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# Dated 2025

NORFOLK COUNTY COUNCIL

**and**

**[ ]**

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**AGREEMENT FOR TECHNOLOGY ENABLED CARE**

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nplaw

Norfolk County Council

County Hall

Martineau Lane

Norwich

NR1 2DH

**THIS AGREEMENT** is dated 2025

## PARTIES

1. **NORFOLK COUNTY COUNCIL,** of County Hall, Martineau Lane, Norwich, Norfolk, NR1 2DH ("the Council") and
2. [ ] incorporated and registered in England and Wales under company number [ ] and whose registered office is[ ] (“You”).

## WHEREAS

(A) The Council wishes to have Services provided as set out in this Agreement and conducted a procurement.

(B) You took part in that procurement and were the successful bidder.

(C) You are willing to provide such Services in accordance with the provisions of this Agreement.

**NOW IT IS HEREBY CONFIRMED** between the Council and You that:

1 **The Contract**

* 1. Your bid is accepted upon the signing of this Agreement and the Contract is hereby constituted upon the terms and conditions set out in the Contract documents (which for the avoidance of doubt shall include all documents attached as schedules to this Agreement).

1.2 The Contract constitutes the sole contract or agreement between the Council and You for the provision by You of the Services.

1.3 You shall provide the Services, herein, in accordance with the provisions of the Contract, its terms and conditions and to the satisfaction of the Council.

2 **General**

2.1 Expressions defined in the Contract documents (true copies of which are attached hereto) shall bear the same meaning when used in this Agreement.

2.2 In the case of any inconsistency between the provisions of this Agreement and the Contract the provisions of this Agreement shall prevail.

2.3 The schedules annexed to this Agreement form part of this Contract and will have effect as if set out in this Agreement.

**EXECUTED** by the parties or their authorised representatives as a contractual agreement on the day and year first above written

SIGNED on behalf of

NORFOLK COUNTY COUNCIL

 ………………………………………………………………

 Authorised signatory

DEDSIGNED for and on behalf of [xx] by

[xx] ………………………………………………………………

 [State position in contracting organisation]

**Terms and Conditions**

# Definitions AND INTERPRETATIONS

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:

 “Agreement”: the document signed by both Parties agreeing to the terms of the Contract.

 "Bid": any tender You have submitted to the Council for the supply of the Services.

"Commencement Date": the date specified by the Council when the Services are to be first supplied as set out in the Invitation to Tender as the Service Commencement Date.

 "Conditions": the terms and conditions of supply of the Services set out in this document together with any special terms and conditions agreed in writing by the Council.

 “Contract”: the contract between the Council and You for the supply of the Services comprising the signed Agreement, these Conditions, the Invitation to Tender, Your Bid and any documentation referred to therein.

 "Contract Manager”: the individual appointed by the Council to act in the name of the Council for the purposes of the Contract, as identified in Schedule 3 and notified to You from time to time.

 “Contract Representative”: the individual nominated in writing by You from time to time to act in Your name for the purposes of the Contract as identified in Schedule 3.

 “Council” Norfolk County Council.

 “Data Protection Legislation” 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.

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

 “Invitation to Tender” the Council’s document setting out its requirements, inviting tenders or bids and offering to purchase the Services in accordance with these Conditions

 “Key Personnel” those personnel employed by You and identified in Schedule 3 for their respective roles in relation to the Contract.

 “KPI” the key performance indicators listed in Schedule 6

 “Necessary Consents” all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the supply of the Services.

 “Parties”: means the parties to the Contract being the Council and You.

 "Performance Default" any negligent act or omission; and/or any breach of contract; and/or any failure by You to properly perform any of the obligations, terms and Clauses of the Contract including (without limitation) any failure to perform the Services to the Contract Standard;

 "Performance Mechanism" means that document set out at Schedule 6

 "Performance Targets" means any specified targets or the Key Performance Indicators against which Your performance in providing the Services shall be measured and which are set out in the Performance Mechanism or the Specification, or Schedule 6

.

 "Price": the price for the Services excluding Value Added Tax as set out in Your Bid.

 “Procurement Reference: NCCT43137

 "Prohibited Act" has the definition at Clause 21.4

 "Services": the services set out in the Invitation to Tender.

 “Service Failure” a service failure more particularly set out in the SLA.

 "Significant Decision" means a decision that needs to be made relating to serious medical treatment or change of accommodation of a Service User in circumstances in which there are no friends or family who it would be appropriate to consult on the decision;

 “SLA” the service level agreement attached at Schedule 1.

 “Supplier” the supplier who will supply the Services as set out in Your Bid

 "Term": the supply of the Services on the Commencement Date and You shall continue to supply the Services, unless terminated earlier in accordance with clause 10 until 31 March 2029 (with the possibility to extend the contract for up to a further 2 years to 31 March 2031 by mutual consent) when the Contract shall terminate automatically without notice.

 “You/Your/Yourself": the supplier who will supply the Services as set out in Your Bid.

* 1. Words in the singular shall include the plural and vice versa.
	2. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
	3. Where the words include(s), including or in particular are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

# OFFER AND ACCEPTANCE

* 1. The Invitation to Bid constitutes and offer by the Council to purchase the Services in accordance with these Conditions.
	2. Your Bid shall be deemed to be accepted, and the Contract shall come into existence on the signing of the Agreement by both Parties

**3.** **COMMENCEMENT AND TERM**

3.1 You will commence the supply of the Services on the Commencement Date and shall continue to supply the Services, unless terminated earlier in accordance with clause 10 until the date set out in the Invitation to Bid, when the Contract shall terminate automatically without notice.

4. **Applicable Conditions**

4.1 These Conditions apply to all Contracts for the supply of Services by the Council from You to the exclusion of any other terms or conditions which You may seek to apply under any sales or service offer or similar document. You waive any right You may have to rely on any term endorsed upon, delivered with or contained in any of Your documents that is inconsistent with these Conditions.

4.2 Where the Services are stated in Schedule 1 or Schedule 6 to be subject to a specific KPI or the SLA, You will provide the Services in such a manner as will ensure that the target KPIs or the SLA are complied with.

**5. The Price and Payment**

5.1 The Price will be in accordance with Your Tender or Bid exclusive of Value Added Tax. Any applicable Value Added Tax will be due at the rate ruling on the date of invoice. No extra charges shall be effective unless agreed in writing with the Council.

5.2 Without prejudice to clause 16 (Variations) the Price in accordance with your Tender or Bid will be fixed until the end of the Contract with the exception of: Equipment Rental, Delivery and Collection, and Virtual Care which will remain fixed until 31st March 2028. From 1st April 2028 and subsequent years until termination, the Council will pay the Price for these exceptions in addition to an annual uplift using the ONS Output Producer Price Inflation Index ([Producer price inflation, UK Statistical bulletins - Office for National Statistics](https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/producerpriceinflation/previousReleases)). The base date for the adjustment will be the April prior to the uplift.

5.3 You will submit an invoice, quoting the Procurement Reference, to the Council at monthly intervals for the Services supplied to the Council in advance of service delivery, setting out such detail as the Council may reasonably require to enable the Council to verify the Services supplied during that period.

5.4 The Council shall consider and verify the invoice in a timely fashion and pay You any sum due no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

5.5 Where the Council fails to comply with clause 5.3, after a reasonable time has passed and dependent upon the circumstances or any concerns expressed at that time, the invoice shall be regarded as valid and undisputed for the purposes of clause 5.3.

5.6 If the Council disputes any invoice:

 5.6.1 the Council will notify You in writing specifying the reasons for disputing the invoice;

 5.6.2 provision of the Services may be suspended at the Council’s discretion and payment of subsequent invoices will be suspended whilst the disputed invoice is investigated by the Council

 5.6.3 You will provide all evidence as may be necessary to verify the disputed invoice;

 5.6.4 the Council will pay You all amounts not disputed as required by clause 5.3 above;

 5.6.5 the Parties shall negotiate in good faith to attempt to resolve the dispute promptly; and

 5.6.6 if the Parties have not resolved the disputed within 30 days of the Council giving You notice, the disputes shall be resolved in accordance with clause 26 (Disputes).

* 1. The Council shall be entitled to set off against the Price (including any applicable Value Added Tax payable) amounts due from You, under this or any other contract.
	2. The Price is inclusive of all Your obligations under this Contract.
	3. Unless agreed in writing by the Council, the Council will not be liable for the cost of any work done or time spent, or expense incurred in excess of that provided for by this Contract

**6. Services**

6.1You will carry out the Services described in the Specification in accordance with the Invitation to Tender. If there is any ambiguity or inconsistency in or between the documents comprising the Contract, the priority of the documents is in accordance with the following sequence: (i) the Invitation to Tender; (ii) these Conditions; (iii) Your Tender response.

6.2 In providing the Services, You shall at all times:

 6.2.1 fully comply with the terms of this Contract and the Council’s reasonable directions;

 6.2.2 comply with the requirements and conditions set out in the Specification attached at Schedule 1, Pricing Form & Proposed Equipment List at Schedule 2, Governance and Meetings at Schedule 3, Data Processing at Schedule 4, Mobilisation Plan at Schedule 5, KPI's at Schedule 6, , the Council’s requirements in the Invitation to Tender at Schedule 7, Safeguarding at Schedule 8, IT System Integration at Schedule 9, your Ethical Supplier Policy at Schedule 10, TUPE at Schedule 11, and Carbon Reduction Plan at Schedule 12.

 6.2.3 comply with all applicable laws and regulations;

 6.2.4 use reasonable skill and care in the performance of the Services and in accordance with generally recognised commercial practices and standards in the industry for similar services;

 6.2.5 ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design and, where applicable, are in accordance with all applicable European Standards and of satisfactory quality and fit for their intended purpose;

 6.2.6 obtain, maintain and comply with all Necessary Consents at Your own cost (unless otherwise agreed in writing with the Council);

 6.2.7 allocate sufficient resources to provide the Services in accordance with the terms of the Contract; and

 6.2.8 ensure that the Contract Representative and Key Personnel who are engaged in the provision of the Services attend such meetings as may be required.

6.9 Unless terminated early in accordance with clause 10, You must carry out the Services, beginning on the Commencement Date, for the Term.

**7. PERFORMANCE**

7.1 Contract review meetings will be held between Your Authorised Representative and the Contract Manager at regular intervals specified in advance by the Council and monitoring visits shall also take place in order to monitor Your performance both on this Contract as a whole and against any Performance Targets.

7.2 The Council may undertake monitoring visits with other strategic partners. The Council shall also be entitled to share information on Your performance and other aspects of Your delivery of the Services with other strategic partners.

7.3 The Council shall wherever possible provide five (5) Working Days’ notice of monitoring visits but reserve the right to make unannounced monitoring visits at any time (in which circumstances the Council shall respect the rights of any Service Users who may be receiving Services at the time of an unannounced visit).

7.4 You shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews (including procuring the attendance of Your Authorised Representatives at such meetings), monitoring visits and any further reasonable methods which the Council undertakes to assess Your performance and contract compliance. You shall provide all reasonable cooperation, facilitation and information required at no additional cost to the Council.

7.5 You shall monitor and report to the Council Your performance against any Performance Targets and provide all information required therein in the format required.

7.7 The Council may elect, at its own cost, to undertake its own performance monitoring at any stage for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract. You will use Your reasonable endeavours to assist the Council in such an exercise. The Council shall notify You of the outcome of the performance monitoring exercise, and (without prejudice to the Council's other rights under this Contract) You shall have due and proper regard to the Council’s findings in relation to the future provision of the Services.

**8. WAIVER**

8.1 Failure by either Party to enforce at any time or for any period any one or more of the provisions of this Contract will not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the Parties to enforce any provision in accordance with its terms.

**9. ASSIGNMENT OR SUB-CONTRACTING**

9.1 Save as permitted under Schedule 1 (Specification) you must not assign, transfer, sub- contract, licence or otherwise dispose of any part of Your rights or obligations under this Contract without the Council's written consent. Sub-contracting is prohibited unless the written consent of the Council is first obtained. You will be responsible for the observance of all the provisions of the Contract by all sub-contractors and by manufacturers and suppliers of goods used in the execution of the Contract.

9.2 If consent is given to sub-contracting, where You enter into a sub-contract, You shall include in that sub-contract:

 9.2.1 provisions having the same effect as clauses 6.2 to 6.4 above; and

 9.2.2 a provision requiring the counterparty to that sub-contract to include in any sub- contract which it awards, provisions having the same effect as clauses 6.2 to 6.4 of this Contract.

9.3 In clause 9.2, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

**10. TERMINATION**

10.1 The Council may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Contract in whole or in part if any of the events set out in clause 10.2 occur.

10.2 The events are:

 10.2.1 if You commit a Prohibited Act, as provided in Clauses 18, 19 ,20 , 21, 22, 23, or 24;

 10.2.2 If an express right to terminate has arisen within Clauses 18, 19, 20, 21, 22, 23, or 24;

 10.2.3 if you commit a breach of contract that cannot be remedied;

 10.2.4 if You:

 10.2.4.1 Cease to carry on the whole or a substantial part of Your business or dispose of the whole or a substantial part of Your assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services;

 10.2.4.2 undergo a Change in Control;

 10.2.4.3 suffer one or more of the following:

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

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

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

 10.2.4.3.4 the suspension of any publicly offered equities;

 10.2.4.3.5 the freezing of substantial assets; or

 10.2.4.3.6 any other event of incapacity rendering You unable or potentially unable to carry out Your obligations under the Contract and/or to meet any liability which may arise through Your negligence or breach of contract;

 10.2.4.4 have a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of Your affairs approved in accordance with the Insolvency Act 1986;

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

 10.2.4.6 commit a serious and material breach of contract;

 10.2.4.7 fulfil those conditions under the Performance Mechanism which entitle the Council to terminate the Contract;

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

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

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

 10.2.4.11 fails to comply with the safeguarding provisions of Schedule 8; , or

 10.2.4.12 is unable to provide alternative arrangements that are acceptable to the Council under Clause 22.6 (Insurance);

 10.2.4.13 the Council has reasonable grounds to consider the You or Your sub- contractor working on this Contract fall within the scope of IR35 (rules in respect of off-payroll working through an intermediary);

 10.2.4.14 a Force Majeure event continues for more than twenty (20) Working Days;

10.3 If the Contract is determined in part, the Price shall be adjusted to reflect fairly the Services which remain and if the Parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt, You shall not be entitled to recover through the adjusted Price any profit that,

 but for the termination, would have accrued to You in respect of the terminated Services.

10.4 The rights of the Councilunder this Clause 10 and Clause 1 below are in addition and without prejudice to any right that either Party may have for prior breach and to any right the Councilmay have against You for the breach, default, negligence or event leading to the termination.

10.5 The remedies of the Councilunder this Clause 10 (and Clause 11 below) may be exercised successively in respect of any one or more defaults by You.

**Termination where the Court Declares this Contract Ineffective**

10.6 In the event that this Contract is subject to a bona fide and substantive legal challenge of any nature relating to the process by which You were awarded this Contract (a “Legal Challenge”), then the Parties shall co-operate in good faith to determine the best way to mitigate the impact of the Legal Challenge, which may include varying some or all of the Contract and/or terminating the Contract in whole or in part.

10.7 In the event that this Contract is declared ineffective by a court of competent jurisdiction:

10.7.1 this Contract shall be terminated, and the provisions of Clause 11 shall apply; and

10.7.2 the Council shall pay to You all sums lawfully due to the You in consideration of Your proper performance of the Services up until the date and time of the declaration of ineffectiveness. The Council shall pay such sums within thirty (30) days of the receipt by it of a correct invoice for the same from You.

10.8 The sums paid to You by the Council under Clause 10.7.2 above shall be in full and final settlement of the Council’s liability for any loss and/or expense incurred by You as a result of the Court declaring this Contract ineffective. The Council shall have no further liability to You, including without limitation, in relation to any loss of profit You incur.

10.9 The Council shall also be entitled to terminate this Contract in the event this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with the Procurement Act 2023 and/or the Public Contract Regulations 2024 in which case the provisions of Clause 10.7.2 and Clause 10.8 shall apply.

1O.10 **Break Clause**

In addition to its rights of termination under the Contract, the Council shall be entitled to terminate this Contract in whole or in part by giving to You not less than six (6) months] advance notice to that effect in which case the provisions of Clause 11 only shall apply. No further compensation or remedy shall be available to You.

**11. CONSEQUENCES OF TERMINATION**

 11.1 If the Contract expires or is terminated in accordance with Clause 10, the provisions of this Clause 11 and the Exit Plan at Schedule 5 shall apply.

 11.2 Notwithstanding the provisions of the Exit Plan, upon termination or expiry:

 11.2.1 You shall forthwith cease to provide the Services;

 11.2.2 You shall submit to the Council within five (5) Working Days of terminationor expiryat the Your own cost a comprehensive status report which shall be current as at the date of submission relating to the Services;

 11.2.3 You shall cease to use the Council’s Data and hand over to the Council a complete and uncorrupted version of all Council Data and all records, information, documents howsoever held and including any media used to store such data including, without limitation, correspondence with Staff, the Council’s service departments, any users of the Services and any other relevant third party and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Council (in which event the Council shall reimburse to the You the Council’s reasonable data conversion expenses) whether such Council Data is on hard copy or on a disk or on any computer systems;

 11.2.4 You shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with the specific instructions issued by the Council; for the avoidance of doubt, Personal Data shall include but not be limited to that data which is Personal Data and for which the Council retains its Data Controller responsibilities;

 11.2.5 You shall cease to use and return any Council Equipment (and in the event You fail to comply, the Council may recover possession thereof and You grant a licence to the Council and its authorised representatives to enter (for the purposes of such recovery) any of Your Premises where any such items may be held);

 11.2.6 You shall vacate any Council’s Premises;

 11.2.7 You shall allow the Counciland any new provider, reasonable right of access to the Your and Your Sub-Contractor's premises, systems, procedures and Staff, where appropriate; and You shall deliver to the Councilupon request all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted Sub-Contractors, including any Council Data and in default of compliance with this provision, the Councilmay recover possession thereof and You grant a licence to the Council or its appointed agents to enter for the purpose of any such recovery any premises of Yours or your permitted Sub-Contractors where any such documents, information or materials may be held. For the avoidance of doubt, this material identified by this Clause shall be in an identifiable and searchable format (and include metadata) and in such form and medium as the Council may reasonably request;

 11.2.8 the Councilshall immediately cease to be under any obligation to make further payment to You until the costs, loss and/or damage to the Councilresulting from or arising out of the termination shall have been calculated;

 11.2.9 the Council shall have the option to purchase at book value any of the assets or equipment used by You solely in performance of Your obligations under this Contract. Where the Council wishes to exercise this option, it shall notify You in writing accordingly not less than twenty (20) Working Days following the date on which this Contract expires or is terminated;

 11.2.10 You shall promptly pay in full the cost of providing the Service or having the Service provided or any part thereof as would have been provided by You during the remainder of the Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to You for providing the Services if the termination is due to an act, omission, default, negligence or breach by You or by any of Your Staff;

 11.2.11 You shall continue to make Your System available to the Council for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the Council Data to be successfully migrated to the Council's System or the systems of one or more third parties. You shall give all such assistance as is reasonably required by the Council and its Service Users to ensure a smooth, successful and seamless transition of the Services and Service Users and conversion and migration of the Council Data. Insofar as such assistance is required after the Contract has expired, the Councilshall pay Your reasonable costs and expenses (the Council shall not pay should the Contract have been terminated in accordance with Clause 10). For the avoidance of doubt, Your compliance with the provisions of this Clause shall include, inter alia, assistance by the Staff, access to the Your System and the provision of information and documentation;

 11.2.12 if the Contract expires or is terminated early for any reason, You shall immediately repay to the Council the full amount pre-paid by the Council in respect of the unexpired portion of the Contract;

 11.2.13 at the Council’s written request, You shall transfer the Service User records to the new provider(s) and/or one or more third parties as determined by the Council; such transfer may be in whole or in part, howsoever determined by the Council.

 11.2.14 the Council shall be entitled to give written notice to the You in accordance with its right this clause 11 and You shall comply with such notice.

 11.3 If You are unable or fail to provide the Services or any part thereof in accordance with this Contract, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due to You under the Contract or shall be recoverable from You by the Council as a debt. The Council's right under this Clause 11.3 shall be without prejudice to any other rights or remedies which it may possess.

 11.4 The Council shall be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination of the Contract, to deduct the same from any sum or sums which would but for Clause 10 have been due from the Council to You under the Contract or any other contract or be entitled to recover the same from You as a debt. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof when the total costs, loss and/or damage resulting or arising out of the termination of the Contract have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would but for Clause 10have been due to the You, any balance shown as due to the Council shall be recoverable as a debt or alternatively, the Council, subject to Clause 10 , shall pay You any balance due to You;

 11.5 Expiry or earlier termination of this Contract shall not affect the continuing rights and obligations of the Parties under Clauses 1, 10, 11, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 34, 39, Schedule 3, Schedule 4, Schedule 5, Schedule 8, or under any other provision of this Contract that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination. When the total costs, loss and/or damage resulting from or arising out of such termination as is referred to in this Clause 11 have been calculated and deducted so far as practicable from any sum or sums which would but for Clause 11 have been due to You, any balance shown as due to the Councilshall be recoverable as a debt, or alternatively, the Council shall pay to You any balance shown as due to You.

**12. SUFFICIENCY OF INFORMATION**

12.1 You will be deemed to have satisfied Yourself before submitting Your Bid as to the accuracy and sufficiency of the Price stated by You which will (except in so far as is otherwise provided in the Contract) cover all Your obligations under the Contract and will be deemed to have obtained for Yourself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect Your Bid.

**13. Ambiguities, inconsistencies or discrepancies between Contract documents**

13.1 You will inform the Council immediately You become aware of any ambiguities, inconsistencies or discrepancies between the Contract documents giving full details.

13.2 Any ambiguities, inconsistencies or discrepancies found within the Contract documents will be resolved by the Council who will issue to You appropriate instructions or where necessary a variation notice in accordance with clause 16.

**14. COPYRIGHT**

14.1 Copyright in the Contract documents will vest so far as it lawfully can in the Council, but You may obtain or make at Your own expense any further copies required for use by You in the supply of the Services.

**15. EXCLUSION OF RIGHTS AND THIRD PARTIES**

15.1 No third Parties will acquire any rights under this Contract and the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

**16. VARIATIONS**

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

 **Council Variations**

16.2The Council may by notice in writing to You, from time to time, require minor and/or non- substantial changes to the Services, the way the Services are provided or any of the Contract Documents; such changes shall not be considered to be a Variation to this Contract nor shall the Prices be affected thereby.

 16.3 The Councilmay propose a Variation by giving written notice You (“the Council Variation Notice”).

 16.4 The Council Variation Notice shall:

 16.4.1 set out the Variation required in sufficient detail to enable You to calculate and provide an estimate of any adjustment to the Prices in accordance with Clause 16.6 below (the “Estimate”);

 16.4.2 state the date on or by which the Council wishes the Variation to be implemented.

 16.5 The Council shall consult with You with respect to the Variation, and You shall provide the Council on or before the date falling ten (10) Working Days after the date of the Council Variation Notice with a reasonable Estimate of the increase or reduction in the Prices (if any), or proposal of other changes to the terms set out herein, which You believes should occur as a result of the changes set out in the Council Variation Notice.

**The Estimate**

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

 16.7 To the extent it is possible to do so the Estimate shall be calculated based on rates and prices that represent the market price current at the date on which the Council Variation Notice is issued.

 16.8 The Estimate shall include a statement of Your opinion on:-

 16.8.1 any impact on the provision of the Services;

 16.8.2 any amendment required to the Contract as a result of the change in the Services; and

 16.8.3 any capital expenditure that is required or no longer required as a result of the change in the Services.

16.9 As soon as practicable after the Council receives the Estimate, the Parties shall discuss and attempt to agree the issues set out in the Estimate. In such discussions the Council may:

 16.9.1 agree the Estimate in which case the Variation shall be implemented in accordance with the Council Variation Notice; or

 16.9.2 modify the Council Variation Notice in which case You shall as soon as practicable and in any event not more than ten (10) days after receipt of such modification, notify the Council of any consequential changes to the Estimate.

16.10 If the Parties cannot agree on the effects and consequences of the Estimate then the dispute will be resolved in accordance with the Dispute Resolution Procedure.

16.11 As soon as practicable after the effects and consequences of the Estimate have been agreed or otherwise determined pursuant to Clause 16.10 the Council shall:

 16.11.1 confirm in writing the Estimate (as modified); or

 16.11.2 withdraw the Council Variation Notice.

16.12 If the Council does not confirm in writing the Estimate (as it may have been modified) within twenty (20) days of the Estimate being agreed in accordance with Clause 16.9 or determined pursuant to Clause 16.10 above then the Council Variation Notice shall be deemed to have been withdrawn.

**Provider Variations**

16.13If You wish to introduce a Variation to the Services it must serve a notice on the Council (“the Provider Variation Notice”).

16.14 The Provider Variation Notice must:

 16.14.1 set out the proposed Variation in sufficient detail to enable the Council to evaluate it in full;

 16.14.2 specify Your reasons for proposing the Variation;

 16.14.3 request the Council to consult with You with a view to deciding whether to agree to the Variation and, if so, what consequential changes the Council requires as a result;

 16.14.4 include an Estimate in accordance with Clauses 16.6 and 16.7; and

 16.14.5 indicate if there is any date by which a decision by the Council is critical.

16.15 As soon as reasonably practicable after the Council receives the Provider Variation Notice the Parties shall meet to discuss the issues in such notice. During such discussions either Party may propose modifications to the proposed Variation.

16.16 If the Council accepts the Provider Variation Notice (with or without modification) the relevant Variation shall be implemented by any date specified in the Provider Variation Notice or in the event that it is not practicable for any reason to implement the Variation by such date it shall be implemented by such other date as the Parties acting reasonably may agree.

16.17 If the Council rejects Your Provider Variation Notice it shall not be obliged to give its reasons for such a rejection.

16.18 Unless the Council's acceptance of the Your proposed Variation specifically agrees to an increase in the Prices, there shall be no increase in the Prices as a result of a Variation proposed by You.

16.19 If the Variation proposed by You causes or will cause the Your costs or those of one of Your Sub-Contractors to decrease, there shall be a corresponding decrease in the Prices.

16.20 Neither Party shall be entitled to reject any Variation which has been proposed to enable the provision of the Services to conform to a change in law.

**17. CONFIDENTIALITY**

17.1You will not at any time during the Term or for a period of two years after expiry, without written consent of the Council, make use of for Your own purposes or disclose to any person (except as may be required by law), the Contract documents or any information contained therein or in any material provided to You by the Council pursuant to the Contract or prepared by You pursuant to the Contract, all of which information will be deemed to be confidential.

17.2 For the purposes of clause 17.1, the Parties agree that information is not confidential if:

 17.2.1 it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of the Contract; or

 17.2.2 the information came from a source not connected with the Contract and that source is not under any obligation of confidence in respect of the information; or

 17.2.3 the information was known to You before the date of the Contract, and You were not under any obligation of confidence in respect of the information; or

 17.2.4 a party is required by law to disclose it; or

 17.2.5 the Parties agree in writing that it is not confidential.

**18. HEALTH AND SAFETY**

18.1 You shall at all times comply with the Health and Safety at Work etc Act 1974 and all other Law relating to the health and safety of Your Staff and others who may be affected by Your acts or omissions in providing the Services under this Contract.

18.2 The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever You are, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work etc. Act 1974 and all relevant Law relating to health and safety and provisions within this Clause 18.

18.3 You shall notify the Council in writing if any method or practice set out in any method statement within Schedule 7 (Tender Response Document) shall be or shall become an unsafe method of practice and shall propose and implement such steps as are necessary to improve or rectify such unsafe methods of practice as soon as possible.

**19. EQUAL OPPORTUNITIES**

19.1You shall comply with the Equalities Legislation in your performance of the Services.

19.2You shall:

 19.2.1not discriminate against any person or for any reason within the meaning and scope of Equalities Legislation;

 19.2.2comply with any official guidance and codes of practice in relation to promoting equality in employment and the provision of services;

 19.2.3have an equal opportunities policy approved by the Council or shall have adopted the Council’s own equal opportunities policy and procedures as may be amended from time to time and notified to You;

 19.2.4take all reasonable steps to secure the observance of this Clause 18by Your Staff employed in connection with the Contract; and

 19.2.5provide such information as the Council may reasonably require for the purpose of assessing Your continued compliance with thisClause 18 and to assist in the Council’s reporting obligations in respect of equal opportunities.

19.3If a Court, tribunal or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) shall make a serious finding of unlawful discrimination against You in connection with similar services to the Services performed in the United Kingdom such that the Council would acting reasonably find it difficult to continue in contract with You without a real and significant risk to its reputation, the Council shall:

 19.3.1have a right to terminate the Contract pursuant to Clause 10; or

 19.3.2shall be entitled to require all reasonable steps from You to mitigate such risks and ensure that any repetition of the circumstances leading to the finding does not occur.

**20. WHISTLEBLOWING**

20.1 You confirm that Your Authorised Representative is authorised as a person to whom Your Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 (“PID Act”) and declare that any of Your Staff making a protected disclosure (as defined by PID Act) shall not be subjected to any detriment and that Your Staff will be made aware of this provision. You further declare that any provision in any contract purporting to preclude a member of Your Staff from making a protected disclosure is void.

20.2 You shall review Your whistleblowing policy and procedure on an annual basis and discuss and review with the Contract Manager on request and shall reflect in Your own policy the Council’s Whistleblowing Procedure and Guidance which can be found at:

 [Whistleblowing policy - Norfolk County Council](https://www.norfolk.gov.uk/whistleblowingpolicy).

**21. ANTI BRIBERY AND CORRUPTION**

21.1Youshall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

21.2Youshall take all reasonable steps to prevent any fraudulent activity (including but not limited to the submission of inaccurate, incomplete, misleading or falsified management information) by Your Staff, You (including Your shareholders, members and directors) and/or any of Your Sub-Contractors or suppliers and including in connection with the receipt of monies from the Council.

21.3You shall not, and shall procure that Your Staff shall not, in connection with this Contract commit a Prohibited Act as defined in Clause 20.4 below.

21.4The following constitute a Prohibited Act:

 21.4.1directly or indirectly to offer, promise or give any person:

 21.4.1.1working for or engaged by the Council a financial or other advantage;

 21.4.1.2induce that person to perform improperly a relevant function or activity; or

 21.4.1.3reward that person for improper performance of a relevant function or activity;

21.4.2 directly or indirectly to request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

21.4.3 committing any offence:

 21.4.3.1 under the Bribery Act;

 21.4.3.2 under legislation creating offences concerning fraudulent acts;

 21.4.3.3 at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

 21.4.3.4 defrauding, attempting to defraud or conspiring to defraud the Council.

21.5 You shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency for the purpose of compliance with the Bribery Act.

21.6 You shall have an anti-bribery policy.

21.7 If any breach of this [Clause](http://uk.practicallaw.com/9-506-3728?q=bribery%20act#a754740#a754740) 21 is suspected or known, You must notify the Council immediately.

**22. MENTAL CAPACITY ACT**

22.1 In relation to the Mental Capacity Act 2005 (as amended) (“MCA”):

 22.1.1 You, including all Your Staff, shall comply with the provisions set out in the MCA when delivering Services;

 22.1.2 You shall have a clear written policy in line with national guidance approved by the Council on Your approach to the MCA. The policy may be reviewed by the Council from time to time and shall ensure that any reasonable amendments requested by the Council are incorporated into Your equality/ diversity policy within twenty-one (21) days of request by the Council;

 22.1.3 all Your Staff must be trained at induction to follow the reporting procedures specified in the policy and that training should be updated at least annually; and

 22.1.4 You shall notify the Council immediately where a Service User may lack capacity, and a Significant Decision is to be made.

22.1.5 You shall appoint a lead contact to act on behalf of You for all purposes connected with the MCA. You shall notify the Council of the lead contact details prior to the Commencement Date;

22.1.6 You shall forthwith give notice in writing to the Council of any change in the identity or contact details of the person appointed as lead contact; and

22.1.7 You shall give maximum possible notice to the Council before changing Your lead contact.

**23. HUMAN RIGHTS ACT 1998**

23.1 In the performance of the Services you shall comply with the Human Rights Act 1988 as if you were a "Public Authority" within the meaning of the Human Rights Act 1988 and, where necessary, comply with any modifications of this Contract to enable the Parties to comply with such obligations.

**24. MODERN SLAVERY**

24.1 You undertake, warrant and represent that:

 24.1.1 neither You nor any of Your Staff, agents or Sub-Contractors:

 24.1.1.1 have committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");

 24.1.1.2 have been notified that You are subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

 24.1.1.3 are aware of any circumstances within Your supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

24.1.2 You shall comply with the Modern Slavery Act 2015 at all times;

24.1.3 Your responses to any Council modern slavery and human trafficking due diligence questionnaire are complete and accurate; and

24.1.4 You shall notify the Council immediately in writing if You become aware or have reason to believe that You or any of Your Staff, agents or Sub-Contractors have breached or potentially breached any of Your obligations under this Clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of Your obligations.

24.2 Any breach of clause 24.2 by You shall be deemed a material breach of the Contract and shall entitle the Council to terminate the Contract in accordance with clause 10.

**25. AGENCY**

25.1 You must not in any circumstances hold Yourself out as being the servant or agent of the Council otherwise than in circumstances expressly or impliedly permitted by the Contract.

25.2 You must not in any circumstances hold Yourself out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or impliedly permitted by the Contract.

25.3 You will not in any circumstances hold Yourself out as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.

**26. INDEMNITY AND INSURANCE**

* 1. Each Party's total aggregate liability in each contract year under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier in that contract year.
	2. No Party is liable to the other for:
		1. any indirect losses; and/or
		2. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
	3. In spite of clause 26.1, neither Party limits or excludes any of the following:
		1. its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
		2. its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
		3. any liability that cannot be excluded or limited by Law.
	4. In spite of clause 26.1, the Supplier does not limit or exclude its liability for any indemnity given under clause 27.1 and those contained in Schedule 11.
	5. In spite of clause 26.1, the Party’s liability under the indemnity contained in Schedule 4 (Data Protection) is outlined in Schedule 4.
	6. The Supplier’s aggregate liability pursuant to this contract on account of loss of or damage to any property of any nature whatsoever including a liability to reimburse to the Council all costs and expenses reasonably incurred by the Council in the reinstatement or replacement of such property shall be capped at £10,000,000.00 (ten-million pounds and zero pence sterling)
	7. Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.

26.8 You must take out and maintain such insurance with a reputable insurance company against all loss of and damage to property and death of or injury to persons arising directly out of Your obligations under the Contract and against all actions, claims, demands, costs, charges and expenses in respect thereof. This includes Public/Third Party Liability and Professional Indemnity Insurance and any other insurances as required by the Council and notified to You. All such insurances shall provide sufficient cover for all Your liabilities under the Contract in respect of any single claim or series of claims made in respect of any incident.

26.9 You will supply to the Council on request copies of all insurance policies, cover notes, premium receipts, advice and other documents necessary to establish compliance with this clause 26.

26.10 In the event that such insurance cover required by this Clause 26 ceases to be available to the You at all or on commercially reasonable rates, You shall notify the Council immediately and the Parties shall acting reasonably consider alternative arrangements. In the event that there are no alternative arrangements that are acceptable to the Council, the Council shall be entitled to terminate the Contract under Clause 10.

26.11 If You consist of more than one person or body, Your obligations will be joint and several.

**27. INTELLECTUAL PROPERTY**

27.1 You warrant that the Services will not infringe any patent, registered design trademark or copyright or other protected right and will fully indemnify the Council against any action, claim or demand costs or expenses arising from or incurred by reason of any infringement or alleged infringement of any such right.

27.2 All intellectual property introduced in connection with this Contract will remain the property of the introducing party. Unless otherwise agreed in writing, any intellectual property created pursuant to this Contract will vest in the Council.

**28. LEGAL PROCEEDINGS**

28.1 Immediately upon becoming aware of the same, You must notify the Council of any accident, damage or breach of any statutory provision relating in any way to the provision of or connected with the Contract and where requested to do so by the Council will assist the Council with any legal proceedings or internal hearings giving evidence or providing documentation as necessary.

**29. WHOLE CONTRACT**

29.1 Subject to any specific clause in this Contract incorporating or referencing any other document, the Contract constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the Parties with respect thereto.

**30. NOTICES**

30.1 Any demand, notice or other communication required to be given to a Party in connection with the Contract shall be in writing and will be sufficiently served if delivered by hand or sent by prepaid first-class post to the address of the Parties set out in the Agreement.

30.2 Any demand, notice or other communication shall be deemed to have been received (i) if delivered by hand, at the time the demand, notice or other communication is left at the proper address, or (ii) if sent by prepaid first class post on the second business day after the date of posting.

**31. DISPUTES**

31.1 With the exception of disputed invoices which shall initially be dealt with in accordance with clause 5.5, any disputes arising which cannot be resolved at an operational level within 14 days of written notification will be escalated to a senior manager in each Party who will attempt to resolve the dispute in good faith or if unable to be resolved within 2 months following escalation may be referred by either party to mediation.

31.2 If the Parties agree that there will be some benefit, the dispute may be referred to more senior representatives of each Party who will attempt to resolve the dispute in good faith prior to escalation to mediation.

31.3 Where a matter is referred to mediation it will be referred to two mediators, one to be appointed by the Council and one to be appointed by You.

**32. FORCE MAJEURE**

32.1 Neither Party will be liable in respect of any breach of the Contract due to any cause beyond its reasonable control (a “Force Majeure Event”) including, but not limited to, Act of God, flood, lightning or fire; industrial action or lockouts (other than a strike or lockout induced by the Party so affected); government instruction issued in a pandemic; the act or omission of Government, highway authorities or other competent authority; war, military operations or riot.

32.2 A Party affected by a Force Majeure Event will inform the other Party as soon as practicably possible of the circumstances involved and the likely timeframe for resolution. Should the Force Majeure Event not be resolved within thirty (30) days of notification, the other Party will be entitled to terminate the Contract by notice in writing.

**33. SEVERABILITY**

33.1 If any provision or part-provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision or part-provision will be severed, and the remaining provisions will continue in full force and effect. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

**34. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION**

34.1 You acknowledge that the Council is subject to the powers of the Local Government Ombudsman and has obligations under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004. You shall assist and cooperate with the Council free of charge to enable the Council to comply with these information disclosure requirements as necessary (including but not limited to providing requested documentation and making staff available to be interviewed) to allow the Council to meet its legal obligations.

34.2 You acknowledge that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of the FOIA, be obliged to disclose information:

 34.2.1 without consulting with You, or

 34.2.2 following consultation with You and having taken Your views into account.

**35. SUSTAINABILITY**

35.1 In the performance of the Contract, You will take into account the Council’s responsibilities to minimise any adverse environmental impact generated by its direct or indirect activity, including sustainability, equality, diversity and other social implications.

**36. ORGANISATIONAL CHANGE**

36.1 The Parties acknowledge that during the Term the Council may be subject to administrative changes as a result of Local Government Reorganisation, and the need may arise to terminate this Contract and/or seek its novation or potential variation with any successor or assign of the Council. In these circumstances the Council will give three months’ notice to You. This is in addition to the rights set out in clause 9 and the Council shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of reorganisation.

**37. BUSINESS CONTINUITY**

37.1 You will maintain in place throughout the Term business continuity arrangements and will review those arrangements at appropriate intervals and if necessary, update them, so as to ensure as far as reasonably practicable that in the event of unexpected circumstances, either within or external to Your organisation, supply of the Services to the Council is subject to a minimum of disruption.

**38. DATA PROTECTION**

38.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation and the controller to controller clauses at Schedule 4.

38.2 This clause 38 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

**39. ENGLISH LAW**

39.1 This Contract will be governed by the Law of England and subject to the exclusive jurisdiction of the English Courts.

**Schedule 1 – Specification**

(Attached)

**Schedule 2 – Pricing Form and Proposed Equipment List**

(Attached)

**Schedule 3 - Governance and Meetings**

(Attached)

**Schedule 4 - DATA PROTECTION**

**DEFINITIONS**

**Agreed Purposes:**Only to process the required data as outlined in this schedule to fulfil the specification and requirements for this contract for Technology Enabled Care.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation.

**Data Discloser:** a party that discloses Shared Personal Data to the other party.

**Data Protection Legislation**: 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); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party..

**Permitted Recipients:** the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

**Shared Personal Data:** the personal data to be shared between the parties under clause 1.1 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the categories of data subject outlined in Appendix 1 of this schedule.

**1.DATA PROTECTION**

* 1. **Shared Personal Data.**

This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

* 1. **Effect of non-compliance with Data Protection Legislation**

Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.

* 1. **Particular obligations relating to data sharing.**

Each party shall:

* + 1. ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
		2. give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
		3. process the Shared Personal Data only for the Agreed Purposes;
		4. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
		5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
		6. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
		7. not transfer any personal data received from the Data Discloser outside the UK OR EEA unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
	1. **Mutual assistance**

Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

1. consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
2. promptly inform the other party about the receipt of any data subject rights request;
3. provide the other party with reasonable assistance in complying with any data subject rights request;
4. not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
5. assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
6. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
7. at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Shared Personal Data;
8. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
9. maintain complete and accurate records and information to demonstrate its compliance with this clause [NUMBER] [and allow for audits by the other party or the other party's designated auditor]; and
10. provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
	1. **Indemnity.**

Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

**Annex 1 to Schedule 4**

**Information Sharing Agreement**

**Information Sharing Agreement**

**(GDPR Compliant)**

|  |  |
| --- | --- |
|  | **Introduction**  |
|  | * 1. This Information Sharing Agreement (ISA) facilitates the lawful, safe and secure sharing of information in accordance with the General Data Protection Regulation (GDPR), Data Protection Act 2018 (the DPA), the Freedom of Information Act 2000 (the FOIA) and the Human Rights Act 1998. For the purposes of this Agreement Norfolk County Council shall be Controller with TBC as Processor
	2. The parties to this ISA are the parties set out in paragraph 2 below (the Parties)
	3. This ISA sets out the roles and responsibilities of the Parties in relation to the information that is to be shared.
 |
|  | **Parties to the Agreement** |
|  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Organisation**  | **Address**  | **Contact Name and Details** |
|  | Norfolk County Council | County Hall, Martineau Lane, Norwich, Norfolk, NR1 2DH | Controller:Chris ScottChris.scott@norfolk.gov.uk |
|  | [TO BE COMPLETED ON CONTRACT AWARD]. |  |  |

 |
|  | **Purpose of the Agreement**  |
|  | 3.1. To outline the responsibilities and requirements of both Parties with regards to Data Protection and data sharing in order to deliver the requirements in the specification for the Technology Enabled Care contract. |
|  | **Agreement**  |
|  | * 1. The Parties agree to the terms of this ISA.
	2. This ISA incorporates the terms of the Norfolk Information Sharing Protocol dated April 2021 (the Protocol) including the arrangements for subject access requests, freedom of information requests, complaints and data breaches.
	3. For the sake of clarity, if the ISA and the Protocol are not compatible or contradict each other in any way, this ISA will take precedence over the Protocol.
 |
|  | **Information to be shared** |
|  | * 1. The personal data to be shared by between the parties will be:
* First name, last name, address and contact info, a brief summary of their condition or any changes to their diagnosis. Also to receive biometric data regards their activities around the prescribed TEC .
 |
|  | **Lawful basis for sharing** |
|  | * 1. The sharing of the Information meets one of the conditions for processing under the GDPR and DPA as follows:
		1. For ordinary personal data the relevant lawful processing condition under Article 6 of the GDPR is: *Article 6 (1) (a) (the data subject has given consent to the processing of his or her personal data for one or more specific purposes).*
	2. The Information will be relevant to the stated purpose(s) of this Agreement and the minimum necessary to achieve the purpose(s).

In all other respects theDiscloser has concluded that the sharing of the Information is fair and lawful. In assessing this, theDiscloser has considered the GDPR, the DPA, the common law duty of confidentiality and the Human Rights Act 1998.  |
|  | **Process for Sharing Information**  |
|  | * 1. The Information will be shared in accordance with the following process:

Upon receipt of a referral, practitioner will assess the individual and determine if any TEC provision is required and outcome expected. Once determined an order is placed with the provider to configure and install the TEC at the individual’s process. This transaction will be sent using encrypted data transfer from our device to their system. |
|  | **Information security**  |
|  | * 1. Each Party must ensure that they have appropriate security arrangements in place and take all reasonable steps to adequately protect the Information from both a technological and physical point of view.
	2. The Information will be transferred securely [TO BE COMPLETED ON CONTRACT AWARD].
	3. TheRecipient *will* ensure that the Information is kept securely in a High Security folder in SharePoint and only designated members of the evaluation team will have access to the Information.
	4. The Information or any part of it will not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data. Should any Party(ies) wish to transfer information to a country outside the EEA they must liaise with their Data Protection Officer/Information Compliance Manager who will consult with the other Party(ies) prior to the release of any information provided by those Party(ies). In order to facilitate this, information should be clearly labelled to identify the source Party
 |
|  | **Access to personal information** |
|  | * 1. The Recipientwill ensure that only the following staff will have access to the Information:
* [TO BE COMPLETED ON CONTRACT AWARD].
	1. Each Party will ensure that all individuals likely to come in contact with the Information are trained in the terms of this ISA and their obligations under the GDPR and DPA.
 |
|  | **Information accuracy, use, retention and deletion**  |
|  | * 1. The accuracy of the Information will be the responsibility of the Discloser. The Discloser will therefore ensure that the Information is accurate and up to date before the data is disclosed. If the Discloser becomes aware of any inaccuracies in the Information, it should inform the other Parties immediately for the data to be corrected or recalled.
	2. The Recipient must only use the Information for the purposes set out in the Agreement at paragraph 3.1 above.
	3. The Recipient must not share the Information with any third party without the written consent of the Discloser and subject to entering into an information sharing agreement (ISA) the terms of which must be approved by the Discloser.
	4. The Information will be retained by the Recipient in accordance with retention policy and schedule. The information will then be destroyed by the Recipient in a secure and confidential manner and the Recipient will notify the Discloser that this has been done.
 |
|  |  **FOIA Requests/Breaches/Complaints/Subject Access Requests**  |
|  | * 1. For the sake of clarity this ISA incorporates paragraph 9 of the Protocol in relation to:
* Subject access requests
* FOIA requests
* Data breaches
* Complaints

11.2 In the event of the above, TBC will give Norfolk County Council all reasonable and timely support in responding to and dealing with the same. |
|  | **Legal Status** |
|  | * 1. The Parties acknowledge that to the extent it shares with or receives Information from other Parties and either does not adhere to the terms of this ISA and the Act in the way it shares, receives or subsequently processes such personal data then the other Parties may incur liability.
	2. For the avoidance of doubt, [TBC] shall indemnify the discloser and Norfolk County Council for any liability incurred as a result of [TBC's] breach of this ISA.
 |
|  | **Review/termination of the agreement** |
|  | * 1. This ISA will be reviewed by the Parties on an annual basis.
	2. If agreed not to extend this ISA will end on termination of the contract in 2031, or earlier by notice in writing by one Party or the other.
	3. A Party may suspend this ISA in writing with immediate effect to investigate and resolve any serious breach of this agreement.
	4. The obligations of confidentiality imposed on the Parties by this ISA shall continue in full force and effect after the expiry or termination of this ISA.
	5. The information will be deleted based on NCC’s data retention policy
 |
|  | **Information Governance Leads**  |
|  | * 1. The Information Governance Leads for the Parties will be:

*Norfolk County Council – Information Governance* [TO BE COMPLETED ON CONTRACT AWARD]. |
|  | **Signatories to Agreement and Date**  |
|  | * 1. The undersigned agree to implement the terms of this ISA and each person signing this ISA represents and warrants that he or she is duly authorised to sign and deliver this ISA:

|  |  |  |  |
| --- | --- | --- | --- |
| **Party** | **Name of signatory**  | **Post**  | **Signature** |
| NCC |  TBC | TBC |  |
| [TO BE COMPLETED ON CONTRACT AWARD]. |  |  |  |

* 1. This ISA is dated 3/7/2025
 |

**Schedule 5 – Mobilisation Plan and Exit Plan**

**Part 1 – Mobilisation Obligations**

* 1. You shall provide the Mobilisation Services to the Contract Standard from the Mobilisation Commencement Date (Date of this Agreement) for the Mobilisation Period.
	2. You shall ensure the smooth, seamless and successful transition of the Services from any Former Provider(s) to You on the Service Commencement Date; this shall include ensuring that handover and contract mobilisation is carried out successfully in accordance with:
		1. the terms of this Contract;
		2. the Specification;
		3. Your mobilisation plan as set out in Annex 1 to this Schedule 5; and
		4. the reasonable instructions of the Council.
	3. Within sufficient time to ensure that You can comply with Your obligations under this Agreement and/or be ready to provide the Services to the Contract Standard from the Commencement Date, You shall arrange a mobilisation meeting which shall be attended by senior representatives of Yours (including Your Authorised Representative), any of the Sub-Contractors (or proposed Sub-Contractors) in so far as the same will be directly providing any Services, representatives of the Council, representatives of the former provider(s) (if applicable) and representatives of such fellow provider(s), if any, as the Council shall determine necessary.

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

**Part 2 – Exit and Handover Arrangement.**

* 1. On expiry or termination of this Contract the Exit Plan shall apply and the parties shall comply with the provisions of the Exit Plan. You shall not charge the Council or any new providers for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this Schedule 5 and the Exit Plan on expiry or earlier termination (or for complying with any other provisions in this Agreement upon termination or expiry).
	2. You shall forthwith upon the request of the Contract Manager, supply to the Council any information reasonably specified by the Council as being necessary for the re-tendering of this Contract.
	3. On giving written notice to You and after twelve (12) months of the date of the expiry or earlier termination of this Contract unless the individual is responding to a job advert the Council shall have the right:
		1. to offer any of the Your staff who has previously been involved in performing the Services employment or a contract for services with the Council and You agree that if such person accepts such offer, You shall release such person from any contractual restriction with it which such acceptance may otherwise contravene; and
		2. to require You to provide for a period of four (4) months following the date of expiry or termination such advice assistance and co-operation as the Council may reasonably require to enable the Council to provide the Services in-house or to procure their provision by a new provider.

TUPE Compliance on Termination

* 1. During the twelve (12) months prior to the expiry of the Contract or after the Council has given notice to terminate this Contract and within ten (10) Working Days of being requested to do so, You shall fully and accurately disclose to the Council any and all information in relation to all persons engaged in providing the Service including:
		1. a list in electronic format of each employee employed by You in the provision of the Service including each employee’s start date;
		2. a list of agency workers, agents and independent contractors engaged by You in the provision of the Services;
		3. the total payroll bill (i.e. total taxable pay and allowances including employer’s contributions to pension schemes) of each employee included in a list; and
		4. the terms and conditions of employment of each Employee / Transferring Employee; their age and identity; the information that must be included in the employee's written statement of employment particulars under s.1 of the Employment Rights Act 1996; information on any disciplinary procedure taken in relation to the employee or grievance procedure taken by the employee within the previous two (2) years in relation to which the ACAS code of practice on disciplinary and grievance procedures applies; information on any Court or tribunal claim brought by the employee against the transferor within the previous two (2) years and any potential claim against the transferee arising out of the employee's employment with the transferor; information about any collective agreements that will have effect after the transfer in relation to the Transferring Employee.
	2. During the twelve (12) months prior to the expiry of the Contract or where notice to terminate this Contract for whatever reason has been given, You shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:
		1. vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
		2. materially increase or decrease the number of employees employed in connection with the Services;
		3. increase the remuneration of employees;
		4. assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services; or
		5. otherwise improve terms and conditions of employment of any of its employees without economic justification towards the end of the Contract Period.

**Annex 1 to Schedule 5**

**Mobilisation Plan**

To be attached on contract award

**Schedule 6 – KPI's**

(Attached – final version to be included at contract award)

**Schedule 7 – ITT and Response to ITT**

To be attached on contract award

**Schedule 8 – Safeguarding**

1. You shall maintain and keep up to date appropriate policies on child protection and the protection of adults at risk. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health & Social Care guidelines, Statutory guidance and national good practice guidelines, including those of the Norfolk Safeguarding Adults Board guidelines and policies and Norfolk Safeguarding Children Partnership, and also with policies, procedures and guidelines issued by the Council. You shall ensure that these policies, procedures and guidelines are communicated to Your staff and that appropriate training is provided to staff in relation to them.
2. You shall comply with the safeguarding obligations in accordance with the provisions specified in this Schedule and with the Council’s Adult and Child Safeguarding procedures in relation to this Schedule 9, details of which are available using the following link and may be amended from time to time and notified to You: [Norfolk Safeguarding Adults Board (NSAB)](https://www.norfolksafeguardingadultsboard.info/) <https://norfolklscp.org.uk/>
3. You shall have in place comprehensive procedures for reporting of and managing allegations against your staff which demonstrates the promotion of the safety and welfare of children and/or adults at risk and are compliant with statutory requirements. You shall evidence safe and robust recruitment procedures and practice for all your staff working with children and/or adults at risk. You shall ensure that Your staff know about and comply with the requirements to make accurate, factual and contemporaneous records to ensure compliance with this Clause 3.
4. You shall fulfil Your legal obligations in relation to carrying out Criminal Records Checks and checking Staff through the DBS or Disclosure Scotland (as appropriate) and the relevant national or local safeguarding authority, where necessary and appropriate and complete a risk assessment form in respect of each staff member when making decisions in relation to convictions revealed by the Criminal Records Check, using a form equivalent to or exceeds the risk assessment form which can be found in Annex 1 to this Schedule 9.
5. You are required to pay the full cost of any such registration and related costs. You acknowledge that the Council has legal responsibilities under the Safeguarding Vulnerable Groups Act 2006 (the **“SVG**”) and that You must check the Protection of Children list and the Protection of Vulnerable Adults list and comply with all other relevant Law in relation to safeguarding children and/or vulnerable adults and shall provide such evidence of compliance with this Clause 5 as the Council shall reasonably require. You shall carry out and repeat the checks specified in this Clause 5 on every three (3) year anniversary from the Commencement Date. If it is a requirement of the Contract for the staff member to be registered with the DBS Update Service, and You shall be responsible for ensuring that the staff member maintains their annual subscription of the DBS Update Service.
6. You shall nominate and name a designated senior officer or manager and make arrangements during the provision of the Services under this Contract to ensure that it complies with the provisions of the SVG.
7. The designated senior officer or manager referred to in Clause 6above shall comply with the provisions of *“Working together”* for safeguarding children, young people and adults in dealing with allegations of abuse made against Your employees who work with children, young people and adults. You shall have in place a safeguarding policy, which is equal to or exceeds the Council’s safeguarding policy (except where a conflict arises between the Council’s safeguarding policy with the Conditions and/or the Specification, in which case the order of precedence of documents specified in Clause 6.1of the Contract shall apply).
8. You shall be entirely responsible for the employment and conditions of service of Your staff and all obligations relating thereto. In addition to the pre-employment checks to be carried out, You shall ensure that suitable references reflecting the staff member’s suitability to work with children and/or vulnerable adults are taken up as part of the recruitment process. All Staff members proposed for the Service shall be subject to an appropriate Criminal Records Check, which should be carried out and results obtained prior to the staff member being employed in connection with the Service. Should an adverse entry be revealed as a result of the Criminal Records Check and/or should any convictions including those that would otherwise be spent under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 be revealed, You shall notify the Contract Manager of these immediately. The Council shall have a right to veto the employment or engagement of any Staff member proposed for the Service as a result of the adverse entry/convictions, but not unreasonably or vexatiously.
9. You shall use one of the following methods for the advice, processing and storage of each Criminal Records Check:

9.1. by You directly (if DBS registered);

9.2 through an external DBS umbrella body.; or

* 1. through the Council’s DBS Umbrella Body.
1. You shall comply with and observe all relevant Law in relation to Criminal Records Checks and follow all recommendations and general guidance issued including by any Central Government Department on Criminal Records Checks and carrying out Criminal Records Checks in relation to any person engaged in a role that meet the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations, when deciding whether the outcome of the Criminal Records Check is satisfactory and whether the individual concerned is suitable to carry out the role in connection with the Services.
2. You shall maintain and disclose to the Council a record of the outcome of the Criminal Records Check, in relation to each staff member where a Criminal Records Check is required, setting out the disclosure number, level of Criminal Records Check and the date the disclosure was made. You shall store the record of the disclosure securely within Your organisation in accordance with Data Protection Legislation and DBS Code of Practice. You warrant, undertake and represent to the Council that each disclosure number will be unique and can, if necessary, be reconciled against a staff member’s name engaged or appointed in connection with the Services.
3. If visits are taking place as part of the recruitment process, potential staff of Yours must be accompanied by a member of Staff at all times and the checks specified in Clause 10 shall have been completed by You prior to such visits taking place.
4. You must have a robust system which evidences when staff are suspended or dismissed that safeguarding children, and/or vulnerable adults guidance including government guidance is followed and relevant professional bodies informed in the event of non-compliance. You will ensure that You have appropriate procedures in place that support:

13.1. the immediate reporting to the Contract Manager of concerns and details of any incidents and/or convictions in relation to Staff members; and

13.2. other action necessary to support the Council’s policies, including the possible mandatory participation in child protection meetings and actions.

1. You shall have codes of conduct in place for all Your staff that set out clear standards of conduct especially in relation to personal and sexual relationships between Your staff and Service Users or other children and/or vulnerable adults.
2. You must provide evidence of robust and effective complaints and whistle-blowing policies including a guarantee to Your staff and Service Users that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.
3. If abuse of an individual is taking or has taken place or is suspected You must comply with the “duty to refer” by immediately notifying the Contract Manager and the safeguarding children and adults lead of the Council as well as Your safeguarding children and vulnerable adults lead and should consider suspension of the staff member(s) and take emergency measures (for example, inform police/seek medical assessment/treatment (as appropriate)). You must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Contract Manager. You must also notify the DBS and/or Disclosure Scotland (as appropriate) if a staff member of Yours is dismissed or removed from working in connection with the Services for the reasons described in the “Duty to Refer” section of the DBS website.
4. You shall seek the consent of each Service User to forward the Service User’s records to the Replacement Supplier(s) and/or one or more third parties determined by the Council on termination or expiry of the Contract. For the avoidance of doubt, the consent should be sought by You from each Service User during the life of the Contract but the transfer(s) of these records shall (if required by the Council) be effected by You (at no cost to the Council) as part of the exit and handover arrangements in accordance with Schedule 5.
5. The Council shall be entitled under its duty to the DBS to respond to requests from the DBS for further information already held by the Council in relation to the Staff.
6. You shall respond to requests from the Council within a reasonable time about Criminal Records Checks in relation to Your staff and shall cooperate with the Council to enable the Council to comply with its duty to the DBS.
7. Failure by You to comply with the safeguarding provisions of this Schedule 9 shall entitle the Council to terminate the Contract in accordance with clause 9 (Termination) of this Agreement.

**Annex 1 to Schedule 8**

Pursuant to **Schedule 8** of the Conditions of Contract You will complete a risk assessment form which is equivalent to or exceeds the form under this Annex 1.

If any of the “Staff” providing the Services include either UK citizens who have lived overseas or non-UK citizens into a post that require an enhanced DBS disclosure check then You must complete the **Safeguarding and Foreign Nationals – Risk Assessment Form** which is equivalent to or exceeds the standards as specified in this form. The Contract Manager shall monitor Your compliance with this during the contract monitoring process.

In relation to **Schedule 8** the Council’s Contract Manager will also be seeking evidence that the process specified is being complied with.

There are legal requirements on You and You must ensure that You are aware of Your legal responsibilities, including (although this list is not exhaustive):

* It is a criminal offence to knowingly employ anyone in Regulated Activity who is barred by the Disclosure and Barring Service (DBS). Some DBS Disclosures will show whether or not a person is barred.
* A mandatory 'duty to refer' will apply - You must tell the DBS if you have concerns about an individual who may pose a risk to vulnerable people. Full details are available on the DBS website.

DBS Adult First guidance (please check the DBS website for up to date guidance on the DBS Adult First service):

The DBS Adult First service applies to adult services such as care homes, domiciliary care agencies and adult placement schemes where DBS certificates are required by law.

This service is only available to organisations who are eligible to access the DBS’s adult barred list and who have requested a check of the barred lists on their DBS application form. DBS Adult First is not a substitute for a DBS certificate and You must take care when making recruitment decisions prior to receiving a full DBS certificate. DBS Adult First checks should only be used in exceptional circumstances and when absolutely necessary.

A DBS Adult First check is not appropriate where a person intends to work with both children and adults. Those working with both vulnerable groups will need to wait for a DBS certificate to be returned to find out whether a person is barred from working with vulnerable groups. There is no equivalent check of the children’s barred list.

**DBS DISCLOSURE RISK ASSESSMENT FORM (Employment)**

**To be used to assess the suitability of the applicant where a Disclosure certificate**

**has revealed offences**

**NOTE: You MUST disregard any offences declared by the applicant that do not appear**

**on the certificate.**

**Please note:** the information and evidence referred to in this form will be relied upon to make an employment decision in relation to staff working with vulnerable groups. It is therefore important that it is fully completed and includes evidence rather than a series of statements. Forms that are not fully evidenced will be returned. Please refer to the guidance attached to this form and contact the Safe Staffing team if you require further assistance.

|  |  |
| --- | --- |
| **Name of Applicant** |  |
| **Position Applied For** |  |
| **Disclosure Type** |  |
| **Disclosure Ref No** |  |
| **Disclosure Issue Date** |  |
| **Tel No** |  |
| **Dept/Service** |  |
| **Name of Hiring Manager/ Head undertaking risk assessment** |  |

This form consists of three sections - please ensure that each section is completed in full, including a full account of offences disclosed.

**SECTION A – To be completed during the discussion between hiring manager and applicant**

|  |  |  |
| --- | --- | --- |
| **Question** | **Applicable**(Please delete as appropriate) | **Evidence relied upon to support this decision**  |
| Did the applicant declare the offence(s)/trace(s) on the Council declaration form and at the interview? | Yes / No(if not why not) |  |
| Did the applicant agree that the information on the DBS Certificate was correct? | Yes / No(if not why not) |  |

|  |  |  |
| --- | --- | --- |
| **No.** | **Offences declared by applicant** | **Brief circumstances behind offence** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| **Question** | **Applicable**(Please delete as appropriate) | **Evidence relied upon to support this decision**  |
| How did the applicant regard the offence(s) / trace(s) with hindsight and what is their attitude towards the matters now?  | Please explain |  |
| What would they have done/do differently now?  | Please explain |  |
| Have the applicant’s circumstances changed since the offence? E.g. location, friends, partner, education?  | Yes / NoPlease explain |  |
| Is the applicant stating any mitigating circumstances? E.g. peer pressure, financial need or lack of judgement | Yes / NoPlease explain |  |

**SECTION B – Hiring Manager Assessment**

|  |  |  |
| --- | --- | --- |
| **Question** | **Applicable**(Please delete as appropriate) | **Evidence relied upon to support this decision**  |
| Did the offences/traces disclosed form any pattern? E.g. is there a cycle or history, reoccurrence, repeat offences  | Yes/No Please explain |  |
| Did the applicant demonstrate any efforts not to re-offend? E.g. rehabilitation course | Yes/No Please explain |  |
| What is the nature of the contact the individual has with children/vulnerable adults?  | Please describe |  |
| Can any safeguards be implemented to reduce/remove any risk?  | Yes/No/Not applicablePlease explain |  |
| Will the nature of the post present any realistic opportunities for re-offending?  | Yes/ NoPlease explain |  |
| Does the post have any direct contact with the public and how vulnerable are they?  | Yes/NoPlease explain |  |
| What supervision is available and how will it be used to mitigate risk? | Please explain |  |

|  |
| --- |
| **Summary of evidence taken into account and rationale for this decision. Any additional comments from the hiring manager/ Headteacher:****Do you wish to proceed with employment? Yes/No Date:****(if yes please explain here why)****Name:** **Signature:**  |

**Safeguarding and Foreign Nationals – Risk Assessment Form Template and Guidance Notes**

**Safeguarding and UK Citizens who have lived or worked overseas.**

The DBS currently cannot access criminal records held overseas, therefore a DBS check may not provide a complete picture of an individual’s criminal record. It is considered good practice to obtain a certificate of good conduct from the embassy of the country the applicant has specified they have spent a significant period of time in.

This procedure (or similar) should form part of an applicant’s pre-employment checks please note that a DBS and all other recruitment checks must be sought taking extra care with references and other background checks.

**Limitations of Certificate of Good Conduct/Letter of Good repute**

Managers should note that the information provided on certificates of good conduct / letters of good repute can be subjective due to the following reasons;

* Data protection
* Political willingness e.g. Countries with political unrest are unlikely to provide information.
* Culture e.g. age of consent in a number of EU countries is less than 16.
* Each country may provide different information, and in some cases, will not provide any information. For details of what each country is able to provide, please refer to the [CPNI Website](http://www.cpni.gov.uk/advice/Personnel-security1/Overseas-criminal-record-checks/).

**Obtaining a Certificate of good conduct/good repute**

The **applicant** is responsible for requesting a ‘Certificate of Good Repute/Letter of Good Conduct’ from the home embassy of that country which can authenticate the document. It also reduces the need and cost for potential translation requirements. Costs for the certificate/letter can vary according to the country and the applicant must cover this charge.

Applicants must provide a certificate of good repute / letter of good conduct from a country that is able to provide one. If this is not obtained, they must provide evidence that an attempt was made to obtain a certificate / letter.

**Useful Contacts/Links**

Foreign and Commonwealth website [www.fco.gov.uk](http://www.fco.gov.uk) or telephone 020 7008 1500

[CPNI – Centre for the protection of National Infrastructure](http://www.cpni.gov.uk/advice/Personnel-security1/Overseas-criminal-record-checks/) -

NCSL safeguarding training which can be found at [www.ncsl.org.uk](http://www.ncsl.org.uk)

**Risk Assessment Template-**

**Overseas Certificate of Good Repute/ Letter of Good Conduct**

**What is this assessment for?**

If an applicant has lived or worked overseas within the last five years for a period 6 months or more, they must seek to obtain a certificate of good repute/letter of good conduct. If the applicant is unable to provide a certificate of Good Repute / Letter of Good Conduct from the embassy of the country they have spent time in, Line Managers/head teacher should make an assessment of any potential risks.

**Who completes it**

The recruiting manager must complete this assessment with knowledge of the role and service, ensuring that appropriate safeguards are put in place.

**Where do I keep it?**

This form should be retained on the personal file of the individual involved.

**Risk Assessment**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Considerations**(tick Yes/No, and add necessary comments) | **Yes** | **No** | **N/A** | **Comments** |
| Has the applicant provided evidence that a Cert. good conduct / Letter of Good Repute has been requested?  |  |  |  |  |
| If one has not been requested, please state reasons? |  |  |  |  |
| Is the certificate/ letter from a country where it may prove difficult to obtain? |  |  |  |  |
| Have satisfactory employment references been sought and received? |  |  |  |  |
| Have references been validated to ensure accurate? e.g. dates stated match, from a genuine source. |  |  |  |  |
| Have satisfactory other pre-employment checks been completed? e.g. Proof of right to work, health, qualifications etc. |  |  |  |  |
| Has the person completed their DBS application form? |  |  |  |  |
| Have they declared any information |  |  |  |  |

**N.B -** Following on from completing this assessment of risks, if the applicant is employed, it is imperative that the employee is provided with an in-depth induction and any relevant professional codes of conduct are issued.

**Manager: Date:**

**Outcome: Agreement to continue with offer/withdraw offer (if not agreed please give details)**

**Schedule 9 – IT System, Data and Integration**

**(Attached)**

**Schedule 10 – Supplier’s ethical sourcing policy**

To be attached on contract award

**Schedule 11 - TUPE**

**Introduction**

The Parties agree to comply with their respective obligations in accordance with this Schedule 12 together with the remainder of the Contract and:

(a) in the circumstances of the transfer of any Transferring Employees where there is a TUPE transfer from the Council or other public sector body to You then the provisions of Clause A below shall apply with regards to those employees;

(b) in the circumstances of the transfer of any Transferring Employees and/or Transferring Original Employees where there is a TUPE transfer from a former provider (or other contractor) to You where ex-Council or public sector staff are involved then the provisions of Clause B below shall apply with regards to those employees; and

(c) in the circumstances of the transfer of any Transferring Employees and/or Transferring Original Employees where there is a TUPE transfer from a former provider (or other contractor) to You where ex-Council or public sector staff are not involved then the provisions of Clause C below shall apply with regards to those employees;

For the avoidance of doubt, different Transferring Employees and Transferring Original Employees may fall into the different categories set out above depending upon their individual circumstances; notwithstanding this, You shall ensure that where TUPE applies that You shall meet Your statutory obligations (including the TUPE Regulations and the LGPS Regulations) as well as Your contractual obligations under this Schedule 12 and the remainder of the Contract.

**TUPE transfer from the Council or other public sector body to the You.**

* 1. **Application of TUPE**

A.1.1. The Parties agree that the provisions of the TUPE Regulations will apply to this Contract.

A.1.2. The Parties agree that, where the identity of a provider of any of the Service is changed pursuant to this Contract (including on expiry of the Contract Period), the change shall constitute a Relevant Transfer.

A.1.3. On the occasion of a Relevant Transfer, You shall comply with Your obligations under the TUPE Regulations and the Directive in respect of the Transferring Employees.

* 1. **Emoluments and Outgoings**

A.2.1. You shall be responsible for all emoluments and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of any Relevant Transfer.

* 1. **Pensions**

## A.3.1. You shall or shall procure that any relevant sub-contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Relevant Transfer date up to and including the date of the expiry or earlier termination of this Contract.

## A.3.2. The provisions of Clauses A.3, A.4 and A.5 shall be directly enforceable by an affected employee against You 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 You or sub-contractor under those Clauses in his/her own right under Section 1(1) of the Contracts Rights of Third Parties Act 1999.

* 1. **Admitted Body Status to the Local Government Pension Scheme**

## A.4.1. Where You or Your sub-contractor(s) (subject to Secretary of State approval for a sub-contractor to become an admitted body) wishes to offer the Eligible Employees membership of the LGPS, You shall or shall procure that You and/or each relevant sub-contractor shall enter into an Admission Agreement to have effect from and including the Relevant Transfer date. You or Your sub-contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate, Pension Bond value and to establish an opening funding position to be used as the basis for future actuarial valuations, in respect of any Eligible Employee who elects to join the LGPS on or after the Relevant Transfer date.

## A.4.2. You shall indemnify and keep indemnified the Council and/or any replacement provider and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from the delayed execution of and/or any breach by You or Your sub-contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.

## A.4.3. You shall and shall procure that You and any of Your sub-contractors shall prior to the Relevant Transfer date, obtain any indemnity or Pension Bond required in accordance with the Admission Agreement. You or Your sub-contractor(s) will bear the cost of any actuarial assessment required in order to assess the value of the Pension Bond or guarantee, including costs associated with revaluations.

* 1. **Provider Pension Scheme**

## A.5.1. Where You or Your sub-contractor(s) do not wish to or are otherwise prevented from offering all or some of the Eligible Employees membership or continued membership of the LGPS, You shall or shall procure that any relevant sub-contractor(s) shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Relevant Transfer date. Such an occupational pension scheme must be:

## A.5.1.1. established no later than three (3) months prior to the date of the Relevant Transfer; and

## A.5.1.2. certified by the GAD as providing benefits that are broadly comparable or equivalent to (as appropriate) to those provided by the Legacy Scheme, and You shall produce evidence of compliance with this Clause A.5 to the Council prior to the date of the Relevant Transfer.

* 1. The Council's actuary shall determine the terms for bulk transfers from the LGPS to Your scheme following the Relevant Transfer date and any subsequent bulk transfers on termination or expiry of this Contract. The actuarial fees associated with the determination of terms for bulk transfers from the LGPS will be payable by You.
	2. You shall and shall procure that each relevant sub-contractor shall:

### A.7.1. 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 You or any sub-contractor(s) in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);

### A.7.2. promptly, and in any event within ten (10) Working Days, provide to the Council such documents and information mentioned in Clause A.7.1, which the Council may reasonably request in advance of the expiry or termination of this Contract; and

### A.7.3. fully cooperate (and procure that the trustees of the Your scheme shall fully cooperate) with the reasonable requests of the Council 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 You or any sub-contractor(s) in the provision of the Services on expiry or earlier termination of the Contract.

**A.8. Provider to inform the Council of any measures**

A.8.1 You shall within twenty (20) Working Days of receiving a request from the Council, provide the Council with any information which is reasonably necessary concerning any measures (within the meaning of the TUPE Regulations and the Directive) that You intend to take in relation to any Transferring Employee.

* 1. **Indemnities**

A.9.1. You shall indemnify the replacement provider from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of such employee provided that this arises from any act, fault or omission of You on or after the date of the Relevant Transfer.

A.9.2. You shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of such employee and/or their access to the LGPS provided that this arises from any act, fault or omission of You on or after the date of the Relevant Transfer.

A.9.3. You shall indemnify and hold harmless the former provider and/or any replacement provider from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by You) in respect of all or any of the Transferring Employees arising from or connected with any failure by You to comply with any legal obligation to such trade union, staff associations or other employee representative under the TUPE Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.

A.9.4. You shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by You in respect of all or any of the Transferring Employees) arising from or connected with any failure by You to comply with any legal obligation to such trade union, staff associations or other employee representative under the TUPE Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.

A.9.5. The Council shall not be liable under this Clause A in the event that-:

A.9.5.1. any information provided in Annex One (*Transferring Employees*) for the purpose of the TUPE Regulations transpires to be inaccurate;

A.9.5.2. any employee of Yours who has transferred to Your employment under the TUPE Regulations brings a claim against You that relates wholly or partially to his or her employment with You; and/or

A.9.5.3. at the end of the Contract Period, if You do not secure a further contract with the Council.

* 1. **Sub-contractors**

A.10.1. In the event that You enter into any sub-contract in connection with this Contract, You shall impose obligations on its sub-contractor on the same terms as those imposed on You pursuant to this Clause A.

A.10.2.You authorise the Council to use all the information provided in relation to the sub-contract referred to in Clause A.10.1.for the purposes of Your business or for informing any potential tenderer for the Services or any part thereof and shall enable and assist the Council and such other persons as the Council may determine to communicate with and meet the Staff and their trade unions or other employee representatives or staff associations as when and where the Council may determine.

A.10.3. The Council shall treat such information as Confidential Information, save as required by Law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Service in succession to You.

A.10.4.You warrant that until the handover on the Relevant Transfer Date of the Transferring Employees to the replacement provider in accordance with the provisions of this Clause A, You shall provide sufficient staff to cover provision of the Services and failure to comply with the provision of this Clause shall result in a substantial breach of Contract by You and the You shall indemnify the Council against any liability arising from failure to comply with this Clause A.10.4. For the avoidance of doubt, this Clause A.10.4. is without prejudice to any other remedies available to the Council whether under this Contract or otherwise.

 **TUPE transfer from provider to provider, where ex Council or public sector staff are involved**

**B.1. Application of TUPE**

B.1.1. The Parties agree that the provisions of the TUPE Regulations will apply to this Contract.

B.1.2. The Parties agree that, where the identity of a provider of any of the Service is changed

pursuant to this Contract (including on expiry of the Term), the change shall constitute a Relevant Transfer.

B.1.3. On the occasion of a Relevant Transfer, You shall comply with Your obligations under the TUPE Regulations and the Directive in respect of the Transferring Employees and the Transferring Original Employees.

**B.2. Emoluments and Outgoings**

B.2.1. You shall be responsible for all emoluments and outgoings in respect of the Transferring Employees and the Transferring Original Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of any Relevant Transfer.

**B.3. Pensions**

## B.3.1. You shall ensure, or shall procure that any relevant sub-contractor(s) shall ensure, that all Eligible Employees are offered Appropriate Pension Provision with effect from the Relevant Transfer date up to and including the date of the expiry or earlier termination of this Contract.

## B.3.2. The provisions of Clauses B.3, B.4 and B.5 shall be directly enforceable by an affected employee against You 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 You or sub-contractor(s) under those Clauses in his/her/their own right under Section 1(1) of the Contracts Rights of Third Parties Act 1999 and Clause 49 of the Contract shall be construed accordingly.

**B.4. Admitted Body Status to the Local Government Pension Scheme**

## B.4.1. Where You or Your sub-contractor(s) (subject to Secretary of State approval for a sub-contractor to become an admitted body) wishes to offer the Eligible Employees membership of the LGPS, You shall enter, or shall procure that You and/or each relevant sub-contractor(s) shall enter, into an Admission Agreement to have effect from and including the Relevant Transfer date. You or Your sub-contractor(s) will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate and Pension Bond value and establish an opening funding position for actuarial purposes of Pension Scheme, in respect of any Eligible Employee who elects to join the LGPS on or after the Relevant Transfer date.

## B.4.2. You shall indemnify and keep indemnified the Council and/or any replacement provider and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from the delayed execution of and/ or any breach by You or Your sub-contractor(s) of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.

## B.4.3. You shall, and shall procure that You and any of Your sub-contractor(s) shall, prior to the Relevant Transfer date, obtain any indemnity or Pension Bond required in accordance with the Admission Agreement. You or Your sub-contractor(s) will bear the cost of any actuarial assessment required in order to assess the value of the Pension Bond or guarantee, including costs associated with revaluations.

**B.5. Provider Pension Scheme**

## B.5.1. Where You or Your sub-contractor(s) do not wish to or are otherwise prevented from offering all or some of the Eligible Employees membership or continued membership of the LGPS, You shall offer, or shall procure that any relevant sub-contractor(s) shall offer, the Eligible Employees membership of an occupational pension scheme with effect from the Relevant Transfer date. Such an occupational pension scheme must be:

## B.5.1.1. established no later than three (3) months prior to the date of the Relevant Transfer; and

## B.5.1.2. certified by the GAD as providing benefits that are broadly comparable or equivalent to (as appropriate) those provided by the Legacy Scheme, and the Contractor shall produce evidence of compliance with this Clause B.5 to the Council prior to the date of the Relevant Transfer.

## B.5.2 The Council’s actuary shall determine the terms for bulk transfers from the LGPS to the Your scheme following the Relevant Transfer date and any subsequent bulk transfers on termination or expiry of this Contract. The actuarial fees associated with the determination of terms for bulk transfers from the LGPS will be payable by You.

## B.5.3. You shall, and shall procure that each relevant sub-contractor shall:

## B.5.3.1. 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 You 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);

## B.5.3.2 promptly, and in any event within ten (10) Working Days of a written request, provide to the Council such documents and information mentioned in Clause B.7.1, which the Council may reasonably request in advance of the expiry or termination of this Contract; and

## B.5.3.3 fully cooperate (and procure that the trustees of the Your scheme shall fully cooperate) with the reasonable requests of the Council 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 You or any sub-contractor(s) in the provision of the Services on expiry or earlier termination of the Contract.

**B.6 Your informing the Council of any measures**

B.6.1. You shall within twenty (20) Working Days of receiving a request from the Council, provide the Council with any information which is reasonably necessary concerning any measures (within the meaning of the TUPE Regulations and the Directive) that You intend to take in relation to any Transferring Employee and any Transferring Original Employees.

**B.7 Indemnities**

B.7.1. You shall indemnify the former provider and/or replacement provider from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee and any Transferring Original Employee arising out of the employment of such employee provided that this arises from any act, fault or omission of Yours on or after the date of the Relevant Transfer.

B.7.2. You shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee and any Transferring Original Employees arising out of the employment of such employee and/or their access to the LGPS provided that this arises from any act, fault or omission of Yours on or after the date of the Relevant Transfer.

B.7.3. You shall indemnify and hold harmless the former provider and/or any replacement provider from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by You) in respect of all or any of the Transferring Employees and any Transferring Original Employees arising from or connected with any failure by You to comply with any legal obligation to such trade union, staff associations or other employee representative under the TUPE Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.

B.7.4. You shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by You in respect of all or any of the Transferring Employees and any Transferring Original Employees) arising from or connected with any failure by You to comply with any legal obligation to such trade union, staff associations or other employee representative under the TUPE Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.

B.7.5. The Council shall not be liable under this **Clause B** in the event that-:

B.7.5.1. any information provided in **Annex One** (*Transferring Employees*) and/or **Annex Two** (*Transferring Original Employees*) for the purpose of the TUPE Regulations transpires to be inaccurate;

B.7.5.2. any employee of Yours who has transferred to the Your employment under the TUPE Regulations brings a claim against You that relates wholly or partially to his or her employment with You; and/or

B.7.5.3. at the end of the Contract Period, if You do not secure a further

 contract with the Council.

**B.8 Sub-contractors**

B.8.1. In the event that You enter into any sub-contract in connection with this Contract, it shall impose obligations on Your sub-contractor on the same terms as those imposed on You pursuant to this Clause B.

B.8.2.You authorise the Council to use all the information provided pursuant to **Clause B.8.1** for the purposes of its business or for informing any potential tenderer for the Services or any part thereof and shall enable and assist the Council and such other persons as the Council may determine to communicate with and meet the Staff and their trade unions or other employee representatives or staff associations as when and where the Council may determine.

B.8.3. The Council shall treat such information as Confidential Information, save as required by Law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Service in succession to You.

B.8.4.You warrant that until the handover on the Relevant Transfer Date of the Transferring Employees and Transferring Original Employees to the replacement provider in accordance with the provisions of this Clause B, You shall provide sufficient Staff to cover provision of the Services and failure to comply with the provision of this Clause shall result in a substantial breach of Contract by You and You shall indemnify the Council against any liability arising from failure to comply with this ClauseB.8.4. For the avoidance of doubt, this Clause B.8.4 is without prejudice to any other remedies available to the Council whether under this Contract or otherwise.

**TUPE transfer from provider to provider where ex Council or public sector staff are NOT involved.**

C.1.1. The Parties agree that the provisions of the TUPE Regulations will apply to this Contract.

C.1.2. The Parties agree that, where the identity of a provider of any of the Service is changed

pursuant to this Contract (including on expiry of the Term), the change shall constitute a Relevant Transfer.

C.1.3. On the occasion of a Relevant Transfer, You shall comply with Your obligations under the TUPE Regulations and the Directive in respect of the Transferring Employees and the Transferring Original Employees.

**C.2 Emoluments and Outgoings**

C.2.1. You shall be responsible for all emoluments and outgoings in respect of the Transferring Employees and the Transferring Original Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of any Relevant Transfer.

**C.3 Indemnities**

C.3.1. You shall indemnify the former provider and/or replacement provider from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee and any Transferring Original Employee arising out of the employment of such employee provided that this arises from any act, fault or omission of Yours on or after the date of the Relevant Transfer.

C.3.2. You shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee and any Transferring Original Employees arising out of the employment of such employee provided that this arises from any act, fault or omission of Yours on or after the date of the Relevant Transfer.

C.3.3. You shall indemnify and hold harmless the former provider and/or any replacement provider from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by You) in respect of all or any of the Transferring Employees and any Transferring Original Employees arising from or connected with any failure by You to comply with any legal obligation to such trade union, staff associations or other employee representative under the TUPE Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.

C.3.4. You shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by You in respect of all or any of the Transferring Employees and any Transferring Original Employees) arising from or connected with any failure by You to comply with any legal obligation to such trade union, staff associations or other employee representative under the TUPE Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.

C.3.5 The Council shall not be liable under this Clause C in the event that-:

C.3.5.1. any information provided in Annex One (*Transferring Employees*) and/or Annex Two(*Transferring Original Employees*) for the purpose of the TUPE Regulations transpires to be inaccurate;

C.3.5.2. any employee of Yours who has transferred to Your employment under the TUPE Regulations brings a claim against You that relates wholly or partially to his or her employment with You; and/or

C.3.5.3. at the end of the Contract Period, if You do not secure a further contract with the Council.

## C.4.1. You shall ensure, or shall procure that any relevant sub-contractor shall ensure, that all Eligible Employees are offered Appropriate Pension Provision with effect from the Relevant Transfer date up to and including the date of the expiry or earlier termination of this Contract.

## C.4.2. The provisions of Clauses C.4, and C.5 shall be directly enforceable by an affected employee against You 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 You or Your sub-contractor(s) under those Clauses in his/her own right under Section 1(1) of the Contracts Rights of Third Parties Act 1999 and Clause 49 of the Contract shall be construed accordingly.

**C.5 Provider Pension Scheme**

## C.5.1. Where You or Your sub-contractor(s) are prevented from offering all or some of the Eligible Employees membership or continued membership of an occupational pension scheme, You shall offer, and shall procure that any relevant sub-contractor(s) shall offer, the Eligible Employees membership of an occupational pension scheme with effect from the Relevant Transfer date. Such an occupational pension scheme must be established no later than three (3) months prior to the date of the Relevant Transfer.

## C.5.2. You shall and shall procure that each relevant sub-contractor shall:

### C.5.2.1. 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 You or Your sub-contractor(s) in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);

### C.5.2.2. promptly, and in any event within ten (10) Working Days of receipt of a written request, provide to the Council such documents and information mentioned in Clause C.5.2.1, which the Council may reasonably request in advance of the expiry or termination of this Contract; and

### C.5.3. fully cooperate (and procure that the trustees of Your scheme shall fully cooperate) with the reasonable requests of the Council 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 You or Your sub-contractor(s) in the provision of the Services on expiry or earlier termination of the Contract.

**C.6 Sub-contractors**

C.6.1. In the event that You enter into any sub-contract in connection with this Contract, You shall impose obligations on Your sub-contractor(s) on the same terms as those imposed on You pursuant to this Clause C.

C.6.2.You authorise the Council to use all the information provided pursuant to Clause C.6.1for the purposes of its business or for informing any potential tenderer for the Services or any part thereof and shall enable and assist the Council and such other persons as the Council may determine to communicate with and meet the Staff and their trade unions or other employee representatives or staff associations as when and where the Council may determine.

C.6.3. The Council shall treat such information as Confidential Information, save as required by Law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Service in succession to You.

C.6.4.You warrant that until the handover on the Relevant Transfer Date of the Transferring Employees and Transferring Original Employees to the replacement provider in accordance with the provisions of this Clause C, it shall provide sufficient Staff to cover provision of the Services and failure to comply with the provision of this Clause shall result in a substantial breach of Contract by You and You shall indemnify the Council against any liability arising from failure to comply with this Clause C.6.4. For the avoidance of doubt, this Clause C.6.4 is without prejudice to any other remedies available to the Council whether under this Contract or otherwise.

**Schedule 12 - Carbon Reduction Plan**

To be attached on contract award