

Dated.....20...

CONTRACT

BETWEEN

SHROPSHIRE COUNCIL

and

[add in legal entity of the Service Provider]

Contract Ref No

For the Provision of Overnight Foster Care Short Breaks]

Heading	Clause	Page
Definitions		
Contract & Term	1	
Payment	2	
VAT	3	
Compliance	4	
Authorised Officer & Service Provider Representative	5	
Variation	6	
Agency	7	
Accounting	8	
Notices	9	
Breach	10	
Prevention of Bribery	11	
Indemnity & Insurance	12	
Termination	13	
Consequences of Termination	14	
Disputes	15	
Assignment & Subcontracting	16	
Force Majeure	17	
Waiver	18	
Severance	19	
Statutory Duties	20	
Governing Law	21	
Conflict of Terms	22	
Rights of Third Parties	23	
Remedies Cumulative	24	
Council Committees	25	
Conclusion of Contract	26	
Sustainability	27	
Freedom of Information Act 2000 (FOIA) & Environmental Regulations 2004 (EIR)	28	
Confidential Information	29	
Contract Status & Transparency	30	
Council Data	31	

Data Protection	32	
Council Data & Personal Information Audits	33	
Business Continuity Plan	34	
Safeguarding	35	
Equalities	36	
Complaints	37	
Intellectual Property	38	
Public Interest Disclosure	39	
Project Materials	40	
Cyber Security	41	
TUPE	42	
Entire Agreement	43	
Schedule 1: The Service		
Schedule 2 : Performance and Monitoring		
Schedule 3 – Service Standards		
Schedule 4 - Finance		
Schedule 5 TUPE clauses options		
Schedule 6 Outcomes/Performance Indicators		
Schedule 7 Safeguarding		
Schedule 8 Processing, Personal Data and Data Subjects		
Schedule 9 Personal Data Sharing between Data Controllers		
Schedule 10 Joint Controller Agreement		
Schedule 11 Security		
Appendices		

THIS CONTRACT is made the day of 20 [..]

hereinafter called the “Contract” between

(1) SHROPSHIRE COUNCIL of Shirehall Abbey Foregate Shrewsbury SY2 6ND
 (“the Council”) and

(2) [add in legal entity name] of [add in legal entity address]
 [(company number X)] /[whose registered charity number is X] (the “Service
 Provider”)

WHEREAS

- (B)¹ The Council wishes to receive Overnight Foster Care Short Breaks for Children & Young People.
- (C) The Council in the exercise of performing its obligations requires the Services to be delivered for the benefit of children and young people (‘the Service Users’) within its administrative area
- (D) The Service Provider has the skills, background and experience in providing the Services required by the Council.
- (E) The Service Provider is willing to provide the Service in accordance with the terms of this Contract and the Council is willing to engage the Service Provider to provide the Services.

NOW IT IS AGREED as follows:

DEFINITIONS

For the purpose of this Contract the following words shall have the following meanings:

‘Annual Review’²	means the annual review to be held on the anniversary of the term or on such date as shall be agreed between the Parties to review the progress of the operation of the Services, accounts and any other operational issues that may arise
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¹ Amend to suit

² Optional definition which may apply to contracts with a duration for more than one year and which are either subject to budget or performance reviews

Associated Person	means in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest; OR any other body that substantially performs any of the functions of the Council that previously had been performed by the Council.
Authorised Officer	means the representative appointed by the Council to manage the Contract on its behalf
‘Best Practice’	means in accordance with the best practice within the industry of the Service Provider
Best Value	the requirement under section 3 of the Local Government Act 1999 for local authorities to secure continuous improvement.
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
Business Continuity Plan	means the Service Provider’s plan referred to in Clause 34 relating to continuity of the Services, as agreed with the Council and as may be amended from time to time
Commencement Date	[add in letter format ie 1st December 2012]
Commercially Sensitive Information	comprises the information of a commercially sensitive nature relating to the Service Provider its Intellectual Property Rights or its business which the Service Provider has indicated to the Council in Writing that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss;

Confidential Information

any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Council or the Service Provider, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including all Personal Data and the Commercially Sensitive Information;

Contract

means this agreement

Contract Documents

means this Contract including the Schedules and any other documents annexed to it

‘Council’

means the Party named above and includes its employees, officers, servants and agents acting on its behalf

Council Data

the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(a) supplied to the Service Provider by or on behalf of the Council; or which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or

(b) any Personal Data for which the Council is the Data Controller.

Council Software

software which is owned by or licensed to the Council, including software which is or will be used by the Service Provider for the purposes of providing the Services but excluding the Service Provider Software

Council System

the Council's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council or the Service Provider in connection with this Contract which is owned by or licensed to the Council by a third party and which interfaces with the Service

	Provider System or which is necessary for the Council to receive the Services; ³
COVID 19	means all forms and mutations of the viral infection (also known as Coronavirus) being the cause of a global pandemic which started prior to the Commencement Date and which may continue to have impacts upon general society during the term of this Contract.
COVID 19 Event	means a circumstance when the UK Government imposes restrictions (including but not limited to, restrictions on travel or restrictions on groups of people being together) that may inhibit the ability of the Service Provider to deliver the Services.
Covid 19 Safe Working Practices	means working practices complying with all applicable guidance issued by the government from time to time with respect to safeguarding individuals from the spread of the Covid-19 virus
CQC	means the Care Quality Commission (or any other body which supersedes it) area office for the area where the Service is located and/or any other body which has regulatory powers or responsibilities in respect of the Service Provider.
Data Controller	is as defined in the Data Protection Legislation
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Data Processor 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	is as defined in the Data Protection Legislation
Data Protection Impact Assessment	an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data

³ Delete this definition if Option 1 of the data protection clause (Council Data) is not used

Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party
Data Protection Officer	shall have the meaning given in the Data Protection Legislation
Data Subject	shall have the meaning given in the Data Protection Legislation
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
Day of Absence	a day on which the Service is scheduled to be provided but is prevented from being provided due to the absence of the Service User from the place where the Service was due to be provided
Domestic Law	means the Law of the United Kingdom or a part of the United Kingdom
DPA 2018	Data Protection Act 2018
EIR	means the Environmental Information Regulations 2004 (as may be amended from time to time)
Employment Checks	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, disclosure and barring checks and occupational health checks.
Exempt Information	any information or class of information (including but not limited to any document, report or other material containing information) relating to this Contract or

otherwise relating to the Parties to this Contract which potentially falls within an Exemption to FOIA (as set out therein)

***Expiry Date**

Insert date [e.g. 1st December 2013]

***Expiry Date**

being the final date that this Contract ends which is either:

- a) the Initial Expiry Date; or
- b) the last date of any agreed Extension Period further to clause 1 below; or
- c) such other date as this Contract is terminated in accordance with its terms

Extension Period

means an extension to the duration of this Contract as agreed between the Parties further to clause 1 of this Contract

Facilities

means working space, computer equipment, access to the internet and the Council's computer network, telecommunications system etc, and shall include not only access to such resources but also use of them to the extent required by the Service Provider in order to perform the Services ⁴

Financial Year

means the period of 12 months from and including 1st April in one year and ending on 31st March in the next

FOIA

means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause.

FOIA notice

means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner.

Formal Complaint

a complaint that cannot be resolved through any instant remedial action and is not a service request

⁴ Delete this definition if the Council is not providing the Contractor with Facilities to enable it to deliver the services

Force Majeure Event

means any circumstance not within a Party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition [or failing to grant a necessary licence or consent];
 - (f) collapse of buildings, fire, explosion or accident; and
 - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party);
 - (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the Party seeking to rely on clause 17 (Force Majeure); and
 - (i) interruption or failure of utility service.
- provided always that COVID-19 and its impacts including associated Government acts and regulations shall be treated as foreseeable by and within the control of the Parties

GDPR

means the General Data Protection Regulation 2016/679 as they apply and are incorporated into UK law by UKGDPR

Initial Term	means a period of <u>4</u> [years commencing on the Commencement Date and expiring on the Initial Expiry Date
Initial Expiry Date⁵	means [insert date] ⁶
Intellectual Property Rights	means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable
Joint Controllers:	where two or more Data Controllers jointly determine the purposes and means of processing
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply
'Malicious Software'	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; ⁷
Officer(s)	those officers of the Council who are authorised by the Council to perform functions in connection with this Contract
Ofsted	Office for Standards in Education
Option to Extend	means the Council's option to extend the Initial Term by a period of up to [...] years] commencing from

⁵ Delete this definition if the contract is for a fixed term and not capable of being extended

⁶ Insert expiry date for the initial term where the Contract is capable of being extended for a further period e.g. where the contract period may be one year plus one year, insert the last date of

⁷ Delete this definition if option 1 of the data protection clause is not used (Council Data)

	and including the date following the Initial Expiry Date
Order Number	means an order reference given by the Council to the Service Provider which must be quoted on all Valid Invoices submitted for payment
Outcomes	means the targets, results or objectives set out in the Specification
Party or Parties	means with respect to Party the Council or the Service Provider and Parties both the Council and the Service Provider together
Payment	the payment to the Service Provider as detailed in Clause 2
PCR	The Public Contracts Regulations 2015
Personal Data	shall have the same meaning as set out in the Data Protection Legislation
Personal Data Breach	means: anything which constitutes a "personal data breach" as set defined in the Data Protection Legislation
Planned Absence	an absence of the Service User from [their home]/[the location] where the Service is provided and where a minimum of one weeks' prior notice (which may be oral or written) of the intended absence is given by the Service User or the Council to the Service Provider
Prevent Duty	Is the duty conferred upon the Council in the exercise of its functions to have due regard to the need to prevent people from being drawn into terrorism further to the Counter-Terrorism and Security Act 2015
Processor Personnel:	means all directors, officers, employees, agents, consultants and contractors of the Data Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract

Prohibited Act

the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

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

(c) committing any offence:

(i) under the Bribery Act 2010;

(ii) under legislation creating offences concerning fraudulent acts;

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

(d) defrauding, attempting to defraud or conspiring to defraud the Council.

'Project Materials'

means all reports, the Specification, documents, papers, information, data, disks, drawings, samples, patterns, in whatever form, medium or format and wherever such Project Materials are located or stored together with all copies of Project Materials⁸

Public Body

as defined in the FOIA 2000

Receiving Party

a Party to this Contract to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response

Registration Body

the Care Quality Commission (or any other body which supersedes it) or any other body which has

⁸ Delete this definition if no Project Materials are being supplied

	regulatory powers or responsibilities in respect of the Service Provider
Regulated Activity	in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012), and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006(as amended by the Protection of Freedoms Act 2012).
Regulatory Bodies	those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;
Regulated Provider	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012),
Request For Information	a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
Relevant Transfer	means a relevant transfer for the purposes of TUPE
Report	means a formal Report to be prepared by the Service Provider recording and evaluating the Outcomes together with recommendations for future actions
‘Review’	means a formal review of the progress of the Services and the achievement of the Outcomes
Service(s)	the Service(s) as described in the Specification and schedules of this Contract
Service Provider	means the Party named above and includes its Staff
Service Provider’s Representative	means the representative appointed by the Service Provider to liaise with the Authorised Representative with regard to the management of this Contract
Service Users	the persons or client group designated from time to time by the Council to receive the Service which shall include where the context so admits,

	carers/guardians/parents of children and young people in receipt of the Services
Specification	the Specification contained in Schedule 1 to this Contract
Staff	All those persons paid or unpaid who deliver the Service on behalf of the Service Provider including a Subcontractor and other agents acting on its behalf
Sub-Contract	any contract or agreement, or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of thereof.
Sub-contractors	Any person(s) that the Service Provider contracts with to provide the Service either directly or indirectly for which the Service Provider is responsible under this Contract
Sub-processor	any third party appointed to process Personal Data on behalf of the Service Provider related to this Contract.
Support Plan	the assessment of the Service User's needs relating to the Service and the agreement with the Service User and/or their representative about how the Service will be delivered
Term	means the period commencing on the Commencement date and ending on the Expiry Date
Tender	means the tender dated submitted by the Service Provider and accepted by the Council annexed to this Contract in Schedule
Third Party	a person (other than the Service User or the Council) who agrees to make a contribution to the cost of the Service

TUPE

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) and the Acquired Rights Directive

Unplanned Absence

an absence of the Service User from the place where the Service is due to be provided where less than one weeks' notice is given either verbally or in Writing by the Service User or the Council to the Service Provider [except where the absence is due to the Service User's admission to hospital]

Valid Invoice⁹

Means an invoice submitted by ¹⁰the Service Provider which must contain the following detail required by the Council to enable payment as specified in **clause 2** of this Contract:

- 1) invoices to be addressed to **XXX¹¹**, Shropshire Council at the address referred to above; and
- 2) submitted on the Service Provider's business letterhead including the Service Provider's name and address, and VAT registration number (where applicable); and
- 3) [**insert details of service/site location, property number and address**] to which payment relates; and
- 4) the Council's official Order Number¹²

Working Days

Monday to Friday inclusive (not including public or bank holidays)

Writing

Includes, unless otherwise specifically stated electronic mail, providing that the electronic mail is acknowledged and confirmed as being received.

Interpretation

In this Contract unless the context otherwise requires:

⁹ Insert details of what is required to be included in an invoice to enable payment to be processed

¹⁰ Insert details of how you want invoices to be submitted e.g. by email or by post

¹¹ Insert address details

¹² Delete if this does not apply

- a. words importing any gender include every gender
- b. words importing the singular number include the plural number and vice versa
- c. words importing persons include firms, companies and corporations and unincorporated body of persons or any state or any agency of any person reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- d. reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006.

In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:

- (i) references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (ii) the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- e. references to numbered clauses and schedules are references to the relevant clause in or schedule to this Contract
- f. reference in any schedule to this Contract to numbered paragraphs relate to the numbered paragraphs of that schedule
- g. any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done
- h. the headings to the clauses, schedules and paragraphs of this Contract are not to affect the interpretation
- i. reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- j. where the word 'including' is used in this Contract, it shall be understood as meaning 'including without limitation'
- k. Where any statement is qualified by the expression so far as the Service Provider is aware or to the Service Provider's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

1 CONTRACT AND TERM

- 1(a) In consideration of the Payment the Service Provider will provide the Service in accordance with the terms of this Contract
- 1(b) It is agreed between the Parties that this Contract will be for the [Initial] Term commencing on the Commencement Date and ending on the [Initial] Expiry Date
- 1(c) It is further agreed between the Parties that[, subject to mutual agreement,] the Council may exercise its Option to Extend this Contract at the expiry of the Initial Term

For further periods of twelve months up to a maximum of [*insert number*] of extensions from the Initial Expiry Date

- 1(d) If the Council decides to exercise its Option to Extend the Initial Term, or an Extension Period, it shall notify the Provider in writing at least 3 months in advance of the expiry date of the Initial Term or, as applicable, an Extension Period. Where the Parties agree an Extension Period to the Initial Term the provisions of this Contract between the Council and the Service Provider shall be the terms to be applied to the Extension Period, SAVE FOR any agreed variations to such terms and/or to the Payment which shall be formalised in writing by way of a Variation Agreement and signed by the Parties in advance of the commencement of any agreed Extension Period.
- 1.(e) If the Council does not give notice of its intention to exercise its Option to Extend further to 1(d) above, then this Contract shall terminate on the Initial Expiry Date. Where an Extension Period has been agreed and is ongoing ("Agreed Extension Period") but the Council decides it does not wish to exercise its Option to Extend for any further Extension Periods at the expiry of the Agreed Extension Period then this Agreement will terminate on the last date of the applicable Agreed Extension Period and, upon the expiry of this Contract, the provisions of clause 14 (Consequences of Termination) shall apply

2 PAYMENT

- 2(a) In each Financial Year the Payment shall be a maximum amount of £0.00 (x pounds only) per annum and shall be payable by the Council to the Service Provider for the Service
- 2(b) The Payment will be made monthly / half yearly / quarterly instalments in arrears upon receipt of a Valid Invoice

- 2(c) The Parties agree that where the Service Provider fails to submit a Valid Invoice, the Council shall be entitled to withhold Payment until the Service Provider submits the information required by the Council.
- 2(d) The Service Provider shall not make a charge to the Service User or any Third Party for the Service provided [other than for those charges expressly permitted under the terms of the Specification].. [
- 2(e) The Council reserves the right to set off against the Payment any sums owed or becoming due to the Council from the Service Provider.
- 2(f) The Service Provider shall not charge and the Council shall not be liable, for any expenses, charges, costs, fees except the Payment as set out in this Contract
- 2 (g) Unless otherwise agreed in Writing by the Council, the Service Provider will pay any of its appointed Sub-contractors within the time period specified within the Sub-Contract but in any event no later than 30 days from receipt of an undisputed invoice.
- 2 (h) In the event of late payment of any sums due to be paid under this Contract by either Party, interest thereon shall be charged at the prevailing statutory rate (further to the Late Payment of Commercial Debts (Interest) Act 1998) above the National Westminster Bank base rate. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after Judgment.
- 2(i)** During the term of this Contract at the reasonable request of the Council, the Service Provider must;
- 2(i)(i) demonstrate how it is going to to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose and:
- 2(i)(ii) shall implement such improvements when requested to do so by the Council; and
- 2(i)(iii) where practicable following implementation of such improvements decrease the price to be paid by the Council for the Services.]

3 VAT

The Payment does not include VAT and if VAT is payable then the Council will pay this in addition to the Payment provided that the Service Provider supplies the Council with an appropriate VAT notice

4 COMPLIANCE

- 4(a) The Council undertakes to:
- 4(a)(i) make the Payments to the Service Provider in accordance with Clause 2
 - 4(a)(ii) liaise with and provide the Service Provider with any information reasonably required by the Service Provider regarding the provision of the Service where appropriate
 - 4(a)(iii) Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Service Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.
- 4(b) The Service Provider undertakes:
- 4(b)(i) That the Services shall only be performed/delivered by the Service Provider unless otherwise agreed in Writing between the Parties
 - 4(b)(ii) To support the national agenda of Public Health England and will engage with relevant future public health initiatives .
 - 4(b)(iii) In performing its obligations under this Contract, the Service Provider shall and shall ensure that each of its Sub-contractors shall:
 - 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 (“Anti-Slavery laws”); and
 - b) have policies and procedures in place to identify, prevent, and mitigate the risks of modern slavery in its and its Sub-Contractors’ operations and supply chains regardless of turnover so as to comply with the spirit of the Modern Slavery Act 2015
 - c) include in contracts with its Sub-contractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 4(b)(iii); and
 - d) notify the Council as soon as it becomes aware of any actual or suspected breach of this clause 4(b)(iii) or such actual or suspected breach of Anti-Slavery Laws by its Sub-contractors and other participants in its supply chain and shall provide reasonable assistance to the Council, including access to the Service Provider’s premises and Staff, to allow the Council to carry out an

audit of the Service Provider's anti-slavery and human trafficking procedures or those of its Sub-contractors or participants in its supply chain;

e) represents and warrants that neither it, nor any of its officers, employees or agents have been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

A breach of this clause 4(b)(iii) shall be deemed a material breach for the purposes of clause 13(Termination)

4(b)(iv) provide the Service:

4(b)(iv)i (subject to local or central government Covid 19 restrictions or guidance in place at the applicable time) either in such places and locations as set out in accordance with the Specification in compliance with Covid 19 Safe Working Practices, or, virtually, as may be deemed to be appropriate at any given time; and

4(b)(iv)ii in accordance with the Specification [Support Plan] [and the Tender] with all due diligence care and skill expected of a suitable and experienced provider of such services; and

4(b)(iv)iii in accordance with the Best Practice within the industry of the Service Provider; and

4(b)(iv)iv with adequate numbers of Staff to provide the Service
4(b)(v) provide the Service in accordance with all current and relevant statutory provisions, regulations, statutory guidance or other legislation from time to time in force relating to the provision of the Service to include but not limited to:

- all standards required by CQC/Ofsted /and other Regulatory Bodies in order to maintain registration thereunder
- the Data Protection Act Legislation and the Caldicott Principle
- the Human Rights Act 1998. The Service Provider shall not do anything in breach of the Act.
- the Health and Safety at Work Act 1974 and any relevant health and safety regulations approved codes of practice and HSE

- guidance and provide evidence of doing so to the Council at any time upon request
- Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012); and
 - Where appropriate the Care Act 2014
 - all equal opportunities legislation and anti-discriminatory practices including those identified in Clause 36 (Equalities)
- 4(b)(vi) ensure that every person employed by it in the provision of the Services is properly trained and instructed with regard to his/her tasks in relation to the Services and that its Staff, Sub-contractors and agents will have the necessary skills, professional qualifications and experience to deliver the Service
- 4(b)(vii) ensure that it carries out its own risk assessments relevant to the Service
- 4(b)(viii) ensure that it has a written procedure for dealing with complaints about the Service in accordance with clause 37 (Complaints) and shall provide a copy of the procedure and details of any complaints made about the Service to the Council upon request
- 4(b)(ix) ensure that no aspect of the Service funded by the Payment is or appears to be party political in intention use or presentation
- 4(b)(x) [by acknowledging in all publicity wherever reasonably practicable the Council's funding of the Service]
- 4(b)(xi) in accordance with the Council's Multi Agency Adult Protection Policy and Procedures [NOT USED]
- 4(b)(xii) ensure that Staff and Sub-contractors are made aware of the Council's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request
- 4(b)(xiii) it will complete the Services by the Expiry Date
- 4(b)(xiv) it will use its best endeavours to achieve and meet the Performance Indicators/Outcomes*]
- 4(b)(xv) where the Service Provider transports any Service User as part of the delivery of the Service, the Service Provider shall ensure that all vehicles used in the delivery of the Service are roadworthy and safe under the Road Traffic Act 1988 and that Staff comply with

- The Smoke-Free (Private Vehicles) Regulations 2015 whilst using such vehicles
- 4(b)(xvi) it has obtained all necessary and required licences, consents registrations and permits to provide the Service and shall maintain such licences, consents, registrations and permits throughout the duration of the Term
- 4(b)(xvii) it shall be responsible for all costs, fees, expenses and charges for training necessary or required for its Staff, Sub-contractors or agents to perform the Service
- 4(b)(xviii) it warrants that none of its current Directors have been involved in liquidation or receivership or have any criminal convictions
- 4(b)(xix) it shall at all times comply with the general duty imposed on local authorities by the Prevent Duty and observe the requirements of the statutory guidance issued by the government from time to time further to the Counter-Terrorism and Security Act 2015
- 4(b)(xx) before it engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services the Service Provider must without limitation, complete the Employment Checks and any other checks required by the Disclosure and Barring Service; and shall procure in respect of all Staff or potential staff or other persons intended to perform any part of the Services:
- 4(b)(xx)(1) that each person being considered for engagement be questioned as to whether he/she has any convictions; and
- 4(b)(xx)(2) that the results of a Disclosure and Barring Service (DBS) check of the most extensive available kind is obtained in accordance with Part V of the Police Act 1997 (as amended) and that each DBS check should include a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Service may involve contact with children and/or Safeguarding Vulnerable Groups Act 2006 where the performance of the Service may involve contact with vulnerable adults;and

- 4(b)(xx)(3) where applicable, provide a copy of the DBS check results to the Council if requested
- 4(b)(xvii)(4) In line with the Council's requirements, DBS checks must be repeated by the Service Provider at its own expense every three (3) years
- 4 (c) the Service Provider warrants that it has full capacity and authority to enter into this Contract and that the signing of this Contract on its behalf has been validly authorised and the obligations expressed as being assumed by the Service Provider under this Contract constitute valid legal and binding obligations of the Service Provider enforceable against the Service Provider in accordance with their terms.
- 4(d) If for any reason the Service Provider is unable to comply with any of its obligations under this Contract it shall notify the Authorised Officer forthwith in Writing of its failure and the reasons. Compliance with this clause shall not prejudice the Council's rights under clauses 10 (Breach) and 13 (Termination)
- 4(e) The Service Provider shall provide to the Council a Parent Company Guarantee in the form annexed to this Contract or in a form agreed in writing by the Council upon the signing of this Contract] [NOT USED]
- 4(f) The Parties agree that there shall be, on dates to be agreed, regular informal reviews of the progress of the development of the Services between the Service Provider and the Council to ensure that the Services are being delivered as required [and that the Performance Indicators/Outcomes are being achieved].. [NOT USED]
- 4(g) In the event that an informal review reveals that [the Services are not being delivered as required or that] [Performance Indicators/Outcomes*] are not being met, a formal Review meeting shall take place between the Parties upon 14 days written notice being given to the Service Provider by the Council [NOT USED]
- 4.(h) The Review meeting shall record in Writing any amendments to the [Services] [Performance Indicators/Outcomes*] agreed between the Council and the Service Provider. [NOT USED]
- 4.(i) Where following a Review, the Council acting reasonably determines that the Service Provider has not [delivered the Services as required or] met the Performance Indicators/Outcomes* the Council may:
- 4.(i).(i) serve the Service Provider with a written notice ("Notice") within one month of the Review meeting specifying which

- [areas of the Services have not been delivered as required] [or which of the Performance Indicators/Outcomes*] it considers that the Service Provider has not met or failed to achieve and giving the Service Provider one calendar month from the date of the Notice to remedy the failure
- 4.(i).(ii) if after one calendar month from the date of the Notice the Service Provider has failed to remedy the failure specified in the Notice then this will be considered to be a breach of the terms of this Contract and the Contract may be terminated in accordance with the provisions contained in clause 13 (Termination) herein
- 4.(i).(iii) The Council shall take into account any verbal or written representations made by the Service Provider before proceeding to take any action to terminate this Contract pursuant to this clause. [NOT USED]
- 4(j) The Service Provider acknowledges and confirms that:
- 4(j)(i) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
- 4(j)(ii) it has received all information requested by it from the Council pursuant to sub-clause 4(j)(i) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
- 4(j)(iii) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to sub-clause 4(j)(ii)
- 4(j)(iv) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
- 4(j)(v) it has entered into this Contract in reliance on its own diligence
- 4(j)(vi)¹³ as at the Commencement Date, the Service Provider warrants and represents that all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in Writing to the Council prior to

¹³ To be marked "Not Used" if there no Tender has been submitted

execution of the Contract AND shall promptly notify the Council in Writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services

- 4(j)(vii) The Service Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Service Provider in accordance with sub-clause 4(j)(vi) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Service Provider could not reasonably have known that the information incorrect or misleading at the time such information was provided.

5. AUTHORISED OFFICER AND SERVICE PROVIDER REPRESENTATIVE:

- 5(a) The Authorised Officer shall be appointed by the Council to act in the name of the Council for the purposes of the contract evidenced by this Contract.
- 5(b) The Service Provider shall appoint a Service Provider Representative to act in the name of the Service Provider for the purposes of the contract evidenced by this Contract
- 5(c) The Parties shall notify each other in Writing of any replacement Authorised Officer or Service Provider Representative or if any person ceases to be either the Authorised Officer or Service Provider Representative.
- 5.(d) The Authorised Officer shall monitor on behalf of the Council, the provision of the Services supplied by the Service Provider and act as liaison officer with the Service Provider's Representative in respect of the operation of the Services. Any issues raised by the Authorised Officer with regard to the delivery of the Services shall in the first instance be addressed and dealt with by the Service Provider's Representative on the Service Provider's behalf.

6 VARIATION

This Contract may only be varied by consent of both of the Parties and any such variation must be in Writing in the form of a Variation Agreement and be annexed to this Contract.

7 AGENCY

- 7(a) The Service Provider is an independent party and nothing in this Contract shall render it an agent of the Council or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties and the Service Provider shall not hold itself out as the Council's agent nor shall it have the power or the right to bind the Council to any obligation.
- 7(b) Under the terms of this Contract the Service Provider shall not have and shall in no way represent itself as having the power to make vary discharge or waive any by-law or regulation of any kind

8 ACCOUNTING [Not Used.]

9 NOTICES

- 9(a) The Service Provider shall comply with and give any Notices required under the Contract or required by any Act of Parliament any instrument rule or order made under any Act of Parliament or any regulation or by-law of any local authority which may have jurisdiction in respect of the Service Provider.
- 9(b) Any Notice under this Contract must be in Writing (which for the purpose of this clause 9 does not include email transmissions) and must only be sent by:
- 9(b)(i) recorded delivery post or
 - 9(b)(ii) personal delivery
- 9(c) The Service Provider's address for the purpose of delivery of a Notice is as set out above and all Notices sent to the Service Provider under this Contract must be sent to the Service Provider's Representative
- 9(d) The Council's address for the purpose of delivery of a Notice is Procurement Manager, Shropshire Council The Guildhall, Frankwell Quay, Shrewsbury Shropshire SY3 8HQ and a separate copy must also be sent to the Authorised Officer at [.....].
- 9(e) All such Notices if delivered by hand shall be deemed to be served immediately and if posted shall be deemed to have been served two days after the date when posted unless the Party upon whom the Notice was purported to be served has informed the serving Party within 24 hours of partial receipt that the Notice was not received in full.

10 BREACH

- 10(a) If the Council identifies areas of the Services which do not comply with the requirements of this Contract (including any Schedules to this Contract) it may send the Service Provider a non-compliance notice detailing
- 10(a)(i) the areas of non-compliance;
 - 10(a)(ii) the action to be taken; and
 - 10(a)(iii) the date by which the action must be taken (which for the

avoidance of doubt must not be a date less than 14 days from the date of the notice).

[10(b)¹⁴ If the Service Provider fails to take any or all of the necessary action by the date given in the non-compliance notice, the Council may send the Service Provider a final non-compliance notice detailing

(i) the areas of non-compliance;

(ii) the action to be taken; and

(iii) the date by which action must be taken (which for the avoidance of doubt must not be a date less than 14 days from the date of the notice).]

10(c) If, in the reasonable opinion of the Council, the Service Provider fails to undertake all of the remedial actions in the [final] non-compliance notice by the due date the Council shall be entitled to take either of the following steps depending on the seriousness of the non-compliance (which in the event of dispute shall be determined in accordance with clause 15 (Disputes):

10(c)(i) to make arrangements to take its own corrective action either itself or through the appointment of another Service Provider and to either:

(a) deduct all costs in connection therewith from any sums due or to become due to the Service Provider under the terms of this Contract; or

(b) to recover such sums from the Service Provider as a debt; and/or

10(c)(ii) to terminate the Contract in accordance with clause 13 (Termination)

10(d) The following obligations are conditions of this Contract and any breach of them shall be deemed a fundamental breach which shall determine this Contract immediately by the giving of a written notice:

10(d)(i) Failure to comply with a Notice to remedy a breach 10(a)

10(d)(ii) Assignment by the Service Provider of any of his obligations under this Contract without the prior written consent of the Council

10(d)(iii) If the Service Provider is convicted of any offence the effect of which under the provisions of any legislation would prevent the Council from contracting with him or maintaining any existing contractual relationship

10(d)(iv) If the Service Provider is issued with a notice from the Health and Safety Executive or Regulatory Bodies prohibiting it from operating

11 PREVENTION OF BRIBERY

¹⁴ If you do not wish to give the Service Provider a second chance at remedying the breach then this clause should be marked "Not Used"

- 11(a) The Service Provider:
- 11(a)(i) shall not, and shall procure that all Service Provider Staff shall not, in connection with this Contract commit a Prohibited Act;
 - 11(a)(ii) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in Writing to the Council before execution of this Contract.
- 11(b) The Service Provider shall:
- 11(b)(i) 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 Bribery Act;
 - 11(b)(ii) the Service Provider shall, within 10 Working Days of a request from the Council, certify to the Council in Writing (such certification to be signed by an officer of the Service Provider) the Service Provider's compliance with this clause 11 and provide such supporting evidence of compliance with this clause 11 by the Service Provider as the Council may reasonably request.
- 11(c) If any breach of clause 11 is suspected or known, the Service Provider must notify the Council immediately.
- 11(d) If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 11(a), 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. This obligation shall continue for two years following the expiry or termination of this Contract.
- 11(e) The Council may terminate this Contract by written notice with immediate effect, and recover from the Service Provider the amount of any loss directly resulting from the cancellation, if the Service Provider or Staff (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 11(a). At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 11(e), the Council shall give

consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by Staff, an employee, Sub-contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-contractor) means and shall be construed as acting:

- 11(e)(i) with the authority; or,
 - 11(e)(ii) with the actual knowledge;
of any one or more of the directors of the Service Provider or
the Sub-contractor (as the case may be); or
 - 11(e)(iii) in circumstances where any one or more of the directors of the
Service Provider ought reasonably to have had knowledge.
- 11(f) Any notice of termination under clause 11(e) must specify:
- 11(f)(i) the nature of the Prohibited Act;
 - 11(f)(ii) the identity of the party whom the Council believes has committed
the Prohibited Act; and
 - 11(f)(iii) the date on which this Contract will terminate.
- 11(g) Despite clause 15 (Disputes), any dispute relating to:
- 11(g)(i) the interpretation of clause 11; or
 - 11(g)(ii) the amount or value of any gift, consideration or commission,
shall be determined by the Council and its decision shall be final
and conclusive.
- 11(h) Any termination under clause 11(e) will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

12 INDEMNITY AND INSURANCE

- 12(a) The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance to provide cover in respect of all legal liability which may be incurred by the Service Provider, arising out of the Service Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies shall include Public Liability and Employers Liability insurance which shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS) for each and every claim.
- 12(b) The Service Provider shall take out and maintain such insurances as are necessary to include any third party and passenger liability in respect of all vehicles used in the provision of the Service and any other category of insurance which the Council may reasonably require from time to time.

12(c) [NOT USED] Where the Service Provider is providing Services of a professional nature, or the Council otherwise specifies that professional indemnity insurance is required, the Service Provider shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or Sub-contractors involved in the provision of the Services hold and maintain policy cover which indemnifies the Service Provider for negligent acts arising out of the performance of this Contract. To comply with its obligations under this clause, and as a minimum, the Service Provider shall ensure professional indemnity insurance held by the Service Provider and by any agent, Sub-contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS) in respect of each and every claim.

12(c)i The Service Provider shall hold and maintain the insurances required under this Contract for a minimum of 6 years following the expiration or earlier termination of this Contract

12(d) [NOT USED] If appropriate and requested in Writing, the Service Provider may also be required to provide Product Liability insurance of at least £2,000,000 (TWO MILLION POUNDS) cover for any one claim.

12(e) If appropriate and requested in Writing, the Service Provider may also be required to provide Cyber insurance cover of at least £1,000,000 (ONE MILLION POUNDS) cover for any one claim.

12(f) The Service Provider warrants that it has complied with this clause 12 and warrants that any insurance policy or policies effected and maintained in accordance with this clause do not contain any endorsements or exclusions which have the effect of voiding, reducing or limiting the cover required in respect of the Services.

12(g) The Service Provider shall prior to commencement of this Contract provide the Council and thereafter upon request, or at least annually during the Term, with:

- (a) copies of the relevant insurance policy documents (including details of any warranties or exclusions); and
- (b) receipts or other evidence of payment of the latest premiums due under those policies; and
- (c) any other evidence reasonably requested by the Council to confirm that the required insurances are in force and effect and meet in full the requirements of this Clause 12.

If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required under this clause 12, the Council may make alternative

arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

12(h) The Service Provider shall:

- (a) do nothing to invalidate any insurance policy or cause the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part, including ensuring that any warranties under the policy are complied with;
- (b) notify the Council as soon as a reasonably practicable when it becomes aware of any relevant fact, circumstance or matter which , or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

12(i) For the avoidance of doubt, the terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Contract.

12(j) Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":

12(j)(i) if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Service Provider shall immediately submit to the Council:

- (a) details of the policy concerned; and
- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

12(j)(ii) if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Service Provider shall:

- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
- (b) if the Service Provider is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Council full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

- 12(k) The Service Provider shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other [reasonable] professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:
- (a) The performance, defective performance or otherwise of this Contract by the Service Provider or the Service Provider Staff
 - (b) Any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the provision of the Services
 - (c) Any claim made against the Council by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Service Provider or the Service Provider Staff; and
 - (d) Any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with the delivery of the Services and performance of this Contract to the extent that the defective performance is attributable to the acts or omissions of the Service Provider or the Service Provider Staff
- 12(l) The Council shall indemnify the Service Provider against all reasonable claims, costs and expenses which the Service Provider may incur and which arise, directly from the Council's breach of any of its obligations under this Contract
- 12(m) Nothing in this Contract shall limit or exclude the liability of either Party for:
- (a) death or personal injury resulting from negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) the indemnities given in this clause 12

13 TERMINATION

- 13(a) This Contract may be terminated prior to the Expiry Date in the following circumstances:-
- 13(a)(i) by either the Council or the Service Provider upon giving [e.g.6 months'] Notice in Writing to the other Party
 - 13(a)(ii) by the Council giving the Service Provider written notice to terminate if, in the reasonable opinion of the Council as a result of any investigations undertaken in accordance with its safeguarding procedures, it considers there is or has been any improper conduct on the part of the Service Provider or its Staff to the effect that it is no longer practicable for the Council to maintain a satisfactory or

viable relationship with the Service Provider. Improper conduct includes any unlawful or fraudulent act or any action which the Council considers to be to the detriment of the welfare of any Service User either by action or neglect as further described in clause 13 (e) below ("improper conduct").

- 13(a)(iii) by the Council upon written notice further to clause 10 (Breach) or Clause 11 (Prevention of Bribery)
- 13(a)(iv) by the Council upon written notice if the Service Provider is declared insolvent or becomes the subject of a voluntary arrangement under section 1 Insolvency Act 1986 or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; has a receiver manager administrator or administrative receiver appointed over all or any parts of its undertaking assets or income; has passed a resolution for its winding up (other than for the purpose of solvent amalgamation or reconstruction), ; has a petition presented to any court for its winding up or for an administration order; or if any distraint execution or other process is levied or enforced on any property of the other and is not paid out withdrawn or discharged within 14 days
- 13(a)(v) by the Council upon written notice if the Service Provider ceases to carry on its business or substantially the whole of its business
- 13(a)(vi) by the Council forthwith by written notice where the Service Provider commits a material breach as a result of a failure to comply with a Notice issued in accordance with Clause 10 (Breach)
- 13(a)(vii) by the Council upon written notice if, in the reasonable opinion of the Council, it is no longer practicable to maintain a satisfactory or viable relationship with the Service Provider because:
 - (a) the Service Provider or its Staff have either acted unlawfully or fraudulently; and/or
 - (b) the Service Provider consistently fails to meet its obligations to the Council and/or Service Users further to this Contract; and/or
 - (c) the Service Provider otherwise persistently commits minor breaches leading to the issue of two or more non-compliance notices within a rolling 6 month period leading to a serious breakdown of mutual trust between the Parties.

- 13(a)(viii) by the Council if the Service Provider is issued with a Notice from the Health and Safety Executive or Registration Body prohibiting it from operating
- 13(a)(ix) by the Council if the Service Provider assigns any of its obligations under this Contract without the prior written consent of the Council
- 13(a)(xi) by either Party upon written notice if the other Party commits a material breach of this Contract and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Contract.
- 13(a)(xii) by either Party upon written notice further to clause 13(a)(xi) where the other Party commits a series of minor breaches which, when taken together, amount to a material breach;
- by either Party upon written notice if the other Party commits a material breach of this Contract which cannot be remedied under any circumstances
- 13(b) Whilst this Contract affords the Council and the Service Provider reciprocal rights to terminate as per the terms of Clause 13(a)(i) the Parties acknowledge that the expectation of most Service Users is that the Parties will not act unreasonably or to the prejudice of the Service Users so far as is reasonably practicable.
- 13(c) In the event of this Contract being terminated at any time prior to the Expiry Date for any reason then the Council's obligations under Clause 2 (Payment) will cease no further Payments will be made and the Service Provider shall repay to the Council all (if any) of the Payments already received (after the liabilities of the Service Provider in the provision of the Service in accordance with this Contract have been met)
- 13(d) Without prejudice to the generality of the foregoing the Council reserves the right to suspend referrals to the Service where in the reasonable opinion of the Council there is or has been any improper conduct on the part of the Service Provider or its Staff and Sub-contractors. Such improper conduct shall be considered a breach of this Contract which may result in the suspension of referrals and or reduction / clawback of part of the Payment consistent with the reduction in Service. Improper conduct includes any action which the Council may reasonably consider to be to the detriment of

the welfare of Service Users either by action or neglect including but not limited to:

- 13(d)(i) Fraud or theft from Service Users
- 13(d)(ii) Neglect of Service Users
- 13(d)(iii) Cruelty and assault to or upon Service Users including verbal and any other forms of psychological abuse
- 13(d)(iv) Financial malpractice
- 13(d)(v) Sexual relationships between Staff and Service Users
- 13(d)(vi) breaches of the Equality Act 2010
- 13(d)(vii) Loss of registration with Regulatory Bodies
- 13(d)(viii) Under investigation by the Council
- 13(d)(ix) Sustained quality concerns

13(e) In the event that the Contract is terminated pursuant to Clause 10(Breach) or 11 (Prevention of Bribery) above or this Clause 13 (Termination) the Council shall:

13(e) (i) cease to be under any obligation to make further Payment until the cost loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and provided such calculation shows a sum or sums due to the Service Provider;

13(e) (ii) be entitled to make other arrangements and if necessary pay other persons to provide the Service

13(e) (iii) be entitled to deduct from any sum or sums which would have been due from the Council to the Service Provider under this Contract or be entitled to recover the same from the Service Provider as a debt any loss or damage to the Council resulting from or arising out of the termination of this Contract and further such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating this Contract and in making alternative arrangements for the provision of the Service provided that the Council will be under a duty to take all reasonable action to mitigate the loss or damage pursuant to this clause.

13(f) Where notice to terminate is given pursuant to this clause 13, this Contract shall terminate with effect on the date specified in the notice

13(g)

14 CONSEQUENCES OF TERMINATION

14(a) Other than as set out in this Contract, neither Party shall have any further obligations to the other under this Contract after its termination

- 14(b) Any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect
- 14(c) Termination of this Contract for any reason, shall not affect the accrued rights, remedies obligations or liabilities of the Parties existing at termination
- 14(d) Notwithstanding its obligations in this clause 14 if a Party is required by law, regulation, or government or regulatory body to retain any documents or materials containing the other Party's Confidential Information, it shall notify the other Party in Writing of such retention, giving details of the documents and/or materials it must retain.
- 14 (e) upon termination of this Contract for any reason, the Service Provider shall, at its own cost, deliver, and require that its employees, agents and Sub-contractors deliver, to the Council all [Project Materials], information and any other property of the Council which are in the possession or control of the Service Provider or the Service Provider's Staff or Sub-contractors at the date of termination.

15 DISPUTES

- 15(a) If any dispute or difference shall arise between the Parties as to the construction of this Contract or any matter or thing of whatever nature arising under this Contract or in connection with it then the same shall be dealt with as follows:-
 - 15(a)(i) in the first instance a special meeting of both the Parties shall be arranged on 14 days written notice to the other Party and the matter shall be discussed and the Authorised Officer and the Service Provider's Representative shall use their reasonable endeavours to resolve the dispute
- 15(b) If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve the other Party's Chief Executive or such other senior authorised officer of either Party whose details have been notified to the other Party with notice of the dispute and they shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice
- 15(c) if the Parties' representatives are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve

notice in Writing (ADR notice) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than [NUMBER] days after the date of the ADR notice

- 15(d) The commencement of mediation shall not prevent the Parties commencing or continuing [court or arbitration] proceedings in relation to the Dispute further to clause 21 which clause shall apply at all times

16 ASSIGNMENT AND SUB-CONTRACTING

16(a) Neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other Party PROVIDED that the Council may,

- (a) assign any of its rights under this Contract; or
- (b) transfer all of its rights or obligations by novation,
to another person.

without the Service Provider's consent where such assignment, transfer or novation is to an Associated Person of the Council;

- 16(b) Any consent required under Clause 16(a) must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.
- 16(c) The Service Provider will not, without the written consent of the Council, sub-contract its right or obligations under this Contract nor allow Services to be provided other than through the Service Provider's Staff and using its own equipment.
- 16(d) In the event that consent is given by either Party to the other Party to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the sub-contracting Party to the consenting Party immediately it is issued
- 16(e) Subject to clause 16 (a), in the event that either Party wishes to assign its rights and obligations under this Contract, the assignor must obtain a written undertaking from the assignee to the consenting Party that it will be bound by the obligations of the assignor under this Contract.
- 16(f) The Service Provider must notify the Council if:
- 16(f)(i) there is a change in the control of the majority of the shares in or the voting rights amongst shareholders or members of the Service Provider's organisation
 - 16(f)(ii) it merges with another organisation
 - 16(f)(iii) it transfers its engagements to another organisation
 - 16(f)(iv) it in any way transfers its business to another organisation

- 16(f)(v) as a result of any misconduct or mismanagement on the part of the Service Provider or a Regulatory Bodies directing an inquiry into or making an order of any kind in relation to the Service Provider's affairs; or
- 16(f)(vi) any registration which the Service Provider must maintain in order to provide any of the Service is withdrawn or cancelled or is threatened to be withdrawn or cancelled
- 16(g) The Council reserves the right to share any information with any Regulatory Bodies about the Service Provider, Service Provider Staff or Service Users regarding the provision of the Service to investigate and safeguard the well-being of Service Users
- 16(h) If 20% of the Service Provider's overall workforce is made up of people from agencies (or not employed directly by the Service Provider) then this may be considered assignment or subcontracting of the Service Provider's obligations under this Contract and require written consent of the Council which it shall be absolutely entitled to withhold
- 16(i) If the Council does give consent to subcontract the carrying out of the Service Provider's obligations under this Contract the Council can subsequently withdraw its consent provided that it acts reasonably in doing so and gives reasonable notice. The Service Provider will be required to terminate the subcontract in these circumstances.
- 16(j) In the event that consent is given by the Council it will not relieve the Service Provider of its obligations under this Contract and the Service Provider will remain responsible for the acts, defaults and neglect of any Sub-contractor or any employee agent of each Sub-contractor as if they were the acts defaults and neglect of the Service Provider. If consent is given to subcontract any part of the Service, the Service Provider will ensure that the Sub-contractor agrees with the Council that it will carry out the obligations to the standard required of the Service Provider under the terms of this Contract

17 FORCE MAJEURE

- 17(a) Neither the Council nor the Service Provider shall be in breach of this Contract nor liable for any failure or delay in performing their obligations under this Contract where it is directly caused, arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Force Majeure Event"), provided that: -
 - 17(a)(i) any delay by a Sub-Contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except

- where the delay is beyond the reasonable control of the Sub-Contractor or supplier concerned; and
- 17(a)(ii) staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay.
- 17(b) If a Party is subject to a Force Majeure Event it shall not be in breach of this Contract provided that: -
- 17(b)(i) it promptly notified the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- 17(b)(ii) it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible in which case the performance of that Party's obligations will be suspended during the period that those circumstances persist, and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay.
- 17(c) Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Contract and by law): -
- 17(c)(i) any costs arising from that delay will be borne by the Party incurring the same; and
- 17(c)(ii) either Party may, if that delay continues for more than 5 weeks, terminate this Contract immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Contract occurring prior to such termination.

18 WAIVER

Failure at any time by either Party to enforce at any time or for any period any one or more of the provisions hereof shall not be construed as a waiver of any such provisions and shall not affect the validity or any part of it or the right of either Party to enforce any provision of this Contract in accordance with its terms at any time

19 SEVERANCE

If any provision of this Contract prohibited by law or judged by any court of competent jurisdiction to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract

20 STATUTORY DUTIES

- 20(a) The Council has various statutory duties in relation to this Contract including (but not exclusively) under Part 1 of the Local Government Act 1999 (Best Value) to carry out a regular review of the Service
- 20(b) The Service Provider its Staff and Sub-contractors must fully co-operate with the Council in complying with any such statutory duty and subject to the provision of the Data Protection Act Legislation the Service Provider must provide to the Council any information facilities and assistance that the Council may reasonably request provided the Council has given the Service Provider reasonable notice and also provided that this does not put the Service Provider to unnecessary cost

21 GOVERNING LAW

It is the responsibility of the Service Provider to comply with all relevant Domestic Law. This Contract shall be governed by and construed in accordance with English Law and the Parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts.

22 CONFLICT OF TERMS

If there is any ambiguity or inconsistency in or between the Contract Documents the Council shall determine, at its sole discretion, the priority of the documents.

23 RIGHTS OF THIRD PARTIES

The Parties to this Contract, except where otherwise expressly stated in this Contract, do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Contract (Rights of Third Parties) Act 1999 (or any amendment or re-enactment thereof)

24 REMEDIES CUMULATIVE

Any remedy or right which either Party may exercise in relation to a breach shall be in addition to and shall be capable of being exercised without prejudice to all other rights and remedies available under the Contract

25 COUNCIL COMMITTEE MEETINGS

The Service Provider agrees that where requested in Writing during the Term it will ensure that an appropriately authorised representative of the Service Provider shall

attend a Committee meeting of the Council, at its own expense, upon being required to do so by the Council to discuss any issues arising from this contract

26 CONCLUSION OF CONTRACT

Upon the expiry or termination of this Contract and upon the Council's request the Service Provider must give (or at the written request of the Council destroy) to the Authorised Officer or any person the Council specifies all data information files records documents and the like (in whatever form that they may be held) which the Council earlier supplied to the Service Provider for the purposes of this Contract or which were produced or augmented by the Service Provider in connection with the carrying out of obligations under this Contract

27 SUSTAINABILITY

The Service Provider will at all times use its best endeavours to source all materials used to provide the Service from sustainable and renewable source and will demonstrate how they contribute to the achievements of the Council's Sustainability Policy and guidance notes

28 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL REGULATIONS 2004 (EIR)

- 28(a) The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 28(b) The Service Provider shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Service Provider acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.
- 28(c) The Service Provider shall :
- 28(c)(i) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 28(c)(ii) provide the Council, at the Service Provider's expense, with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
 - 28(c)(iii) provide, at the Service Provider's expense, all necessary assistance as reasonably requested by the Council to enable the Council to

respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 28(c)(iv) ensure that any Sub-contractor also complies with the provisions detailed above
- 28(d) The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information the Council may consult with the Service Provider prior to making any decision or considering any exemption.
- 28(e) In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 28(f) The Service Provider acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Services:
 - 28(f)(i) in certain circumstances without consulting the Service Provider; or
 - 28(f)(ii) following consultation with the Service Provider and having taken their views into account; provided always that where sub-clause 28(f)(i) above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 28(g) The Service Provider shall ensure that all Information required to be produced or maintained under the terms of this Contract, or by Law or professional practice or in relation to the Contract is retained for disclosure for at least the duration of the Contract plus one year together with such other time period as required by the Contract, law or practice and shall permit the Council to inspect such records as requested from time to time.
- 28(h) The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable

disclosure under FOIA, or any other Law, of any information (including Exempt Information) whether relating to this Contract or otherwise relating to any other party.

29 CONFIDENTIAL INFORMATION

- 29(a) The Service Provider will keep confidential any information it becomes aware of by reason of the operation of this Contract and any other information which the Council may from time to time determine as relevant to this Contract and shall not use divulge or communicate the same to any third party without the consent in Writing of the Council.
- 29(b) The Service Provider shall at all times keep confidential all information held or known in respect of its past or present Service Users.
- 29(c) The Service Provider shall not mention the Council's name in connection with this Contract or disclose the existence of the Contract in any publicity material or other similar communication to third parties without the Council's prior consent in Writing
- 29(d) Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - 29(d)(i) treat the other Party's Confidential Information as confidential; and
 - 29(d)(ii) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent
- 29(e) Clause 29(d) shall not apply to the extent that:
 - 29(e)(i) such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information
 - 29(e)(ii) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner
 - 29(e)(iii) such information was obtained from a third party without obligation of confidentiality
 - 29(e)(iv) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract
 - 29(e)(v) it is independently developed without access to the other Party's Confidential Information.

- 29(f) The Service Provider may only disclose the Council's Confidential Information to the Service Provider's Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Service Provider's Staff are aware of and shall comply with these obligations as to confidentiality.
- 29(g) The Service Provider shall not, and shall procure that the Service Provider's Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
- 29(h) The Service Provider shall ensure that its Staff, employees and agents are aware of and comply with this Clause 29 and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by the Service Provider, its Staff or agents.
- 29(i) The Service Provider shall ensure that its Staff and agents are aware of and comply with Schedule 3 Service Standards and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by such persons mentioned above.
- 29(j) The Service Provider its Staff and any person employed or engaged by the Service Provider in connection with this Contract shall:
- 29(j)(i) only use the Confidential Information for the purposes of this Contract
 - 29(j)(ii) not disclose any of the Confidential Information to any third party without the prior written consent of the Council which consent the Council shall be absolutely entitled to refuse
 - 29(j)(iii) not use the Confidential Information for the solicitation of business from the Council
- 29(k) Nothing in this Contract shall prevent the Council from disclosing the Service Provider's Confidential Information:
- 29(k)(i) to any consultant, contractor or other person engaged by the Council
 - 29(k)(ii) for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council.
- 29(l) The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to this Contract is made aware of the Council's obligations of confidentiality.

- 29(m) The provisions of this Clause shall survive the expiration or termination of this Contract.

30 CONTRACT STATUS AND TRANSPARENCY

- 30(a) Further to the Local Government Transparency Code 2015 the Council is obliged to publish details of expenditure exceeding £500. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract [and any associated tender documentation provided by the Service Provider (the Tender Submission)] is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract [or the tender submission] is exempt from disclosure in accordance with the provisions of the FOIA.
- 30(b) Notwithstanding any other term of this Contract, the Service Provider hereby gives his consent for the Council to publish this Contract [and any tender submission] in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 30(c) The Council may consult with the Service Provider to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.
- 30(d) The Service Provider shall assist and cooperate with the Council to enable the Council to publish this Contract and any tender Submission.

31 COUNCIL DATA (Not Used)

- 31(a) The Service Provider shall not delete or remove any copyright or proprietary notices contained within or relating to the Council Data.
- 31(b) The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in Writing by the Council and in particular the Service Provider shall not store any Council Data, which the Council has notified the Service Provider requires storage in an encrypted format, on any portable device or media unless that device is encrypted.
- 31(c) To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council as requested by the Council in any format specified reasonably requested by the Council.
- 31(d) The Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data and shall

take such back- up copies of the Council Data at regular intervals appropriate to the frequency of the revision of the Council Data.

31(e) The Service Provider shall ensure that any system on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council's security policy to include, but not limited to, the following requirements:

31(e)(i) Access to the system is restricted to Service Provider Staff with a legitimate need to access the Council Data

31(e)(ii) The system is kept up to date with the latest versions of operating system and anti-virus updates

31(e)(iii) Transfer of data to and from the system is conducted in a secure manner

31(f) If the Council Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's default so as to be unusable, the Council may:

31(f)(i) require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Council Data as soon as practicable; and/or

31(f)(ii) itself restore or procure the restoration of Council Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so including the restoration of the Council's Data.

31(g) If at any time the Service Provider suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Council via the Council's ICT Helpdesk immediately and inform the Council of the remedial action the Service Provider proposes to take.

31(h) The Service Provider shall check for and delete Malicious Software and if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

31(i) Any cost arising out of the actions of the parties taken in compliance with the provisions of sub-clause 31(h) above shall be borne by the Parties as follows:

31(i)(i) by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software or the

- Council Data (whilst the Council Data was under the control of the Service Provider); and
- 31(i)(ii) by the Council if the Malicious Software originates from the Council Software or the Council Data (whilst the Council Data was under the control of the Council).

32 DATA PROTECTION

- 32.1** Both Parties will comply with all applicable requirements of the Data Protection Legislation and agree to take account of any guidance issued by the Information Commissioner's Office. This clause 32 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 32.2** where there is any conflict, ambiguity or inconsistency between this clause (including any associated definitions) and the remainder of this Contract, this clause 32 shall take precedence.
- 32.3** The parties acknowledge that [in respect of the Personal Information identified in Schedule 8 only,] for the purposes of the Data Protection Legislation and for the remainder of this clause 32 where the context so admits, the Council is the Data Controller and the Service Provider is the Data Processor unless otherwise specified in Schedule 8. Schedule 8 sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Personal Data and categories of Data Subject. [The provisions of clause 32.5 to 32.9 shall apply to this relationship.]
- 32.4** The Parties acknowledge that the Service Provider shall have access to and will process Personal Data for the purpose of the provision of the Services and whilst the Parties acknowledge that the Data Protection legislation will ultimately determine the status of the parties under the legislation, following an assessment of their respective roles under this Contract, the Parties agree that, with the exception of the Personal Data identified in Schedule 8, the Service Provider is not processing Personal Data on behalf of the Council but is a Data Controller in its own right in respect of the Personal Data which it processes pursuant to the terms of this Contract. The Parties consider their relationship in respect of any Personal Information not identified in Schedule 8 to be that of 'controller to controller' and will comply with the obligations of a Data Controller under the Data Protection Legislation and where the Parties share Personal Data as controllers it shall be undertaken in accordance with clause 32.10 to 32.12 below.

Data Processor's Obligations

32.5 Without prejudice to the generality of Clause 32.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider and/or lawful collection of the Personal Data by the Service Provider on behalf of the Council for the duration and purposes of this Contract.

32.6 Without prejudice to the generality of [Clause 32.1](#), the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this Contract:

- (a) process that Personal Data only on the documented written instructions of the Council as set out in Schedule 8 unless the Service Provider is required by Domestic Law to otherwise process that Personal Data. Where the Service Provider is relying on Domestic Law as the basis for processing Personal Data, the Service Provider shall promptly notify the Council of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Service Provider from so notifying the Council;
- b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all Staff who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Service Provider has provided appropriate safeguards in

- relation to the transfer as determined by the Council;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) the Service Provider complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) notify the Council immediately if it receives:
 - i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (f) assist the Council in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Council without undue delay on becoming aware of a Personal Data Breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract ;
- (h) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of this Contract unless required by Domestic Law to store the Personal Data; and
- i) maintain complete and accurate records and information to demonstrate its compliance with this clause 32 and allow for audits by the Council or the Council's designated auditor and immediately inform the Council if, in the opinion of the Service Provider, an instruction infringes the Data Protection Legislation

[32.7] The Service Provider shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Service Provider's obligations under this Clause 32.]

32.8 The Council does not consent to the Service Provider appointing any third party processor of Personal Data under this Contract

32.9 The Council may, at any time on not less than 30 days' notice, revise this clause 32 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

32.10 Where the Parties include two or more Joint Controllers as identified in Schedule 8 in accordance with the Data Protection Legislation, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 7 in replacement of Clauses 32.1-32.14 for the Personal Data under Joint Control.]

[Controller to Controller Data Sharing

32.11. Each Party acknowledges that one party (referred to in this clause as the Data Discloser) will regularly disclose to the other party Personal Data, as more particularly identified in Schedule 9, to be shared between the parties under this Contract("the Shared Personal Data") which has been collected by the Data Discloser for the purposes set out in Schedule 9("the Agreed Purposes").

32.12. Each Party shall:

- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the permitted recipients identified in Schedule 9 ("the Permitted Recipients") for the Agreed Purposes;
- (b) give full information to any Data Subject whose Personal Data may be processed under this Contract of the nature such processing;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
- (f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

- (g) not transfer any personal data received from the Data Discloser outside the UK unless in compliance with the provisions of clause 32.6(d) above:

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

- (a) consult with the other Party about any notices given to Data Subjects in relation to the Shared Personal Data;
- (b) promptly inform the other Party about the receipt of any Data Subject Request;
- (c) provide the other Party with reasonable assistance in complying with any Data Subject Request;
- (d) not disclose or release any Shared Personal Data in response to a Data Subject Request without first consulting the other Party wherever possible;
- (e) assist the other Party, at the cost of the other Party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Contract unless required by law to store the personal data; and
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the other Party or the other Party's designated auditor.

32.14. Each Party shall indemnify the other against all direct liabilities, costs, expenses, damages and losses (including all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising directly out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it,

reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it (if requested).

33 COUNCIL DATA AND PERSONAL INFORMATION AUDITS

- 33(a) Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit for the following purposes:
- 33(a)(i) to review the integrity, confidentiality and security of the Council Data - [Not Used];
 - 33(a)(ii) to review the Service Provider's compliance with the Data Protection Act Legislation, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses in this Contract and any other legislation applicable to the Services;
- 33(b) The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 33(c) Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 33(c)(i) All information requested by the Council within the permitted scope of the audit;
 - 33(c)(ii) Reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 33(c)(iii) Access to Service Provider Staff
- 33(d) The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Services.
- 33(e) The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its intention to conduct an audit.
- 33(f) The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 33(g) This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Contract which may be conducted as specified in this Contract.

34 BUSINESS CONTINUITY PLAN

The Service Provider shall comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans and must, unless otherwise

agreed by the Parties in writing, maintain and regularly provide the Council with up-to-date copies of a Business Continuity Plan and must notify the Council as soon as reasonably practicable of its activation (if an interruption has a direct impact on the Council) and in any event no later than 5 Working Days from the date of such activation. Where, for whatever reason, there is a suspension of all or part of the Services the Contractor will, where applicable, implement the relevant parts of the Business Continuity Plan to ensure that there is no interruption in the availability of the relevant part of the Services

35 SAFEGUARDING

35(a) Where the Service or activity being undertaken in this Contract is a Regulated Activity the Service Provider shall :

35(a)(i) ensure that all individuals engaged in the provision of the Service or activity, and prior to commencing the provision of the service or activity, are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and

35(a)(ii) monitor the level and validity of the checks under this clause 35(a) for each member of the Service Provider's Staff.

35(b) The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of a Service or activity that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

35(c) The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 35 have been met.

35(d) The Service Provider shall refer information about any person carrying out the Services or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, children or vulnerable adults.

35(e) The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she

would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

35(f) Where the Service Specification specifies that the Service or activity to be provided under this Contract involves a Regulated Activity, or the Council otherwise notifies the Service Provider, acting reasonably, that the Service Provider's Staff are required to be subject to a Disclosure and Barring Service check, the Service Provider shall comply with clause 35(b) above..

35(g) The Service Provider shall in addition to clauses 35 (a)-(f) above comply with the requirements set out in Schedule 7 (Safeguarding) to this Contract

36 EQUALITIES

36(a) The Service Provider and any Sub-contractor employed by the Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age

i) in the supply and provision of Service under this Contract, and

ii) in its employment practices.

36(b) Without prejudice to the generality of the foregoing, the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or other relevant legislation, or any statutory modification or re-enactment thereof).

36(c) In addition, the Service Provider and any Sub-contractor or person(s) employed by or under the control of the Service Provider in providing services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it

36(d) The Service Provider and any Sub-contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by Equality and Human Rights Commission, which give practical guidance to Councils on the elimination of discrimination.

36(e) In the event of any finding of unlawful discrimination being made against the Service Provider and any Sub-contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equality and Human Rights Commission over the same period, the Service

Provider and any Sub-contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

- 36(f) The Service Provider and any Sub-contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by Equality and Human Rights Commission, which give practical guidance to Councils on the elimination of discrimination.
- 36(f) The Service Provider and any Sub-contractor employed by the Service Provider will provide a copy of its policies to the Council at any time upon request. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Service Provider's compliance with the above conditions.

37 COMPLAINTS PROCEDURE

- 37(a) The Service Provider shall:
- 37(a)(i) inform complainants that they may refer their complaint in respect of the services provided under this Contract direct to the Council;
 - 37(a)(ii) promptly (and in any event within two Working Days of receipt) send to the Council all Formal Complaints received by the Service Provider in respect of the services provided under this Contract and the Council will deal with the Formal Complaint under its own complaint procedure. The Service Provider will inform the Council where the complainant has requested that the Service Provider deal with the Formal Complaint through its own complaint procedure.
 - 37(a)(iii) co-operate fully in any Council investigation into a Formal Complaint referred to the Council and provide any documents or information reasonably requested by the Council in relation to the complaint within the timescales specified by the Council.
- 37(b) The Service Provider shall operate a complaints procedure in respect of any services provided under this Contract, to the entire satisfaction of the Council, and comply with the requirements of any regulatory body to which the Service Provider is subject (including any change in such requirements) and ensure that its complaints procedure meets the following minimum standards:
- 37(b)(i) is easy to access and understand;
 - 37(b)(ii) informs complainants that they may refer their complaint in respect of services provided under this Contract direct to the Council;

- 37(b)(iii) clearly sets out the time limits that will be followed under the complaints procedure and the process for keeping the complainant informed of progress with such complaints;
 - 37(b)(iv) provides confidential record keeping to protect employees under this Contract and the complainant
 - 37(b)(v) provides information to management so that services can be improved
 - 37(b)(vi) provides effective and suitable remedies
 - 37(b)(vii) is regularly monitored and audited and which takes account of complainant and Council feedback.
- 37(c) The Service Provider shall make its complaints procedure available upon request.
- 37(d) The Service Provider shall ensure that all its employees and persons employed in the performance of this Contract are made aware of its complaints procedure.
- 37(e) Where the Service Provider is undertaking an investigation into a complaint, the Service Provider shall ensure that, under no circumstances, is the complaint investigated by a member of its staff who may be part of the complaint and that the investigation is carried out by someone who is independent of the matter complained of.
- 37(f) The Service Provider shall keep accurate and complete written records of all Formal Complaints received and the responses to them and shall make these records available to the Council within 20 Working Days of request.
- 37(g) The Service Provider should note that if a complaint is made to the Council by a third party relating to the Services provided on behalf of the Council under this Contract, the Local Government Ombudsman has the power to investigate such a complaint and the Council requires the Service Provider to fully co-operate in any such investigation. If the Council is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Service Provider the Service Provider shall indemnify the Council in respect of the costs arising from such maladministration or injustice.

38 INTELLECTUAL PROPERTY

- 38(a) In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or Sub-contractor of the Service Provider:
- 38(a)(i) in the course of performing the Services; or

- 38(a)(ii) exclusively for the purpose of performing the Services, shall vest in the Council on creation.
- 38(b) Unless stated expressly in Writing in this Contract, neither Party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Contract
- 38(c) The Service Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.
- 38(d) This provision shall survive the expiration or termination of the Contract

39 PUBLIC INTEREST DISCLOSURE ('Whistleblowing')

The Service Provider will ensure that its Staff and Sub-contractors are made aware of the Council's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request.

40 PROJECT MATERIALS [NOT USED]

The Council shall be entitled to all property copyright and other intellectual property rights in the project materials which property and other intellectual property rights the Service Provider with full guarantee assigns to the Council. This provision shall survive the expiration or termination of this Contract.

41 Cyber Security [Not Used]

- 41.1 The Service Provider will be compliant with all applicable laws or statutes and all applicable judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the protection of IT Systems and Data from a security breach or unauthorised use, access, misappropriation.
- 41.2 The Service Provider must:
- a) Have secure configuration in place for systems and devices, ensuring that default passwords and settings are changed regularly.
 - b) Ensure that all software and systems are kept up to date with security patches.

- c) Have robust firewalls and secure internet gateways in place.
- d) Ensure that strong access control measures are in place, including user permissions and multi-factor authentication for sensitive systems and data.
- e) Undertake regular patching and updates to address any unknown vulnerabilities within applications.
- f) Have effective antivirus and antimalware in place across all systems.
- g) Have secure configuration in place for all mobile devices, including remote wiping capabilities.
- h) Ensure that all Service Provider Personnel complete cyber security training.

42 TUPE

The Parties agree that the provisions of Schedule 5 shall apply to any Relevant Transfer of staff under this Contract

43 ENTIRE AGREEMENT

This Contract contains the entire agreement between the Parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

SCHEDULE 1 : THE SPECIFICATION

SCHEDULE 2 : PERFORMANCE AND MONITORING

During the Term of the Contract the Council may monitor the provision of the Service to the Service Users as follows:

- 1.1 Quarterly monitoring and evaluation meetings may be held between the Service Provider and the Authorised Officer
- 1.2 The Service Provider may be asked to draft a written report for the Council on the provision of the Service to the Service users and email this to the Council's [officer name, title and office location] at least 2 weeks in advance of the meeting detailing the following:
 - update of the provision the Service to Service Users by the Service Provider
 - progress on meeting the Performance Indicators detailed above
 - Service User feedback on the Service
 - compliance with the contract ie Insurance requirements, payments etc
 - any issues, complaints, comments or compliments regarding the Service
 - finance report on expenditure
 - staff & volunteer that provide the Service (inc training and development)
- 1.3 The Council's [officer name, title and office location] is to be sent, annually and at the earliest opportunity following completion, two copies of the Service Provider's Annual Audited Accounts.
- 1.4 Other monitoring processes and visits to the Service may be undertaken by the Authorised Officer. The Service Provider must undertake to co-operate and allow reasonable access to staff and service records upon request, for monitoring purposes.
- 1.5 A Service Review may take place 12 months prior to the end of the Term to evaluate the effectiveness of the Service and a report will be required of the Service Provider detailing:
 - aggregated monitoring information for the Term
 - a report against the Performance Indicators/Outcomes and Outputs
 - the changing need/demand of Service Users using the Service (and) likely to be using the Service in the future
 - improvements new initiatives and problems that need to be considered or resolved
 - evaluation participation: Hear by Right standards & satisfaction survey

Officers of the Council may seek to monitor this Contract by:

- 1.6 visiting the premises where the Service is provided (announced or unannounced from time to time) to undertake a review on any or all aspects of the operation of the Service and compliance by the Service Provider with the terms set out in this Contract. The Council will have careful regard to the nature of the Service provided and shall when on premises controlled by the Service Provider respect Service Provider's rules as to security health and safety.
- 1.7 carrying out a quality assurance exercise which may involve contacting Service Users and/or their families and friends and ascertaining their views on the provision of the Service at the premises where the Service is provided.

The Service Provider will:

- 1.8 allow Officers of the Council access to the premises where the Service is provided (upon the production by Council Officers of an identity badge) to carry out a monitoring visit. This may include viewing the premises and all areas used for the provision of the Service such as Service Users' bedrooms (Council Officers shall have regard to Service Users' privacy) communal areas, kitchen, bathrooms, halls (and any areas that a Service User can gain access to) to monitor and observe the provision of the Service to Service Users as required under the terms of this Contract.
- 1.9 give assistance to Council Officers and prompt access to any file information or record it holds in respect of the Service User or the provision of Service to the Service Users as required by this Contract.
- 1.10 Provide information to the Council that evidences that systems are in place and being used and the Service is being provided as required by this Contract
- 1.11 allow Officers of the Council to speak to Service User's and Staff in private (the Council shall have regard to the Service Users needs and Staff needed on duty to provide the Service)
- 1.12 access to all records or information on Service Users or the provision of the Service (this may include informal records such as staff handover book, staff rota)
- 1.13 upon request provide photocopies of documentation (subject to the Council contributing to the Service Provider's reasonable photocopy costs)
- 1.14 supplying to the Council upon request the names of Service Users who utilise the Service and/or any contact details the Service Provider holds for next of kin or family / friends of the Service User for the purpose of contacting them to ascertain their views of the Service provided.

- 1.15 meet reasonable requests by Officers for information in order to investigate complaints made by Service Users; or to assess the financial viability of the Service Provider, the reliability of care provision throughout the Contract period, consistency and standards of care, the Service User's and/or their representative's views of the Service.
- 1.16 The Service Provider will ensure that it obtains any necessary consent from Staff and/or Service Users to allow the Council access to files to monitor the provision of the Service.
- 1.17 Will supply information which the Council may request from time to time in order to comply with Department of Health or Department of Children, Schools and Families requirements

SCHEDULE 3 : SERVICE STANDARDS

1. GUIDING PRINCIPLES FOR CHILDREN SERVICES

The Service Provider will provide a Service that is:

- 1.1 Safe – the Service Provider ensure the safety of Service Users and support Staff in the provision of the Service. This includes practice around needs assessments, risk assessments, safe recruitment, adherence to the procedures prescribed by Shropshire's Safeguarding Children Board (SSCB) in relation to keeping children safe and general Health and Safety.
- 1.2 Inclusive – the Service Provider will seek to address and avoid ways in which children and young people (Service Users) are marginalised and subjected to discrimination. This includes conduct by Staff and a can-do approach, which seeks make children feel accepted and included.
- 1.3 Enabling – the Service Provider will encourage the rights of children and young people (Service Users) to make decisions about their own lives. This includes respect for confidentiality, fostering independence, enabling children and young people to reach their potential in childhood and subsequent adulthood. This also includes working in partnership with parents to achieve the same outcome.
- 1.4 Cooperative – the Service Provider will work in partnership with the key stakeholders in the Service : the commissioning organisation, the referrer (currently the Disabled Children's Team), parents, children (Service Users), representatives from inspection or development agencies, representatives from forums representing Service Users and others, when necessary. This includes regular contract monitoring with the commissioning organisation and TUPE arrangements relating to change of providers. It also includes a commitment to work with and thus develop resources in the local community, for the long term benefit of families and children living in Shropshire.
- 1.5 Compliant – the Service Provider will work within the terms of this Contract, with skill, care and diligence. This includes compliance quality standards within this Contract, all statutory provision and guidance which apply to the Service and are issued by a registration body.

It is essential that all Staff that provide the Service are recruited to the Service meet the requirements of any relevant legislation (such as the Care Standards Act 2000 National Minimum Standard) and that all current Staff actively work towards these. It is essential that the Service Provider can prove

that all managers can manage and are supported to achieve a Level 4 equivalent management qualification.

The Service Provider will ensure that all Staff receive effective supervision, appraisal and training on a regular basis.

- 1.6 Flexible – the Service Provider shall be able to respond quickly, thoughtfully and positively to the changing needs of the stakeholders and the wider strategic context. This principle is particularly important in the current context of further expected change: development of personalisation, SEND reforms, changes to public services and the ongoing challenge to seek more efficient ways of working
- 1.7 Transparent – the Service Provider will produce accurate, timely and comprehensive information about their Service in clear and simple language. This includes dealing with complaints and feedback, information about income and costs of the Service. Information will be required on time and in line with Schedule 2 Performance and Monitoring.
- 1.8 Self-aware – the Service Provider will promote a culture of learning and active participation with children (Service Users) and parents. It includes actively seeking feedback on its own performance, strengths and weaknesses. It uses the findings to improve performance, efficiency and to keep its range of activities fresh and popular.
- 1.9 Accountable – The Service Provider will have a reliable, trustworthy and robust infra-structure and leadership to manage the contractual requirements which contribute to the delivery of a safe and high quality Service. This includes assessment of Service Users needs, risk assessment of activities, management of finance and budget, management of information (service users, activities, impact) and relationship with stakeholders, approach to organisational policies and procedures, quality assurance and safe record keeping.
- 1.10 Good value for money – The Service Provider will make the best use of its resources and gives consideration to long-term sustainability. This includes seeking to avoid duplication, seeking best value with Sub-contractors and its supply chain. This also includes putting any contributions made by parents to best use. This can also include seeking additional income from other sources to support the provision.

2. INFORMATION FOR SERVICE USERS

The Service Provider will produce information detailing the Services its philosophy and operation and ensure that it is available in an accessible format to all Service Users the Council and relevant agencies. The information must identify how a Service Users can make a complaint and policies concerning equal opportunities and confidentiality and when confidentiality will be breached.

3. PARTICIPATION

The Service Provider will ensure that:

- 3.1 Views (including complaints) of children/young people/families/carers about the Service are sought and recorded.
- 3.2 Children/young people/families/carers participate in the life of the Service in a range of ways.
- 3.3 The participation of children/young people/families/carers has made a difference to the way the Service is delivered.
- 3.4 The participation of children/young people/families/carers has made a difference to the way influencing on policy or practice locally or nationally is done.

4. COMPLAINTS

The Service Provider will in addition to its obligations under clause 37 (Complaints) ensure that:

- 4.1 ensure that it has an effective and easy to use complaints procedure.
- 4.2 make it easy for children, young people, Service Users and their families to raise concerns. .
- 4.3 ensure that the Complaints Procedure follows specified timescales and has informal and formal parts.
- 4.4 make information about the complaints procedure widely known and may include information about the Social Services Complaints Procedure under Section 26 of the Children Act.
- 4.4 ensure that a suitable person investigates all aspect of the complaint promptly, decides whether the complaint is upheld and recommend remedies to be carried out within a specified timescale. That same person should ensure the child or young person Service User gets feedback about the outcome of his/her complaint and knows what to do if he/she is dissatisfied with the outcome.
- 4.5 make sure that any solutions are put in place straight away or within a set timescale.

- 4.6 record all complaints, both formal and informal and analyses the data annually and ensure that lessons are learned from the analysis and action taken where necessary.
- 4.7 keep accurate and complete written records of all complaints received and the responses to them and if required to do so by a Council' Officer shall make such records available to the Council.
- 4.8 assist the Council investigating a complaint by a Service User and participate in all complaint investigations within the timescales requested by the Council in accordance with SSCB procedures.
- 4.9 ensure that any complaint regarding possible physical, psychological, financial, sexual or discriminatory abuse or neglect should be reported immediately to COMPASS on 0345 678 9021 or 0345 678 9040 (after 5pm or weekends) and confirmed in Writing as soon as reasonably practical but no later than five working days.
- 4.10 ensure that where a complaint is made against a member of the Staff this shall be investigated in accordance with the documented complaints procedure of the Service Provider. The Council's Multi Agency Adult Protection Policies and Procedures or Local Safeguarding Children Board Procedures should be followed and strictly adhered to in any case of actual or suspected abuse in all such cases the Service Provider shall notify the Council's Commissioning and Procurement Team of any complaints and actions taken in individual cases and the nature of the complaint if it is from a Service User.

5. POLICIES, PROCEDURES AND GUIDANCE

- 5.1 The Service Provider will ensure that it has appropriate policies, procedures and guidance in place for the provision of the Service and as a minimum on:
 - 5.1.1 Operational policies on the recruitment, management and training of Staff .
 - 5.1.2 Grievance and disciplinary procedures.
 - 5.1.3 Health and Safety Policy
 - 5.1.4 Confidentiality record keeping and security policy.
 - 5.1.5 Lone/out of hours working policy.
 - 5.1.7 Risk Management policy and procedure.
 - 5.1.8 Complaints Policy
- 5.2 The Service Provider will ensure that all Staff used to provide the Service have access to copies of the Council's Safeguarding Children's Board Procedures and the Whistleblowing Policy

- 5.3 The Service Provider will ensure that all Staff have seen copies of the policies and procedures listed above in 5.1 and 5.2 (that are relevant to their duties and responsibilities) and sign a form (which will be held on their Staff file) which indicates that they have seen read and understood them

6. STAFF AND TRAINING

The Service Provider will ensure that:

- 6.1 all Staff are trained to do their job to a high standard and will access the appropriate and required training offered by the Council.
- 6.2 all Staff have clear job descriptions and person specifications and are sufficiently skilled with the required knowledge experience and training to undertake the role.
- 6.3 all Staff understand service structure, lines of accountability, policies and procedures and how their role is to be carried out and the responsibilities and outcomes for Service Users are achieved.
- 6.4 all Staff working in the Service with direct contact with Service Users undergo an enhanced search by the Disclosure and Barring Service (DBS)
- 6.5 it follows guidance issued by the DBS as to the level of disclosure required for each staff post and ensure that the code of practice for the DBS is strictly adhered to.
- 6.6 it keeps itself informed of and complies with all current legislation regarding the vetting and barring of Staff in particular the Safeguarding Vulnerable Groups Act 2006
- 6.7 the identity of all Staff will be verified prior to employment as will the authenticity of qualifications.
- 6.8 in the event of agency staff being used the Service Provider must ensure that the Agency has carried out thorough checks, including references and DBS clearance and that those staff are suitably skilled and trained to deliver the service.
- 6.9 conditions of service, salaries, taxes, National Insurance and all levies of any kind relating to the employment of persons employed by the Service Provider.
- 6.10 it notifies the Council of any of its Staff whose conduct places a Service User at risk or might bring the Council into disrepute and will ensure that they are the subject of immediate investigation by the Service Provider and dealt with to the satisfaction of the Council which might direct that the employee be removed from activities or the provision of the Service.

7 RECORD KEEPING

- 7.1 The Service Provider's facilities for storing records such as filing cabinets must be lockable and in a secure environment. Evidence must be available that any statutory requirements relating to the premises have been complied with.
- 7.2 Information recorded in respect of each Service User will meet regulatory standards in the case of regulated Services. Non statutory Services will ensure that essential records are kept regarding the support of all Service Users including identifying data, referral and allocation documents, support plans and service commencement date and termination date.
- 7.3 A register of all Staff must be maintained which should include the following information
 - 7.3.1 name, address and telephone number
 - 7.3.2 position held and hours worked
 - 7.3.3 emergency contact - name, address and telephone number
 - 7.3.4 date of issue of identification and retrieval if appropriate
 - 7.3.5 recruitment details including references, evidence of DBS disclosure and interview
 - 7.3.6 induction and training records
 - 7.3.7 copies of training certificates and qualifications
- 7.4 The Service Provider will ensure that each member of Staff are made aware that their files (with their permission) may be inspected by officers of the Council for the purpose of monitoring
- 7.5 In accordance with Caldicott recommendations and confidentiality requirements the Service Provider will ensure that:
 - 7.5.1 Service Users are able to find out how the Service Provider deals with confidential and sensitive information about them and should be given a leaflet (or other communication relevant to their level of understanding) that clearly explains what information is kept on them and how they can access this.
 - 7.5.2 Service Users and Staff have access to their personal records in private and as quickly as possible if requested and no later than 40 days whilst considering the interest of any third party information which can only be given with the third party's permission.
 - 7.5.3 When the Service User has examined the records they are signed and dated by a member of Staff to show they have been examined and by the Service User when possible.

- 7.5.4 Staff are required to sign and date an acknowledgement that they have examined records pertaining to them upon the fulfilment of their request.
- 7.5.5 It has a policy document that details Staff Code of Conduct in relation to confidentiality. This document must be shared with and understood by Staff used to provide the Service and regularly updated.
- 7.5.6 Staff induction contains training on confidentiality procedures. Staff files should evidence the date and nature of the induction on confidentiality that was given to new Staff.
- 7.5.7 Confidential and security training needs should be assessed on an ongoing basis taking into account the role of each member of Staff used to provide the Service and this should be done annually
- 7.5.8 Staff contracts explicitly mention confidentiality and disclosure issues
- 7.5.9 The flows of Service User information are reviewed
- 7.5.10 Information collections have a named owner (member of Staff) who is responsible for protecting access
- 7.5.11 Confidential information on Service Users is safeguarded so that unauthorised people do not gain access to it.
- 7.5.12 Protocols governing the sharing of Service User information with other organisations is agreed and understood
- 7.5.13 A named individual is appointed who will have responsibility for data security
- 7.5.14 It has a programme to review typical risks regarding Service Users identifiable information
- 7.5.15 Incidents involving security breaches are anticipated and dealt with appropriately
- 7.5.16 Security issues are monitored and reported
- 7.5.17 Passwords are used to safeguard information held on computer regarding the Service
- 7.5.18 Only authorised persons have access to information and only if they need it to carry out their roles.
- 7.5.19 If it is uncertain about the application of the above to the provision of the Service it will immediately contact the Council for clarification

SCHEDULE 4 : FINANCE

- 1.1 Payments will be made by the Council within 30 days of receipt of a Valid Invoice in arrears
- 1.2 In the event that a Service User does not receive the Service as a result of a Planned Absence, the Council will not be liable for the Payment during the period of the Planned Absence
- 1.3 In the event that an Service User does not receive the Service as a result of an Unplanned Absence the Council will be liable for the first 3 days of Payment at 50% of the cost of the care package only.
- 1.4 Where notice of an Individual's absence is given but the absence is treated as an Unplanned Absence due to receipt of insufficient notice by the Service Provider then from the date of expiry of the full notice period the absence shall be deemed a Planned Absence for the remainder of the period of absence.

SCHEDULE 5 – TUPE

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EMPLOYMENT PROVISIONS

Unless otherwise stated, the following definitions shall apply:

Data Protection Legislation: means: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party

"Direct Loss" all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of reasonably and necessarily incurred legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from [the Council] [or any Former Provider] to the Service Provider or Sub-contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider or Sub-contractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11 of the Employment Regulations :

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

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

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions in relation to payments made by the Council or the Replacement Provider to a Transferring Service Provider Employee which would have been payable by the Service Provider or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions ;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive ;

Former Provider: a provider supplying services to the Council before the Service Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-contractor of such Provider (or any sub-contractor of any such sub-contractor);

Indirect Losses means loss of profits (other than profits directly and solely attributable to carrying on of the Business), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

New Fair Deal: the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date;
- (b) any similar pension protection in accordance with the [Sections 2A – 2C] inclusive to Section 2 of this Schedule as notified to the Service Provider by the Council;

Notified Sub-contractor: a Sub-contractor identified in Annex D to whom Transferring Council Employees and/or Transferring Former Provider Employees will transfer on a Relevant Transfer Date;

Old Fair Deal: HM Treasury Guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" issued in June 1999 including the supplementary guidance "Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues" issued in June 2004;

Partial Termination: the partial termination of the relevant contract to the extent that it relates to the provision of any part of the Services

Redundancy Costs: statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Service Provider to the Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

Redundant Transferring Employees: Transferring Council Employees whom the Service Provider has dismissed following a lawful redundancy within [NUMBER] months of the Effective Date.

Relevant Transfer: a transfer of employment to which the Employment Regulations applies;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Section 2 and [Sections 2A-2C], where the Service Provider or a Subcontractor was the Former Provider and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Service Provider (or Subcontractor), references to the Relevant Transfer Date shall become references to the Commencement Date;

Replacement Services: any services which are the same as or substantially similar to the Services and which the Council receives in substitution for any of the Services following the expiry or termination of Partial Termination of this Contract, whether those services are provided by the Council internally and/or by any third party;

Replacement Provider: any third party provider of Replacement Services appointed by the Council from time to time (or where the Council is providing replacement Services for its own account, the Council);

Replacement Sub-contractor: a sub-contractor of the Replacement Provider to whom Transferring Service Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

Retendering Information: as defined in paragraph 6.10;

Service Provider Staff: all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or any Sub-contractor engaged in the performance of the Service Provider's obligations under this Contract;

Service Provider's Final Staff List: a list provided by the Service Provider of all Service Provider Staff who will transfer under the Employment Regulations on the Service Transfer Date;

Service Provider's Provisional Staff List: a list prepared and updated by the Service Provider of all Service Provider Staff who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider and who are expected, if they remain in the employment of the Service Provider or of any Sub-contractor as the case may be until immediately before the termination date or the expiry date of the (as appropriate), would be Transferring Service Provider Employees;

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-contractor to a Replacement Provider or a Replacement Sub-contractor;

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-contractor to the Council or any Replacement Provider giving rise to a Relevant Transfer;

Staffing Information: in relation to all persons identified on the Service Provider's Provisional Staff List or Service Provider's Final Staff List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the Data Protection Legislation, but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other Employee Liability Information

Statutory Schemes: means the [CSPS], [NHSPS] [or] [LGPS] as defined in Section [2A] [2B] [2C] to Section 2 of this Schedule;

Sub-contractor: the contractors engaged by the Service Provider to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the Services to the Council.

Transferring Council Employees: employees of the Council whose contracts of employment transfer with effect from the Effective Date to the Service Provider by virtue of the application of the Employment Regulations. A list of the Transferring

Council Employees, as at the date of execution of the Contract, is attached at Annex B.

Transferring Former Provider Employees: employees of a Former Provider whose contracts of employment transfer with effect from the Effective Date to the Service Provider or Sub-contractor by virtue of the application of the Employment Regulations. An indicative list of the Transferring Former Provider Employees, as at the date of execution of the Contract, is attached at Annex C.

Transferring Service Provider Employees: those employees of the Service Provider and/or the Service Provider's Sub-contractors wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry date or the termination date of the Contract to whom the Employment Regulations will apply on the Service Transfer Date whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Service Provider to provide an indemnity, undertaking or warranty, the Service Provider shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Former Provider, Replacement Provider or Replacement Sub-contractor, as the case may be.

3. TRANSFER OF FORMER PROVIDER EMPLOYEES TO THE SERVICE PROVIDER ON THE EFFECTIVE DATE

3.1 The Council and the Service Provider agree that the commencement of the provision of the Services or of any relevant part of the Services shall constitute a Relevant Transfer in relation to the Transferring Former Provider Employees and the contracts of employment of any Transferring Former Provider Employees shall transfer to the Service Provider or Sub-Contractor. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under the Employment Regulations. As a result of the operation of the Employment Regulations, the contracts of employment between each Former Provider and the Transferring Former Provider Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Provider and/or any Subcontractor and each such Transferring Former Provider Employee. The Relevant Transfer shall occur on the Effective Date

3.2 Subject to paragraphs 3.3 and ~~03.4~~, if any employee of a Former Provider who is not identified as a Transferring Former Provider Employee and claims, and/or it is determined, in relation to such person that their contract of employment has been transferred from a Former Provider to the Service Provider and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

3.2.1 the Service Provider shall, or shall procure that the Subcontractor shall, within five (5) Working Days of becoming aware of that fact notify the Council and the relevant Former Provider in writing; and

3.2.2 the Former Provider may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter provided always that such steps are in compliance with applicable Law, within fifteen (15) Working Days of receipt of notice from the Service Provider;

3.2.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Former Provider and/or the Council, the Service Provider shall, or shall procure that the Subcontractor shall immediately release the person from its employment or alleged employment;

3.2.4 if after the period referred to in paragraph 3.2.2:

- (a) no such offer has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved;
- (d) the Service Provider and/or any Subcontractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person,

and subject to the Service Provider's compliance with paragraphs 3.2.1 to 3.2.4 the Council shall procure that the Former Provider will indemnify the Service Provider and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Provider's employees referred to in paragraph 3.2 provided that the Service Provider takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

3.3 The indemnity in paragraph 3.2:

3.3.1 shall not apply to:

- (a) any claim for:
 - (i) for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

arising as a result of any alleged act or omission of the Service Provider and/or any Subcontractor; or

- (b) any claim that the termination of employment was unfair because the Service Provider and/or Subcontractor neglected to follow a fair dismissal procedure; and

3.3.2 shall not apply to any termination of employment occurring later than 6 Months from the Relevant Transfer Date.

3.4 If the Service Provider and/or any Subcontractor at any point accept the employment of any person as is described in paragraph 3.2, such person shall be treated as having transferred to the Service Provider and/or any Subcontractor and the Service Provider shall, or shall procure that any Subcontractor shall comply with such obligations as may be imposed upon it under applicable Law

3.5 The Service Provider shall be liable for and indemnify and keep indemnified the Council and any Former Provider against any Employment Liabilities arising from or as a consequence of:

(i) any act or omission by the Service Provider or any Subcontractor in respect of any Transferring Former Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Provider Employee whether occurring before, on or after the Effective Date;

(ii) the breach or non-observance by the Service Provider or any Subcontractor on or after the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Former Provider Employee; and/or

(b) any custom or practice in respect of any Transferring Former Provider Employees which the Service Provider or any Subcontractor is contractually bound to honour;

(iii) any claim by any trade union or other body or person representing any Transferring Former Provider Employees arising from or connected with any failure by the Service Provider or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Effective Date;

(iv) any proposal by the Service Provider or a Subcontractor prior to the Effective Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Provider Employees to their material detriment on or after their transfer to the Service Provider or a Subcontractor (as the case may be) on the Effective Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Effective Date as a result of or for a reason connected to such proposed changes;;

(v) any of the employees informing the Council and any Former Provider they object to being employed by the Service Provider or Sub-Contractor; and

(vi) any change in identity of the Transferring Former Provider Employees' employer as a result of the operation of the Employment Regulations

(vii) any claim made by or in respect of a Transferring Former Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Provider Employee relating to any act or omission of the Service Provider or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Provider's failure to comply with its obligations under regulation 13(4) of the Employment Regulations; and

(viii) any statement communicated to or action undertaken by the Service Provider or a Subcontractor to, or in respect of, any Transferring Former Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Council and/or the Former Provider in writing

3.6 The Service Provider shall be liable for and indemnify and keep indemnified the Council and any Former Provider against:

3.6.1 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Former Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Effective Date; and

(b) in relation to any employee who is not a Transferring Former Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Provider to the Service Provider or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Effective Date;

3.6.2 any failure of the Service Provider or any Sub-Contractor to meet all remuneration, benefits, entitlements and outgoings for the Transferring Former Provider Employees, and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.

3.7 The Service Provider shall immediately on request by the Council and/or the Former Provider provide details of any measures that the Service Provider or any Sub-Contractor of the Service Provider envisages it will take in relation to any Transferring Former Provider Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider will give confirmation of that fact, and shall indemnify the Council and any Former Provider against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3.8 The indemnities in paragraph 3.5 and 3.6 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Provider whether occurring or having its origin before, on or after the Effective Date including any Employee Liabilities arising from the Former Provider's failure to comply with its obligations under the Employment Regulations.

3.9 The Service Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Former Provider Employees, on and from the Effective Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Effective Date and any necessary apportionments in respect of any periodic payments shall be made between the Service Provider and the Former Provider.

3.10 The Council shall procure that each Former Provider shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Provider Employees in respect of the period up to (but not including) the Effective Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken

holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Effective Date) and the Service Provider shall make, and the Council shall procure that each Former Provider makes, any necessary apportionments in respect of any periodic payments.

3.11 Subject to paragraph 3.12, the Council shall procure that each Former Provider shall indemnify the Service Provider and any Sub-Contractor against any Employee Liabilities arising from or as a result of:

3.11.1 any act or omission by the Former Provider in respect of any Transferring Former Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Provider Employee arising before the Effective Date;

3.11.2 the breach or non-observance by the Former Provider arising before the Effective Date of:

(a) any collective agreement applicable to the Transferring Former Provider Employees; and/or

(b) any custom or practice in respect of any Transferring Former Provider Employees which the Former Provider is contractually bound to honour;

3.11.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Former Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Effective Date; and

(b) in relation to any employee who is not a Transferring Former Provider Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Provider to the Service Provider and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Effective Date;

3.11.4 a failure of the Former Provider to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Provider Employees in respect of the period to (but excluding) the Effective Date;

3.11.5 any claim made by or in respect of any person employed or formerly employed by the Former Provider other than a Transferring Former Provider Employee for whom it is alleged the Service Provider and/or any Notified Subcontractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations; and

3.11.6 any claim made by or in respect of a Transferring Former Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Provider Employee relating to any act or omission of the Former Provider in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Service Provider or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

3.12 The indemnities in paragraph 3.11 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider or any Sub-Contractor whether occurring or having its origin before, on or after the Effective Date including, without limitation, any Employee Liabilities:

3.12.1 arising out of the resignation of any Transferring Former Provider Employee before the Effective Date on account of substantial detrimental changes to their

working conditions proposed by the Service Provider or any Sub-Contractor to occur in the period from (and including) the Effective Date; or

3.12.2 arising from the failure by the Service Provider and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.

3.12.3 Subject to paragraphs 3.12.4 and 3.12.5, if any employee of a Former Provider who is not identified as a Transferring Former Provider Employee and claims, and/or it is determined, in relation to such person that their contract of employment has been transferred from a Former Provider to the Service Provider and/or any Sub-Contractor pursuant to the Employment Regulations then:

(i) the Service Provider shall, or shall procure that the Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact notify the Council and the relevant Former Provider in writing; and

(ii) the Former Provider may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter provided always that such steps are in compliance with applicable Law, within fifteen (15) Working Days of receipt of notice from the Service Provider;

(iii) if such offer of employment is accepted, or if the situation has otherwise been resolved by the Former Provider and/or the Council, the Service Provider shall, or shall procure that the Sub-Contractor shall immediately release the person from its employment;

(iv) if after the period referred to in paragraph 3.12.3.(ii):

(a) no such offer has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved;

(d) the Service Provider and/or any Subcontractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person,

and subject to the Service Provider's compliance with paragraphs 3.12.3.(i) to 3.12.3.(iv) the Council shall procure that the Former Provider will indemnify the Service Provider and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Provider's employees referred to in paragraph 3.12.3 provided that the Service Provider takes, or shall procure that the Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

3.12.4 The indemnity in paragraph 3.12.3:

3.12.4.1 shall not apply to:

(a) any claim for:

(i) for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Service Provider and/or any Sub-Contractor; or

(b) any claim that the termination of employment was unfair because the Service Provider and/or Subcontractor neglected to follow a fair dismissal procedure; and

3.12.4.2 shall not apply to any termination of employment occurring later than 6 Months from the Relevant Transfer Date.

3.12.5 If the Service Provider and/or any Sub-Contractor at any point accept the employment of any person as is described in paragraph 3.12.3, such person shall be treated as having transferred to the Service Provider and/or any Sub-Contractor and the Service Provider shall, or shall procure that any Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law

4. The Service Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Council and/or at the Council's direction, the Former Provider, in writing such information as is necessary to enable the Council and/or the Former Provider to carry out their respective duties under regulation 13 of the Employment Regulations. The Council shall procure that the Former Provider shall promptly provide to the Service Provider and each Sub-Contractor in writing such information as is necessary to enable the Service Provider and any Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. LIMITS ON THE COUNCIL'S OBLIGATIONS

Where in this schedule the Council accepts an obligation to procure that a Former Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Council's contract with the Former Provider contains a contractual right in that regard which the Council may enforce, or otherwise so that it requires only that the Council must use reasonable endeavours to procure that the Former Provider does or does not act accordingly.

6. RETENDERING AND PRE-SERVICE TRANSFER OBLIGATIONS

6.1 The Service Provider agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Council at any time (provided that the Council shall only be entitled to make one such request in any six month period),

it shall provide at no cost to the Council and in a suitably anonymised format so as to comply with the Data Protection Legislation, the Service Provider's Provisional Staff List, together with the Staffing Information in relation to the Service Provider's Provisional Staff List and it shall provide an updated Service Provider's Provisional Staff List at such intervals as are reasonably requested by the Council.

6.2 At least 28 Working Days prior to the Service Transfer Date, the Service Provider shall provide to the Council or at the direction of the Council to any Replacement Provider and/or any Replacement Sub-contractor:

- (a) the Service Provider's Final Staff List, which shall identify which of the Service Provider Staff are Transferring Service Provider Employees; and
- (b) the Staffing Information in relation to the Service Provider's Final Staff List (insofar as such information has not previously been provided).

6.3 The Council shall be permitted to use and disclose information provided by the Service Provider under clause 6.1 and clause 6.2 for the purpose of informing any prospective Replacement Provider and/or Replacement Sub-contractor.

6.4 The Service Provider:

- (a) shall promptly notify the Council forthwith in Writing of any material changes to the information provided pursuant to clause 6.1 and clause 6.2 as and when such changes arise; and
- (b) warrants, for the benefit of the Council, any Replacement Provider, and any Replacement Sub-contractor that all information provided pursuant to clause 6.1 and clause 6.2 shall be true and accurate in all material respects at the time of providing the information.

6.5 From the date of the earliest event referred to in clause 6.1(a), clause 6.1(b) and clause 6.1(c), the Service Provider agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Service Provider's Provisional Staff List and shall not without the approval of the Council (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Service Provider Staff listed on the Service Provider Provisional Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Service Provider Staff (including any payments connected with the termination of employment);
 - (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Service Provider Staff save for fulfilling assignments and projects previously scheduled and agreed;
 - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Staff List;
 - (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Staff List save by due disciplinary process, and shall promptly notify, and procure that each Sub-contractor shall

promptly notify, the Council or, at the direction of the Council, any Replacement Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Service Provider or relevant Sub-contractor or received from any persons listed on the Service Provider's Provisional Staff List regardless of when such notice takes effect.

6.6 During the Term, the Service Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

6.7 The Service Provider shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Council, any Replacement Provider and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Service Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Service Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Service Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Council or, at the direction of the Council, to any Replacement Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Service Provider's Final Staff List who is a Transferring Service Provider Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

6.8 The Council regards compliance with this paragraph 6 as fundamental to the Contract. In particular, failure to comply with paragraphs 6.1 and 6.2 in respect of the provision of accurate information about the Transferring Service Provider Employees shall entitle the Council to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 6.8 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Service Provider's failure to comply with paragraphs 6.1 or 6.2, as the case may be.

6.9 Any change to the Staffing Information which would increase the total employment costs of the staff in the six months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Service Provider shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

6.10 The Service Provider shall indemnify and shall keep indemnified in full the Council and at the Council's request any Replacement Provider against all Direct Losses arising from any claim by any party as a result of the Service Provider or Sub-contractor failing to provide or promptly to provide the Council and/or any Replacement Provider where requested by the Council with any information required under this Clause 6.1 to 6.4 inclusive ("the Retendering Information") and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply to the extent that such information was originally provided to the Service Provider or any Sub-contractor by the Council and was materially inaccurate or incomplete when originally provided.

7. EMPLOYMENT REGULATIONS EXIT PROVISIONS

7.1 The Council and the Service Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Provider and/or a Replacement Sub-contractor. Such change in the identity of the provider of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive

will apply. The Council and the Service Provider further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Service Provider and the Transferring Service Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Provider and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Service Provider Employee.

7.2 The Service Provider shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Service Provider Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Service Provider Employees and other employees or former employees of the Service Provider or each Sub-contractor (who had been engaged in the provision of the Services) arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Service Provider and/or the Sub-contractor (as appropriate); and (ii) the Replacement Provider and/or Replacement Sub-contractor.

7.3 Subject to clause 7.4, the Service Provider shall indemnify the Council and/or the Replacement Provider and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Service Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission of the Service Provider or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Service Provider or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or

- (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the Service Provider or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Service Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Service Provider to the Council and/or Replacement Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Service Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-contractor other than a Transferring Service Provider Employee for whom it is alleged the Council and/or the Replacement Provider and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee

relating to any act or omission of the Service Provider or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Council and/or Replacement Provider to comply with regulation 13(4) of the Employment Regulations.

7.4 The indemnities in clause 7.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Provider and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Service Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

7.5 If any person who is not a Transferring Service Provider Employee claims, or it is determined in relation to any person who is not a Transferring Service Provider Employee, that his/her contract of employment has been transferred from the Service Provider or any Sub-contractor to the Replacement Provider and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Council shall procure that the Replacement Provider shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in Writing to the Service Provider; and
- (b) the Service Provider may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Provider and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

7.6 If such offer is accepted, or if the situation has otherwise been resolved by the Service Provider or a Sub-contractor, the Council shall procure that the Replacement Provider shall, or procure that the Replacement Sub-contractor shall, immediately

release or procure the release of the person from his/her employment or alleged employment.

7.7 If after the 15th Working Day period specified in clause 7.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Council shall advise the Replacement Provider and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

7.8 Subject to the Replacement Provider and/or Replacement Sub-contractor acting in accordance with the provisions of clause 7.5 to clause 7.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Service Provider shall indemnify the Replacement Provider and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of clause 7.7 provided that the Replacement Provider takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

7.9 The indemnity in clause 7.8:

- (a) shall not apply to:
 - (i) in any case in relation to any alleged act or omission of the Replacement Provider and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (ii) any claim that the termination of employment was unfair because the Replacement Provider and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in clause 7.5(a) is made by the Replacement Provider and/or Replacement Sub-contractor to the Provider within six months of the Service Transfer Date.

7.10 If any such person as is described in clause 7.5 is neither re-employed by the Service Provider or any Sub-contractor nor dismissed by the Replacement Provider

and/or Replacement Sub-contractor within the time scales set out in clause 7.5 to clause 7.7, such person shall be treated as a Transferring Service Provider Employee and the Replacement Provider and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

7.11 Not Used.

7.12 The Service Provider shall, and shall procure that each Sub-contractor shall, promptly provide to the Council and any Replacement Provider and/or Replacement Sub-contractor, in Writing such information as is necessary to enable the Council, the Replacement Provider and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Council shall procure that the Replacement Provider and/or Replacement Sub-contractor, shall promptly provide to the Service Provider and each Sub-contractor in Writing such information as is necessary to enable the Service Provider and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

7.13 Subject to clause 7.14, the Council shall procure that the Replacement Provider indemnifies the Service Provider on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Service Provider Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Provider and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Provider and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Service Provider Employees which the Replacement Provider and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Replacement Provider and/or Replacement Sub-contractor to

comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

(d) any proposal by the Replacement Provider and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Service Provider Employees on or after their transfer to the Replacement Provider or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Replacement Provider or Replacement Sub-contractor to, or in respect of, any Transferring Service Provider Employee on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Service Provider in Writing;

(f) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (i) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
- (ii) in relation to any employee who is not a Transferring Service Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Service Provider or Sub-contractor, to the Replacement Provider or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

(g) a failure of the Replacement Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period from (and including) the Service Transfer Date; and

(h) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment

Regulations) of any Transferring Service Provider Employee relating to any act or omission of the Replacement Provider or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

7.14 The indemnities in clause 7.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Service Provider and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

7.15 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer to a Replacement Provider will be fulfilled.

7.16 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause 6 and 7, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Service Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

7.17 Despite clause 7.16, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

8. PENSIONS

The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff and Section 2 of this Schedule 2;

Section 2 Pensions

1. Definitions

In this Section 2, the following words have the following meanings:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
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"Best Value Direction"	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
"Broadly Comparable"	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CRTPA"	Contracts Rights of Third Parties Act 1999.
"CSPS"	the schemes as defined in Section 2C to this Section 2(Pensions);
"Direction Letter/Determination"	has the meaning in Section 2B to this Section 2 (Pensions);
"Fair Deal Eligible Employees"	means each of the CSPS Eligible Employees (as defined in Section 2C to this Section 2 (Pensions)), the NHSPS Eligible Employees (as defined in Section 2B to this Section 2 (Pensions)) and/or the LGPS Eligible Employees (as defined in Section 2A to this Section 2 (Pensions)) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 9 or 10 of this Section 2 (Pensions);
"Fair Deal Employees"	<p>those:</p> <p>(a) Transferring Council Employees; and/or</p> <p>(b) Transferring Former Provider Employees; and/or</p> <p>(c) employees who are not Transferring Council Employees or Transferring Former Provider Employees but to whom the Employment</p>

	<p>Regulations apply on the Relevant Transfer Date to transfer their employment to the Service Provider or a Subcontractor, and whose employment is not terminated in accordance with the provisions of paragraphs Error! Reference source not found.3.4 (option 1) or 3.2.4 (option 2) or paragraph Error! Reference source not found.4.3.4 of option 3;</p> <p>(d) where the Former Provider becomes the Service Provider those employees;</p> <p>who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Council</p>
"Fair Deal Schemes"	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
"Fund Actuary"	means Fund Actuary as defined in Section 2A to this Section 2 (Pensions);
"LGPS"	the schemes as defined in Section 2A of this Section 2 (Pensions),
"NHSPS"	the schemes as defined in Section 2B to this Section 2 (Pensions); and
"New Fair Deal"	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for Staff Pensions: Staff Transfer from Central Government"</i> issued in October 2013 including:</p> <p>(a) any amendments to that document immediately prior to the Relevant Transfer Date; and</p> <p>(b) any similar pension protection in accordance with the subsequent Sections 2A – 2C inclusive as notified to the Service Provider by the Council.</p>

1. Service Provider obligations to participate in the pension schemes

- 1.1 In respect of all or any Fair Deal Employees each of Section 2A: LGPS, Section 2B: NHSPS and Section 2C CSPS : shall apply, as appropriate.
- 1.2 The Service Provider undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Service Provider to participate in the appropriate Statutory

Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

1.3 The Service Provider undertakes:

1.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and

1.3.2 to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

1.4 Where the Service Provider is the Former Provider (or a Subcontractor is a subcontractor of the Former Provider) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Service Provider (or Subcontractor) at the Commencement Date, this Section 2 shall be modified accordingly so that the Service Provider (or Subcontractor) shall comply with its requirements from the Commencement Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Service Provider (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Council.

2. Service Provider obligation to provide information

2.1 The Service Provider undertakes to the Council:

2.1.1 to provide all information which the Council may reasonably request concerning matters referred to in this Section 2 as expeditiously as possible; and

2.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Section 2 without the consent in writing of the Council (such consent not to be unreasonably withheld or delayed); and

2.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former New Deal Eligible Employees arising on expiry or termination of this Agreement

3. Indemnities the Service Provider must give

3.1 The Service Provider undertakes to the Council to indemnify and keep

indemnified [NHS Pensions,] the Council and/or any Replacement Provider and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- 3.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any Default by the Service Provider of this Section 2, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- 3.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Service Provider or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 9 or [10-40](#) of this Section 2;
- 3.1.3 relate to claims by Fair Deal Employees of the Service Provider and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
 - (a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement;
 - (b) arise out of the failure of the Service Provider and/or any relevant Subcontractor to comply with the provisions of this Section 2 before the date of termination or expiry of this Agreement; and/or
- 3.1.4 arise out of or in connection with the Service Provider (or its Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.
- 3.1.5 The indemnities in this Section 2 [and Sections 2A-2C] shall survive termination of this Agreement;

4. What happens if there is a dispute

- 4.1 The Dispute resolution procedure set out in clause 34 of the Agreement will not apply to this Section 2 and any dispute (i) between the Council and the Service Provider or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Section 2 shall in the absence of agreement between the Council and the Service Provider be referred to an independent

Actuary:

- 4.1.1 who will act as an expert and not as an arbitrator;
 - 4.1.2 whose decision will be final and binding on the Council and the Service Provider; and
 - 4.1.3 whose expenses shall be borne equally by the Council and the Service Provider unless the independent Actuary shall otherwise direct.
- 4.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

5. Other people's rights

- 5.1 The Parties agree clause 36 (Rights of Third Parties) does not apply and that the CRTPA applies to this Section 2 to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them or it by the Service Provider under this Section 2, in their or its own right under section 1(1) of the CRTPA.
- 5.2 Further, the Service Provider must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in their or its own right under section 1(1) of the CRTPA.

6. What happens if there is a breach of this Section 2

- 6.1 The Service Provider agrees to notify the Council should it default any obligations it has under this Section 2 and agrees that the Council shall be entitled to terminate its Agreement for breach and the consequences of termination set out in clause 39 of this Agreement shall apply in the event that the Service Provider:
- 6.1.1 commits an irremediable default of any provision or obligation it has under this Section 2; or
 - 6.1.2 commits a default of any provision or obligation it has under this Section 2 which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Council giving particulars of the default and requiring the Service Provider to remedy it.

7. Transferring New Fair Deal Employees

- 7.1 Save on expiry or termination of this Agreement, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Service Provider shall and shall procure that any relevant Subcontractor shall:
- 7.1.1 notify the Council as far as reasonably practicable in

advance of the transfer to allow the Council to make the necessary arrangement for participation with the relevant Statutory Scheme(s);

- 7.1.2 consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
- 7.1.3 procure that the employer to which the Fair Deal Employees are transferred (the "**Replacement Provider**") complies with the provisions of this Section 2 provided that references to the "Service Provider" will become references to the Replacement Provider, references to "Relevant Transfer Date" will become references to the date of the transfer to the Replacement Provider and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the Replacement Provider.

8. What happens to pensions if this Agreement ends

- 8.1 The provisions of clause 7 (Employment Regulations Exit Provisions) in Section 1 above apply in relation to pension issues on expiry or termination of this Agreement.
- 8.2 The Service Provider shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Agreement provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Provider [and/or NHS Pension and/or CSPA] and/or the relevant Administering Authority and/or the Council may reasonably require, to enable the Replacement Provider to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

9. Broadly Comparable Pension Schemes On The Relevant Transfer Date

- 9.1 If the terms of any of [paragraphs [Error! Reference source not found.4](#) of Section 2B: NHSPS or] 3.6 of Section 2A: LGPS applies, the Service Provider must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Council.
- 9.2 Such Broadly Comparable pension scheme must be:
 - 9.2.1 established by the Relevant Transfer Date;
 - 9.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 9.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Provider's

- Broadly Comparable pension scheme (unless otherwise instructed by the Council);
- 9.2.4 capable of paying a bulk transfer payment to the Replacement Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Council); and
 - 9.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Council).
- 9.3 Where the Service Provider has provided a Broadly Comparable pension pursuant to the provisions of this paragraph 9, the Service Provider shall (and shall procure that any of its Subcontractors shall):
- 9.3.1 supply to the Council details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - 9.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
 - 9.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Provider's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Council (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
 - 9.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 9 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Service Provider and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Service Provider and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair

Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

9.4 Where the Service Provider has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 9, the Service Provider shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Agreement:

9.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph 9.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 9.3.3) but using the last day of the Fair Deal Eligible Employees' employment with the Service Provider or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and

9.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Provider's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph 9.4.1 been complied with, the Service Provider shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Provider's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Council shall otherwise direct. The Service Provider shall indemnify the Council or the Replacement Provider's Broadly Comparable pension scheme (or the relevant

Statutory Scheme if applicable) (as the Council directs) for any failure to pay the difference as required under this paragraph 9.

10. Broadly Comparable Pension Schemes In Other Circumstances

10.1 If the terms of [any of] paragraphs[[Error! Reference source not found.2.2](#) of Section 2C: CSPS, [Error! Reference source not found.5.2](#) of Section 2B: NHSPS and/or] 4 of Section 2A: LGPS apply, the Service Provider must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Council.

10.2 Such Broadly Comparable pension scheme must be:

- 10.2.1 established no later than [three months] prior to the date of the Relevant Transfer; and
- 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Council);
- 10.2.4 capable of paying a bulk transfer payment to the Replacement Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Council); and
- 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Council).

10.3 Where the Service Provider has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Service Provider shall (and shall procure that any of its Subcontractors shall):

- 10.3.1 supply to the Council details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- 10.3.2 be fully responsible for all costs, contributions, payments

and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and

10.3.3 where required to do so by the Council, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Council (where applicable). The Service Provider must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Service Provider shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and

10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph ~~10~~¹⁰⁻¹⁹ with immediate effect for those Fair Deal Eligible Employees who are still employed by the Service Provider and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Service Provider and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

10.4 Where the Service Provider has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Service Provider shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Agreement allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Provider's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Provider's Broadly Comparable

pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Service Provider or the Subcontractor (as agreed between them) must pay the Replacement Provider's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Service Provider and any Subcontractor, the Shortfall shall be paid by the Service Provider. The Service Provider shall indemnify the Council or the Replacement Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Council directs) for any failure to pay the Shortfall under this paragraph 10.

11. Right Of Set-Off

11.1 The Council shall have a right to set off against any payments due to the Service Provider under this Agreement an amount equal to:

- 11.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Service Provider or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
- 11.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Service Provider or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or
- 11.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Service Provider or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

11.2 The Council shall also have a right to set off against any payments due to the Service Provider under this Contract all reasonable costs and expenses incurred by the Council as result of paragraphs 11.1 above.

Section 2A

1. Local Authority Pension Scheme

1. Definitions and Interpretation:

The definitions below are in addition to the definitions set out in Section 2 above and rules of interpretation in this Schedule apply in this Agreement:

Admission Agreement: the agreement to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, as amended, by the Administering Authority, the Council and the Service Provider or Sub-Contractor, as appropriate in the Administering Authority's standard form

Administering Authority: means Shropshire Council

Appropriate Pension Provision: in respect of Eligible Employees, either:
(a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or
(b) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of their Legacy Scheme.

Cessation Date: any date on which the Service Provider or the relevant Sub-Contractor ceases to be an Admission Body other than as a result of the termination or expiry of this Contract or because it ceases to employ any Eligible Employees;

Eligible Employees:

(a) the Transferring Council Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or
(b) the Transferring Former Provider Employees who are former employees of the Council and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services.

Fund: means the Shropshire County Pension Fund, a pension fund within the LGPS

Fund Actuary: the actuary to the Fund appointed by the Administering Authority of that Fund;

Legacy Scheme: the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer.

LGPS: the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;

LGPS Eligible Employees: any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or

otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS

LGPS Fair Deal Employees: any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and

LGPS Regulations: the Local Government Pension Scheme Regulations 2013 (SI 2013/2356)

3. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

3.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Service Provider and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an Admission Agreement with effect from the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Agreement .

3.5 The Service Provider will (and will procure that its Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by the Administering Authority in relation to an Admission Agreement.

3.6 If the Service Provider and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with paragraph 3.1 because the Administering Authority will not allow it to participate in the Fund, the Service Provider shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of paragraph 10 of Section 2 above.

3.7 If the Service Provider and/or any of its Subcontractors becomes an LGPS Admission Body in accordance with paragraph 3.1 but the Admission Agreement is terminated during the term of this Agreement for any reason at a time when the Service Provider or Subcontractors still employs any LGPS Eligible Employees, the Service Provider shall (and procure that its Subcontractors shall) at no extra cost to the Council, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly

Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of paragraph 10 of Section 2

4. Where the Service Provider and/or any of its Subcontractors is an LGPS Admission Body, the Service Provider shall (and procure that its Subcontractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

5 In addition to the indemnities required in accordance with paragraph 3, Section 2 above, the Service Provider shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or bond in the Administering Authority's standard form as required in accordance with the Admission Agreement. [The Service Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the value of the Bond or guarantee.]

6 The Service Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council and where such benefits are of a discretionary nature they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Effective Date. The Service Provider shall be responsible for meeting all costs associated with the award of such benefits.

7. CLAIMS FROM ELIGIBLE EMPLOYEES OR TRADE UNIONS

7.1 The Service Provider hereby indemnifies the Council and/or any Replacement Provider and, in each case, their Sub-Contractors from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Service Provider and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- (a) relate to pension rights in respect of periods of employment on and after the Effective Date until the date of termination or expiry of this Agreement; or
- (b) arise out of the failure of the Service Provider and/or any relevant Sub-Contractor to comply with the provisions of this Clause 7 before the date of termination or expiry of this Agreement.

8. PENSIONS EXIT PROVISIONS

8.1 The Service Provider shall and shall procure that each relevant Sub-Contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the Council such documents and information mentioned in paragraph 8.1(a) which the Council may reasonably request in advance of the expiry or termination of this Agreement; and
- (c) fully cooperate (and procure that the trustees of the Service Provider's scheme shall fully cooperate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on expiry or termination of the Agreement;
- (d) not adversely affect pension rights accrued by the Eligible Employees in the period ending on expiry or termination of the Agreement.

Annex A.**Admission Agreement***Insert as applicable***Annex B. Transferring Council Employees***THERE ARE NO TRANSFERRING COUNCIL EMPLOYEES***Annex B. Transferring Council Employees**

TUPE Information – Provisional List													
Job Title	Date employment began	Normal hours of work	Notice period	Monthly Salary or Wages	Holiday Entitlement (excluding Bank Holidays) in hours	Sick pay Entitlement	Car or travel allowance	Pension Rate		Employee and Employer Pension contributions	Other benefits	% of time spent on contract	Copy of terms and conditions
								Employee	Employer				Y/N

Annex C. Transferring Former Provider Employees

Complete as applicable

Annex C. Transferring Former Provider Employees

TUPE Information – Provisional List													
Job Title	Date employment began	Normal hours of work	Notice period	Monthly Salary or Wages	Holiday Entitlement (excluding Bank Holidays) in hours	Sick pay Entitlement	Car or travel allowance	Pension Rate		Employee and Employer Pension contributions	Other benefits	% of time spent on contract	Copy of terms and conditions
								Employee	Employer				Y/N

Annex D. List of Notified Sub-contractors

Complete as applicable

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Schedule 6
Outcomes/Performance Indicators

SCHEDULE 7

Safeguarding

Shropshire Safeguarding Children’s Board (SSCB) has defined procedures aimed at all those working (including volunteers) in SSCB partner agencies and in private, voluntary or community sector organisations with responsibilities for children and young people (“children”) living in Shropshire.

The SSCB procedures have been written so that they are consistent with Working Together (2015) and to be part of the wider goal of improving the overall wellbeing of children. They focus on the ‘Staying Safe’ outcome and provide a framework for an integrated approach to safeguarding children from harm.

- 1. To fulfill their commitment to safeguard and promote the welfare of children, all organisations that provide services for children need to have the following in place (and provide evidence to the Council if requested to do so):**
 - i) Clear priorities for safeguarding and promoting the welfare of children explicitly stated in strategic policy documents;
 - ii) A clear commitment by senior management to the importance of safeguarding and promoting children’s welfare;
 - iii) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children; roles and accountability for taking action and reporting internally and between agencies is properly defined and understood by those involved
 - iv) Recruitment and human resources management procedures that take account of the need to safeguard and promote the welfare of children, including safe recruitment policies and practices, including enhanced Disclosure and Barring Service (DBS) checks, for all staff, including agency staff, students and volunteers, working with children (as per the guidance of the Disclosure and Barring Service DBS).

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- v) Procedures for dealing with allegations of abuse against members of staff and volunteers;
- vi) Arrangements to ensure that all staff receive supervision and undertake appropriate training to equip them to carry out their responsibilities effectively, and keep this up to date by refresher training at regular intervals; and that all staff, including temporary staff and volunteers who work with children, are made aware of the establishment's arrangements for safeguarding and promoting the welfare of children and their responsibilities for that
- vii) Policies to safeguard and promote the welfare of children including a child protection policy, and procedures that are in accordance with Shropshire's Safeguarding Children Board procedures;
- viii) Their own complaints procedure for Service Users;
- ix) Arrangements to work effectively with other organisations to safeguard and promote the welfare of children, including arrangements for sharing information;
- x) Culture of listening to and engaging in dialogue with children and seeking their views in ways appropriate to their age and understanding, and taking account of those both in individual decisions and the establishment or development of services; and,
- xi) Appropriate whistle blowing procedures and a culture that enables issues about safeguarding and promoting the welfare of children to be addressed

2. All Staff who work with children, families and Service Users should be able to:

- i) Understand the risk factors and recognise children in need of help including Early Help and/or safeguarding
- ii) Recognise the needs of parents who may need extra help in bringing up their children, and know where to refer for help;
- iii) Recognise the risks of abuse to an unborn child;

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- iv) Contribute to enquiries from other professionals about a child and their family or carers;
- v) Liaise closely with other agencies including other health professionals
- vi) Plan and respond to the needs of children and their families, particularly those who are vulnerable
- vii) Contribute to planning support for children at risk of Significant Harm e.g. children living in households with domestic violence, parental substance misuse;
- viii) Help ensure that children who have been abused and parents under stress (e.g. who have mental health problems) have access to services to support them;
- ix) Play an active part, through the Child Protection Plan, in safeguarding children from Significant Harm;
- x) As part of generally safeguarding children and young people, provide ongoing promotional and preventative support through proactive work with children, families and expectant parents

3. The Service Provider will adhere to Shropshire’s Safeguarding Children’s Board Procedures which means that the following situations will need to be reported appropriately:

- i) Situations where children or young people are thought to be at risk of significant harm need to be reported to COMPASS and to the Providers Service Manager.
- (ii) Situations where there is a concern about a vulnerable adult need to be reported to COMPASS and to the Service Provider’s service manager.
- iii) Situations where there are safeguarding concerns about Service Provider staff or volunteers need to be reported by the Service Provider to the Council’s Designated Officer, COMPASS and the Commissioner.

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COMPASS :

0345 678 9021

0345 678 9040 (after 5pm or weekends)

4. The Service Provider must ensure that it follows the guidance of the Disclosure and Barring Service (DBS) and complies with the requirements of the Shropshire Safeguarding Children’s Board and shall ensure that it undertakes enhanced disclosure DBS checks prior to its Staff volunteers or other persons under its control commencing work on the Services to be provided to the Council and shall monitor the level and validity of the checks for each member of Staff, volunteer or other person under its control during the term of this C

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SCHEDULE 8

Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Data Controller, who may take account of the view of the Data Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Data Controller’s Data Protection Officer are:
Information Governance Officer email: Information.Request@Shropshire.gov.uk
2. The contact details of the Data Processor’s Data Protection Officer shall be provided promptly upon request.
3. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Data Controller and Data Processor	The Parties acknowledge that in respect of the Personal Data identified in this Schedule only, for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Service Provider is the Data Processor in accordance with Clause 32(a)
Subject matter of the processing	Personal Data about Service Users to ensure that the Service Provider is able to safely meet their Assessed Needs.
Duration of the processing	For the period of Service delivery to a Service User plus 6 years after the last date on which the Service is delivered to the individual Service User.
Nature and purposes of the processing	The Service Provider is to provide Services as ordered by the Council to meet its obligations under the The Children Act 1989. The nature of the processing of the data may include, but not be limited to, the following, in order to deliver a statutory service to Service Users: <ul style="list-style-type: none">• Collecting, maintaining and storing Service User

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	<p>records in all formats</p> <ul style="list-style-type: none"> • Sharing Service User information across the Service Provider’s organisation and with other appropriate external agencies to include: appropriate Regulatory Bodies; the Police; health services. • Completion of returns relating to multi-agency safeguarding and complaints processes. <p>The purpose of processing the data is to enable the Service Provider to provide a quality service to Service Users in accordance with this Contract and to safeguard individual Service Users where there are concerns about their wellbeing.</p>
Type of Personal Data	<p>Personal data:</p> <p>Service User details as follows: Name; address; date of birth; next of kin.</p> <p>Special category data:</p> <p>Gender and ethnic origin; GP; medical and health/care related details relevant to their support plan; current risk assessment; mental capacity; mental impairment; relevant offence details where appropriate.</p>
Categories of Data Subject	Service Users
Plan for return and destruction of the data once the processing is complete	<p>Information where no longer required should be destroyed securely, unless specifically instructed by the Council that it must be returned to the Council.</p> <p>Personal data on Service Users must be retained for 6 years after the Service was delivered to the individual Service User.</p>

Schedule 9

Personal Data Sharing between Data Controllers

Further to clause 32, Personal Data may be shared between the Parties in accordance with this Schedule:

Description	Details
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Agreed Purposes:	In connection with the provision of the Service the Service Provider will also need to collect Personal Data from Service users to use and process for their own set purposes, in respect of this data the Service Provider will be the Data Controller.
Permitted Recipients:	The Parties to this Contract, the employees of each Party and any third parties engaged to perform obligations in connection with this Contract.
Shared Personal Data:	Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: Records relating to care delivery in respect of the following categories of Data Subject: Service Users

Appendix 1

Tender and Tender Response Document

IN THE WITNESS of which the parties hereto have executed this document on the above date by their duly authorised officers

Signed by and on behalf of

Shropshire Council

.....

Tim Collard

Assistant Director Legal &
Governance

Please complete this Agreement using pdf “version 6 with options – Oct 2015” as guidance.

..... Miranda Garrard
Head of Legal & Democratic Services

SIGNED by an authorised signatory on behalf of the SERVICE PROVIDER	Signature:..... Print Name:..... Position:.....
SIGNED by an authorised signatory on behalf of the SERVICE PROVIDER	Signature:..... Print Name:..... Position:.....