population estimates 2014 to 2019).

2.3.4 The population of young people in Calderdale aged 0-24 is 59,100 (ONS, 2021), making up 28.7% of the total population.

- 2.3.5 Calderdale has a mix of both rural and urban communities, made up of 17 wards. Over three quarters of the population live in urban areas. Over four fifths of Calderdale is rural (ONS Census 2011).
- 2.3.6 10.5% of the population were made up of Black, Asian and minority ethnic groups (ONS 2021), up 2.2% since 2011. The latest published annual school census for 2024 records 26% of pupils with Black, Asian or Minority ethnicity. There is a small migrant Eastern European community.
- 2.3.7 Main areas of deprivation are in Halifax West Central and North & East Halifax, with particularly high levels of deprivation in Park (Halifax West Central), Ovenden and Illingworth and Mixenden (North & East Halifax) wards. There are also smaller pockets of deprivation across the borough, including parts of Brighouse, Elland and Todmorden. Within Calderdale 24.7 % of children and young people (0 to 19) live in low-income families (HMRC and DWP 2019/20) which is higher than 19.1% for England (English indices of Deprivation 2019, c/o Calderdale Dataworks).
- 2.3.8 There are 87 primary schools (including two special), with 18,433 pupils on roll (Calderdale School Census, October 2024). 40 (46%) of the 87 primary schools are now academies. Calderdale also has 16 secondary schools (including one special), serving 16,653 pupils. 13 (81%) of secondary schools are now academies (Calderdale School Census October 2024).
- 2.3.9 Calderdale has one Alternative Provision Academy working with primary and secondary age pupils.
- 2.3.10 In October 2024 there were 35,181 children enrolled in primary and secondary schools in Calderdale. 4676 pupils in Calderdale primary and secondary schools were receiving SEN support, accounting for around 13%. Of these, 1852 pupils had an EHC plan (around 5% of pupils).
- 2.3.11 In January 2021 there was a slightly lower proportion of pupils from BME backgrounds with identified SEND overall than in the population as a whole in Calderdale. Within that the proportion of BME pupils and students with an Education Health and Care Plan (EHCP) was slightly higher than average and the proportion at SEN Support slightly lower (January 2020 schools census).
- 2.3.12 26% of students who were Children Looked After had an EHCP in January 2020, slightly below the national average of 28%. 30.4% of

Children Looked After were on SEN support, slightly above the national average of 28.4% (Source: Calderdale Local Area SEND Report 2020)

### **3 What do we expect this Service to deliver?**

- 3.1 Education, Health and Care (EHC) Plans are required for children and young people aged up to 25 who require enhanced support to achieve their educational outcomes.
- 3.2 EHC Plans identify a child or young person's strengths and abilities and any additional educational, health and social needs and set out the additional support to meet those needs in order to achieve the best possible outcomes and also to prepare young people for adulthood.
- 3.3 Children with Specialist Educational Needs and Disability (SEND) who have EHC Plans need specialist input about their psychological needs in relation to learning and education in order to help develop an appropriate plan or to support the decision that a plan is not needed.
- 3.4 The Service will deliver the provision of educational psychology assessments, advice and support to inform the EHC planning process and EHC reviews. It will enable the Council to meet its statutory duty for children and young people aged 0-25 years in early years settings, schools, academies, post-16 provision, educated at home, and youth offending services in Calderdale, who are referred by the Special Educational Needs Team (SEN team).
- 3.5 The Service will deliver the following work as requested by the council's SEN team:
  - a) Educational Psychology assessments and reports to feed into EHC planning process
  - b) Input into EHC reviews
  - c) Dispute resolution and input into mediation cases, support and input into tribunal cases and to attend meetings where required
  - d) Development and early intervention work as requested by the council
- 3.1.5 It does not include any other educational psychology services not explicitly set out in this specification.

### **4. Indication of need and demand**

- 4.1 The number of educational psychology assessments linked to EHC plans required each year has been projected based on the figures for the current and previous years:

- There were 403 assessments completed in 2022/23
  - There were 554 assessments completed in 2023/24 (an increase of 37% on the previous year)
  - There have been 261 assessments completed in the first half of 2024/25 and an estimate total of 550 to be completed by the end of 2024/25. The 2024/25 full year estimate is around the same level as the previous year, and therefore, it is expected that there will be 0% increase on the previous year.
  - Although the number of assessments completed is predicted to have levelled off in 2024/25, it is expected that demand will rise again in the future by approximately 13% year on year
- 4.2 The number of EHC plan reviews required each year has been based on figures from the current and previous years:
- There were 12 reviews carried out in 2022/23
  - There was 1 review carried in in 2023/34
  - So far there haven't been any reviews carried out in the first half of 2024/45, and therefore, it is unexpected there will be an increase on the previous year
  - Although the number of EHC plan reviews have fallen since 2023, it is forecasted demand could reach 12 each year.
- 4.3 The number of Dispute Resolution and input into mediation cases has been forecasted based on current and previous years:
- There were 12 mediation cases involved in for 2022/23
  - There were 17 mediation cases involved in for 2023/24
  - So far in the first half of 2024/25 there have been 9 mediation cases which the educational psychology service have been involved with and this is expected to rise to 18 by the end of the year.
  - Based on previous years, it is expected there will be a need for up to 20 dispute resolution cases each year.

## **5 Service Provision**

### **5.1 Service Delivery Requirements**

5.1.1 The Service is required to provide educational psychology on behalf of the Council.

5.1.2 Educational psychology is the application of psychological theory, research and techniques to support children, young people, their families and schools to promote the emotional and social wellbeing of young people. Educational Psychologists also support those with SEN to achieve their full potential through the use of assessment, advice and recommendations.

5.1.3 Educational Psychologists must be registered and regulated by the Health and Care Professions Council (HCPC). They hold a British Psychological Society accredited degree and a professional doctorate through the Association of Educational Psychologists.

5.1.4 The Service must be delivered in a way that enables the Council to meet its statutory duties towards children with SEND, relevant duties identified in the Children and Families Act 2014 and work in line with the statutory guidance relating to this area. The Service will be affected by central Government-led changes to the prevailing legislative and policy framework. The Service must take into account any changes in public policy, national agenda and applicable law affecting the delivery of services to children and young people with SEND.

5.1.5 The Service forms part of the EHC Plan system, involving partners from the Council, schools, health and others. Changes to other provision within this pathway will impact on the Service and the provider may need to adjust service procedures and delivery accordingly.

5.1.6 The Service must:

- Improve the educational outcomes, emotional well-being and personal development of children and young people aged 0-25 years through the application of psychology in providing assessment, advice, and recommendations.
- Ensure the Council meets its statutory duties in relation to the provision of psychological advice and information for EHC assessments and reviews as outlined in the 2015 SEND Code of Practice.
- Provide support to the Council where requested before an EHC Plan transfer and also where an education placement has broken down and there is a dispute about the next suitable placement, or a case is likely to go to Tribunal.
- Support the Council and schools with developmental and early intervention work to support wider Local Area SEND improvements when requested.

5.1.7 In order to achieve this, the Service must deliver:

a) The provision of educational psychology input into the EHC planning process for children and young people in Calderdale aged 0-25 years in the report format agreed by the Council within six weeks of the request being received.

b) Provision of educational psychology input into EHC Plan reviews for children and young people in Calderdale aged 0-25 years in the report format agreed by the Council within four weeks of the request being received. These reviews will be carried out where there is a significant change in need identified that may require alternative provision, where

an education placement has broken down or for Transition Annual Reviews where the Council deems that this is necessary.

Educational psychology input into the EHC Planning process (assessments as 5.1.7 a) and reviews as 5.1.7 b)) can include:

- Liaison with other professionals working with the child and family
- Observation of the child in school or early years settings
- Discussion/meeting with parents/carers
- Written assessment report, including recommendations, in the format required by the Council

c) The Service will provide educational psychology input where a case is at risk of having to be heard at a Tribunal or is due to be heard at a Tribunal. This can include:

- further observation of the child if required
- review of original assessment report and advice to SEN team
- attendance at mediation meetings
- attendance as a witness at Tribunal meetings

d) Support for the Council and schools with developmental and early intervention work to support wider Local Area SEND improvements. This will be subject to a specific request from the local authority SEN Service Manager.

5.1.8 The level of input required by the Service for each individual child and young person is determined by the SEN Team as part of the EHC Plan process.

5.1.9 The Service must be accessible to all communities who need it, including arranging for translation and interpretation where necessary.

## **5.2 Availability**

5.2.1 The Service must be available all year around including school holidays.

5.2.2 The Service must be contactable Monday-Friday (excluding Bank Holidays) from 9.00am-5.00pm, by telephone and email.

5.2.3 The Service must ensure business continuity. It is essential that the Service is staffed appropriately to meet all statutory deadlines as outlined in the outputs section of this specification.

5.2.4 The Service must ensure availability across the whole geographical spread of Calderdale in a range of venues and locations as required.

Occasionally, the service will be required to carry out assessments outside the borough as needed.

5.2.5 Remote assessments will be considered as a method of delivery on a needs led basis and subject to agreement with the Council's SEN team. However, in person (face to face) assessments have been identified as the preference of young people and families with lived experience, and therefore, in person assessments should be delivered wherever possible.

### 5.3 Performance Requirements

#### 5.3.1 Outcomes

5.3.1.1 The Service is required to achieve the following key outcomes:

- 1) To support the best educational outcomes for children and young people by applying specialist expertise in psychology, child development, and considering broader systems, including health and care, with a particular focus on the education system.
- 2) To enable the Council to meet its statutory duty in relation to the provision of advice and information for the completion of the EHC planning process.

5.3.1.2 The outcomes will be achieved by measuring the Key Performance Indicators (KPI) identified below:

KPI	Measurement	Monitoring Frequency (from the start and throughout the lifetime contract)
100% of educational psychology reports completed and submitted for EHC assessments within a 6-week timescale	Monitoring reports submitted to commissioner and SEN team	Quarterly
100% of educational psychology reports completed and submitted for EHC review assessments	Monitoring reports submitted to commissioner and SEN team	Quarterly

within a 4 week timescale		
100% of reports submitted within timeframe given by Tribunal	Monitoring reports submitted to commissioner and SEN team	Quarterly
100% of EP assessments which include SMART outcomes	Quality RAG rating of reports by SEN team (based on dip sample)	6 months
100% of EP assessment which include a concise summary of CYP needs	Quality RAG rating of reports by SEN team (based on dip sample)	6 months
Parent satisfaction with the EP assessment process (% agreed with provider within the first quarter of service delivery)	Service satisfaction survey report	Annually
Schools/settings reporting satisfaction with the EP assessment process (% agreed with provider within the first quarter of service delivery)	SEN Team parent/carer survey	Annually
100% of local authority SEN officers reporting satisfaction with the EP assessment process	Quarterly quality of reports by SEN team	Quarterly

5.3.2.3 KPIs will be measured using the data from the Provider's quarterly and annual reports, as per Clause 9 of the Contract Terms and Conditions and section 6 below.

### 5.3.3 Throughputs

5.3.3.1 The projected volume of work in the table below has been estimated based on historic and current workloads. Allocation of resources must be flexible across the delivery of the Service as a whole, to ensure any change in demands continue to be met

<b>Educational Psychology Support Service</b>	<b>Details</b>	<b>Estimated number per year</b>
EHC assessments 0-25 years	The input required from the service will include consultation with all key stakeholders including children and families, observation of the child and report writing. It is expected the demand for assessments will increase by 13% each year. The service must have the capacity to meet this demand. It should also have the capacity to deliver an additional 100 assessments each year on top of those to mitigate against a greater rise than expected.	Year 1 – 622 Year 2 - 703
EHC plan reviews	It is assumed that educational psychology input will only be required where there is a significant change in need identified that may require alternative provision, or for Transition Annual Reviews where the child has not been seen by an Educational Psychologist for several years and guidance is needed. This will include consultation with all key stakeholders including children and families, observation of the child and report writing.	Up to 12 reviews per year
Dispute Resolution	Dispute resolution and mediation work involving consultation with all key stakeholders including	Up to 20 days per year

	children and families, observation of child and report writing. Attendance at Tribunal meetings as a witness where requested.	
Early Intervention work	The Service may be requested to support the Council and schools with developmental and early intervention work to support wider Local Area SEND improvements. This work is not guaranteed and will be subject to agreement with the Council.	Up to 10 days per year

### 5.3.2 Strategic Partnership Working

- 5.3.4.1 The Service appointed must develop effective and cooperative partnership working with all stakeholders including (but not limited to) schools, health services including Child and Adolescent Mental Health Services (CAMHS) and Speech and Language Therapy (SALT) and other relevant teams within the Authority and partners, especially the SEN Team, Adults and Children's Disability Services and the Portage, Early Years Support Team and Specialist Inclusion Team.
- 5.3.4.2 The Service will work with key stakeholders to identify appropriate mechanisms for communication and joint working which enable the effective delivery of the Council's statutory duties and agree a communication plan with commissioners which ensures effective and cooperative partnership working.
- 5.3.4.3 The Service will ensure that key stakeholders are able to access educational psychology expertise through the implementation of the agreed communication plan.
- 5.3.4.4 The Service will be required to have a thorough understanding of local support services, systems and processes.

## 6 Quality and Contract Management Requirements

- 6.1 This Contract will be managed by the Commissioning Officer within the Integrated Commissioning, Contracts and Quality Team alongside colleagues from the SEND team at Calderdale Council.
- 6.2 The Provider shall submit quarterly reports to the Commissioning Officer including quantitative and qualitative data which shall include the information listed in Appendix C plus any additional information requested by the Authority. Further, the Provider's quarterly reports shall detail its performance against each of the KPIs. Appendix C is subject to change on reasonable notice by the Authority (including by email), dependent on the requirements of the Authority and funding partners. The Provider will be consulted about any proposed changes. The quarterly reports will be reviewed by the lead commissioner and discussed with the Provider as part of quarterly contracts monitoring meetings. Other representatives, such as those from funding partners, may be invited to participate in these meetings, as appropriate.
- 6.3 The Provider shall submit annual reports summarising relevant quantitative and qualitative data from the year, which shall include the information listed in Appendix C plus any additional information requested by the Authority. The annual report will include reflection on strengths of and opportunities within provision, as well as impact of the provision and aspirations for the future. The annual reports will be reviewed by the lead commissioner and discussed with the Provider as part of the final quarterly contract monitoring meeting of the contractual year.
- 6.4 Quarterly and annual reports, or parts thereof, will be shared with the Council's SEND team when requested, to enable wider scrutiny and understanding of service provision.
- 6.5 Site visits to the Service may be undertaken as required.
- 6.6 The Service must meet the requirements of the Ofsted/Care Quality Commission (CQC) joint area inspections of SEND services and is required to complete a self-evaluation of how their Service supports the early identification, meets needs and improves outcomes of children and young people with SEND, as well as how effectively it is meeting statutory duties such as the timely provision of assessments and reports to support the education, health and care assessments and plans.

- 6.7 Overall, the Service must be based on best practice in this field. The Provider must work towards achievement of local/national good practice standards. The Provider must keep its wider knowledge and expertise of good practice up to date with any changes or developments in the field.
- 6.8 The Provider must implement a robust complaints procedure which is accessible and publicised to all individuals accessing the Service and partners. The Provider is expected to identify lessons learned, areas for improvement and make any necessary changes to ensure continual improvement.
- 6.9 The Provider must implement and uphold robust quality assurance policies and procedures, ensuring efficient practices are in place. This must involve routine quality audits of educational psychology reports, which will be reviewed alongside 5 audits per half term conducted by Council officers. This will contribute to the quarterly monitoring process. The Provider is expected to identify lessons learned, areas for improvement and make any necessary changes to ensure continual improvement.
- 6.10 The Provider will work collaboratively with the Council to develop and agree a robust multi-agency audit process.
- 6.11 The Service will be required to comply with all the relevant standards set by the Health and Care Professions Council.

## **7 Presence in Calderdale**

- 7.1 The Provider is expected to operate in such a way that allows a presence in the area to demonstrate:
- An understanding of the locality and its priorities and issues
  - Links with integrated teams and other associated professionals in the locality

## **8 Safeguarding and Prevent**

- 8.1 The Provider must have a Safeguarding Adults and Safeguarding Children Policy that complies with the Calderdale Safeguarding Partnership Multi-Agency Policy and Procedures for both adult and children's safeguarding. All safeguarding concerns related to Staff must be effectively investigated and appropriate referrals made in accordance with local and national procedures, including Person in a Position of Trust (PiPot), Local Authority Designated

Officer (LADO), professional bodies, children's social care, adult social care, and Disclosure and Barring Service (DBS).

8.2 The Provider's staff must be trained in Safeguarding Adults and Safeguarding Children and Prevent.

8.3 The Provider must ensure that any issue relating to the safeguarding of adults or children is reported to the authority in line with the Safeguarding Partnership procedures.

8.4 The Provider has a duty to cooperate with and implement Section 11 (Organisational Safeguarding Checklist) of the Children's Act (2004) and with the Disclosure and Barring Scheme (DBS) (child & adults).

8.5 Information about Safeguarding Adults in Calderdale can be found at <https://safeguarding.calderdale.gov.uk/professionals/safeguarding-adults/>.

8.6 Information about Safeguarding Children in Calderdale can be found at <https://safeguarding.calderdale.gov.uk/professionals/safeguarding-children/>.

8.7 Information about reporting concerns about adults or children in Calderdale can be found at <https://safeguarding.calderdale.gov.uk/report-concerns/>.

8.8 The Provider must take part in any Safeguarding Adult Review, Child Safeguarding Practice Review or Domestic Homicide Review if the provider has had any contact with the subjects under review. (The statutory footing for these are set out in the Care Act 2014, Working Together to Safeguard Children 2018 and the Home Office DHR guidance).

8.9 The Provider must comply with the Mental Capacity Act 2005, ensuring Staff receive training according to national guidance and are competent in this area. This includes undertaking relevant mental capacity assessments.

8.10 Prevent is part of the UK's counter terrorism strategy. It aims to prevent people from supporting violent extremism and terrorism in all its forms.

8.11 The Provider must ensure all staff understand Prevent and what they can do to support the Prevent Strategy. All Staff must complete the relevant Prevent training requirements and be able to identify and appropriately refer on those people at risk of becoming radicalised into violent extremism and terrorism.

8.12 Further information and guidance is available at:  
<https://www.calderdale.gov.uk/v2/residents/community-and-living/crime-prevention-and-community-safety/prevent>  
[gov.uk/prevent-duty-training](https://www.calderdale.gov.uk/prevent-duty-training)

8.13 The Provider must ensure all staff undertake essential training at the frequency as set out in Appendix A.

## **9 Equality and Accessibility**

9.1 The Provider must comply with the Equality Act 2010

9.2 The Provider must deliver services compliant with the Public Sector Equality Duty i.e. having due regard to eliminate unlawful discrimination, advance equality of opportunity and foster good relations

<https://www.gov.uk/government/publications/public-sector-equality-duty>

9.3 The Provider must be aware and responsive to any additional requirements a person may have to particular protected characteristics including: age, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, disability, race, religion or belief, sex, and sexual orientation.

9.4 The Provider must ensure that staff are appropriately trained and knowledgeable to meet the specific requirements of people with particular protected characteristics outlined under 9.3.

9.5 The Provider must ensure that promotional material and the environment accessed by service users is reflective of the diverse community served.

9.6 The Provider must have systems and policies in place to ensure that it is responsive to the needs of people who use the service and must ensure it makes all reasonable adjustments to ensure that the service is accessible, appropriate and flexible.

9.7 The Provider shall consider the demographics of the local population in the recruitment of staff and where possible will ensure their workforce reflects the demographics of the community they serve.

9.8 The Provider shall assess the impact of the service and work with people who use the service and other stakeholders to understand whether there are any barriers to improved access, experience or outcomes. Where these are identified, reasonable steps should be taken to minimise the impact of the barriers.

9.9 The Provider must follow the NHS England Accessible Information Standard. The Standard sets out a specific, consistent approach to identifying, recording, flagging, sharing and meeting the information and communication support needs of patients, service users, carers and parents with a disability, impairment or

sensory loss. Details as to requirements of the standard can be found on the NHS England Accessible Information Standard webpage (<https://www.england.nhs.uk/ourwork/accessibleinfo/>).

## **10. Information Governance and Record Keeping**

- 10.1 The Provider must have sound information governance arrangements, give clear direction to staff and ensure legal requirements (such as the Data Protection Act 2018/ GDPR) and best practice standards are met.
- 10.2 The Provider must create, maintain, store and retain records for people who use the Service, in line with legal requirements and best practice standards. The Provider will securely destroy records in accordance with the date of disposal.
- 10.3 The Provider must share information for the purposes of safeguarding and preventing risk and harm.
- 10.4 The Provider must:
- Use records solely for the execution of its obligations under this Contract
  - Give each person who uses the service full and accurate information regarding their support and must evidence that in writing in the relevant record
  - Review the records of people who use the service annually, where appropriate
  - Ensure the records of people who use the service are passed on safely and securely to the new Provider in the event of a future transfer of service, following guidance from the Council.

## **11. Engagement and Co-Production**

- 11.1 Effective and meaningful engagement and participation with people who use or are affected by this service is essential. The Provider must ensure that service users, families, partners and other stakeholders have the on-going opportunity to play an active and influential part in designing, delivering, and improving the service, ensuring that this service is designed around their needs.
- 11.2 Calderdale has a joint Involving People Strategy with a shared set of principles for involving people across Calderdale – supporting the delivery of Calderdale Cares, the Wellbeing Strategy and Vision 2034. The Provider is expected to work in line with that Strategy. For more information go to [www.wypartnership.co.uk/engagement-and-consultation](http://www.wypartnership.co.uk/engagement-and-consultation) and click on Involving People Strategy.

- 11.3 The Service will gather feedback from service users through a range of evaluative methods e.g. service user questionnaires, the results of which will be shared along with a plan to demonstrate how the results of this has been used to share the service design and delivery.
- 11.4 The Service will take into account the views of children and young people about their experiences of assessment processes, what works well and what does not. Calderdale Council gathered the views of children and young people from the Calderdale SEND Youth Representatives and Calderdale Young Commissioners and the results are summarised in Appendix D.
- 11.5 The service will take into account the views of School Special Educational Needs Co-ordinators (SENCOS) in Calderdale. SENCOs have told us that the assessment process works best when relationships are established with the school and the child. It is beneficial for Educational Psychologists to work closely with SENCOs, who will often know the child well. Reports should be shared with SENCOs following assessment.
- 11.6 The Service will take into account feedback from families from the Family Voice Calderdale Group which provides insight on the assessment process and suggestions into how it can be improved. It is expected the Service will consider these views and explore any changes in practice. Results have been summarised in Appendix E.

## **12. Workforce Standards and Requirements**

- 12.1 The Service will be delivered by appropriately qualified and experienced staff who are registered with the Health and Care Professions Council.
- 12.2 The Provider will ensure that they are aware and comply with Safer Recruitment policy and practice.
- 12.3 The Provider must ensure that all eligible staff have an enhanced Disclosure & Barring Service (DBS) Adult and Child check. Employees will not be allowed to work with vulnerable children until the Disclosure and Barring check has been received. The Provider must ensure that DBS Adult and Child checks are renewed at least every three years at no cost to the Council.
- 12.4 The Provider, where possible will ensure their workforce reflects the demographics of the community they serve.
- 12.5 The Provider will ensure that all staff have undertaken a full and thorough induction and are competent to undertake their role. They will comply with legal requirements and operate safe working practices showing dignity, compassion and respect at all times towards people who use the service.

12.6 Providers will have a staff development programme in place and all staff will be offered the opportunity to undertake training to enhance their role. They will maintain continuous professional development (CPD) in line with the Health and Care Professions Council CPD standards.

12.7 Providers will adhere to the National Minimum Wage and National Living Wage legislation.

12.8 Staff will receive regular training to carry out all aspects of their role as detailed in Appendix A at the recommended frequency or sooner if policy or practice changes.

12.9 The Provider will have policies in place for the recruitment, ongoing training and supervision of staff. All staff must have the relevant skills, experience and competence to occupy their designated roles. Systems must be in place to ensure that competencies are maintained and skills are up to date.

12.10 The Provider must ensure that management arrangements are in place to ensure appropriate leadership, guidance and supervision is consistently available to staff across the service. To ensure effective practice by appropriately qualified staff from the point of referral to completion of assessment or other relevant work, including professional supervision in line with British Psychological Society guidelines.

12.11 The Provider will be responsible for organising work, taking into account the needs and preferences of people who use the service.

12.12 The Provider shall employ sufficient staff to cover sickness, annual leave and training needs. In the event the service is affected by staff absence, it is expected that service provision be maintained by other means and the Lead Commissioning Officer is informed.

12.13 The Provider shall ensure all staff employed in the service are trained and supported in understanding the importance of reporting in ensuring the safety of vulnerable adults and children.

12.14 The Provider shall ensure that Staff are not assigned to support any relative of that named Staff member.

12.15 Staff shall not become involved in any personal transactions with any Service User or family member, including the sale or purchase of goods, borrowing or lending of money or goods.

12.16 The Provider may make use of agency or temporary Staff in the performance of the Service. This should be monitored by the Provider and raised with the Council should recruitment become an area of concern.

12.17 The Provider must have a Whistleblowing policy, ensure all staff are aware of that policy and ensure all staff are also aware that the Council has a Whistleblowing policy.

### **13 Workforce Misconduct**

- 13.1 The Provider must have a policy and procedure in place for managing staff conduct, which includes the suspension of a member of staff who is the subject of allegations of serious misconduct. The procedure should also ensure that the Provider undertakes responsibilities to report members of staff within this process to the Disclosure and Barring Scheme.
- 13.2 Any Staff member of the Provider whose behaviour or actions are in the opinion of the Council in breach of the contract conditions or service specification may upon the request of the Strategic Commissioning Manager be removed from working on the Service.
- 13.3 The Provider shall issue guidance to staff on the requirement to report potentially serious incidents or abusive behaviour that may constitute misconduct, including racial, financial and other discriminatory abuse.
- 13.4 In the event of an allegation of misconduct of an inappropriate nature, the Council Commissioning & Contracts Team shall be informed immediately of such allegations and shall advise on the action to be taken.
- 13.5 In such an instance the Council may require the removal of the named member(s) of staff pending the outcome of an investigation. This may be deemed necessary in order to protect and support the named member(s) of staff.
- 13.6 Misconduct shall include, but is not limited to:
- Failure to uphold the principles of the Mental Capacity Act (2005) and the Mental Capacity (Amendment) Act 2019 as defined in the Code of Practice.
  - Fraud or theft.
  - Physical, verbal or mental abuse, including threatening behaviour, physical restraint, deprivation of care of the Service User, family members or members of support networks.
  - Harassment/inappropriate behaviour regarding gender, race, religion, belief systems, sexual orientation or physical ability.
  - Any kind of exploitation, whether in relation to the Service User's or family members dependence, disability, age or sensory impairment.
  - Developing a personal relationship with a Service User or family member.
  - Neglect of the Service User's requirements.
  - Staff should be appraised by their managers of the serious potential consequences of such misconduct.

## **14 Policies and Procedures**

- 14.1 The Provider must ensure it has relevant policies and procedures in place (as listed in Appendix B, that these are regularly reviewed, updated as necessary and that staff members comply with the policies and procedures.

## **15 Business Continuity**

- 15.1 The Provider must have a Business Continuity Plan in place that details the process for service recovery and/or continuation of service delivery in the event of serious disruption to the Provider's premises and/or working arrangements, including but not limited to pandemic, floods, fire, power and utilities failures. The Provider will ensure that the Business Continuity Plan will be made available at the request of the Lead Commissioning Officer.
- 15.2 The Business Continuity Plan will focus upon the continuation of service delivery and communication with people who use the service and the Council. It must include considerations to prioritise those individuals who use the service who are most at risk from disruption to the service. The Business Continuity Plan should detail any Provider resources that will be made available from other sources, for example, the Provider's wider staff team, service provision, in the event of serious disruption in Calderdale.
- 15.3 In line with advice provided by the Council's Emergency Planning Team, the Provider must have completed Business Continuity Planning that accounts for the service commissioned by the Council. This should include completion of a Business Impact Analysis, development of a Business Continuity Plan, completion of training with all staff to understand the Business Continuity Plan, testing of the Business Continuity Plan at least annually, and review and update of the Business Impact Analysis and Business Continuity Plan at least annually. Access to documents and further information on Business Continuity is available on the Council's Business Advice webpage <https://new.calderdale.gov.uk/business-services>

## **16 Vision 2034**

- 16.1 In 2025 we welcomed a new long-term Vision for the whole borough, to build on existing strengths and help us to strive to be the place we want to be.
- 16.2 The Vision for 2034 is for Calderdale to be an enterprising place, full of opportunity, where we can all live a larger life.
- 16.3 We will always be kind and welcoming. Everyone will have reason to be full of hope and this will enable us to thrive and get us through testing times.

- 16.4 We will be celebrated for our distinctive heritage, nature and creativity that everyone can enjoy.
- 16.5 The Provider will consider how it can support Calderdale's Vision.
- 16.6 Once the Vision 2034 is formally launched, further information will be available at <https://www.calderdale.gov.uk/vision/>

## 17 Active Calderdale

- 17.1 Physical activity means different things to many people in Calderdale. For some it's the gym, going for a run, cycling or sport. For others it's walking, gardening, dancing or commuting. For some it's about fitness and losing weight, for others it's about connecting with friends and family, and for some it's about maintaining their physical health, mental health or independence – the list is endless, and unique to everyone.
- 17.2 Active Calderdale is the physical activity strategy that will help us to become a more active borough by 2024, we'll do this by supporting everyone to be more active, more often and in any way they choose. In particular, we want to reach the 27% of Calderdale who are active for less than 30 minutes per week to make small simple changes across the whole system to enable the people of Calderdale to be more active, and to get all of the physical, mental, social, environmental & economic benefits that an active population can bring.
- 17.3 The Provider will consider how they can support the Active Calderdale Strategy <https://active.calderdale.gov.uk>.

## 18 Social Value

- 18.1 The Council has a strong commitment to achieving the Council's Vision of obtaining social value through its procurement activity. The key to this is in using procurement and commissioning as an enabler. Social value is about looking at ways that our spend can deliver additional environmental, economic, or social benefits by how and where the funding is spent. Social value is a key part of the Council's Inclusive Economy Strategy promoting an inclusive economy through sustainable procurement, encouraging all sectors to work co-operatively towards shared goals. More information on the Council's Inclusive Economy Strategy can be found at: <https://www.calderdale.gov.uk/v2/residents/community-and-living/inclusive-economy-strategy>.
- 18.2 Providers will demonstrate how they deliver social value in line with the Council's Vision and how they will deliver and implement any additional measures agreed as part of this arrangement.

## 18 Environmental Diversity and the Climate Change

- 18.1 The Council can address many causes and impacts of climate change by working with the Council's Partners, at a local level. Information regarding climate change and key local challenges can be found on the Council's Climate Change webpage (<https://new.calderdale.gov.uk/climate-change>).
- 18.2 Information about Calderdale's commitment to environmental diversity and the climate challenge can be found at the Council's Environmental Projects and Campaigns webpage (<https://calderdale.gov.uk/v2/residents/environment-planning-and-building/sustainability/environmental-projects-and-campaigns>).
- 18.3 Providers will consider how they will help contribute to supporting Calderdale with local environmental diversity and climate challenge priorities.

## 19 Glossary

SEND	<p>Specialist Educational Needs and disabilities (SEND) describes any learning difficulty which means a child needs extra 'educational provision'.</p> <p>Children might have a learning difficulty if they:</p> <ul style="list-style-type: none"> <li>a) have significantly greater difficulty learning than the majority of children their age</li> <li>b) have a disability which hinders them using general school facilities in their area</li> <li>c) require special provisions to help them with learning or to help them attend school</li> </ul> <p>Specialist Educational Needs and Disabilities. Sometimes defined as Special Educational needs and Disabilities, however in Calderdale 'Specialist' is used following a proposal by young people working as part of the SEND Youth Representatives Group and agreed at SEND Partnership Board.</p>
Educational Psychology	<p>Educational psychology is the application of psychological theory, research and techniques to support children, young people, their families and schools to promote the emotional and social wellbeing of young people. Educational Psychologists also support those with learning difficulties to achieve their full potential through the use of assessment, monitoring and evaluation.</p>
EHC Plans	<p>Education, Health and Care Plans are for children and young people aged up to 25 who need more support than is available through special educational needs support at a</p>

		setting/school based SEN Support level. EHC Plans identify educational, health and social needs and set out the additional support to meet those needs in order to achieve the best possible outcomes and also to prepare young people for adulthood.
SEND Code of Practice		The 2015 SEND Code of Practice provides statutory guidance on duties, policies and procedures relating to Part 3 of the Children and Families Act 2014 and associated regulations and applies to England. It relates to children and young people with special educational needs and disabled children and young people ("SEND"). The SEND Code of Practice outlines the statutory duties which the Council must meet in relation to the provision of educational psychology advice and information for children and young people with SEND.
Educational Psychologist		Educational psychologists are registered and regulated by the Health and Care Professions Council (HCPC). They hold a British Psychological Society accredited degree and a professional doctorate through the Association of Educational Psychologists.
Portage and Early Years Support Team (PEYS)		Home and setting based service run by Children and Young People's Services for pre-school children who need more time and support to learn basic skills during their early years. Some children may have a specific condition such as Downs syndrome, cerebral palsy or autistic spectrum disorder problems whilst for others there may be no specific diagnosis. Portage aims to work with families to enable them to learn new skills which will encourage their child development. Activities are play based and designed to be fun. The pre-school support service also provides outreach support to early years settings.
ASD (Autistic Spectrum Disorder) Service		The ASD team is an education provision which operates during school term-time. It offers support and advice to mainstream schools and early years services to enable children with ASD to be successful learners.
Transitional Review	Annual	An annual review of the EHC plan before a transfer to a new phase of education.
Specialist Service	Inclusion	The service has experienced and qualified staff who provide training, advice and support to parents / carers and schools, at various educational and recreational settings. They provide direct support to children and young people to enable them to meet their educational needs and support their social and emotional development.
Open (CAMHS)	Minds	A targeted and specialist service to provide support for the mental health of children and young people

Co-Production	Delivering public services in an equal and reciprocal relationship between professionals, people using services, their families and their neighbours. Where activities are co-produced in this way, both services and neighbourhoods become far more effective agents of change.
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### Appendix A Training

Subject	Recommended Minimum Frequency
Induction and Foundation Training	One off
Fire Safety	Annual
Confidentiality and Data Protection (GDPR)	2 years
Autism Awareness	3 years
Communication Skills (including communication with people with sensory impairment)	3 years
Cultural Awareness	3 years
Disability Awareness, including working with and supporting people with a visual impairment, hearing impairment or dual sensory loss	3 years
Domestic Abuse	3 years
Equality, Diversity and Inclusion	3 years
Health and Safety	3 years
Mental Capacity Act (MCA)	3 years
Mental Health Awareness	3 years
Prevent	3 years
Recording and Reporting	3 years
Safeguarding Adults and Children	3 years
Supporting Adults, Children and Young People who display Behaviour that Challenges	3 years
Violence and Aggression: De-escalation Techniques	3 years

#### Optional Training

Subject

Subject

## Appendix B Policies and Procedures

- Alcohol and Drugs Testing
- Attendance Management
- Behaviour that Challenges
- Bullying and Harassment
- Business Continuity
- Climate Change
- Code of Conduct
- Complaints and Compliments
- Deprivation of Liberty Safeguards
- Disciplinary, Grievance and Capability
- Disclosure and Barring Service (DBS)
- Domestic Abuse
- Equality and Diversity
- Expenses
- Gifts
- Health and Safety (including Accidents and Incidents, Fire Safety, Lone Working, Moving and Handling, Risk Assessment)
- Infection Prevention and Control
- Information Governance (including Data Protection, Confidentiality, Information Sharing)
- Learning and Development (including Induction, Training, Supervision, Appraisal)

- Personal Relationships at Work
- Quality Assurance
- Record Keeping
- Recruitment, selection and retention (including Safer Recruitment)
- Safeguarding Adults and Children
- Service User Engagement
- Smoking
- Social Media
- Social Value
- Statement of Purpose and Aims and Objectives of the Organisation
- Violence and Aggression
- Whistleblowing

## Appendix C

### Data Collection and Reporting Requirements

Figures must be reported for the full quarter/year or as at the quarter/year end, as appropriate to the report and the specific data element being reported.

The Provider must collect, record and be able to provide a breakdown of each of the reporting elements below, together with key and service specific demographic data, also described below, as and when requested.

Number of educational psychology reports requested to be carried out by assessments in person
Number of educational psychology reports requested to be carried out by assessments remotely
Number of educational psychology reports completed by carrying out assessments in person and returned within the 6-week timescale
Number of educational psychology reports completed by carrying out assessments remotely and returned within the 6-week timescale
% of educational psychology reports completed by carrying out assessments in person and returned within the 6-week timescale
% of educational psychology reports completed by carrying out assessments remotely and returned within the 6-week timescale
Number of educational psychology reports requested for EHC review where the assessment is requested to be carried out in person
Number of educational psychology reports requested for EHC review where the assessment is requested to be carried out remotely
Number of educational psychology reports completed and submitted for EHC review where the assessment has been carried out in person and returned within 4 weeks
Number of educational psychology reports completed and submitted for EHC review where the assessment has been carried out remotely and returned within 4 weeks
% of educational psychology reports for review assessments completed and returned within 4 weeks which have been carried out by doing assessments in person
% of educational psychology reports for review assessments completed and returned within 4 weeks which have been carried out by doing assessments remotely
Total number of educational psychology reports (EHC assessments and reviews) completed in the period (both carried out remotely and in person)
Number of mediation case reports requested
Number of mediation cases involved with
% of mediation reports for tribunal submitted within the given timescale
Number of requests for educational psychology attendance at tribunal meetings
Number of tribunal meetings accepted for attendance

% attendance at tribunal meetings where educational psychology input is required
% of EP assessments carried out remotely which include SMART outcomes
% of EP assessments carried out in person which include SMART outcomes
Overall % of EP assessments carried out remotely and in person which include SMART outcomes
% of EP assessment carried out remotely which include a concise summary of CYP needs
% of EP assessments carried out in person which include a concise summary of CYP needs
Overall % of EP assessments carried out remotely and in person which include a concise summary of CYP needs
% of parents rating EP service satisfaction as good or excellent where the assessment has been carried out in person
% of parents rating EP service satisfaction as good or excellent where the assessment has been carried out remotely
Overall % of parents rating EP service satisfaction as good or excellent where the assessment has been carried out either in person or remotely
% of schools/settings rating EP service satisfaction as good or excellent where the assessment has been carried out in person
% of schools/settings rating EP service satisfaction as good or excellent where the assessment has been carried out remotely
Overall % of schools/settings rating EP service satisfaction as good or excellent where the assessment has been carried out either in person or remotely
% of local authority SEN officers reporting satisfaction with the EP assessment process where the assessment has been done in person
% of local authority SEN officers reporting satisfaction with the EP assessment process where the assessment has been done remotely
Overall % of local authority SEN officers reporting satisfaction with the EP assessment process where the assessment has been carried out either in person or remotely
<p><b>Demographics</b></p> <p>It is expected that the Service will collect, record and be able to provide a breakdown of the above reporting elements with key and service specific demographic data, to include as a minimum:</p> <ul style="list-style-type: none"> <li>• Age</li> <li>• Sex</li> <li>• Gender</li> <li>• Ethnicity</li> <li>• Disability</li> <li>• Educational setting (e.g. School/home based)</li> </ul>

## Appendix D

### Views of Children and Young People from the Calderdale SEND Youth Representatives and Calderdale Young Commissioners

The Calderdale Specialist Educational Needs and Disability (SEND) youth representatives is made up of a group of young people with SEND who share their views in order to help design and improve services in Calderdale. The Calderdale Young Commissioners are a group of young people who focus on the design and improvement of commissioned children and young people's services in the borough.

The SEND youth representatives were consulted about their experience of assessments in 2023 and their tips on what makes a good and a bad assessment. This has been reviewed by the Young Commissioners in 2025. Findings are below.

#### The Assessment

- Should be thorough but if possible, not too lengthy;
- If it includes tests, explain the reasons behind each test;
- It is important you know the reason for the assessment. A suggestion could be to send out some information for the young person to research before the assessment, including a list of questions so that there is time for the young person to process their answers;
- A letter sent in advance could include information on how long it will take, whether there will be breaks, whether it will be done through activity or questions, the name and a photo of the assessor if possible and details about the venue;
- The letter should be easy read and personal rather than generic;
- It is important to have the option for a parent/carer to go with the young person to offer support and build confidence;
- The assessment should be age appropriate;
- Easy read clear notes provided after the assessment to explain the outcome;
- It's really important to know what is happening after the assessment is complete, so as not to be left confused or wondering;

#### The Assessor

- Be welcoming but not to 'matey', not over sharing and being childish;
- Assure the young person that there are boundaries in the assessment;
- Be straightforward, empathetic and understanding;
- Be nice, kind, helpful, respectful, welcoming and wear a badge so the young person knows the assessor's name.

#### The Venue

- The space should have a window and feel comfortable and not too clinical;
- Have some stress toys available to alleviate anxiety;

- Have warm tone lights and plants in the room. This helps calm you down;
- Have some calming scents, such as incense ;
- Language is really important as phrases can stick with you. For example do not use phrases such as “not normal”;
- After care is also really important. Let the young person have a drink and unwind, perhaps with breathing exercises rather than letting them just leave as this experience can be overwhelming.
- If the assessment is not happening in a familiar place, provide a map or even a link on YouTube showing what the building looks like, what is nearby, which entrance to use when walking in, what will you see and how to get to the reception;
- If possible the young person should have a choice of where the assessment takes place and at what time and day. This could be arranged prior to the agreed meeting.
- School is easy for a young person to get to, but if not at school the assessment should take place in a neutral venue, such as the Laura Mitchell Centre café.

What makes a bad assessment:

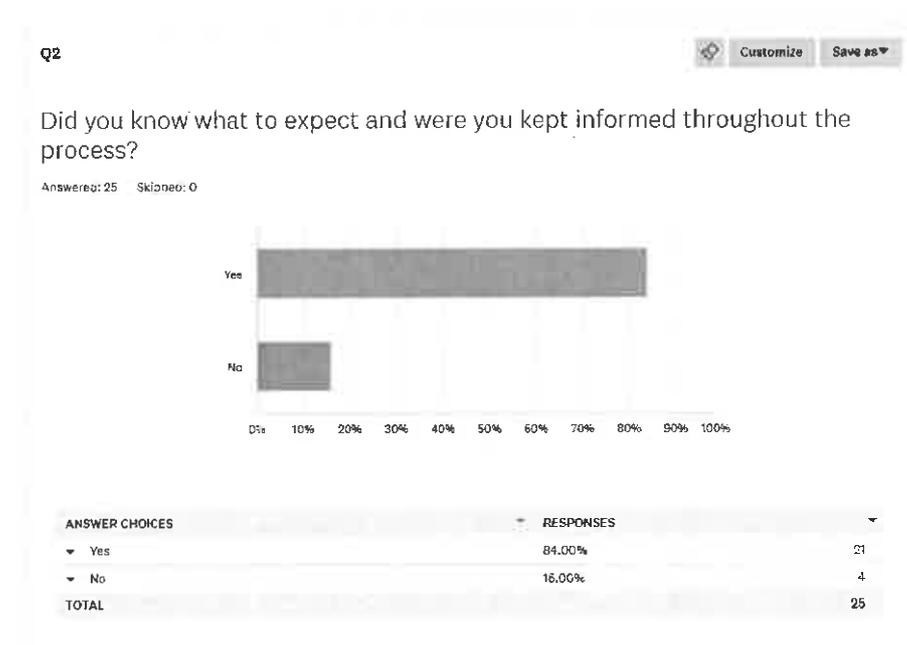
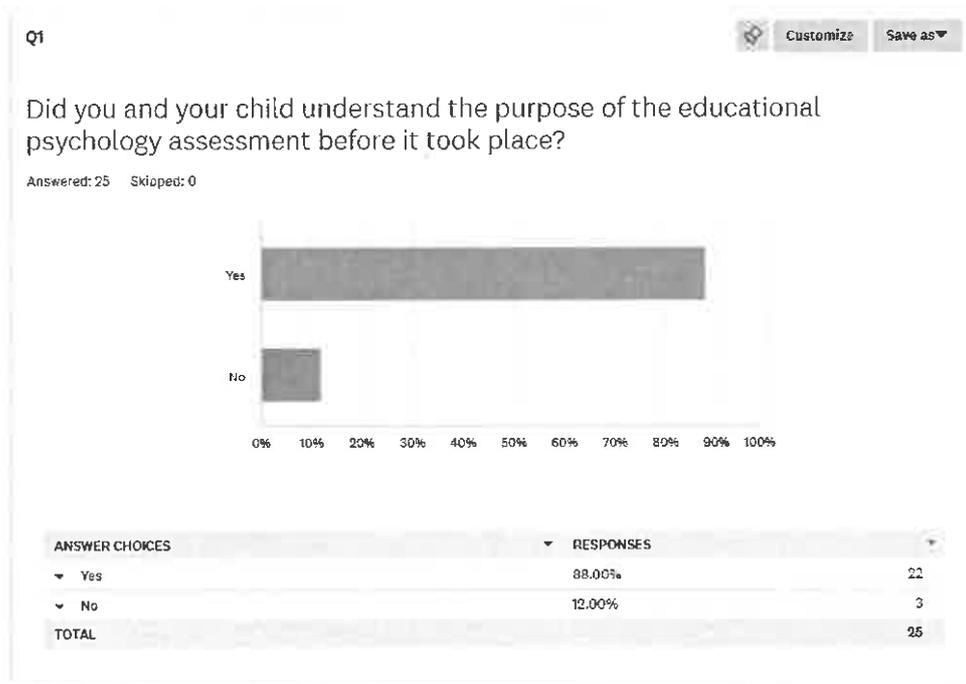
- Sitting in silence, or the assessor not talking directly to the young person;
- Relying on public transport can be stressful if delayed;
- The assessor turning up late - the longer the wait the more stressful it is;
- The assessment not being personal but just very general;
- The assessor not knowing much about the young person

## Appendix E

### Family Voice Calderdale Survey Results

A survey was carried out in February 2025 with participants of Family Voice Calderdale who are parents of children and young people with SEND who have previously received an educational psychology assessment to inform an EHCP.

Page 1

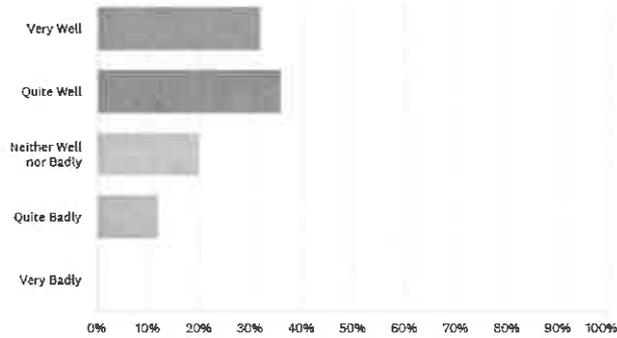


Q3

Customize Save as

How well did the Educational Psychologist communicate with you and your child before, during and after the assessment?

Answered: 25 Skipped: 0



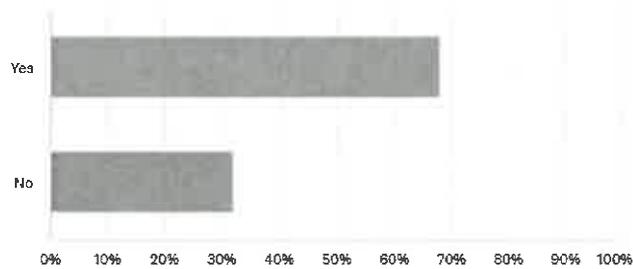
ANSWER CHOICES	RESPONSES
Very Well	32.00% 8
Quite Well	36.00% 9
Neither Well nor Badly	20.00% 5
Quite Badly	12.00% 3
Very Badly	0.00% 0
<b>TOTAL</b>	<b>25</b>

Q4

Customize Save as

Did you feel listened to and that any concerns were addressed?

Answered: 25 Skipped: 0



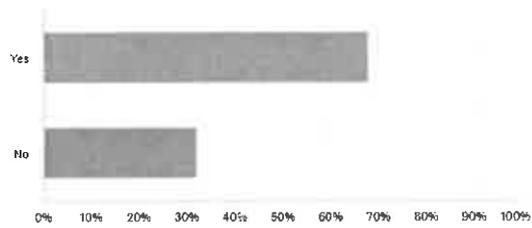
ANSWER CHOICES	RESPONSES
Yes	68.00% 17
No	32.00% 8
<b>TOTAL</b>	<b>25</b>

Q5

Customize Save as

Do you feel the assessment assessed your child's specific needs?

Answered: 25 Skipped: 0



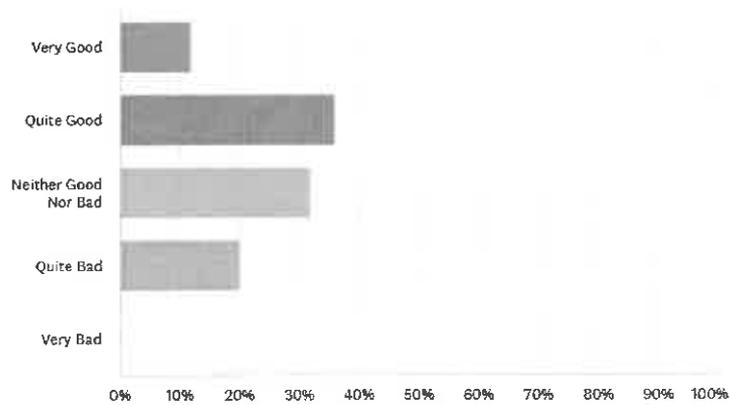
ANSWER CHOICES	RESPONSES
Yes	68.00% 17
No	32.00% 8
<b>TOTAL</b>	<b>25</b>

Q6

Customize Save as

How do you rate the collaboration between your family, school and the educational psychologist?

Answered: 25 Skipped: 0



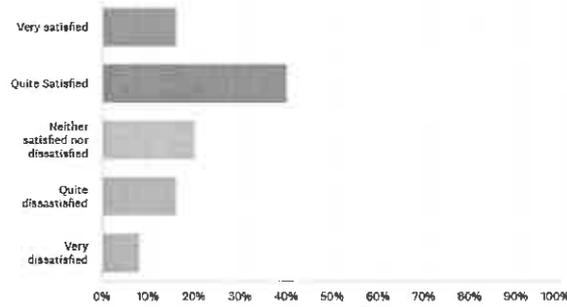
ANSWER CHOICES	RESPONSES
Very Good	12.00% 3
Quite Good	36.00% 9
Neither Good Nor Bad	32.00% 8
Quite Bad	20.00% 5
Very Bad	0.00% 0
<b>TOTAL</b>	<b>25</b>

Q7

Customize Save as

How satisfied are you with the outcomes of the Educational Psychology assessment in terms of the development and support of your child?

Answered: 25 Skipped: 0



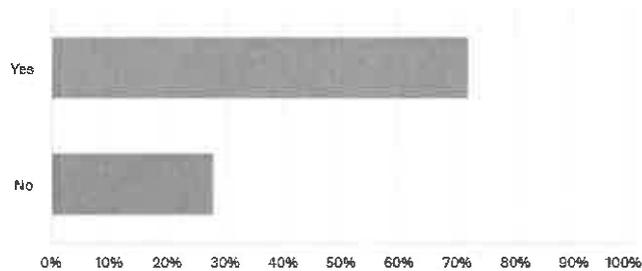
ANSWER CHOICES	RESPONSES
Very satisfied	15.00% 4
Quite Satisfied	40.00% 10
Neither satisfied nor dissatisfied	20.00% 5
Quite dissatisfied	15.00% 4
Very dissatisfied	8.00% 2
TOTAL	25

Q8

Customize Save as

Do you think the assessment will have a lasting impact on your child's education and well-being?

Answered: 25 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	72.00% 18
No	28.00% 7
TOTAL	25

**Q9 – What would you suggest to improve the educational psychology assessment process for future families in receipt of this service**

- To avoid the use of vague language in reports. For it to be more understandable
- To listen to parents' concerns and take action wherever possible
- To avoid inaccuracies and using generic reports which are not specific to the child
- To take into account information from other assessments
- To ensure the process is person centred and meets the child's individual needs
- Improved communication between schools, the EP's and parents
- For schools and EP's to work more closely together
- To provide face to face assessments when deemed most appropriate by parents
- More information and preparation directed at the child beforehand
- To take into account the personal circumstances of the child and to ensure the process most appropriately fits their needs
- More consistent communication with parents throughout the process and contact details shared
- The EP to get to know the child and family rather than having a one-off meeting
- Improve schools' understanding of recommendations and how to implement these
- To have the process explained better to parents. Perhaps peer support and/or training for parents

## SCHEDULE 2

### PROVIDER'S TENDER

#### Answers to quality question

Quality Questions	Raw Score	Weighting	Weighted Score
<p>1. Describe and illustrate how you will deliver the specified service in Calderdale.</p> <p>Within your answer, please include an overview of your organisation, including its experience in delivering educational psychology services and reflect on the service provision requirements specified in section 5 of the service specification. (3 pages)</p>	5	3	15
<p>2. Describe how you will work collaboratively with schools, local authorities and other professionals in the delivery of this service. (1 page)</p>	5	1	5
<p>3. Describe how you will involve parents and carers in the assessment process, ensuring they are well informed and the voice of children, young people and their families is heard and acted upon? (2 pages)</p>	5	2	10
<p>4. Outline how you will ensure you have sufficient capacity to deliver all elements of provision within set timescales, respond to changes in demand and provide flexible support to the local authority. You should explain how you will handle urgent or high priority cases. (2 pages)</p>	5	2	10
<p>5. Describe your approach to quality assurance and service improvement.</p> <p>You should include details of the tools and practices you will use to maintain high standards of service delivery and ensure reports are of a high quality (2 pages)</p>	5	2	10
<p>6. How will you ensure that the assessor is well-equipped to meet the needs of young people, considering their unique communication styles, individual preferences, and comfort? Please include examples in your answer (2 page)</p>	5	2	10
<b>Total</b>			<b>60</b>





































## Forms

# FORM OF TENDER

The Tenderer in submitting the Tender hereby undertakes that in the event of their Tender being accepted by the Council, they will provide the Services detailed in this documentation and Specification and will within 14 (fourteen) days of being called upon to do so, execute a Contract embodying the following documents:

Service Specification  
Conditions of Contract  
Pricing Schedule  
Responses to quality questions  
Declaration of Commercially Sensitive Information  
Declaration of Non-Collusive Tender  
Privacy Notice  
Procurement Specific Questionnaire  
Any relevant clarifications

Failure by the successful Tenderer to execute a Contract within the time specified, will entitle the Council, at any time, by notice in writing, to withdraw its offer to appoint the successful Tenderer.

The Tenderer in submitting the Tender warrants to and undertakes with the Council that:

- At the time of signing the Contract (if they are successful) they will ensure they will comply in all respects with the requirements of the Contract.
- All representations made or information supplied to the Council in connection with the Tender are true, complete and accurate to the best of their knowledge
- They have satisfied themselves in relation to all matters arising in connection with the submission of the Tender.
- They have full power to enter into the Contract to carry out the Works or Services and will by the date of commencement of the Contract have arranged all necessary consents and permissions as are required.

I/We the undersigned hereby offer to provide the Services described or referred to in these Tender Documents at the costs specified, exclusive of value added tax (VAT).

I/We hereby declare that this Tender is at a fixed price and not subject to fluctuations for 3 months from the date of issue of the official order.

I/We understand that the Council does not bind itself to accept the lowest, or any, Tender.

I/We hereby certify and declare that I/We have taken out/will take out if successfully awarded, such Policies of Insurance as I/We are required to do by the terms of the Contract.

I/We undertake that all elements of this Tender shall from the date of its opening not be withdrawn or modified for and during the period of 90 (ninety) days in respect of the said requirement.

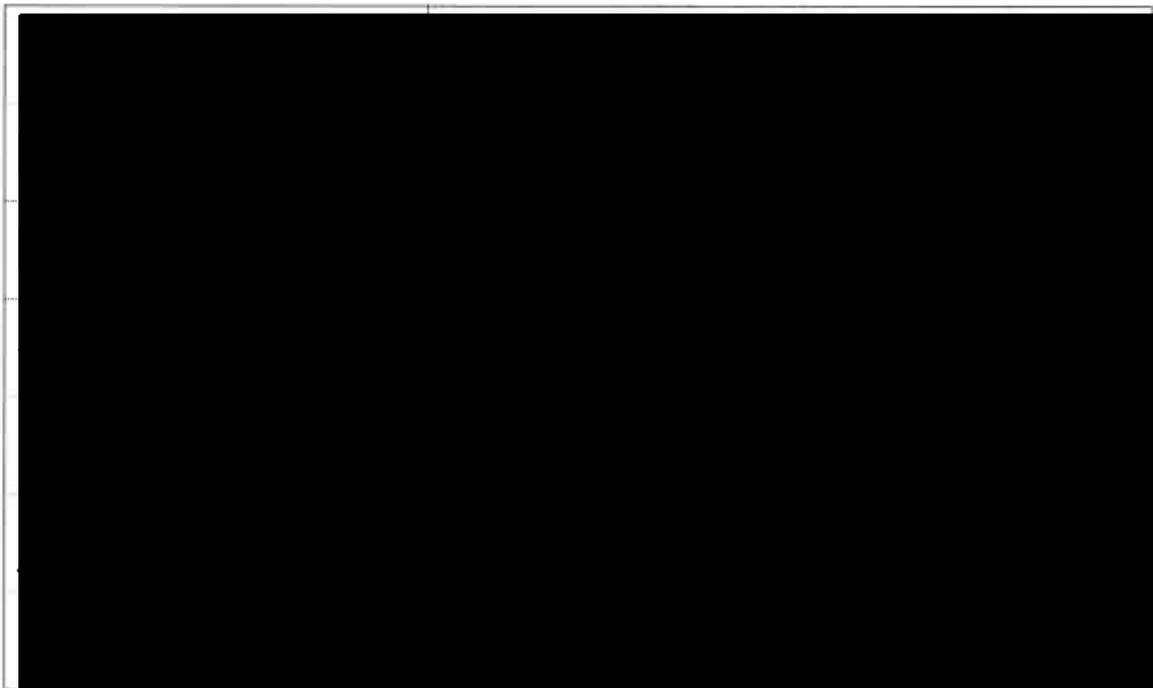
I/We understand that the Council accepts no liability as to the actual amount of work included within this contract.

No further conditions or alterations to the Form of Tender and Pricing Schedule will be permitted. Please sign this Form in full knowledge of this requirement.

I/We hereby undertake to commence the Services on the start date

I/We confirm that in preparation and submission of this Tender I/We have observed and accepted the above conditions.

I/we also declare that in the preparation and submission of this Tender I/we have observed and complied with the Invitation to Tender and Conditions contained and referred to in these Tender Documents.





## **PRIVACY NOTICE**

### **How we use your information**

Calderdale Council is registered with the Information Commissioners Office (ICO) under the provisions of the Data Protection Act 2018. The Council takes its responsibilities under the Act very seriously. As part of this Tender please ensure you read and sign this privacy notice which has been included within this Tender documentation.

The information provided by you as part of your Tender is collected and used by us for the purposes of evaluating your Tender submission.

If your Tender is successful we may use any personal data submitted by you for the purposes of undertaking a financial assessment.

In the event a contract is awarded to you, we also need to retain this information in order to maintain accurate records of your name, contact details and details of your Tender submission (including such details of key individuals or members of staff which you have included in your Tender) for the duration of the term of the contract and for a period equal to the relevant statutory limitation period following expiry or termination of the contract (see below) or until you notify us that the information is no longer relevant (for example where a named or key individual leaves your organisation or where that individual is no longer involved in the provision of the services commissioned).

After contract award, we will continue to retain information shared or submitted by the successful contractor for the duration of the term of the contract and for a period equal to the relevant statutory limitation period following expiry or termination of the contract or until you notify the relevant contract manager for the Council that the information is no longer relevant (for example where a named or key individual leaves your organisation or where that individual is no longer involved in the provision of the services commissioned). It is your responsibility during the term of the contract to keep the Council notified of any changes to the information submitted and to notify the

Council where an individual has withdrawn his or her consent to the Council's retention of any personal data.

In addition, you have the right to see what information is held about you, to have inaccurate information corrected, to have information removed from our system unless we are required by law or a statutory purpose to keep it. To do this contact [procurement@calderdale.gov.uk](mailto:procurement@calderdale.gov.uk). You also have the right to complain to the Data Protection Officer if you feel that your data has not been handled in accordance with the law. We will not share your information without your consent.

The Council's Data Protection Officer is Suzanne Prescott who can be contacted at [information.management@calderdale.gov.uk](mailto:information.management@calderdale.gov.uk).

Individual's names, contact details, record of qualifications and other relevant personal data requested or submitted as part of your Tender (including eligibility) are recorded electronically on our system in order to maintain up to date records.

Where your tender submission results in an award of contract to you, this information will be kept for 6 years or 12 years, depending on the type of tender.

Where your tender submission is unsuccessful, this information will be kept for 1 year or 4 years, depending on the type of tender, or until such time as the information is reviewed and removed by us or removed at your request.

### **Consent**

Please sign below to confirm that sharing or submitting your information with us constitutes explicit consent from you for us to process your data for this purpose.

Please sign below to confirm that sharing or submitting your information with us also constitutes your confirmation to us that you have express consent from each individual whose personal data is being shared or submitted as part of your tender and where applicable, this consent shall extend to the Council retaining such information for the duration of the contract as set out below.

You may withdraw this consent at any time prior to award of contract by communicating your request in writing to us via the 'Messaging' section of YORtender.

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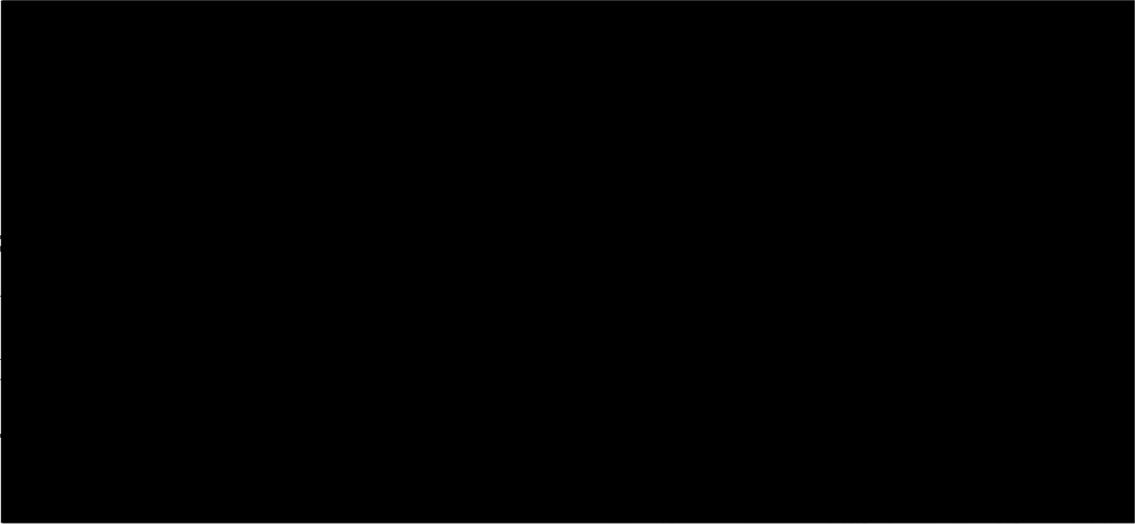


## DECLARATION OF NON-COLLUSIVE TENDER

In recognition of the principle that the essence of selective tendering is that the Council shall receive bona fide competitive Tenders from all those tendering I/WE CERTIFY THAT:

1. The Tender submitted herewith is a bona fide Tender, intended to be competitive.
2. I/We have not fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement<sup>1</sup> with any other person<sup>2</sup>.
3. I/We have not done, and undertake that we will not do at any time before the hour specified for the return of the Tender, any of the following acts:
  - 3.1 communicating with a person other than the person calling for this Tender the amount or approximate amount of the proposed Tender (except where the disclosure, in confidence, of the approximate amount of the Tender was essential to obtain insurance premium quotations required for the preparation of the Tender);
  - 3.2 entering into any agreement with any other person that he/she shall refrain from tendering or as to the amount of any Tender to be submitted; and
  - 3.3 offering, paying, giving or agreeing to give any sum of money or valuable consideration directly or indirectly to any person for doing, having done, causing or having caused to be done in relation to any other Tender or proposed Tender any act or thing of the sort described above.





### **IR35**

Public sector bodies will be responsible for identifying and reviewing the employment status of all workers engaged through personal service intermediaries (referred to hereafter as personal services companies or PSCs) including those provided via an agency.

Where, in the absence of the PSC, the worker would have been regarded as an employee of the public sector authority (under the IR35 rules), the public sector body or the agency will be required to treat payments made to the PSC as if they were earnings paid to the worker from an employment with the public body ('deemed employment payments').

The public sector body or the agency will be required to account for PAYE and National Insurance (both employee and employer) to HMRC on the deemed employment payments made to the PSC.

Providers of such services to Calderdale Council will not be activated until an IR35 toolkit report has been completed and forwarded to the Payments Section by the engaging officer responsible for procuring the service.

### **Disclaimer**

This information is provided in good faith and is based on guidance currently available. The guidance may be subject to change based on HMRC rules. Services, the Council, Schools and any third parties should take appropriate Legal and Financial advice to ensure full compliance with the regulations.

### **PRIVACY NOTICE**

Calderdale Council is registered with the Information Commissioners Office (ICO) under the provisions of the Data Protection Act 2018. The Council takes its responsibilities under the Act very seriously.

The information provided by you is collected purely for the administration of invoices received by ourselves in order to enable payments for services received. Processing is necessary for the performance of a contract with the data subject. If this data is not provided to us we may be unable to make payments as required upon delivery of service.

We may share some of the information you have given us with other Council departments and statutory bodies where required to do so by law.

In addition, you have the right to see what information is held about you, to have inaccurate information corrected, to have information removed from our system unless we

are required by law or a statutory purpose to keep it. To do this contact [procurement@calderdale.gov.uk](mailto:procurement@calderdale.gov.uk)

. You also have the right to complain to the Data Protection Officer if you feel that your data has not been handled in accordance with the law. We will not share your information without your consent.

The Council's Data Protection Officer is Suzanne Prescott who can be contacted at [information.management@calderdale.gov.uk](mailto:information.management@calderdale.gov.uk).

You also have the right to lodge a complaint with the Information Commissioner's Office at [www.ico.org.uk](http://www.ico.org.uk)

Your name, contact details and banking details are recorded electronically on our system. This information is kept for a maximum of seven years from last payment made or until such time as the data is reviewed by us or removed at your request.



























































## SCHEDULE 5

### DISCLOSURE AND BARRING SERVICE CHECKS – PROCEDURE

1. The Provider shall not employ staff or engage volunteers to provide the Services without first undertaking appropriate check of the Disclosure and Barring Service in respect of such person ("**DBS Checks**"), where required by statute to do so. For the purpose of any Children's Services or Vulnerable Persons Services these shall be Enhanced Checks.
2. Any recruitment decisions made by the Provider shall take into account the DBS check.
3. The Provider shall confirm to the Council that DBS checks have been carried out. This Schedule 5 relates both to paid employees, Providers and any volunteers who will provide the Services.
4. Ordinarily the Provider should not accept a DBS check obtained by Provider Staff from previous employment with another employer. The Provider must seek the Authorised Officer's consent if they seek to rely on a DBS check obtained by Staff from previous employment with another employer
5. The Provider shall, whenever required, produce to the Council evidence that DBS Checks have been carried out on any individual employee or volunteer.
6. The Council shall not be liable for any expenses incurred by the Provider in obtaining DBS Checks or any other disclosure, nor for any other associated expenses incurred by the Provider.
7. The Provider shall indemnify the Council in respect of any claim or action against the Council arising from the Provider's employment of any person in respect of whom the Provider has either failed to make a check with the Disclosure and Barring Service, or has failed to undertake the appropriate level of check with the Bureau (commensurate with the risks to Service Users likely to attach to the particular post), such liability to include all losses damages costs and expenses (including legal costs) associated with any such claim or action.
8. The Council accepts that the Provider may choose to employ people who return an adverse DBS Check and in particular may seek to employ ex-offenders. However, in doing so, the Provider shall accept that the Council will incur no liability for such employment decisions made by the Provider. The Provider shall have a policy on employment of such individuals and shall take note of the Disclosure and Barring Service Recruitment of Ex-Offenders guidance and any other relevant law. [Recruitment of ex-offenders guidance - GOV.UK](#)
9. Failure by the Provider to comply with its obligations this Schedule 5 may be regarded as a fundamental breach of this Contract.

## SCHEDULE 6

### TUPE AND PENSIONS OBLIGATIONS

#### 1 Interpretation

1.1 The following definitions and rules of interpretation in this Schedule 6 apply in the Contract:

**Appropriate Pension Provision:** in respect of Eligible Employees, continued membership, access or continued eligibility for membership of their Legacy Scheme.

**Effective Date:** the date(s) on which the Services (or any part of the Services), transfer from any Third Party Employer to the Provider or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-Contractor.

**Eligible Employees:** the Third Party Employees who are members of or have access to a Legacy Scheme on the date of a Relevant Transfer of the Services and move from the public sector to an independent Contractor by way of a transfer to which TUPE applies or by way of a non-voluntary transfer to a public service mutual or to other new models of public service delivery or those who are compulsorily transferred out of the public sector, and who remain continuously employed on the delivery of the outsourced service or function and will remain eligible to be members of a Legacy Scheme subject always to the eligibility criteria of the Legacy Scheme.

**Employee Entitlements:** means the remuneration, benefits, entitlements and outgoings that the Relevant Employees (and any other person who is or will be employed or engaged by the Service Provider or any sub-contractor in connection with the provision of the Services) are entitled to including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise.

**Employee Liability Information:** the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

- a. the identity and age of the employee;
- b. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- c. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- d. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor

has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor;

- e. information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

**Employment Liabilities:** All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, Contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**Legacy Scheme:** the relevant public service 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 or have access to prior to the Relevant Transfer.

**New Fair Deal Guidance:** Fair Deal for staff pensions: staff transfer from central government prepared by HM Treasury dated October 2013 as amended from time to time including any subsequent or newer versions issued.

**Participation Agreement:** where there are Eligible Employees following a Relevant Transfer, the agreement to be entered into in accordance with New Fair Deal Guidance by the administering Council, the Council and the Provider or Sub-Contractor, as appropriate in the administering

Council's standard form to enable the Provider or Sub-Contractor to participate in the Legacy Scheme and provide pension protection for Eligible Employees.

**Provider's Final Staff List:** the list of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**Provider's Provisional Staff List:** the list prepared and updated by the Provider of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

**Relevant Employees:** those employees whose Contracts of employment transfer with effect from the Service Transfer Date to a Replacement Service Provider by virtue of the application of TUPE.

**Relevant Transfer:** a relevant transfer for the purposes of TUPE.

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Council internally or by any Replacement Service Provider.

**Replacement Service Provider:** the service provider taking over the provision of the Services after the Service Transfer Date.

**Service Transfer:** the transfer of Services (or any part of the Services) from the Service Provider to the Replacement Service Provider under TUPE.

**Service Transfer Date:** the date on which the Services (or any part of the Services), transfer from the Provider or Sub-Contractor to any Replacement Service Provider.

**Staffing Information:** in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-

employed, Contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

**Third Party Employees:** employees of Third Party Employers whose Contracts of employment transfer with effect from the Effective Date to the Provider or Sub-Contractor by virtue of the application of TUPE.

**Third Party Employer:** a service provider engaged by the Council to provide some or all of the Services to the Council before the Effective Date and whose employees will transfer to the Provider on the Effective Date.

## **2 Transfer of Employees to the Provider on the Effective Date**

- 2.1 The Council and the Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the Contracts of employment of any Third Party Employees shall transfer to the Provider or Sub-Contractor. The Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The Relevant Transfer shall occur on the Effective Date.
- 2.2 The Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:
- i. any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider making on or after the Effective Date;
  - ii. any of the employees informing the Council and any Third Party Employer they object to being employed by the Provider or Sub-Contractor; and
  - iii. any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Effective Date.
- 2.3 The Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.
- 2.4 The Provider shall immediately on request by the Council and/or the Third Party Employer provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Provider will

give confirmation of that fact and shall indemnify the Council and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

### **3 Employment Exit Provisions**

- 3.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Council or Future Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Provider shall and shall procure that any Sub-Contractor shall, subject to compliance with the Data Protection Legislation, at no cost to the Council and within 14 (fourteen) calendar days of receiving notice of termination of this Contract or otherwise, on receipt of a written request from the Council at any time, provide to the Council, or at the discretion of the Council to the Replacement Service Provider, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Provider shall notify the Council of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4 The Council shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Future Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5 The Provider warrants to the Council and the Replacement Service Provider that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.
- 3.6 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 The Council regards compliance with this paragraph 3 as fundamental to the Contract. In particular, failure to comply with paragraph 3.2 and paragraph 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 3.7 shall not exceed an amount equivalent to the

Charges that would be payable in the three-month (3) period following the Provider's failure to comply with paragraph 3.2 or paragraph 3.3, as the case may be.

- 3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Council 's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.9 In the six months prior to termination of this Contract, the Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council 's prior written consent.
- 3.10 The Provider shall indemnify and keep indemnified in full the Council and at the Council 's request each and every Replacement Service Provider against all Employment Liabilities relating to:
- a) any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services;
  - b) any act or omission by the Provider on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
  - c) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider) arising from or connected with any failure by the Provider to comply with any legal obligation, whether under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE;
  - d) all Employee Entitlements payable in respect of any period on or before the Service Transfer Date;
  - e) the provision of/ or proposal by, the Provider to offer to change to any benefit, term or condition or working condition or any Relevant Employee arising on or before the Service Transfer Date;
  - f) any claim made by or in respect of any person employed or formerly employed by the Provider other than a Relevant Employee or which it is alleged the Council or any Replacement Service Provider may be liable by virtue of this agreement and/or TUPE;
  - g) any act or omission of the Provider in relation to its obligations under Regulation 11 of TUPE, or in respect of an award or compensation under Regulation 12 of TUPE except to the extent that the liability arises from the Council or Replacement Service Provider's failure to comply with Regulation 11 of TUPE;

- h) any statement communicated to or action done by the Council or in respect of any Relevant Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Council in writing; and
- i) in respect of any claim arising from any act or omission of the Provider in relation to any other individual who is not a Relevant Employee during any period whether before, on or after the Service Transfer Date.

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

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

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

#### **4. Pensions**

4.1 The Provider shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this Contract.

4.2 The provisions of this paragraph 4 shall be directly enforceable by an affected employee against the Provider or any relevant Sub-Contractor and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Provider or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

4.3 The Provider shall or shall procure that any relevant Sub-Contractor shall ensure that the Eligible Employees are provided with continued access to (or where appropriate, continued membership of) the Legacy Scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer including where the Eligible Employees continue to be employed on the Contracted-out service or function, including any transfer to a Sub-Contractor and any compulsory second or subsequent generation transfer (including as a result of an outsourcing of a service or

function) and the Provider shall produce evidence of compliance with this paragraph 4.3 to the Council prior to the date of the Relevant Transfer.

4.4 On the termination or expiry of this Contract, the Provider and any Sub-Contractor shall fully comply with any obligation or reasonable request received in respect of any bulk transfer pursuant to the New Fair Deal Guidance.

4.5 Where the Provider or Sub-Contractor is under an obligation to ensure the Eligible Employees with continued access to (or where appropriate, continued membership of) the Legacy Scheme in their new employment while they continue to be employed on the transferred service or function pursuant to paragraph 4.3 of this Schedule 6, the Provider shall or shall procure that it and/or each relevant Sub-Contractor shall:

(i) enter into a Participation Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer provided that the Provider and any relevant Sub-Contractor shall agree the terms of the Participation Agreement prior to the Relevant Transfer;

(ii) at all times fully comply with the terms of the Participation Agreement;

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

(iv) provide such information to the administering Council or scheme manager as is necessary to ensure the efficient running of the Legacy Scheme and to meet any requirements placed on any scheme manager pursuant to the pensions legislation (within the meaning of section 13(7) of the Pensions Act 2004 including any regulations issued by the Secretary of State for Work and Pensions that specify the records that must be kept by scheme managers) together with any further information requirements in respect of the Legacy Scheme as set out in the scheme regulations any directions by the Treasury made under sections 15 and 16 of the Public Service Pensions Act 2013 together with any further directions pursuant to section 25 of that Act;

(v) comply with any requirements of the scheme regulations and the Pensions Regulator and Pensions Ombudsman;

(vi) promptly provide to the Council such documents and information mentioned in paragraph 4.5(iv) which the Council may reasonably request in advance of the expiry or termination of this Contract;

(vii) fully cooperate with the reasonable requests of the Council under the New Deal Guidance relating to any administrative tasks necessary to deal with the pension rights of

and aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on expiry or termination of the Contract;

(viii) comply with any reasonable request by the Council to monitor compliance and to regulate any breaches of the Participation Agreement including any request by the Council to enter into a Contract between the Council and the Legacy Scheme's administrating Council to allow the administrating Council to notify or inform the Council where there is a breach of the Participation Agreement by the Provider or any Sub-Contractor;

(ix) on any subsequent transfer the staff continue to provide all Eligible Employees with membership to or continued access to the Legacy Scheme while they continue to be employed on a Contracted-out service or function, including any transfer to a Sub-Contractor and such obligation shall continue on any second or subsequent generation transfers and this obligation shall be enforceable by the Council against any new employer; and

(x) indemnify and keep indemnified the Council and/or any Replacement Service Provider and, in each case, their sub-Contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Provider or any Sub-Contractor of the terms of the Participation Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.

4.6 The Provider acknowledges and agrees (and shall procure that any Sub-Contractor acknowledges and agrees that:

- i the Provider (and where applicable, the Sub-Contractor) shall be required under the New Fair Deal Guidance to collect the appropriate employee contributions from Eligible Employees and to ensure that such contributions are paid to the Legacy Scheme in accordance with the requirements set out in the scheme regulations or by the scheme manager;
- ii the Provider (and where applicable, the Sub-Contractor) shall be required to pay employer contributions in respect of Eligible Employees under the New Fair Deal Guidance and that such contributions will normally be set at the same level as the employer contribution rate paid by all other employers in the Legacy Scheme however that the normal rate of employer contributions payable to the Legacy Scheme may be adjusted (upwards or downwards) from time to time following the outcome of an actuarial valuation of the Legacy Scheme;
- iii the Council may require that any savings made by the Provider or any Sub-Contractor in employer contributions arising as a result of Eligible Employees transferring or moving away from the public service Contract or otherwise ceasing to participate in the Legacy Scheme be paid to the Council;
- iv the Council shall be entitled to charge to the Provider an exit payment arising from the termination of the Participation Agreement and for the purposes of calculating such exit payment and any other sums due to the administering Council under the Participation Agreement, the Council shall ensure that the Eligible Employees' past service benefits

accrued prior to the Effective Date are fully funded as at the Effective Date, as determined by the Legacy Scheme's actuary.

- 4.7 The Provider and any Sub-Contractor shall ensure that the Contracts of employment of all Eligible Employees who are compulsorily transferred in second or subsequent generation transfers continue to provide that such Eligible Employees have a right to continued membership of the relevant Legacy Scheme together with a right to enforce term against any new employer.
- 4.8 Where requested, the Provider shall provide the scheme manager with the names of the Eligible Employees who will retain (eligibility for) membership of the Legacy Scheme in accordance with the New Fair Deal Guidance.

## SCHEDULE 7

### BUSINESS CONTINUITY PROCEDURE

1. The Provider shall make copies of its Business Continuity Plan available to the Council upon request.
2. The Provider shall notify the Council if an incident occurs which requires the activation of the Business Continuity Plan and shall provide details of how it intends to manage any such incident and any subsequent amendments made to processes or systems.
3. The Provider shall (as a matter of course) test its Business Continuity Plan on a regular basis (at least annually), or when there has been any change to the mode or method in which the Services are provided, or when there has been a change to any business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan.
4. The Provider, on request by the Council, shall provide evidence by way of a written report summarising the results of any Business Continuity Plan test and shall promptly implement any actions or remedial measures which the Council may consider to be appropriate as a result of such tests.
5. The Provider shall inform the Council when such tests or exercises of its Business Continuity Plan are scheduled. The Council reserves the right to appoint a representative to attend any Business Continuity Plan test that is to be undertaken by the Provider.

#### **Business Continuity Planning**

6. Business Continuity Planning is an ongoing process requiring the support of the Provider's most senior officials. The primary objective of Business Continuity Planning is to maintain viable recovery strategies and plans to ensure all units can recover their critical activities following a major incident. A major incident is any accidental, natural or malicious event, which threatens or disrupts normal operations, or the delivery of the Services, for sufficient time to significantly affect or cause failure of the provision of any essential part of the Services to the Council.
7. All Council Providers must be in a position to demonstrate they have adequate Business Continuity Plans and associated contingency arrangements in place to ensure minimum disruption in the delivery of the Services to the Council in the event of a major incident affecting their buildings, systems, Employees or their own external suppliers and Sub-contractors.
8. The Council requires the demonstration of robust contingency plans by appropriate means. In order to meet this requirement, the Provider must provide to the satisfaction of the Authorised Officer its Business Continuity Planning policy which must be supported by its senior officials and with tested contingency arrangements in place. Depending upon the importance and scale of the Services to be delivered, the Council reserves the right to request detailed evidence of contingency plans such as sight of the Provider's

Business Continuity Plan, the Provider's attendance at any contingency exercise or to conduct an audit of the Provider's contingency arrangements.

9. The Council requires Business Continuity Plans to include the following:
  - 9.1 provision for the regular review and updating of the Business Continuity Planning documentation at least every three (3) years,
  - 9.2 provision for the regular testing of the Business Continuity Planning Plan at least yearly,
  - 9.3 details of the locations at which copies of the Business Continuity Planning documentation are held and provision to ensure that at such locations may be added to as shall be specified by the Authorised Officer,
  - 9.4 details of the locations at which copies of any other important procedures and documents which form part of or are ancillary to the Business Continuity Planning documentation are held and provision to ensure that at such locations may be added to as shall be specified by the Authorised Officer,
  - 9.5 provision to ensure that IT/PC backups to be taken regularly and details of the locations at which these are held and provision to ensure that at such locations may be added to as shall be specified by the Authorised Officer,
  - 9.6 that minimum contingency resources (such as but not by way of limitation Employees, IT, telephones, etc.) as shall be required by the Authorised Officer are identified,
  - 9.7 details of the Provider's Emergency Management and/or Recovery Team,
  - 9.8 details of any contingency site or location and provision to ensure that at such site or location may be added to as shall be specified by the Authorised Officer,
  - 9.9 details of the Provider's IT systems recovery/backup arrangements,
  - 9.10 contingency details relating to the loss of any of the Provider's key suppliers,
  - 9.11 contingency details relating to the loss of any of the Provider's Employees,
  - 9.12 details of the Provider's Business Continuity Plan activation checklist,
  - 9.13 details of the communication processes and associated contact information covering the Provider's key Employees and suppliers/Providers and.
  - 9.14 confirmation that the Council is included in the Provider's priority customer list.

#### **Business Continuity Training**

10. The Provider shall maintain a training plan and a record of training for all persons engaged in the delivery of its obligations under this Contract. The Provider shall make the training

plan and training records available to the Authorised Officer following any reasonable request.

11. Where either Party to this Contract identifies at any time that the Provider Staff require further training to ensure the proper delivery of the Services, the Parties shall work together to agree and implement a training programme to meet such training needs (with the Provider bearing the costs of the agreed programme).



















## SCHEDULE 9

### DATA PROTECTION SCHEDULE

#### **Part A - General Information Governance Requirements**

1. Notwithstanding any of their respective obligations under the Contract (including the Appendices), the Parties acknowledge their respective obligations arising under:
  - (a) Data Protection Legislation;
  - (b) the CQC Regulations;
  - (c) the common law duty of confidentiality;
  - (d) the Social Care Record Guarantee for England;
  - (e) the FOIA;
  - (f) the Human Rights Act 1998 article 8;

and must assist each other as necessary to enable each other to comply with these obligations.

2. The Provider must also nominate:
  - (a) an Information Governance Lead, to be responsible for information governance and for providing the Provider's Board of Directors, governing body, executive team or any other body having overall responsibility for the actions of the Provider with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;
  - (b) nominate a Caldicott Guardian in accordance with the provisions of clause 19 of the Contract and
  - (c) a Senior Information Risk Owner, each of whom must be a member of the Provider's Board of Directors, governing body, executive team or any other body having overall responsibility for the actions of the Provider,

and ensure that the Council is kept informed at all times of the identities of the Information Governance Lead, Caldicott Guardian and the Senior Information Risk Owner. The Provider must adopt and implement the recommendations of the Caldicott Information Governance Review and the Response to Caldicott.

#### **Part B - Provider's Data Protection Obligations and Warranties**

3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. The Annex to this Schedule 9 sets out the intended status of the Parties for the purposes of the Data Protection Legislation.
4. The Provider must ensure that all Personal Data processed by the Provider in the course of delivering or performing the Services is processed in accordance with the Data Protection Legislation.
5. The Provider's obligations in relation to Personal Data processed by the Provider in the course of delivering or performing the Services include:
  - (a) publishing, maintaining and operating policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Industry Practice;
  - (b) publishing, maintaining and operating policies that describe the personal responsibilities of Provider Staff for handling Personal Data and applying those policies conscientiously;
  - (c) publishing, maintaining and operating agreed protocols to govern the disclosure of Personal Data;
  - (d) where appropriate having a system in place and a policy in relation to the recording of any telephone calls or other telehealth consultations in relation to the Services, including the retention and disposal of those recordings.
6. The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, the information required by Data Protection Legislation including the information prescribed by Articles 13 and 14 of the UK GDPR.
7. Where the Council requires information for the purposes of quality management of care processes, the Provider must provide anonymised, pseudonymised or aggregated data, and must not disclose that Personal Data to the Council for those purposes without written consent or some other lawful basis for disclosure.
8. The Provider must (unless it can lawfully justify non-disclosure) disclose defined or specified confidential patient information to or at the request of the Council where support has been provided under the Health Service (Control of Patient Information) Regulations 2002, respecting any individual Service User's objections and complying with other conditions of the relevant approval.

9. The Provider must comply with the IG Guidance for Serious Incidents in relation to any SIRI.
10. The Provider must not process the Personal Data which is subject to this Contract outside of the UK without the prior written consent of the Council and, where the Council consents to a transfer, it must comply with the Data Protection Legislation and any reasonable instructions of the Council.

### **Part C – Data Protection Obligations where information is shared as independent Controllers**

11. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the joint control of the Parties, this Part C shall apply in addition to the provisions set out in the other Parts of this Schedule 9 (other than Part D) and each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data.
12. Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
13. The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Contract.
14. The Parties shall only provide Personal Data to each other:
  1. for the purposes identified in the Annex to this Schedule;
  2. in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
  3. Where the processing is recorded in the Annex to this Schedule.
15. Each Party shall ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it).

16. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract (“the Request Recipient”):
  1. the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence; or
  2. where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
    1. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
    2. provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
17. Each party shall promptly notify the other Party upon it becoming aware of any Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
  1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
  2. implement any measures necessary to restore the security of any compromised Personal Data;
  3. work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  4. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
18. Personal Data provided by one Party to the other Party may be used exclusively for the purposes specified in the Annex to this Schedule.
19. Personal Data shall not be retained or processed for longer than is necessary, as specified in the Annex to this Schedule.

**Part D – Provider's Data Protection Obligations and Warranties where the Provider is the Processor**

20. This Part D shall apply in addition to the other Parts in this Schedule 9 (other than Parts C and G) where the Provider is processing Personal Data as a Processor and the Council is the Controller of such Personal Data.

21. The Provider shall, in relation to any Personal Data processed as a Processor under this Contract:
- (a) process that Personal Data only on the documented written instructions of the Council which are set out in the Annex to this Schedule 9, unless the Provider is required by Law to otherwise process that Personal Data. Where the Provider is relying on the Law as the basis for processing Personal Data, the Provider shall promptly notify the Council of this before performing the processing required by Law unless the Law prohibits the Provider from so notifying the Council;
  - (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
  - (c) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
    - (i) the Council or the Provider has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective remedies;
    - (iii) 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; and
    - (iv) the Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
  - (d) notify the Council immediately if it receives:
    - (i) a request from a Data Subject to have access to that person's Personal Data;
    - (ii) a request to rectify, block or erase any Personal Data;
    - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
  - (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Council without undue delay on becoming aware of a Data Breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;
  - (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination or expiry of the Contract unless required by Law to store the Personal Data;
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this Part D and immediately inform the Council if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation.
22. Where the Provider intends to engage a Sub-Contractor pursuant to clause 46 of the Contract (Sub-Contracting and Assignment) and intends for that Sub-Contractor to process any Personal Data relating to this Contract, it shall:
- 1. Notify the Council in writing of the intended processing by the Sub-Contractor;
  - 2. Obtain prior written consent from the Council to the processing; and
  - 3. enter into a written agreement incorporating terms which are substantially similar to those set out in this Part D.

#### **Part E – Where the Parties are Joint Controllers of Personal Data**

23. In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall enter into a data sharing agreement which shall include clauses that are necessary to comply with Article 26 of the UK GDPR. The Parties shall not share Personal Data until such an agreement is in place.

#### **Part F – Provider’s Data Protection Indemnity**

24. The Provider agrees to indemnify and keep indemnified and defend at its own expense the Council against all costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Provider or Provider Staff to comply with any of its data protection and information governance obligations under this Schedule 9.
25. In addition to its obligations under clause 39 of the main terms of this Contract (Insurance), the Provider shall take out insurance sufficient to cover any payment that may be required under this Data Protection Schedule, and produce the policy and receipt for premium paid, to the Council on request.

#### **Part G - Responsibilities when engaging Sub-Contractors**

26. Subject always to clause 46 of the Contract (Sub-Contracting and Assignment) if the Provider is to require any Sub-Contractor to process Personal Data on its behalf or on the behalf of the Council, the Provider must:
- (a) require that Sub-Contractor to provide sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;
  - (b) ensure that the Sub-Contractor is engaged under the terms of a written Contract requiring the Sub-Contractor to:
    - (i) process such personal data only in accordance with the Provider's instructions;
    - (ii) comply at all times with obligations equivalent to those imposed on the Provider pursuant to Data Protection Legislation;
    - (iii) allow rights of audit and inspection in respect of relevant data handling systems to the Provider or to the Council or to any person authorised by the Provider or by the Council to act on its behalf; and
    - (iv) impose on its own Sub-Contractors (in the event the Sub-Contractor further sub-contracts any of its obligations under the Sub-Contract) obligations that are substantially equivalent to the obligations imposed on the Sub-Contractor by this Schedule 9.

#### **Part H – Survival**

27. This Schedule shall survive termination of the Contract and continue until the earlier of (1) the date it is expressly terminated pursuant to written Contract or (2) at the point the Provider has destroyed all Personal Data relevant to the Services.

#### **Part I - Definitions and Interpretation**

28. In this Data Protection Schedule, the terms “**Sensitive Personal Data**” and “**Process**”, “**Processing**” are as defined in Data Protection Legislation. References to Personal Data and Sensitive Personal Data within this Schedule are in connection with data relating to the Services.
29. In addition, the following terms shall have the following meanings:

‘**Caldicott Information Governance Review**’ means the Information Governance Review (March 2013) also known as Caldicott 2, available at:  
<https://www.gov.uk/government/publications/the-information-governance-review>;

**‘Caldicott Principles’** means the principles applying to the handling of personally identifiable information set out in clause 19;

**‘Controller’** has the meaning set out in Data Protection Legislation;

**‘Data Breach’** has the meaning set out in the Data Protection Legislation;

**‘Data Subject’** has the meaning set out in Data Protection Legislation;

**‘IG Guidance for Serious Incidents’** means the HSCIC (now NHS Digital) Checklist Guidance for Reporting, Managing and Investigating Information Governance and Cyber Security Serious Incidents Requiring Investigation V5.1 – 29th May 2015 as may be amended from time to time by NHS Digital or any successor body;

**‘Joint Controllers’** means where two or more Controllers jointly determine the purposes and means of processing Personal Data;

**‘Personal Data’** has the meaning set out in Data Protection Legislation;

**‘Processor’** has the meaning set out in Data Protection Legislation;

**‘Senior Information Risk Owner’** means the Provider’s nominated person, being an executive or senior manager on the board of directors, governing body, executive team or other body having overall responsibility for the actions of the Provider, whose role it is to take ownership of the organisation’s information risk policy, act as champion for information risk on the Board of Directors or other governing body of the Provider and provide written advice to the accounting officer on the content of the organisation’s statement of internal control in regard to information risk;

**‘SIRI’** means an information governance or cyber incident requiring investigation, as more particularly explained in the IG Guidance for Serious Incidents.

## **Annex to Schedule 9 (Data Protection Schedule/General Data Protection Regulation)**

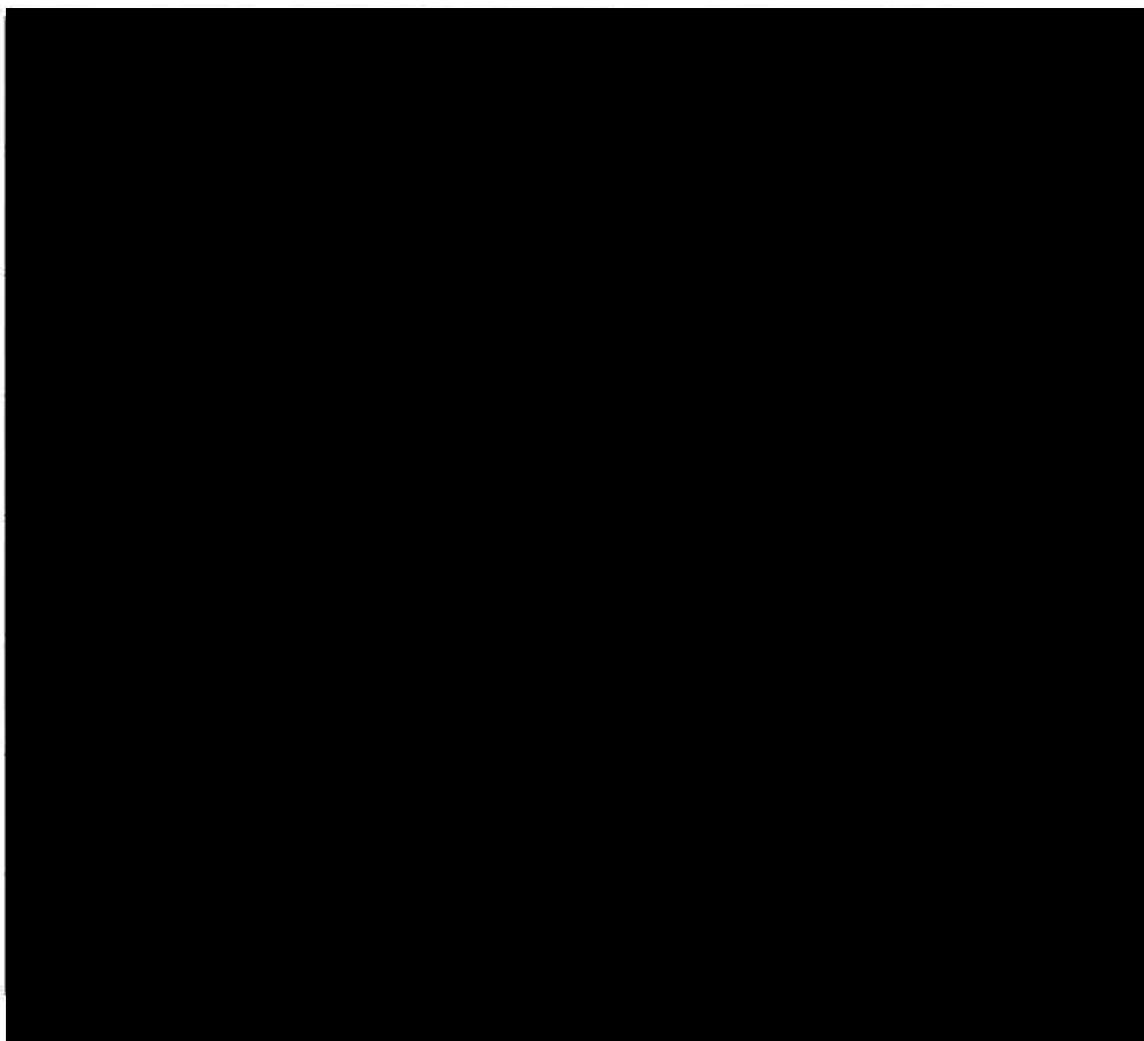
1. The below table sets out details of the processing activities where:
  - a. Personal Data is shared between the Parties in accordance with Part C of this Schedule 9 (i.e. when each Party is a separate independent Controller); and
  - b. where Personal Data is processed by the Provider as a Processor on behalf of the Council in accordance with Part D of this Schedule 9.
2. The table also sets out the status of each Party for the purpose of the Data Protection Legislation in relation to the processing of Personal Data.

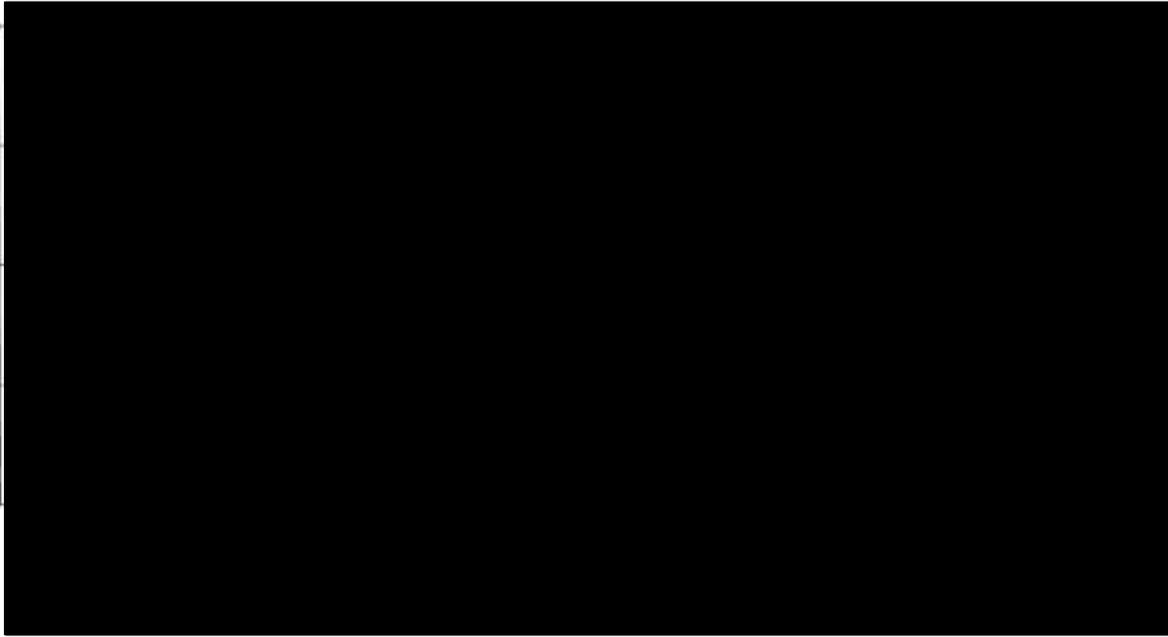
Description	Details
Status of the Parties	<p><b><u>The Parties are Independent Controllers of Personal Data</u></b></p> <p>The Parties acknowledge that they are both independent Controllers for the purpose of the Data Protection Legislation.</p>
Subject matter of the processing	Recording of data, exporting of data, sharing electronic data via sharepoint site, sharing of written Educational Psychology Assessment electronically, sharing Council and Provider representative contact details.
Duration of the processing	For the Contract Period and until the Party's obligations under the contract have been discharged.
Nature and purposes of the processing	<p>The purpose of the sharing of Personal Data is to:</p> <ol style="list-style-type: none"> <li>1. allow the parties to perform the respective obligations under this contract;</li> <li>2. ensure the Services are properly delivered;</li> <li>3. facilitate the transfer of the Services back to the Council or a Replacement Provider (as the case may be) on expiry or termination of this agreement.</li> </ol> <p>The nature of the processing includes the collection, recording, organisation, structuring, storage, adaptation, alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment, combination, restriction, erasure or destruction of data (whether or not by automated means).</p>
Type of Personal Data	Parent/carer - name, contact number and address. Child - school, name, date of birth; assessment report. Council and Provider representatives – name, work email address, work contact number, work address.
Categories of Data Subject	Parents/carers and children, names of Council officers, Educational Psychologists and other Provider staff.

<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS Requirement under union or member state law to preserve that type of data</p>	<p>See clause 19.8</p>
--	------------------------

All Providers should complete the table below – please read Schedule 9 (Data Protection Schedule) of the Agreement and complete with details of any organisation you will share the details with e.g. Clinical Commissioning Group or a sub-contractor.

If you do not intend to share details with any other person or organisation please insert “not applicable” in the first row.





## **SCHEDULE 10**

### **DISPUTE RESOLUTION**

#### Dispute Resolution Process

#### **1. ESCALATED NEGOTIATION**

1.1. Except to the extent that any injunction is sought relating to a matter arising out of clause 27 (Confidentiality), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either Party giving to the other written notice of the Dispute, setting out its nature and full particulars together with relevant supporting documents. On service of such written notice, the Council Representative and the Provider Representative shall attempt in good faith to resolve the Dispute.

1.2. If the Council Representative and the Provider Representative are for any reason unable to resolve the Dispute within 15 Working Days of a Party serving written notice of the Dispute pursuant to paragraph 1.1, the Dispute shall be escalated by either of them making a written

negotiation offer to the other, and during the 20 Working Days following receipt of such offer (the "Negotiation Period") each of the Parties shall negotiate in good faith and be represented:

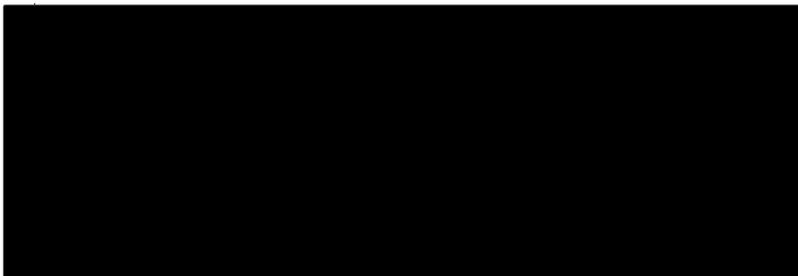
1.2.1. for the first 15 Working Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter that led to the Dispute and has Council to settle the Dispute; and

1.2.2. for the last 5 Working Days, by its chief executive, director, or board member who has authority to settle the Dispute, provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

The levels of escalation pursuant to paragraph 1.2.1 and paragraph 1.2.2 are:

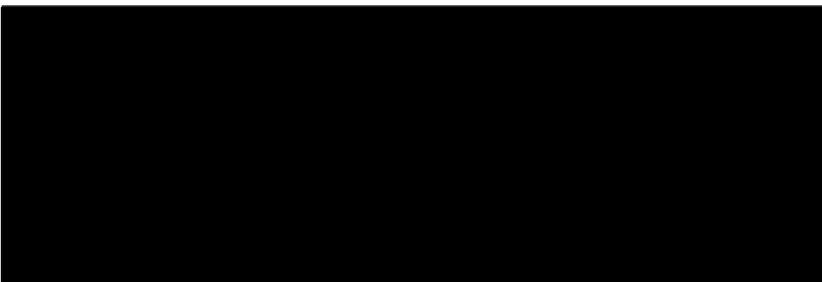
First Level:

Council – Head of Service;



Second Level:

Council –Director of Children’s Services;



## 2. MEDIATION

2.1. If the Parties are unable to settle the Dispute by negotiation, they must within 20 Working Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties.

2.2. The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any

mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.

2.3. All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

### 3. EXPERT DETERMINATION

3.1. If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within 20 Working Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.

3.2. If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.

3.3. Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.

3.4. The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 15 Working Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence

upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.

3.5. The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within 15 Working Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.

3.6. The Expert must produce a written decision with reasons within 30 Working Days of receipt of the statement of case referred to in paragraph 3.4, or any longer period as is agreed by the Parties after the Dispute has been referred.

3.7. The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.

3.8. The Parties must comply with any request or direction of the Expert in relation to the expert determination.

3.9. The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties and the Expert agree are within the scope of the expert determination. The Expert must send his decision in writing simultaneously to the Parties. Within 10 Working Days following the date of the decision the Parties must provide the Expert and each other with any requests to correct minor clerical errors or ambiguities in the decision. The Expert must correct any minor clerical errors or ambiguities at his discretion within a further 5 Working Days and send any revised decision simultaneously to the Parties.

3.10. The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.

3.11. The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, or material breach of instructions on the part of the Expert at which point a Party will be permitted to apply to Court for an Order that:

3.11.1. the Expert reconsider his decision (either all of it or part of it); or

3.11.2. the Expert's decision be set aside (either all of it or part of it).

3.12. If a Party does not abide by the Expert's decision the other Party may apply to Court to enforce it.

3.13. All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation

or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.

3.14. The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.

3.15. The Expert is appointed to determine the Dispute or Disputes between the Parties and his decision may not be relied upon by third parties, to whom he shall have no duty of care.

## **SCHEDULE 11- CHANGE CONTROL**

### **1. General principles**

- 1.1 Where the Council or the Provider sees a need to change this contract, the Council may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 11.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Provider and the Provider Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 11, shall be undertaken entirely at the expense and liability of the Provider.

### **2. Procedure**

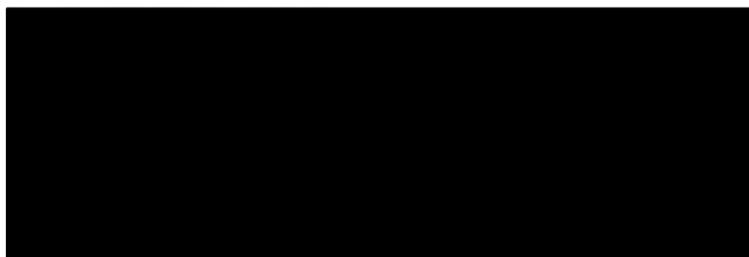
- 2.1 Discussion between the Council and the Provider concerning a Change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this agreement by the Council; or
  - (c) a recommendation to change this agreement by the Provider.
- 2.2 Where a written request for a Change is received from the Council, the Council shall, unless otherwise agreed, submit two copies of a Change Control Note (which may take the form of a supplemental agreement) to be signed by the Provider within four weeks of the date of the request.
- 2.3 A recommendation to amend this contract by the Provider shall be submitted directly to the Council. The Council shall give its response to the Change Control Note within four weeks and may issue a supplemental agreement to be signed by the Provider.
- 2.4 Each Change Control Note shall contain:
  - (a) the reason for the Change;
  - (b) full details of the Change, including any specifications;
  - (c) the price, if any, of the Change;
  - (d) a timetable for implementation, together with any proposals for acceptance of the Change;

- (e) a schedule of payments if appropriate;
- (f) details of the likely impact, if any, of the Change on other aspects of this agreement including:
  - (i) the timetable for the provision of the Change;
  - (ii) the staff to be provided;
  - (iii) the Charges;
  - (iv) the documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (g) the date of expiry of validity of the Change Control Note;
- (h) provision for signature by the Council and the Provider; and
- (i) if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this contract under clause 41.1 will be apportioned.

2.5 A Change Control Note signed by the Council and by the Provider shall constitute an amendment to this contract.

## SCHEDULE 12- CONTRACT MANAGEMENT

A list of contact officers will be provided by each of the Council and the Provider prior to entering into this contract or within 1 month of entering into the contract and this will be kept up to date as required over the Term.



### 2. The Council's Authorised Officer(s):

**Senior Commissioning Officer, [contracts.team@calderdale.gov.uk](mailto:contracts.team@calderdale.gov.uk)**

Integrated Commissioning, Contracts and Quality Team (ICCQ),

Calderdale Council.

2nd Floor, Princess Buildings

Princess Street

Halifax

HX1 1TS





