Dated 17th July 2025

**service agreement**

1. **North Northamptonshire Council**

**and**

1. **TCR Nottingham Ltd**

**Contract in relation to**

**NHS Health Checks Software**

**Legal Services**

**North Northamptonshire Council**

The Corby Cube, George Street,

Corby, Northamptonshire

NN17 1QG

Legal Ref: 23385

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**THIS AGREEMENT** is made on 2025

**BETWEEN**

1. **NORTH NORTHAMPTONSHIRE COUNCIL,** whose principal place of business is Ground Floor, Sheerness House, 41 Meadow Road, Kettering, NN16 8TL, with address for service at The Corby Cube, George Street, Corby, Northamptonshire, NN17 1QG (**“the Council”**); and
2. TCR NOTTINGHAM LTD, a company registered in England and Wales under company number 03767831, whose registered office is Unit 8, Langley Park, North Street, Langley Mill, Notts, NG16 4BS. (**“Provider”**).
3. **BACKGROUND**

1.3 The Council has offered to extend the existing agreement with the Provider. On the basis of its offer, the Council is appointing the Provider, in order that they may provide the Services to the Council in the manner described in this Agreement.

1.4 The Provider agrees that it is and will continue throughout the Term of this Agreement to comply with all relevant Laws as are necessary to manage and deliver the Services.

**IT IS AGREED** as follows:

## **DEFINITION AND INTERPRETATION**

## In this Agreement the definitions set out in Schedule 1 (Definitions) shall apply.

### In this Agreement, unless the context otherwise requires:

### the singular includes the plural and vis versa;

### reference to a gender includes the other gender and the neuter;

### references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, modified, replaced, extended, enacted or re-enacted from time to time (whether before or after the date of this Agreement) and to any regulations made under it.

### any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or “similar”, shall be construed as illustrative and without limitation to the generality of the related general words;

### The headings of this Agreement are for ease of reference only and shall not affect its interpretation.

### References to Conditions and schedules are, unless otherwise provided, references to the Conditions of and Schedules to this Agreement.

### **3. COMMENCEMENT AND DURATION**

### 3.1 The Agreement shall take effect on the Commencement Date nd shall expire automatically on the Expiry Date, unless it is otherwise terminated under Condition 38, 39 or 40 or otherwise lawfully terminated. The Term may be extended for a further period or periods upon agreement of the Parties evidenced in writing.

### 3.2 Without Prejudice to Condition 3.1, the Council may at its discretion and from time to time by placing an advertisement during the Term of the Framework on ProContract or such other procurement portal it has in place at that time, invite further potential bidders to express an interest in entering into the Framework for the remainder of the Term, subject to the Conditions contained in this Agreement.

### **4.** **SCOPE OF THIS AGREEMENT**

### 4.1 This Agreement shall govern the relationship between the Parties in respect of the provision of the Services.

### 4.2 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the Services and the Provider agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.

### 4.3 The Provider agrees that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Council for Services from the Provider and that the Council is at all times entitled to enter into other contracts and or arrangements with other suppliers or providers for the provision of any or all Services which are the same as or similar to the Services.

### 4.4 Nothing in this Agreement shall be read as preventing or inhibiting the Council from carrying out any statutory or regulatory function, duty or power that they may have, or as inhibiting or fettering the exercise of any statutory or regulatory power which they respectively possess.

### Nothing in this Agreement shall be read as preventing or inhibiting the Council from carrying out any statutory or regulatory function, duty or power that they may have, or as inhibiting or fettering the exercise of any statutory or regulatory power which they respectively possess.

**5. SECURITY OF NETWORK AND INFORMATION SYSTEMS**

5.1 The Provider warrants that security of its network and information systems is up to date and accurate and that it will update the Provider immediately in the event of any changes to such information.

5.2 The Provider shall notify the Council immediately it becomes aware of any Incident, and respond without delay to all queries and requests for information from the Provider about any Incident, whether discovered by the Provider or the Council, in particular bearing in mind the extent of any reporting obligations the Council may have under the Network and Information Systems Regulations 2018 (NIS Regulations) and data protection legislation and that the Council may be required to comply with statutory or other regulatory timescales.

5.3 The Provider will use its reasonable endeavours to ensure the continuity of the Services at all times in accordance with the information on business continuity management and any relevant policies referred to in this Agreement with a view to ensuring the continuity of any services to be provided by the Provider that rely on the Software.

5.4 The Provider agrees to co-operate with the Council in relation to:

5.4.1 all aspects of its compliance with the NIS Regulations (if applicable);

5.4.2 any requests for information, or inspection, made by any regulator (including in connection with the NIS Regulations);

5.4.3 any request for information made in respect of this Agreement or

5.4.4 any Incident.

5.5The Provider shall (and warrants and represents that it shall) at all times in accordance with Good Industry Practice:

5.5.1 implement, operate, maintain, and adhere to, appropriate policies to cover the issues specified in this Agreement, including an incident management process which shall enable the Provider, as a minimum, to discover and assess Incidents, and to prioritise those Incidents, sufficient to meet its reporting obligations under clause this Agreement; and

5.5.2 Mitigate against all Incidents.

5.6 The Provider shall provide copies of the policies referred to in Schedule 1 promptly on request by the Customer.

5.7The Provider shall indemnify the Council against any loss or damage suffered by the Council in relation to any breach by the Provider of its obligations under this Agreement, which cause the Provider to breach the Cybersecurity Requirements

# 6. SERVICE STANDARDS

## 6.1 In the performance of the Services, the Provider shall deliver the Services:

## 6.1.1 in accordance with Conditions of this Agreement;

## 6.1.2 carry out all reasonable directions of a Council Officer.

## 6.1.3 in accordance with any relevant Law and current Standards;

6.1.4 through Staff who are qualified and competent to carry out their role and meet the needs of Service Users who use the Services;

6.1.5 and inform the Council of any changes to the manager or responsible individual;

6.1.6 in such a way so that the name and reputation of the Council is not brought into disrepute or otherwise adversely affected;

6.2 For the avoidance of doubt, the Parties agree that Staff shall have no contractual or agency relationship with the Council and the Provider agrees to indemnify and keep indemnified the Council in respect of any claim made by Staff arising from the performance of its obligations under this Agreement.

6.3 Any Prohibited Act on the part of the Provider or its Staff shall be considered to be in breach of this Agreement and may result in the immediate suspension or termination of the Agreement.

6.4 In the event of industrial disputes or action by any Staff, it remains the Provider’s responsibility to meet the requirements of this Agreement. The Provider shall inform the Council immediately of impending or actual industrial disputes or action which may affect the Provider’s ability to deliver the Services and of the Provider’s contingency plans for dealing with such disputes or action as set out in Condition 16.

6.5 The Provider shall facilitate pre-contract monitoring information as reasonably requested by the Council and in any event, in accordance with Schedule 6 Contract Monitoring.

6.6 The Provider shall notify the Council immediately of any significant change in circumstances that might affect delivery of the Services.

## **7. PROVIDER OBLIGATIONS**

7.1. The Provider shall notify the Council Officer of any statutory requirement issued by CQC or any other Regulator, together with an action plan to address the requirements.

7.2 If the Provider is convicted of an offence arising from any breach of relevant Law, the Council will have an option to terminate the Agreement and the provisions of Condition 39 will apply.

7.3 Without prejudice to the rest of this Condition 7, the Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement.

# 8. PROVIDER’S STATUS

8.1 At all times during performance of the Services the Provider shall be an independent Provider and not an agent of the Council.

8.2 The Provider shall not (and to their best endeavours shall ensure that the Staff do not) say or do anything that might lead any other to believe that the Provider is acting as the agent of the Council.

**9. ENTIRE AGREEMENT**

9.1 The Agreement between the Council and the Provider shall constitute the entire agreement as it relates to the subject matter of this Agreement. This Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, in relation to the subject matter of this Agreement save that that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

## **10. NO PARTNERSHIP**

## 10.1 Nothing in this Agreement will be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between any of the Parties.

# 11. NOTICES

### 11.1 Except as otherwise expressly provided within this Agreement, no Notice or other communication from one Party to the other shall have any validity unless made in writing by or on behalf of the Party concerned.

11.2 Any notice or other communication under this Agreement which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Schedule 4. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or twenty four (24) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

**12. CONFLICTS OF INTEREST**

12.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff, servant, agent, consultant or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or such persons and the duties owed to the Council or its Service User under the provisions of the Agreement. The Provider will disclose to the Council and or its Service User full particulars of any such conflict of interest which may arise.

12.2 The provisions of this Condition shall apply during the continuance of the Agreement and shall continue indefinitely after the termination of the Agreement.

**13. FRAUD**

* 1. The Provider shall safeguard the Council and or its Service User against any Prohibited Act. The Provider shall notify the Council and the Service User as appropriate if it has reason to suspect that any Prohibited Act has occurred or is occurring or is likely to occur.
  2. As soon as the Provider becomes aware of or suspects the commission of any Prohibited Act in respect of the provision of the Services it will notify the Council.
  3. In circumstances where a Provider and or its Staff are reasonably suspected of having committed a Prohibited Act the Provider Officer will provide to the Council such information as is reasonable to satisfy the Council Officer that appropriate action has been taken to safeguard the Service User and or the Council.

## **14. MONITORING, CONTINUOUS IMPROVEMENT AND CO-OPERATION**

14.1 In delivering the Services the Provider:

14.1.1 shall, throughout the Term of this Agreement aspire to achieve continuous improvement in the quality of Services performed;

14.1.2 will provide such reasonable assistance and information that the Council may reasonably require to enable the Council to discharge and fulfil its Best Value Duty in relation to the Service;

### 14.1.3 will allow the Council Officer or any person authorised by the Council together with appropriate staff, to monitor the provision of the Services.

### 14.2 The Parties agree to monitor the effectiveness and efficiency of the provision of the Services and carry out regular monitoring visits in accordance with Schedules 2 and 7.

### The monitoring visits may include (but not be limited to) consideration of:

## performance of the Provider against Schedules 2 and 7;

## proposed changes to the Services;

## shared learning and opportunities for improving the delivery of the Services.

## 14.4 Without prejudice to the foregoing the Provider shall have its performance and compliance under this Contract and in relation to the Services it shall deliver pursuant to it evaluated through a process of contract monitoring. The Council shall invoke a process of contract monitoring at its discretion in the event that it considers the Provider to be in default of its obligations under this Contract and/or in relation to the delivery of Services thereunder or is deemed to be non-compliant in any other way. The Provider shall comply and co-operate with any reasonable requests and requirements that the Council may make of it pursuant to any contract monitoring process.

**15. Personnel Management AND SAFEGUARDING**

15.1 The Provider will:

15.1.1 operate policies and procedures on personnel matters for its Staff. These should include appropriate arrangements for recruitment, checks for suitability, levels of qualification and/or experience for specific posts, training and development, and supervisory, disciplinary and grievance procedures, having regard to the nature of the Services. Copies of policies and procedures must be made available to the Council on request;

15.1.2 make checks in respect of such Staff with the DBS for the purpose of checking at an enhanced level of disclosure;

15.1.3 put in place a process whereby all existing and new Staff who undertake regulated and controlled activities will be registered with the DBS within any timescales required and specified by the DBS including checks carried out prior to the start date of any Staff and fully comply with Safeguarding Vulnerable Groups Act 2006 (the “SVGA”);

15.1.4 not employ any Staff to undertake regulated or controlled activities who appears unsuitable as a result of information received from the checks;

15.1.5 comply with the Public Interest Disclosure Act 1998 and have a whistleblowing policy for its Staff and encourage them to report any incidents of malpractice within the provision of the Services;

15.1.6 ensure that appropriate steps are taken and recorded to enable Service Users from being subjected to Abuse;

15.1.7 ensure that all Staff are aware of the Local Safeguarding Policy and Procedures and will ensure that an up to date copy of the Local Safeguarding Policy and Procedures is kept at the Care Home and is available to its Staff at all times;

15.1.8 have an internal policy for safeguarding Vulnerable Adults and Children which is compatible to the Local Safeguarding Policy and Procedures;

15.1.9 ensure that Children’s Safeguarding, Mental Capacity Act 2005 including Deprivation of Liberty Safeguards are adhered to;

15.1.10 ensure that allegations, suspicions and incidents of Abuse be followed up promptly by the Provider in accordance with the Local Safeguarding Policy and Procedures and if any placement is out of county notify the Council;

15.1.11 ensure there are robust procedures for responding to suspicion or evidence of Abuse and ensure that they follow-up concerns and pass relevant details to the Council immediately**.**

## **16. BUSINESS CONTINUITY**

* 1. The Provider must:

### 16.1.1 operate a business continuity policy and a plan for as long as this Agreement is in force; and

### 16.1.2 provide the Council with a copy of any such policy and plan at its reasonable request.

### 16.2 Failure by the Provider to comply with its obligations under Condition 16 may be regarded as a Default of this Agreement.

### 16.3 The Provider acknowledges and accepts their obligations under this Condition 16, and shall undertake regular risk assessments, business impact analysis and review the business continuity plan in relation to this Agreement, at least annually.

## 16.4 The Provider warrants that the Council shall have reasonable access to and the ability to reproduce and retain any pertinent documentation deemed appropriate to comply with Condition 16, (subject to Condition 24 (Data Protection) and Condition 25 (Confidentiality).

## **17. PAYMENT RATE**

17.1 The Payment Rate under this Agreement shall be as detailed in Schedule 3.

17.2 The Council may review the Payment Rate at its discretion from time to time but shall be under no obligation to do so.

## **18. PAYMENT**

* 1. Payment to the Provider will be made in accordance with Schedule 3 (Payment).

# 19. RECOVERY OF SUMS DUE

* 1. Wherever under this Agreement any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider or under any other agreement or contract with the Council.
  2. Any overpayment by the Council to the Provider, whether of the Payment Rate or of tax, shall be a sum of money recoverable by the Council from the Provider.

19.3 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.

## **20. PREVENTION OF CORRUPT**

**Anti-Corruption and Bribery**

20.1 Each party undertakes to the other party that:

1. it will not, in the course of the operation of the Contract, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
2. in so far as it applies to the party concerned, that it will not engage in any activity, practice or conduct which would constitute an offence under section 117 (2) of the Local Government Act 1972;
3. it has and will maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010; and

(d) from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under Condition 20.1(a) and clause 20.1(c) and will provide any information reasonably requested by the other party in support of such compliance.

20.2 The Provider shall have an anti-bribery policy to prevent any director, shareholder, officer, employee, adviser or representative of the Provider from committing an offence or Prohibited Act under the Bribery Act 2010 and the Local Government Act 1972 and shall enforce it where appropriate.

20.3 Breach of any of the undertakings in this Condition 20 shall be deemed to be a material breach of this Agreement.

**Prevention of Fraud**

20.4 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Council.

20.5 The Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

20.6 If the Provider or its Staff commits Fraud in relation to this or any other contract with the Council, any other public authority and/or the Crown the Council may:

(a) terminate the Contract and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Term; or

(b) recover in full from the Provider any other loss sustained by the Council in consequence of any breach of this clause 20.

**21. EQUALITIES AND HUMAN RIGHTS**

**Equity of Access, Equality and No Discrimination**

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

21.2 The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).

21.3 In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:

a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;

b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and

c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and,

for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.

21.4 As soon as reasonably practicable following any reasonable request from the Council, the Provider must provide the Council with a plan detailing how it will comply with its obligations under Condition 21.3.

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

a) monitor the equality of access to the Services; and

b) fulfil their obligations under the Law.

**Human Rights**

21.6 Each Party shall (and shall procure that their respective staff shall) at all times comply with the provisions of the Human Rights Act 1998 (for the purposes of Condition 21.6 and 21.7 the "HRA") when performing their respective obligations under this Contract (including those relating to the Services) insofar as the Act imposes duties, obligations and/or responsibilities on that Party.

21.7 Each Party shall undertake, or shall refrain from undertaking, such acts as the other Party reasonably requests in writing so as to enable that Party to comply with its obligations under the HRA.

**22. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

22.1 Except for the Council, who the Provider has agreed shall have the right to enforce any Condition of the Agreement, any person who is not a Party to the Agreement (including without limitation any Staff, officer, agent, representative, or sub-contractor of either the Service User or the Provider) shall not have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of the Parties. For the purposes of this condition 22.1, ‘Third Parties’ shall have the meaning attributed to it by The Contracts (Rights of Third Parties) Act 1999.

## **23. HEALTH, SAFETY AND OR WELLBEING OF THE SERVICE USER**

## 23.1 The Provider:

## 23.1.1 and its entire Staff (or persons, officer, agent, representative, or sub-contractor) employed by it will throughout the Term shall fully comply with the requirements of Safety Legislation;

## 23.1.2 will provide to the Council Officer, in writing within seven (7) Days, any information relating to the Provider’s compliance with this Condition 23 that the Council may reasonably request at any time during the Term;

## 23.1.4 will allow the Council Officer or any person authorised by the Council, to review the provision of the Services at any time and where required unannounced;

23.1.5 shall promptly notify the Council and the Service User of any significant health, safety and or wellbeing hazards which may arise in connection with the performance of a Services.

23.2 The Provider shall ensure that its Staff are supported when raising concerns at work (Whistleblowing) in accordance with the Public Disclosure Act 1998.

**24. DATA PROTECTION**

Information Sharing and Records

24.1 Subject always to the provisions of Clause 24.20 below the Provider shall on request and at the expense of the Council afford the Council or the Council’s representatives such access to those records as may be requested by the Council in connection with the Contract.

24.2 The Provider shall grant the Council during the Term of this Contract access (free of charge during normal business hours on reasonable notice) to all such documents (including computerised documents and data) for purposes of financial audit of this Contract and Services being delivered by the Provider pursuant to it in order for the Council to carry out examinations into the economy, efficiency and effectiveness with which the Provider has used its resources to deliver the Services. The Council shall provide such explanations as are reasonably required for these purposes.

24.3 The Provider acknowledges that the Council may from time to time require data and/or information relating to the provision of the Services in order to allow the Council to comply with its obligations. The Provider shall therefore provide the Council with any data and/or information that may be requested by the Council acting reasonably within the timescale specified in the request.

Data Protection

24.4 The Parties shall observe all of their obligations under the Data Protection Legislation that arise in connection with the Service.

24.5 For the purposes of this Clause, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer” “Process” and “Processing" shall have the meaning prescribed under the Data Protection Legislation. With respect to the Parties' rights and obligations under this Contract, the Parties agree that in relation to the Personal Data contained within Service User records, the Parties shall act jointly as Data Controllers.

24.6 The Authority instructs and authorises the Provider to Process the Enquiry Phase Personal Data for the purposes set out in Schedule 6 as a Data Processor.

24.7 The Provider shall:

24.7.1 Process the Enquiry Phase Personal Data only on documented instructions from the Authority (unless the Provider or the relevant Sub-Processor is required to Process the Enquiry Phase Personal Data to comply with applicable laws, in which case the Provider will notify the Authority of such legal requirement prior to such Processing unless such applicable laws prohibit notice to the Authority on public interest grounds). For the purpose of this clause

24.7.1 the Processing detailed in Schedule 5 constitutes documented instructions;

24.7.2 ensure that any individual authorised to Process the Enquiry Phase Personal Data is subject to appropriate confidentiality obligations, is under an appropriate statutory obligation of confidentiality, and complies with clause 24.7.2; and

24.7.3 at the option of the Authority, securely delete or return to the Authority any Enquiry Phase Personal Data after the term of the Contract, and delete any remaining copies. The Provider will be entitled to retain any Enquiry Phase Personal Data which (a) it has to keep to comply with any applicable law or (b) it subsequently processes as a Data Controller as a result of providing services directly to the Data Subject.

24.7.4 implement appropriate technical and organisational measures to prevent a breach of security, leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Enquiry Phase Personal Data transmitted, stored or otherwise Processed (a “Data Security Incident”);

24.7.5 notify the Authority without undue delay after becoming aware of a Data Security Incident;

24.7.6 taking into account the nature of the Processing of Enquiry Phase Personal Data, provide reasonable assistance to the Authority (at the Authority’s cost) in:

24.7.6.1 complying with its obligations under the Data Protection Laws relating to the security of Processing the Enquiry Phase Personal Data;

24.7.6.2 responding to requests for exercising Data Subjects’ rights under the Data Protection Laws, including by appropriate technical and organisational measures, insofar as this is possible;

24.7.6.3 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects; and

24.7.6.4 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.

24.7.7 make available to the Authority all information necessary to demonstrate compliance with the obligations set out in this Notice and

24.7.8 allow for and contribute to audits, including inspections, conducted by the Authority or another auditor mandated by the Authority.

24.8 With respect to the Parties' rights and obligations under this Contract, the Parties agree that in relation to the Personal Data contained within Service User records, the Parties shall act jointly as Data Controller. Where the Parties are acting as Joint Controllers they shall put into place such arrangements as are necessary to agree the respective roles and relationships with each other in respect of the rights of the data subject pursuant to Article 26 GDPR.

24.9 The Parties shall ensure that Personal Data is safeguarded at all times in accordance with the Law, which shall include without limitation obligations to:

24.9.1 (where relevant only to the Services being delivered by the Provider) have a “Caldicott Guardian”, as defined by the Local Authority Circular LAC 2002/2, in this case the Council’s nominated information governance lead, able to communicate with the other Parties, who shall take the lead for information governance and from whom the other Parties shall receive regular reports on information governance matters, including but not limited to details of all incidents of data loss and breach of confidence;

24.9.2 (where transferred electronically) only transfer essential data that is (i) necessary for direct Service User care; and (ii) encrypted to the higher of the international data encryption standards for health and adult social care (this includes, but is not limited to, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes);

24.9.3 have policies which are rigorously applied that describe individual personal responsibilities for handling Personal Data;

24.9.4 have agreed protocols for sharing Personal Data with other public authorities and non-public organisations;

24.9.5 perform an annual information governance self-assessment.

24.10 To the extent that any Party (including its staff) is acting as a "Data Processor" on behalf of any other Party, that Party shall, in particular, but without limitation:

24.10.1 notify the Party acting as “Data Controller” immediately if it considers that any of the Data Controller’s instructions infringe the Data Protection Legislation;

24.10.2 shall provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Data Controller, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

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

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

24.10.3 only process such Personal Data, as that term is defined in the Data Protection Legislation, as is necessary to perform its obligations under this Contract, and only in accordance with any instruction given by the other Party under this Contract. [If it is so required the Data Processor shall promptly notify the Data Controller before processing the Personal Data unless prohibited by Law];

24.10.4 ensure that it has in place Protective Measures, which have been reviewed and approved by the Data Controller as appropriate to protect against a Data Loss Event having taken account of the:

(e) nature of the data to be protected;

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

(g) state of technological development; and

(h) cost of implementing any measures;

24.10.5 ensure that:

(i) the Data Processor Personnel do not process Personal Data except in accordance with this Contract;

(j) it takes all reasonable steps to ensure the reliability and integrity of any Data Processor Personnel who have access to the Personal Data and ensure that they:

(i) are aware of and comply with the Provider’s duties under this clause;

(ii) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;

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

(iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(v) are aware of and trained in the policies and procedures identified in Clauses 24.9.4 and 24.9.5 above.

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24.10.6 not transfer Personal Data outside of the EU unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:

(k) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;

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

(m) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and

(n) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;

24.10.7 at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Contract unless the Data Processor is required by Law to retain the Personal Data.

24.10.8 shall maintain complete and accurate records and information to demonstrate their compliance with this clause 24.

24.10.9 allow for audits of its Data Processing activity by the Data Controller or the Data Controller’s designated auditor.

24.10.10 designate a data protection officer if required by the Data Protection Legislation.

24.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Data Processor must:

24.11.1 notify the Data Controller in writing of the intended Sub-processor and processing;

24.11.2 Obtain the written consent of the Data Controller.

24.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 24 such that they apply to the Sub-processor; and

24.11.4 provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.

24.12 The Data Processor shall remain fully liable for all acts or omissions of any Sub-processor. Subject to clause 24.10, either Party shall notify the other Party immediately if it:

24.12.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

24.12.2 receives a request to rectify, block or erase any Personal Data;

24.12.3 receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;

24.12.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

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

24.12.6 becomes aware of a Data Loss Event.

24.13 The Parties’ obligations to notify under clause 24.12 shall include the provision of further information to the other Party in phases, as details become available.

24.14 Taking into account the nature of the processing, each Party shall provide the other with full assistance in relation to either Party’s obligations under Data Protection Legislation and any complaint, communication or request made under clause 24.9 (and insofar as possible within the timescales reasonably required by the Parties) including by promptly providing:

24.14.1 the other Party with full details and copies of the complaint, communication or request;

24.14.2 such assistance as is reasonably requested by the other Party to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

24.14.3 the other Party, at its request, with any Personal Data it holds in relation to a Data Subject;

24.14.4 assistance as requested by the other Party following any Data Loss Event;

24.14.5 assistance as requested by the other Party with respect to any request from the Information Commissioner’s Office, or any consultation by the other Party with the Information Commissioner’s Office.

24.15 Either Party may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

24.16 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. Either Party may on not less than 30 Working Days’ notice to the other amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

24.17 Each Party shall indemnify and keep indemnified the other Party against all Losses incurred by it in respect of any breach of this clause by the defaulting Party, except to the extent that such breach was attributable to any act, omission or direction of the non-defaulting Party.

Confidential Information

24.18 Except as required by Law and specifically pursuant to this clause 24, each Party agrees at all times during the continuance of this Contract and after its termination to keep confidential any and all information, data and material of any nature which the Parties may receive or otherwise obtain which has been designated as confidential by the other Parties in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) in connection with the operation of this Contract or otherwise relating in any way to the business, operations and activities of the other Party, its employees, agents and/or any other person with whom it has dealings including any client of either Party. For the avoidance of doubt this Clause shall not affect the rights of any workers under Section 43 A-L of the Employment Rights Act 1996.

24.19 Subject always to clause 24.20 below the Parties agree to provide or make available to each other sufficient information concerning their own operations and actions and concerning Service User information (including material affected by the Data Protection Legislation in force at the relevant time) to enable efficient operation of the Services.

24.20 The Parties shall ensure that the provision of the Services complies with all relevant Data Protection Legislation regulations and guidance and that the rights of access by Service Users to their data are observed.

**25. CONFIDENTIALITY**

25.1 Each Party shall:-

25.1.1 treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

25.1.2 not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

25.2 The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement is:-

25.2.1 given only to such of the Staff or its third party engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement;

25.2.2 treated as confidential and not disclosed (without prior Approval) or used by any Staff or its third party otherwise than for the purposes of the Agreement.

25.3 The Provider shall ensure that Staff or its third party is aware of the Provider’s confidentiality obligations under this Agreement.

25.4 The Provider shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Agreement.

25.5 The provisions of Conditions 25 to 30 (inclusive) shall not apply to any Confidential Information received by one Party from the other:-

* + 1. which is or becomes public knowledge (otherwise than by Default of this Condition);
    2. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
    3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
    4. is independently developed without access to the Confidential Information; or
    5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 (FOIA) or the EIR pursuant to Condition 32; or
    6. where the Council considers the health, safety and or wellbeing of a Service User to be of concern; then information will be shared with Regulatory Bodies and or any other organisations.

25.6 Nothing in this Condition shall prevent the Council:-

25.6.1 disclosing any Confidential Information for the purpose of:-

25.6.1.1 the examination and certification of the Council’s accounts; or

25.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or

25.6.2 disclosing any Confidential Information obtained from the Provider:-

25.6.2.1 to any government department or any other relevant agency. All government departments or relevant agencies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other relevant agencies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any relevant agency; or

25.6.2.2 to any person engaged in providing any services to the Council for any purpose relating to the Agreement and will notify the Provider that it has done so;

25.6.2.3 Provided that in disclosing information under sub-paragraph 26.6.2 the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

25.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

25.8 In the event that the Provider fails to comply with this Condition, the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

**26. MODERN SLAVERY**

26.1 The Parties agree to:

a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015;

b) have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance; and

c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

**27. FREEDOM OF INFORMATION (FOIA)**

27.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council to enable the Council to comply with these Information disclosure requirements.

27.2 The Provider shall ensure that any of its sub-contractors shall:

27.2.1 transfer to the Council the Request for Information that it receives as soon as practicable after receipt and in any event within 2 (Two) Working Days of receiving a Request for Information;

27.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within 5 (Five) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

27.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

27.3 The Council shall be responsible for determining at its absolute discretion whether any Commercially Sensitive Information (as defined in FOIA) and/or any other Information is:

27.3.1 exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

27.3.2 to be disclosed in response to a Request for Information, and in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

27.4 The Provider acknowledges that (notwithstanding the provisions of Condition 27.2) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the Discharge of the Functions Public Authorities under Part 1 of FOIA (issued under section 45 of the FOIA), be obliged under the FOIA or the EIR to disclose Information:

27.4.1 without consulting with the Provider, or

27.4.2 following consultation with the Provider and having taken its views into account.

27.5 The Provider shall ensure that all Information produced in the course of this Agreement shall permit the Council to inspect such records as requested from time to time.

27.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Condition 27.4.

**28. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

28.1 Without prejudice to the Council’s obligations under the FOIA, no Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party.

28.2 The Parties shall take all reasonable steps to ensure the observance of the provisions of Condition 28.1 by all their servants, employees, agents, professional advisors and consultants. The Provider shall take all reasonable steps to ensure the observance of the provisions of Condition 28.1 by its sub-contractors.

* 1. The Council shall be entitled to publicise the Agreement in accordance with any legal obligation upon the Council, including any examination of the Agreement by an auditor and or any safeguarding issues.

**29. ASSIGNMENT, SUB-CONTRACTING AND CHANGE OF OWNERSHIP BY THE PROVIDER**

29.1 The Provider shall not transfer, assign, sub-contract, novate, or in any other way dispose of the Agreement without obtaining the written Approval of the Council, which will not to be unreasonably withheld.

29.2 In the event that the Council reasonably agrees that the Provider may transfer, assign, sub-contract, change the owner or in any way dispose of the Agreement then this shall not relieve the Provider of any obligation or duty attributable to the Provider under the Agreement.

29.3 Where the Council has agreed in writing to Condition 29.2, copies of any relevant documentation shall be provided to the Council within twenty (20) Working Days of request.

29.4 The Council shall not be held liable for any costs incurred by the Provider if the Provider fails to obtain Approval from the Council of the situations identified in Condition 29.1 within twenty (20) Days of any change due to take place.

29.5 The Provider shall be responsible for paying the Council’s reasonable costs in granting and processing any Approval sought under this Condition 29

30. WAIVER

30.1 The failure of either Party to perform any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.

30.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Condition 11.

30.3 A waiver of any right or remedy arising from a Default of Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent Default of the Agreement.

31. VARIATIONS

31.1 The Parties agree that neither shall be entitled to vary the content of the Agreement without the written consent of the other except if there is a statutory change which imposes new or amended duties upon either Party. Where such new or amended duties are connected with the performance of the Services in which case the Council will be entitled to issue a Variation of the Agreement to the Provider.

31.2 The Parties shall use their best endeavours to ensure that all Variations are effected in a consensual and reasonable manner.

31.3 Either Party may reasonably request a Review Meeting (Parties to bear their own costs) and consider what Variations (if any) are required to be made resulting from changes in the needs of the Service User or demand for the Service.

32. SEVERABILITY

32.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

32.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

1. **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**
   1. As a minimum requirement, in so far as they are aware the Provider shall:
      1. keep a record of all written or otherwise recorded complaints by a Service User or their representative concerning the provision of the Services, including complaints made to CQC;
      2. provide the Council with a summary of all complaints upon reasonable request
      3. use all reasonable endeavours to resolve complaints and shall inform the Council when any complaint by a Service User has been resolved. If any such complaint has not been resolved within twenty (20) Working Days of the date it has been notified to the Council, the Council Officer may direct what reasonable action is to be taken by the Provider to resolve the complaint and the timescale within which this action is to be taken;
      4. maintain a register of all complaints relating to Abuse, and allegations of Abuse, of Vulnerable Adults and Children in their care, and shall:

## keep such register at its regular place of business;

## Provide access to the Council to such register upon the Council’s request.

## 33.1.5 ensure that all its Staff engaged in the provision of the Services are fully aware of the complaints procedure and the Provider will appoint a complaints manager and the details of such role will be set out in the Provider’s complaint procedure.

* 1. Where a complaint is received about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Services, then the Council Officer and the Provider shall take all reasonable steps to ascertain whether the complaint is valid. If the Council Officer so decides, after reasonable representation from the Provider, he may uphold the complaint, or take further action in accordance with the provisions of Condition 39.3.
  2. In the event that the Council is of the opinion that there has been a breach of contract by the Provider, or the Provider’s performance of its duties under this Agreement has failed to meet the requirements, then the Council may, without prejudice to its rights under Condition 38, do any of the following:
     1. make such reduction from the Payment to be made to the Provider as the Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Provider shall have failed to provide;
     2. terminate the Agreement in whole or in part and thereafter itself provide or procure a third party to provide such part of the Services.
  3. If the Provider fails to supply and or perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall in writing instruct the Provider to perform the work and the Provider shall at its own cost and expense remedy such failure within fourteen (14) Days or such other period of time as the Council may reasonably direct.
  4. If the Provider:
     1. fails to comply with Condition 33.3 above; or
     2. persistently fails to comply with Condition 33.3 above, and such failures, taken as a whole, are materially adverse to the commercial interests of the Council;

the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

* 1. The remedies of the Council under this Condition may be exercised successively in respect of any one or more failures by the Provider.

34. REMEDIES CUMULATIVE

34.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for Default of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**35. NOVATION BY THE COUNCIL**

* 1. Subject to Condition 35.3, the Council shall be entitled to:
     1. transfer, assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the Provider’s obligations under the Agreementr; or
     2. novate the Agreement to any other body established by the Crown or under statute in order substantially to perform any of the functions that previously had been performed by the Council provided that any such novation shall not increase the burden of the Provider’s obligations pursuant to the Agreement; or
     3. novate the Agreement to any private sector body which substantially performs the function of the Council provided that any such novation shall not increase the burden of the Provider’s obligations pursuant to the Agreement.
  2. Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Condition 35.3, affect the validity of this Agreement. In such circumstances, this Agreement shall bind and inure to the benefit of any successor body to the Council.
  3. If the Agreement is novated pursuant to Condition 35.1 to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this Condition both such bodies being referred to as “the Transferee”) the:

35.3.1 rights of termination of the Council in Condition 33 and 34 above shall be available to the Council in the event of the bankruptcy, insolvency or Default of the Transferee;

* + 1. Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof with the previous consent in writing of the Provider.
  1. The Council shall be entitled to disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Agreement by the Provider. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

## **36. LIABILITY AND INDEMNITY**

36.1 Neither Party excludes or limits liability to the other Party for:

36.1.1 death or personal injury caused by its negligence; or

36.1.2 Fraud; or

36.1.3 fraudulent misrepresentation; or

36.1.4 any Default of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

36.2 Subject to any contrary court orders or directions and subject to the Council taking all reasonable steps to mitigate its own losses, the Provider shall be liable for and shall fully indemnify the Council, its officers, employees, agents and other Providers against all liabilities, damages, costs, losses, claims, expenses, demands and proceedings whatsoever, howsoever arising, whether in agreement, tort or otherwise, directly or indirectly, out of, or in the course of, or in connection with, the provision of or failure to provide the Services.

36.3 The Provider's liability and indemnity to the Council arising under this Condition shall be without prejudice to any other right or remedy available to the Council.

Required Insurances

36.4 The Provider shall insure against its full liability under Condition 36 and shall maintain all statutory required insurance policies including:

36.4.1 Public liability insurance cover shall be in the minimum sum of £5,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited and should be adequate to cover all risks in the performance of the Services;

36.4.2 Employers liability shall be in the minimum sum of £10,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;

36.4.3 Directors and Officers liability, Trustee’s Liability, Professional Indemnity or similar as appropriate to the Provider’s circumstances shall be in the minimum sum of £2,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited which should be in place for a 6 year period following the termination of the Agreement;

36.4.4 Medical negligence insurance to a minimum limit of £2,000,000.00 for any one occurrence where the Services require the Provider to undertake clinical procedures;

36.4.5 Property and contents insurance as the Provider deems appropriate to its own premises and commensurate to the Service being delivered

36.4.6 motor vehicle insurance commensurate with the potential liabilities of the Provider relating to the operation of vehicles used for the transport of Service Users by the Provider.

36.5 The Provider shall upon request by the Council produce to the Council satisfactory documentary evidence that the insurance required under this Condition is properly maintained.

37. WARRANTIES AND REPRESENTATIONS

37.1 The Provider warrants and represents that:-

* + 1. It has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Provider;
    2. It shall discharge its obligations hereunder with all due skill, care and diligence and (without limiting the generality of this Condition) in accordance with its own established internal procedures;
    3. the Services shall be to the reasonable satisfaction of the Council;
    4. the Services shall conform in all respects with the requirements of Law, any statutes, orders, regulations or bye-laws from time to time in force relating to the Agreement;

### all obligations of the Provider pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

### it is not in default in the Payment of any due and payable taxes or in the filing, registration or recording of any document or under any Law or statutory obligation or requirement which Default might have a material adverse effect on its business, assets or financial or its ability to observe or perform its obligations under this Agreement.

38. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

Where Provider is a company

38.1 The Council may terminate the Agreement with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:

38.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

38.1.2 a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

38.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors’ meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

38.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

38.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

38.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

38.1.7 being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

38.1.8 any event similar to those listed in Conditions 38.1.1 - 38.1.7 occurs under the law of any other jurisdiction.

Where Provider is an individual

38.2 The Council may terminate the Agreement with immediate effect by notice in writing where the Provider is an individual and:

38.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider’s creditors; or

38.2.2 a petition is presented and not dismissed within fourteen (14) Days or order made for the Provider’s bankruptcy; or

38.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

38.2.4 the Provider is unable to pay its debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

38.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider’s assets and such attachment or process is not discharged within fourteen (14) Days; or

38.2.6 they die or are adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or

38.2.7 they suspend or cease, or threatens to suspend or cease, to carry on all or a substantial part of their business; or

38.2.8 any similar event occurs under the Law of any other jurisdiction within the United Kingdom.

Provider Change of Control

38.3 The Provider shall provide the Council with prior written notice if the Provider is to undergo (or where it is contemplated) a change of control within the meaning of section 416 of the Income and Corporation Tax Act 1988 **(“change of control”).** The Provider must seek the Council’s prior approval to the change of control (“**Approval**”).

38.3.1 The Council may terminate the Agreement by notice in writing with immediate effect within six (6) months of being notified that a change of control has occurred where the Provider did not provide prior notification of the change of control and where prior Approval to the change of control was not sought,

38.3.2 Where no notification has been made (either pursuant to conditions 38.3 or 38.3.1 ) the Council may terminate the Agreement by notice in writing with immediate effect within six (6) months of becoming aware of a change of control.

38.3.3 The Council shall not be permitted to terminate this Agreement under this condition 38.3 where an Approval was granted prior to the change of control.

38.3.4 The Council may at its sole discretion grant Approval to a change of control retrospectively upon application by the Provider for Approval to a change of control that has already occurred.

38.3.5 The Council may attach conditions which it deems reasonable to the granting of any Approval regardless of whether such Approval is sought before the change of control has occurred or after the change of control.

38.3.6 The Provider shall be responsible for paying the Council’s reasonable costs in granting and processing any Approval sought under this condition 38.3.

39. DEFAULT, SUSPENSION AND TERMINATION

39.1 The Council may terminate in full or part this Agreement issued pursuant to this Agreement by written notice to the Provider with immediate effect if the Provider commits a Default and if the Provider:

* + 1. fails to deliver within the time specified;
    2. has not remedied the Default to the satisfaction of the Council within fourteen (14) Days, or such other shorter period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
    3. is not capable of remedying a Serious Default; or
    4. commits any Prohibited Act; or
    5. at any time ceases to hold a valid CQC registration or the Provider has been convicted of an offence under the Health and Social Care Act 2008 such that it would be unlawful for the Council to continue to contract with the Provider for the provision of the Services or the penalty for such an offence is a fine equal to or exceeding level 5 on the standard scale or a prison sentence; or
    6. commits a breach of its obligations to take out and maintain required insurances; or
    7. commits a breach of any Conditions under the Agreement; or
    8. commits a Default or a Serious Default; or

## 39.2 If either Party commits a Default the other party will be entitled to serve on that party a written notice of default (a “Default Notice”). This will be without prejudice to any other right or remedy which may be available to the parties, either under the Agreement or at Law.

## 39.3 If either Party serves a Default Notice which relates to a Default which can be remedied the party receiving the Default Notice will take the action specified in the Default Notice, within a reasonable timescale subject to the circumstances of the Default, at their own cost.

## 39.4 The Provider will be entitled to apply the provisions of Conditions 39.2 and 39.3 to the Council except that if the breach concerned is a failure to pay the Provider the amount payable under Condition 18 (Payment) on time, then the Council must make such late payment within 10 (Ten) Working Days of the Default Notice being served.

## 39.5 If the Parties disagree that a Default has occurred and/or about the action required to be taken and or the timescale within which the action is to be taken, then either party may refer the matter for resolution, in accordance with Condition 46 (Dispute Resolution).

## 39.6 If a Party commits a Default or a Serious Default or fails to remedy a default within the timescale set out in the Default Notice and the default presents a risk to the health and or welfare of any or all of the Service Users then the other party will be entitled to serve a notice of suspension (“a Suspension Notice”) if the Suspension Notice can reasonably be expected to remove or otherwise reduce the said risk. The Suspension Notice will set out the nature of the Default or Serious Default, the date when the Service or relevant part of the Service is to be suspended, the steps reasonably required to remedy the Default or Serious Default and the reasonable timescale for remedying the same. Within five (5) Working Days of a written request being made by the Provider, the Council shall supply full written details of the said risks that the Council considers to exist and why the Council considers that a suspension will remove or otherwise reduce the risks to any or all of the Service Users. Within five (5) Working Days of a written request being made by the Provider, the Council shall conduct a full review as to whether or not the said risks remain, such review to include that in the event of the Council reasonably deciding that the risks no longer remain, it will lift the suspension within two (2) Working Days of the conclusion of the review. If the Council reasonably decides during the said review that the risks do remain to such extent that justifies a suspension under the provisions of this Condition, the Council will within two (2) Working days of the conclusion of the review supply full written details of the said risks and why it considers that a continuation of the suspension will remove or otherwise reduce the risks to any or all of the Service Users.

## 39.7 Where the Council serves a Suspension Notice:

### 39.7.1 the Services will be subject to the Council’s review; and

### 39.7.2 the Provider will cease providing the Service on the request of the Council.

### 39.8 Following the service of a Suspension Notice by the Council to the Provider, as soon as possible after the Provider has rectified the Default and/or Serious Default the Council will reasonably decide whether or not the Provider is to resume the provision of the Service or that part of the Service that was subject to the suspension.

### 39.9 Further to Condition 39.8 above, if the Council decides that the Provider is to resume the provision of the Service or that part of the Service that was subject to the suspension then the Council will serve on the Provider a notice of resumption (a “Resumption Notice”) which will set out:

### 39.9.1 the date upon which the Service, or the part thereof, is to be resumed. This shall be no later than five (5) Working Days after the Council’s decision that the Service or part of the Service is to be resumed;

### 39.9.2 such reasonable conditions relating to the Provider’s resumption of the Service or that part of the Service as the Council reasonably decides are necessary.

### 39.10 Throughout the suspension period, and subject to the Council taking reasonable steps to mitigate its loss the Provider will reimburse the Council for and indemnify the Council against all reasonable costs and expenses above the Payment Rate for the period of suspension incurred by the Council as a result of any such suspension, including (but not limited to) the cost to the Council of providing the Service, or part thereof, under Condition 39.9.2. If such costs and expenses are not paid by the Provider to the Council by the date of the next following Invoice and the Provider does not raise a dispute in respect thereof, the Council will be entitled to deduct any such monies owed to the Council from any monies owed to the Provider under that Invoice, without prejudice to the provisions of Condition 19 (Recovery of Sums Due).

### 39.11 Nothing in this Condition 39 will operate to prevent the Parties from exercising their rights of termination under Conditions 38, 40 and 41.

40. BREAK

40.1 Either Party shall have the right to terminate the Agreement or to terminate the provision of any part of the Agreement at any time by giving no less than six (6) months’ written notice to the other.

41. CONSEQUENCES OF TERMINATION

41.1 Where the Council terminates the Agreement under Condition 39 or terminates the provision of any part of the Agreement under that Condition, and then makes other arrangements for the provision of Services and subject to taking reasonable steps to mitigate its loss, the Council shall be entitled to recover from the Provider the cost of making those other arrangements and any additional reasonable expenditure incurred by the Council throughout the remainder of the Term. Where the Agreement is terminated under Condition 39, no further Payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements. With regard to the application of this Condition the Council acknowledges its general duty to mitigate any losses it might suffer.

41.2 Where the Council terminates the Agreement under Condition 40, the Council shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Agreement, provided that the Provider takes all reasonable steps to mitigate such loss. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under Condition 40.

41.3 The Council shall not be liable under Condition 41.2 to pay any sum which:

41.3.1 was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

41.3.2 when added to any sums paid or due to the Provider under the Agreement, exceeds the total sum that would have been payable to the Provider if the Agreement had not been terminated prior to the expiry of the Term; or

41.3.3 The Council’s total liability to the Provider in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed Contract Price in aggregate.

42. DISRUPTION

42.1 The Provider shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

42.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

42.3 In the event of industrial action by the Staff, the Provider shall seek Approval to its proposals to perform its obligations under the Agreement.

42.4 If the Provider’s proposals referred to in Condition 42.3 are considered insufficient or unacceptable by the Council, then the Agreement may be terminated by the Council by notice in writing with immediate effect.

42.5 If the Provider is temporarily unable to fulfil the requirements of the Agreement and or owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time may be approved by the Council. In addition, the Council may reimburse any additional expense incurred by the Provider in fulfilling the provisions of the Agreement as a result of such disruption.

43. RECOVERY UPON TERMINATION

43.1 Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Provider and the Council accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

43.2 At the end of the Term (and howsoever arising the Provider shall forthwith deliver to the Council upon request all the Council’s property (including but not limited to materials, documents, information, access keys, design templates, machinery) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted Providers or its sub-contractors.

43.3 The provisions of this Condition shall survive the continuance of this Agreement and indefinitely after its termination.

**44. FORCE MAJEURE**

44.1 For the purpose of this Condition, “Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within the Provider’s organisation or within any sub-contractor’s organisation.

44.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a Payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 3 months, either Party may terminate the Agreement by notice in writing with immediate effect.

44.3 Any failure or delay by the Provider in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or Provider shall be regarded as due to Force Majeure only if that agent, sub-contractor or Provider is itself impeded by Force Majeure from complying with an obligation to the Provider.

44.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in this Condition 44.2 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

44.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

1. **RE-TENDERING AND FUTURE HANDOVER**

45.1 Within thirty (30) Working Days of being so requested by the Council, the Provider shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Council to issue invitations to bidders for the future provision of the Services and it shall be the Provider’s responsibility to get all consents or permits necessary to pass that information to the Council.

45.2 Where, in the opinion of the Council, the TUPE Regulations are likely to apply on the termination or expiration of the Agreement, the information to be provided by the Provider under Condition 45.1 shall include, as applicable, accurate information relating to the employees or personnel under the control of the Provider who would or could be transferred under the TUPE Regulations (the "Employees") and such other relevant information as may be reasonably required for disclosure to third parties intending to submit bids for any subsequent agreement for the provision of the Services ("the Workforce Information").

45.3 Furthermore, the Provider will not for a period of 6 months prior to termination or expiry of the Term make any material changes in the numbers of Employees to be transferred under the TUPE Regulations, their remuneration or other terms and conditions of employment.

45.4 The Provider shall advise the Council immediately of any changes to the Workforce Information between the date on which it is provided and the expiry of this Agreement and shall ensure that the information disclosed is accurate and up to date and that all known existing liabilities relating to the Employees have been discharged.

45.5 The Provider shall indemnify the Council against any claim made against the Council at any time by any person in respect of the liability incurred by the Council arising from any deficiency or inaccuracy in information, which the Provider is required to provide under Condition 45.1.

45.6 The Provider shall, if required by the Council, provide an undertaking and warranty to any person to whom the Provider’s Employees may transfer pursuant to the TUPE Regulations to the effect the Provider has discharged all its obligations as employer in relation to the Employees.

45.7 The Provider shall co-operate fully with the Council during the handover arising from the completion or earlier termination of this Agreement. This co-operation, during the setting up of operations period of the new provider, shall extend to consultation with the Employees allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.

45.8 Within twenty (20) Working Days of being so requested by the Council, the Provider shall transfer to the Council, or any person designated by the Council, free of charge, all computerised filing, recordings, documentation, information, planning and drawings held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued format to operate on a proprietary software package compatible to that used by the Council.

**46. DISPUTE RESOLUTION**

* 1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within 30 (Thirty) Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the corporate director (or equivalent) of each Party.
  2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
  3. The performance of this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider (or employee, agent, Provider or sub-contractor) shall comply fully with the requirements of this Agreement at all times.
  4. In order to resolve a dispute, the following procedure is to be followed:

## Inform the other Party of the need for a meeting between the Council and Provider Officer’s within seven (7) Working Days, or such other period that might be agreed;

## If the dispute remains unresolved, then either Party may refer it to the senior officer of each Party for resolution and the same will meet for discussion within fourteen (14) Working Days thereafter or such shorter period as the Parties may agree.

## If the dispute is still not resolved, then the matter will, if both Parties agree in writing, be referred to an independent mediator as soon as reasonably practicable.

## The mediator shall be an individual agreeable to both Parties.

## If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party shall with fourteen (14) Working Days from the date of the proposal to appoint a mediator or within fourteen (14) Working Days of notice to either Party that he or she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (“the Model Procedure”) unless (a) the Council considers that the dispute is not suitable for resolution by mediation or (b) the Provider does not agree to mediation.

## To initiate a mediation, a Party must give notice in writing (“ADR notice”) to the other Party to the dispute addressed to its Chief Executive (or senior officer if it does not have a Chief Executive) requesting a mediation in accordance with Condition 46.4.8. A copy of the request should be sent to CEDR.

## The procedure in the Model Procedure will be amended to take account of any:

## 

## 46.4.7.1 relevant provisions in the Agreement; or

## 46.4.7.2 other agreement which the parties may enter into in relation to the conduct of the mediation (“Mediation Agreement”).

## If there is any point on the conduct of the mediation (including as to the nominator of the mediator) upon which the Parties cannot agree within fourteen (14) Working Days from the date of the ADR notice, CEDR will, at the request of any Party, decide that point for the Parties, having consulted with them.

## The mediation will start not later than twenty eight (28) Working Days from the date of the ADR notice.

## Costs for this process shall be borne by the fault bearing Party.

## Both Parties agree to co-operate with the requirements of the appointed mediator and agree that all negotiations regarding the matters in dispute shall be strictly confidential.

## If the dispute is still unresolved then the Parties can agree to refer the matter to arbitration or the courts.

## **47. supply of information and audit**

## 47.1 The Provider must notify the Council if:

## there is a change in the control of the majority of the shares in, or the voting rights amongst, its shareholders or members of its organisation;

## it merges with another organisation;

## it transfers any of its business to another organisation;

## a Regulatory Body directs an inquiry into or makes an order of any kind in relation to its affairs including requirements identified from an inspection, in which case the Provider will provide to the Council at NNC’s request a copy of the inspection or any registration which it must maintain in order to provide the Services is withdrawn or cancelled or is threatened to be withdrawn or cancelled; or

## they are or become aware of any investigations of the Provider instigated under the Local Safeguarding Policy and Procedures.

## 47.2 The Provider shall:

## at all reasonable times (including following termination for whatsoever reason of this Agreement) afford to or obtain for any auditor (including any auditor carrying out functions under the Audit Commission Act 1998 or the Local Government Act 1999) conducting an internal audit, inspection or an audit of Best Value Performance Plans or to or for the Council Officer (or its nominee) access to any records, information and data in the possession or control of the Provider which in any way relate to or are or have been used in connection with the provision of the Services;

## provide the Council with an up-to-date email address which will be used for general correspondence and as the access point for electronic monitoring forms;

## keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Services provided under it, and the amounts paid;

## keep the records and accounts referred to in Condition 47.2.3 above in accordance with good accountancy practice;

## afford the Council and/or the auditor (as they may reasonably request) access to such records and accounts as may be required from time to time.

## The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Agreement; save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by auditors is outside of the control of the Council.

## The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition 47, unless the audit reveals a Serious Default by the Provider in which case the Provider shall reimburse the reasonable costs incurred by the Council in relation to the audit.

48 **PAY LEGISLATION**

48.1 In performing the Contract, the Service Provider must comply, and must ensure that any Sub-Contractor complies with the Pay Legislation by having regard to:

a) the principle that men and women should receive equal pay for equal work as implemented in the Equality Act 2010; and

b) the requirements to pay its staff at a rate that complies with the statutory rates for the National Minimum Wage and the National Living Wage.

48.2 The Service Provider must provide to the Council as soon as reasonably practicable, any information that the Council reasonably requires to monitor the Service Provider’s compliance with its obligations under clause 48.1.

49 **PREVENTION OF TAX EVASION**

49.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider’s Staff, have at any time prior to the Commencement Date:

a) committed a Proscribed Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Proscribed Act; and/or

b) been listed by any government department or agency as being debarred, suspended, proposed for suspension of debarment, or otherwise ineligible for participation in government procurement or contracts on the grounds of a Proscribed Act.

49.2 The Service Provider shall not during the term of this Contract:

a) commit a Proscribed Act; and / or

b) do or suffer anything to be done which would cause the Council or any of the Council’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Criminal Finances Act 2017 or otherwise incur any liability in relation to the Criminal Finances Act 2017.

49.3 The Service Provider shall:

a) 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 in any relevant jurisdiction for the purpose of compliance with the Criminal Finances Act 2017;

b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 49.1 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

49.4 The Service Provider shall during the term of this Contract:

a) establish, maintain and enforce, and require that’s Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Criminal Finances Act 2017 and prevent the occurrence of a Proscribed Act; and

b) keep appropriate records of its compliance with its obligations under clause 49.4(a) and make such records available to the Council on request.

49.5 The Service Provider shall immediately notify the Council in writing if it suspects or becomes aware of any breach of clause 49.1 and / or 49.2, or has reason to believe that it has or any of the Service Provider’s Staff have:

a) been subject to an investigation or prosecution which relates to an alleged Proscribed Act;

b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Proscribed Act; and / or

c) been involved in any Proscribed Act or otherwise suspects that any person or Party directly or indirectly connected with this Contract had committed or attempted to commit a Proscribed Act.

49.6 If the Service Provider makes a notification to the Council pursuant to clause 49.5, the Service Provider must respond promptly to the Council’s enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation in accordance with clause 47 (Supply of Information and Audit). This obligation shall survive termination of the Contract.

49.7 If the Service Provider is in Default under clause 49.1 and / or 49.2, the Council may by notice:

a) require the Service Provider to remove from performance of the Contract any Service Provider’s Staff whose acts or omissions have caused the Default; or

b) terminate the Contract by written notice with immediate effect.

49.8 Any notice served under clause 49.7 must specify:

a) the nature of the Proscribed Act;

b) the identity of the party whom the Council believed has committed the Proscribed Act;

c) the date on which this Contract will terminate; and

d) the action that the Council has elected to take.

49.9 Notwithstanding Condition 46 (Dispute Resolution), any dispute relating to:

a) the interpretation of Condition 49; or

b) the amount or value of any gift, consideration or commission,

c) shall be determined by the Council and its decision shall be final and conclusive.

49.10 Any termination under Condition 49.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

50 **COMPLIANCE WITH THE COUNTER-TERRORISM AND SECURITY ACT 2015**

50.1 The Provider acknowledges that the Council has a duty under the Counter-Terrorism and Security Act 2015 (CTSA) in the exercise of its functions to have due regard to the need to prevent people from being drawn into terrorism.

50.2 The Provider shall facilitate the Council’s compliance with its duty pursuant to the CTSA and the Provider shall have regard to any statutory guidance issued by the Secretary of State under section 29 of the CTSA and in particular the Provider shall ensure that staff:

a) understand what radicalisation means and why people may be vulnerable to being drawn into terrorism;

b) are aware of extremism and the relationship between extremism and terrorism;

c) know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extreme ideology that can be associated with it; and

d) obtain support for people who may be exploited by radicalising influences.

50.3 Where the Provider identifies or suspects that someone may be engaged in terrorist-related activity, the Provider must refer such person or activity to the police (or to the Multi-Agency Safeguarding Hub (MASH)).

**51. COSTS AND EXPENSES**

50.1 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

**52. GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS** of which this Agreement has been duly executed by the parties.

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| --- | --- | --- | --- | --- |
| |  |  | | --- | --- | | Signed by **NORTH NORTHAMPTONSHIRE COUNCIL**  for and on behalf of North Northamptonshire Council | ...................................  Authorised Signatory | | Signed for and on behalf of TCR NOTTINGHAM LIMITED | Name:  Title:  ...................................  Operations Director  Name: Mark J Poole  4th August 2025  Witness  Signature: L A Morris  Name: Lesley Morris  Tile: Company Secretary | |

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**SCHEDULE 1**

**DEFINITIONS**

**Definitions**

In this Contract unless the context otherwise requires the following terms shall have the meanings given to them below:

“**Abuse”** means a single or repeated act, or lack of appropriate action, occurring within a relationship where there is an expectation of trust which causes or is likely to cause harm or distress to a Service User including but not limited to exploitation, physical, emotional, psychological, verbal, financial, sexual or racial abuse, discrimination, restraint, neglect of, or cruelty towards, Service Users or abuse through misapplication of medication by deliberate intent, negligence or ignorance.

**“Adequate Procedures”** means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010.

**“Agreement”** means this written agreement between the Council and the Provider consisting of these Conditions and any attached Schedules.

**“Associated Person”** in relation to a company, a person (including an employee, agent or subsidiary) who performs services for or on behalf of that company

“**Approval”** means the written consent of the Council.

**“AUDIT/AUDIT-C”** means Alcohol Use Disorders Identification Test

**“Authorised Person”** the person appointed by the Council to administer and manage the contract as set out in Schedule 4 (Andrew Machaeson) on behalf of the Council or such other person as the Council may nominate from time to time.

**“Barred List”** the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 (the “SVGA”).

**“Best Value Duty”** are the obligations of the Council under part 1 of the Local Government Act 1999 (the “Act”), including the statutory instruments and guidance issued by the Secretary of State in relation to the Act;

**“BMI”** means Body Mass Index.

“**Carer**” means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage.

**“CHD”** means Coronary heart disease

**“CKD”** means Coronary Kidney disease

**"Commencement Date"** shall be on 1ST AUGUST 2025 and being the date from which the Contract commences;

“**Commercially Sensitive Information”** means the information listed in Schedule 3 and is information of a commercially sensitive nature relating to the Provider, its IPRs or its business or which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Provider significant commercial disadvantage or material financial loss;

**“Conditions”** these terms and conditions of the Contract;

**“Confidential Information”** means:

(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

(i) was public knowledge at the time of disclosure (otherwise than by breach of condition 25 (Confidentiality);

(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) which is independently developed without access to the Confidential Information.

“**Contracting Authority**” means any contracting authority subject to procurement rules as defined in the Public Contracts Regulations 2015.

**“Contract Price”** means the price (exclusive of any applicable VAT) payable to the Provider by the Council under the Contract, as set out in Schedule 3 (Payment & Payment Rate), for the full and proper performance by the Provider of its obligations under the Contract.

**“Contract Manager”** is the person authorised by the Provider to act on behalf of the Provider for all purposes connected with the Contract or such other person as the Provider shall appoint from time to time, the particulars of whom appear in Schedule 4 (Details of Council and Provider Officer).

**“Conviction”** other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);

**“CQC”** the Care Quality Commission or any replacement or successor body;

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies.

**“CVD”** means cardiovascular disease

**“Cybersecurity Requirements”** all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, applicable to either party, relating to security of network and information systems and security breach and incident reporting requirements, including data protection legislation, the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

**“Data Loss Event”** any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

**“Data Processor Personnel”** means all directors, officers, employees, agents, consultants and contractors of any Data Processor engaged in the performance of its obligations under this Contract.

**“Data Protection Impact Assessment”** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**“Data Protection Legislation”** this includes: this includes:

(a) the General Data Protection Regulation (Regulation (EU) 2016/679) (**GDPR**),

(b) the Law Enforcement Directive (Directive (EU) 2016/680) (**LED**) and any applicable national implementing Laws as amended from time to time,

(c) the Data Protection Act 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy;

(d) the Regulation of Investigatory Powers Act 2000 (where applicable);

(e) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) (where applicable);

(f) Directive 2002/58/EC concerning the processing of Personal Data and the protection of privacy in the electronic communications sector (where applicable);

(g) [the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) (where applicable); and

(h) all applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable;

**“Data Subject Access Request”** is a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**“DBS”** means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

**“Default”** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other but a Default shall not include a Serious Default.

**“DBP”** means diastolic blood pressure

**“DNA”** means Does Not Attend, referring to individuals invited for health checks who fail to attend.

**“EMIS”** means a Primary Care Clinical system which GP’s use to store / manage patient data and consultations.

“**Environmental Information Regulations”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“Enquiry Phase Personal Data”** the Personal Data to be Processed by or on behalf of the Council, more particularly described in Schedule 6.

“**Equipment”** means the Provider’s equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract.

**“Expiry Date”** the end date of the Contract being: 31ST MARCH 2027

**“FAST”** means Fast Alcohol Screening Test

**“Fees Regulations”** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

“**FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“**Force Majeure”** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

(a) any industrial action occurring within the Provider’s or any Sub-Contractor’s organisation; or

(b) the failure by any Sub-Contractor to perform its obligations under any sub-contract.

**“Fraud”** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

**“GPPAQ”** means General Practice Physical Activity Questionnaire

**“Good Industry Practice”** means National Standards, Guidance, practices, methods and procedures conforming to the Law and with all due skill and care, diligence, prudence and foresight which would be expected from a skilled and appropriately experienced, qualified and trained person or body engaged in a similar type of undertaking under the same or similar circumstances.

“**Guidance”** means any applicable local authority, health or social care guidance, direction or determination which the Council and/or the Provider have a duty to have regard to.

**“HbA1c”** means blood glucose level

**“HDL”** means high-density lipoproteins.

**“Information”** has the meaning given under section 84 of the FOIA.

**“IT”** means information technology

**Intellectual Property Rights or IPRs means** any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto and as may be more specifically set out in the Contract.

**“International Transfer”** a transfer to a country outside the European Economic Area (as it is made up from time to time) of Enquiry Phase Personal Data which is undergoing Processing or which is intended to be Processed after transfer

**“Law”** means:

1. any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
2. any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
3. any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
4. National Standards;
5. Guidance; and
6. any applicable industry code;

in each case in force in England and Wales.

**“Legal Guardian”** means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs.

**“Local Safeguarding Policy and Procedures”** means the inter-agency safeguarding children and adults procedures of the county of Northamptonshire.

“**Month”** means calendar month.

**“National Standards**” means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time.

“**Framework”** means this Agreement which is a framework agreement.

“**Parties”** means the Council and the Provider and “Party” means either one of them.

**“Pay Legislation”** means the Equality Act 2010, the National Minimum Wage Act 1998, the National Minimum Wage Regulations 2015 (SI 2015/621) and the National Minimum Wage (Amendment) Regulations 2016 (SI 2016/68) as amended from time to time.

**“Party”** means a party to the Contract, the Council and Provider are each a party and together shall be known as the ‘Parties’.

**“POCT”** means Point of Care Testing

“**Premises”** means the location where the Services are to be delivered and/or, as set out in the Specification.

**“Pricing”** means the pricing contained in Schedule 3 (Payment).

**“Prohibited Act”** means

1. offering giving or agreeing to give any servant of the Council any gift or consideration of any kind as an inducement or reward for:
2. doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Contract or any other agreement with the Council; or
3. showing favour or disfavour to any person in relation to the Contract or any other agreement with the Council;
4. committing any offence:
5. under the Local Government Act 1972 and or the Bribery Act 2010;
6. under legislation creating offences in respect of theft and fraudulent acts;
7. at common law in respect of fraudulent acts in relation to the Contract or any other agreement with the Council; or
8. defrauding or attempting to defraud or conspiring to defraud the Council;

(c) any action that may reasonably be considered to be to the detriment of a Service User’s welfare or to the delivery of the Service – either by positive action or by omission. Such action shall include but is not limited to:

1. breach of the Law; or
2. health and care; or
3. Children’s Safeguarding and or Deprivation of Liberty Safeguards; under the Safeguarding Vulnerable Groups Act 2006 (SVGA) and the Mental Capacity Act 2005; or
4. Abuse; or
5. Fraud and theft from Service Users; or
6. sexual misconduct; or
7. financial malpractice; or
8. business continuity failure.

**“Property”** means the property, other than real property or Premises, issued or made available to the Provider by the Council in connection with the Contract.

**“Proscribed Act”** means

1. if a person commits:
2. an offence of cheating the public revenue; or
3. an offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax;
4. committing any offence:
5. under the Criminal Finances Act 2017;
6. under the Taxes Management Act 1970;
7. under the Value Added Tax Act 1994;
8. under the Customs and Excise Management Act 1979;
9. under any of the Finance Acts;
10. at common law concerning any form of fraudulent conduct which results in depriving the HMRC of money to which it is entitled.

**“Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“**Provider**” means the person, firm or company with whom the Council enters into this Contract for the provision of the Services.

**“QRISK”** is a prediction algorithm for cardiovascular disease (CVD) that uses traditional risk factors (age, systolic blood pressure, smoking status and ratio of total serum cholesterol to high-density lipoprotein cholesterol) together with body mass index, ethnicity, measures of deprivation, family history, chronic kidney disease, rheumatoid arthritis, atrial fibrillation, diabetes mellitus, and antihypertensive treatment.

“**Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Schedule 2A (Specification).

**“READ codes”** means the standard clinical terminology system used in General Practice

“**Review Meeting”** means a meeting which can be called by either Party to consider Variations that may be made resulting from changes in the needs of the Service User or the demand for the Service. Such a meeting may involve the Service User and where possible the Service User’s interested parties.

“**Receipt”** means the physical or electronic arrival of the invoice at the address of the Council detailed at Condition 11 or at any other address given by the Council to the Provider for the submission of invoices.

“**Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

“**Replacement Provider”** means any third party Provider appointed by the Council to supply any Services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“**Request for Information”** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**“Schedule”** means a schedule attached to, and forming part of, the Contract.

“**Serious Default”** a default by the Provider which materially risks the health, safety or welfare of a Service User and or a breach of Condition 7 of the Contract, including but not limited to where the Provider’s Service is judged by CQC (or successor organisation) to be at the level of ‘non-compliance’ within CQC’s judgement.

“**Service(s)”** means the services (and any part or parts of those services) described in each of, or, as the context admits, all of the Service Specifications, and/or as otherwise provided or to be provided by the Provider under and in accordance with this Contract.

**“Service User”** means the person directly receiving the Services provided by the Provider as specified in the Service Specification and includes their Carer and Legal Guardian where appropriate.

**“SNOMED codes”** means the standard clinical terminology system used in General Practice (these will replace READ codes).

**Software**: the Provider’s proprietary software in machine-readable object code form as described in Schedule 5, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Council under this Agreement.

**“Specification”** means the description of the Services to be supplied under the Contract as set out in the Schedule 2A (Specification) including, where appropriate, the quantity of the Services, any applicable Quality Standards and specified Outcomes; the location to which the Services are to be delivered; a description of any Services to be carried out by the Provider or any Staff; any equipment with which the Services shall be compatible; the date(s) and time(s) of delivery of the Services and any necessary training or instruction to be given to the Council.

**“Staff”** means all persons employed by the Provider to perform its obligations under the Contract together with the Provider’s servants, agents, Providers and Sub-Contractors used in the performance of its obligations under the Contract.

**“Sub-Contract”** means any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

**“Sub-Contractor”** means the contractors or suppliers that enter into a Sub-Contract with the Provider.

**“Sub-processor”** means any third Party appointed to process Personal Data on behalf of a Data Processor for the purposes of this Contract.

**“System One”** refers to a Primary Care Clinical system which GP’s use to store / manage patient data and consultations.

**“SBP”** means Systolic blood pressure

“**Tender”** means the document(s) submitted by the Provider to the Council in response to the Council’s invitation to Providers for formal offers to supply it with the Services.

**“Term”** means the period from the Commencement Date to:

1. the Expiry Date
2. or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

**“TIA”** means Transient ischaemic attack

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/46) (as amended).

“**Variation**” means a variation to a provision or part of a provision of this Contract as proposed by the Council in accordance with Condition 31.

“**Variation Notice**” means a notice to vary a provision or part of a provision of this Contract including the Contract Price, issued under Condition 31.

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“**Vulnerable Adult”** someone over 18 years of age who may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of themselves, or unable to protect themselves against significant harm or exploitation and as described in the Department of Health and Home Office publication “No Secrets”.

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1. **SCHEDULE 2A**

**SERVICE SPECIFICATION**

See Annex 1

SCHEDULE 2B

# Key Performance Indicators

See Annex 2

**SCHEDULE 3**

**PAYMENT & PRICING SCHEDULE**

See Annexes 3 & 4

**SCHEDULE 4**

**DETAILS OF THE COUNCIL AND PROVIDER CONTACT**

|  |  |
| --- | --- |
| **COUNCIL CONTACT** | **PROVIDER CONTACT** |
| The Council Officer shall liaise with the Provider in relation to all matters concerning the performance of the Services and the Provider’s obligations under the Agreement. | The Provider Officer shall liaise with Council Officer in relation to all matters concerning the performance of the Services and Council’s obligations under the Agreement. |
| **Name: ANDREW MACHAESON**  **Position: COMMISSIONING MANAGER**  **Address:**  SHEERNESS HOUSE, KETTERING.  **Postcode:** NN16 8TL  **Telephone:** 07826 999626  **Email: ANDREW.MACHAESON@NORTHNORTHANTS.GOV.UK** | **Name:**  **Position:**  **Address:**  **Postcode:**  **Telephone:**  **Email:** |

**SCHEDULE 5**

**DATA PROCESSING SCHEDULE**

SEE ANNex 5

**SCHEDULE 6**

1. **CONTRACT MONITORING**

# Monitoring

# The Provider will submit monthly monitoring data as outlined in schedule 2 ‘service specification’. This will be monitored and supported as part of the contract management process.

# Commissioners will meet at least quarterly with providers to discuss performance.

# Providers who do not satisfactorily fulfil performance requirements will be supported to improve by the quality assurance and improvement officer but, if no improvement is apparent, will ultimately have their contract removed.

# Sub-contracting

# Alternative providers can carry out NHS health checks on behalf of GP practices. Any sub-contracting arrangements must be agreed in advance with the commissioner.

# It is the responsibility of the provider to ensure that any sub-contractors fulfil all requirements of the programme. It is a legal requirement for third parties to submit data to the GP practice.

# It is expected that the lead provider has a named contract manager who will monitor performance of sub-contracts in line with the expectations of the service specification and report back to the commissioner on performance.