**Norfolk County Council**

**SERVICES CONTRACT**

**2025**

**PROVISION OF PROACTIVE INTERVENTION**

**FOR NORFOLK COUNTY COUNCIL**

**CONTRACT REF: NCCT43119**

**1. FORM OF AGREEMENT**

**THIS AGREEMENT** dated the day of 20[ ]

is made between

**Norfolk County Council of County Hall, Martineau Lane, Norwich, NR1 2DH (“the Council”);**

and

[**Insert Provider’s full registered name**],([Company/Charity] Registration Number [ ]) situate at [XXX] (**“**the **Provider”**);

together referred to as “the **Parties**”.

**IT IS AGREED THAT:**

1. This Form of Agreement with the following attached documents will together form the Contract Documents:

Conditions of Contract

Schedule 1 - Specification

Schedule 2 - Performance Monitoring and KPIs

Schedule 3 - The Council’s Policy Statements

Schedule 4 - Payment Schedule

Schedule 5 - Tender Response Document

Schedule 6 - Copy Contract Award Letter and any other relevant correspondence

Schedule 7 - Not Used

Schedule 8 – Not Used

Schedule 9 - Not Used

Schedule 10 - TUPE and Pensions Schedule

Schedule 11 - Safeguarding Policy

Schedule 12 – Not Used

Schedule 13 – Not Used

Schedule 14 – Data Protection – Specific Requirements

Schedule 15 – DBS Risk Assessment

Schedule 16 – Not Used

1. The Contract effected by the signing/execution (as appropriate) of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior contracts, negotiations, representations or understandings whether written or oral.

3. The Provider shall provide the Services in accordance with the provisions of the Contract and subject to this, the Council shall make to the Provider the payments provided by the Contract for Services provided in accordance with the Contract.

**IN WITNESS whereof the parties have signed this Agreement the day and year first set out above:**

|  |  |
| --- | --- |
| **SIGNED ON BEHALF OF**  **Norfolk County Council by** | **SIGNED ON BEHALF OF**  **Norfolk County Council by** |
|  |  |
|  |  |
|  |  |
| Signature | Signature |
|  |  |
|  |  |
|  |  |
|  |  |
| Name | Name |
|  |  |
|  |  |
|  |  |
|  |  |
| Title | Title |
|  |  |

**SIGNED ON BEHALF OF**

**[Insert Provider’s Registered Name]**

acting by:

…………………………………….

Director/Partner (signature)

…………………………………….

Name of Director/Partner (print name)

…………………………………….

Director / Partner/Company Secretary\* (signature)

[\*please delete as appropriate]

…………………………………….

Name of Director/Partner/ Company Secretary (print name)

**CONDITIONS OF CONTRACT**

[A. DEFINITIONS AND INTERPRETATION 11](#_Toc500319841)

[1. DEFINITIONS 11](#_Toc500319842)

[2. INTERPRETATION OF THIS CONTRACT 21](#_Toc500319843)

[B. THE SERVICES AND PERSONNEL 22](#_Toc500319844)

[3. DURATION OF CONTRACT 22](#_Toc500319845)

[4. THE SERVICES 24](#_Toc500319846)

[5. PROVIDER’S WARRANTIES, RESPONSIBILITY AND KNOWLEDGE 27](#_Toc500319847)

[6. THE COUNCIL’S CONTRACT MANAGER 28](#_Toc500319848)

[7. THE PROVIDER’S AUTHORISED REPRESENTATIVE 29](#_Toc500319849)

[8. STAFF 29](#_Toc500319850)

[9. SAFEGUARDING 32](#_Toc500319851)

[10. PROVIDER’S EQUIPMENT 34](#_Toc500319852)

[11. USE OF COUNCIL PREMISES/ COUNCIL EQUIPMENT 35](#_Toc500319853)

[C. FINANCIAL ARRANGEMENTS 36](#_Toc500319854)

[12. PRICES AND PAYMENT 36](#_Toc500319855)

[13. PRICE THROUGHOUT THE CONTRACT PERIOD/INDEXATION 38](#_Toc500319857)

[14. RECOVERY OF SUMS DUE 40](#_Toc500319858)

[D. CONTROL OF THIS CONTRACT 40](#_Toc500319859)

[15. ASSIGNMENT AND SUBCONTRACTING 40](#_Toc500319860)

[16. VARIATIONS AND CHANGE CONTROL 41](#_Toc500319861)

[17. PERFORMANCE MONITORING AND CONTRACT REVIEW 43](#_Toc500319862)

[18. INTELLECTUAL PROPERTY RIGHTS 43](#_Toc500319863)

[19. ICT AND COMPUTER SYSTEMS 45](#_Toc500319864)

[20. AUDIT AND MONITORING RIGHTS 46](#_Toc500319865)

[21. RECORDS 46](#_Toc500319866)

[22. PUBLICITY 47](#_Toc500319867)

[E. FREEDOM OF INFORMATION CONFIDENTIALITY AND DATA PROTECTION 47](#_Toc500319868)

[23. FREEDOM OF INFORMATION 47](#_Toc500319869)

[24. CONFIDENTIALITY 49](#_Toc500319870)

**25. DATA PROTECTION…………………………………………………………………………………………...51**

[F. ADDITIONAL STATUTORY OBLIGATIONS AND REGULATIONS 53](#_Toc500319910)

[26. BRIBERY, CORRUPTION AND FRAUD 53](#_Toc500319911)

[27. EQUALITY 53](#_Toc500319912)

[28. HEALTH AND SAFETY 54](#_Toc500319913)

[29. WHISTLEBLOWING 54](#_Toc500319914)

[30. ADDITIONAL SPECIFIC STATUTORY OBLIGATIONS 55](#_Toc500319915)

[G. INSURANCE AND INDEMNITY 56](#_Toc500319916)

[31. INSURANCE 56](#_Toc500319917)

[32. LIABILITY AND INDEMNITY 57](#_Toc500319918)

[H. REMEDIES FOR POOR PERFORMANCE AND TERMINATION 58](#_Toc500319919)

[33. FORCE MAJEURE 58](#_Toc500319920)

[34. BUSINESS CONTINUITY 59](#_Toc500319921)

[35. COMPLAINTS 59](#_Toc500319922)

[36. DEFAULTS AND REMEDIES 59](#_Toc500319923)

[37. TERMINATION 64](#_Toc500319925)

[38. CONSEQUENCES OF TERMINATION 68](#_Toc500319926)

[39. EXIT AND HANDOVER ARRANGEMENTS 70](#_Toc500319927)

[I. GENERAL PROVISIONS 72](#_Toc500319929)

[40. DISPUTE RESOLUTION PROCEDURE 72](#_Toc500319930)

[41. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999 73](#_Toc500319931)

[42. LEGAL PROCEEDINGS 73](#_Toc500319932)

[43. OMBUDSMAN 73](#_Toc500319933)

[44. AGENCY 74](#_Toc500319934)

[45. ENTIRE AGREEMENT 74](#_Toc500319935)

[46. CONFLICT OF INTEREST 74](#_Toc500319936)

[47. LIEN OR ENCUMBRANCE 74](#_Toc500319937)

[48. SEVERANCE 74](#_Toc500319938)

[49. WAIVER 75](#_Toc500319939)

[50. NOTICES 75](#_Toc500319940)

[51. LAW AND JURISDICTION 75](#_Toc500319941)

[J. CONTRACT SPECIFIC CONDITIONS 75](#_Toc500319942)

[52. PARENT COMPANY GUARANTEE 75](#_Toc500319943)

[53. PERFORMANCE BOND 76](#_Toc500319944)

[54. FLUENCY DUTY 76](#_Toc500319945)

[55. PREVENT DUTY 77](#_Toc500319946)

[56. SERIOUS INCIDENTS PROTOCOL 77](#_Toc500319947)

[57. USE OF COUNCIL PREMISES/ COUNCIL EQUIPMENT 77](#_Toc500319948)

**CONDITIONS OF CONTRACT**

A. DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

**“Action Plan”** has the meaning set out in Clause 36.11;

**“Affected Party”** means a party affected by a Force Majeure Event;

**“Authorisation”** means an authorisation given by the Council after completion of the statutory assessment process in relation to a Service User, giving lawful authority to deprive a person of their liberty;

**“Basic Disclosure”** means a Basic Disclosure check carried out through Disclosure Scotland, which is required where a Provider is engaged in a position of trust but is not eligible for a Standard Disclosure check, Enhanced with Barred List Check or Enhanced without Barred List Check;

**“Best Value Duty”** means the duty imposed on the Council by Part 1 of the Local Government Act 1999 (“1999 Act”) (as may be amended from time to time) and under which the Council is under a statutory duty continuously to improve the way its functions are exercised having regard to a combination of economy efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Public Sector Audit Appointments Limited and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation;

**“Bribery Act”** means the Bribery Act 2010 and any subordinate legislation

made under that Act from time to time together with any related guidance or codes of practice issued by the relevant government department;

**“Business Continuity Plan”** means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;

**“Change in Control”** any change in control as defined by section 416 of the Income and Corporation Taxes Act 1988;

**“Commencement Date”** means the date specified in Clause 3.1, which is the first date on which the Provider is obliged to provide the Services to the Contract Standard;

**“Commissioning Order”**

**or “Order”** means an order under which one or more Individual Placements may be ordered via a Commissioning Order Form;

**“Commissioning Order Form”** means an order form based upon the pro forma set out in Schedule 12 under which one or more Individual Placements may be ordered;

**“Competent Body”** means anybody that has authority to issue standards or recommendations with which either party must comply;

**“Conditions of Contract”** means these terms and conditions of contract;

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA;

**“Continuous Improvement Plan”** means the plan at Clause 4.6;

**“Contract”** means these Conditions of Contract, the form of agreement to which they are attached and all attached schedules;

**“Contract Manager”** means the representative appointed by the Council or that representative’s delegate appointed under Clause 6**;**

**“Contract Period”** means the period during which this Contract shall remain in force and effect pursuant to Clause 3and shall be the period from the Commencement Date to the Expiry Date inclusive as may be extended in accordance with Clause 3.4;

**“Contract Standard”** means that standard set out in Clause 4.1;

**“Council”** has the meaning attributed to it in the form of agreement to which these Conditions are attached;

**“Council Data”** means

(i) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Provider or provided to the Provider for processing under this Contract which at all times shall remain the property of the Council which shall include without limitation copies of any retention schedule produced by the Provider in order to comply with Data Protection Legislation; or

(ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever media;

**“Council’s DBS Umbrella Body”** means the Council’s HR Safe Staffing Team responsible for the advice, processing and storage of Criminal Records Checks;

**“Council’s Equipment”**  means all equipment, parts, materials, articles and/or mechanisms provided by the Council for use in connection with the Services;

**“Council’s Policy Statements”** means those Policy Statements of the Council set out in Schedule 3

**“Council’s Premises”** or

**“Council Premises”** means any premises, services and facilities owned by the Council or for which the Council has legal responsibility;

**“Council’s System”** the Council's computing environment as at the Commencement Date (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council or the Provider in connection with this Contract which is owned by or licensed to the Council by a third party which interfaces with the Provider’s System or which is necessary for the Service Users(s) and/or Council to receive the Services;

**“Criminal Records Checks”** means one of four checks carried out (as appropriate) under the bureau established pursuant to the Protection of Freedoms Act 2012:

* Enhanced Disclosure with a Barred List Check
* Enhanced Disclosure without a Barred List Check
* Standard Disclosure
* Basic Disclosure

**“CQC”** means the Care Quality Commission;

**“CQC Regulations”** means the Care Quality Commission (Registration) Regulation 2009;

**“Critical Performance Default”** means a Performance Default which significantly or materially affects the Provider’s provision of the Services to the Contract Standard or undermines the fundamental purpose of the Contract;

**“Data Protection Authority”** meansthe Information Commissioner's Office (ICO) (or replacement or successor organisation from time to time) which is responsible for the supervision, promotion and enforcement of the Data Protection Legislation;

**“Data Protection Legislation”** means all privacy laws applicable to the personal data which is processed under or in connection with this Contract, including the DPA, The Data Protection (Charges and Information) Regulations 2018, the UK GDPR and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019 419) (amongst others) as implemented by the applicable English and Welsh laws, and all regulations made pursuant to and in relation to such legislation together with all codes of practice and other statutory guidance on the foregoing issued by the Information Commissioner’s Office, all as amended, updated and/or replaced from time to time;

**“DBS Check(s)** means a Criminal Records Check(s) on individuals carried out through the DBS;

**“DBS Update Service”** means a service available through the DBS, where an individual has subscribed for the update service for free, instant online checks to be carried out by an employer on individuals to see if any new information has come to light since the criminal records certificate was first issued in respect of an individual;

**“Default Notice”** means a notice issued under Clause 36.5;

**“Deprivation of Liberty”/”DoL”** means the framework of safeguards set out in Schedule A1 of the Mental Capacity Act 2005 (as amended, updated and/ or replaced from time to time);

**“Disclosure & Barring Service”**

**(“DBS”)** means the Non-Departmental Public Body which helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups, including children and vulnerable adults;

**“Disclosure Scotland”** is an [executive agency](http://en.wikipedia.org/wiki/Executive_agency_of_the_Scottish_Government) of the [Scottish Government](http://en.wikipedia.org/wiki/Scottish_Government), providing [criminal records disclosure](http://en.wikipedia.org/wiki/Employment_discrimination_against_persons_with_criminal_records) services by way of a Basic Disclosure check for employers and [voluntary sector](http://en.wikipedia.org/wiki/Voluntary_sector) organisations;

**“Dispute Resolution** **Procedure”** means the procedure set out in Clause 40 of this Contract;

**“DPA”** means the Data Protection Act 1998 (as amended, updated and/or replaced from time to time);

“Eligible Employees” means the Transferring Employees and/or Transferring Original Employees

**“Enhanced Disclosure With**

**Barred List Check”** means a type of Criminal Records Check, which includes a check of the DBS barred list and any additional information held by the police that is reasonably considered relevant to the role being applied for and includes roles that do not work with children or vulnerable adults specifically but potentially both and should be used for jobs that involve caring for, supervising or being in sole charge of children and/or vulnerable adults;

**“Enhanced Disclosure without a**

**Barred List Check”** means a type of Criminal Records Check, which includes an enhanced disclosure check without a barred list check that is required where a Provider is engaged in a role that meets the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations;

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

**“Expiry Date”** means the date specified in Clause 3.2;

**“Fellow Provider”** means any other provider engaged to carry out works or provide services to the Council;

**“Force Majeure Event”**  means any of the following events that materially affecting the performance by a Party of its obligations under this Contract: fire, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; terrorist attack; nuclear, chemical or biological contamination; compliance with any governmental order, governmental rule or governmental regulation which comes into effect after the Commencement Date; loss at sea; extreme adverse weather conditions; interruption or failure of utility service;

“**Former Provider”** means the provider previously appointed by the Council to provide all or any of the services which are substantially similar to any of the services prior to the appointment of the Provider;

**“GAD”** means the Government Actuary Department;

**“Good Practice”** means the exercise of reasonable skill, care, prudence, efficiency, foresight and timeliness which would be expected from a reasonably and suitably skilled, trained and experienced person performing the relevant obligations with due regard for evidence-based guidelines;

**“Index”** means the Consumer Prices Index (CPI) published by the Office of National Statistics;

**“Individual Placement Contract”**

**or “IPC”** means a contact for one or more Individual Placements entered into between the Council and the Provider;

**“Individual Placement”** means a single package of care which is provided for one or more Service Users by the Provider in accordance with the terms of a Commissioning Order;

**“Information to Service Provider”**

**or “ISP”** means the information issued to the Service Provider prior to the placement of a Service User which details information of the Service User’s needs on which the Service Provider assesses whether it is able to meet the Service User’s needs;

**“Infringement”** has the meaning attributed to it in Clause 18;

**“Initial Term”** has the meaning attributed to it in Clause 3.2;

**“Intellectual Property** **Rights”** or

**“IPR”** means all intellectual and industrial property rights including patents, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**“IR35”** means the off-payroll working rules which apply to a worker providing services through an intermediary;

**“Key Performance Indicators”** or

**“KPI”** means the key performance indicators as defined and set out in Schedule 2;

**“Law”**  means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bylaw, regulatory policy, guidance or industry code, judgment of a UK court or the European Court of Justice, or directives or requirements of any Regulatory Body of which the Provider is bound to comply. Any reference to “Legislation” shall be construed accordingly;

**“Legacy Scheme”** means 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 date;

**“LGPS”** means Local Government Pension Scheme made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 (as amended);

**“LGPS Regulations”** means the relevant LGPS pension regulations in force at the time this Contract is entered into;

**“MCA”** means the Mental Capacity Act 2005 (as amended and updated from time to time);

**“Mobilisation Period”** means the period from the Mobilisation Commencement Date to the Commencement Date;

**“Mobilisation Services”** mean the Services to be provided pursuant to this Contract from the Mobilisation Commencement Date up to the Commencement Date.

**“Mobilisation Commencement Date”** shall mean the date of this form of agreement;

**“Non-Critical Performance Default”** has the meaning set out in Clause 36**;**

**“Ombudsman”** means a local commissioner (known as the Local Government and Social Care Ombudsman) who is responsible for conducting investigations for the Commission for Local Administration in England (CLAE), which is a body of commissioners established under the Local Government Act 1974 and which, has the power to investigate complaints about councils (and certain other bodies) in England;

**“PAMMS”** means the web-based regional provider assessment and market management solution application;

**“PAMMS Assessment”** means an assessment of the Provider’s performance undertaken by or on behalf of the Council in line with PAMMS;

**“Party”** means a party to this Contract and “Parties” shall be construed accordingly;

**“Performance Default” •** any negligent act or omission; and/or

• any breach of contract; and/or

• any failure by the Provider properly to perform any of the obligations, terms and Clauses of the Contract including (without limitation) any failure to perform the Services to the Contract Standard;

**“Performance Mechanism”** means that document set out at Schedule 2;

**“Performance Targets”** means any specified targets (including those identified as part of any PAMMS Assessment) or the Key Performance Indicators against which the Provider’s performance in providing the Services shall be measured and which are set out in the Performance Mechanism or the Specification;

**“Pre-Existing IPR Rights”** means any Intellectual Property Rights vested in or licensed to the Council or the Provider prior to or independently of the performance by the Council or the Provider prior to or independently of the performance by the Council or the Provider of their obligations under the Contract and in respect of the Council includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

**“Price”** means the price for the Services as set out in Clause 12 and Schedule 4; if a payment mechanism is not agreed between the Parties and identified in Schedule 4, the Price is that set out in the Tender Response Document at Schedule 5;

**“Prohibited Act”** has the definition at Clause 26.4;

**“Property Rights”** has the meaning attributed to it in Clause 18;

**“Provider”** means the party identified as such in the form of agreement to which these Conditions are attached;

**“Provider Portal”** means the web based provider portal within PAMMS.

**“Provider’s Authorised**

**Representative”** means such person nominated in writing by the Provider to act as the Provider’s representative in relation to this Contract and approved by the Contract Manager;

**“Provider’s Equipment”** has the meaning set out in Clause 10.1;

**“Provider’s Premises”** means any premises owned by the Provider or for which the Provider has legal responsibility;

**“Provider’s System”** any computer or IT system used in the provision of the Services;

**“Public Portal”** means the web based public portal within PAMMS.

**“Regulatory Body”** means any body other than CQC carrying out regulatory functions in relation to the Provider and/or for which the Provider the has legal responsibility;

**“Relevant Transfer”** means a relevant transfer for the purposes of the TUPE Regulations;

**“Replacement Provider”** means any third party appointed by the Council from time to time to provide all or any of services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party;

**“Request”** shall have the meaning specified in Clause 23;

**“Review Date”** means the date three (3) months before an anniversary of the Commencement Date in each year of the Contract Period.

**“Run-off Insurance Cover”** means insurance to cover losses occurring from previous insurance policy years where claims made policies (or membership of a NHS Risk Management Scheme) ceases to continue uninterrupted (or transfers to a losses occurring basis) leaving a gap in insurance;

**“Serious Incident Report”** means the report of a serious incident as outlined in Schedule 13;

**“Service(s)”** means the Services to be provided pursuant to this Contract, more particularly described in the Specification and any reference to “Service” shall be construed accordingly;

**“Service User(s)”** means the beneficiary or recipient of the Services, including without limitation any member of the public;

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

**“Specification”** means the description of the Services to be provided under this Contract appearing in Schedule 1;

**“Staff”** means all persons employed or engaged by the Provider to perform this Contract together with the Provider’s servants, suppliers, agents, volunteers and Sub-Providers used in the performance of this Contract and/or the provision of the Services;

**“Standard Disclosure”** means a type of Criminal Records Check for spent and unspent convictions, cautions, reprimands and final warnings, which is required where the role is included in the list of eligible roles detailed in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and the role does not required an enhanced DBS check;

**“Sub-Contract”** means a contract between the Provider and a Sub-Provider;

**“Sub-Contractor”** means an organisation appointed by the Provider or with whom the Provider contracts to provide part of the Services and any of that organisation’s contractors who may be providing any of the Services;

**“SVG”** means the Safeguarding Vulnerable Groups Act 2006 (as amended under the Protection of Freedoms Act 2012);

**“Tender Response Document”** means the Provider’s proposal to meet the Specification setting out the methods to be used by the Provider to provide the Services under this Contract as set out in Schedule 5;

**"Transferring Employees"**  means:

1. all employees who immediately prior to the Commencement Date are assigned to the organised grouping of resources and employees to the Services and which are the subject of transfer in accordance with the Regulations and who shall transfer by the virtue of the application of the Regulations to the Provider;
2. all employees who immediately prior to the Service Transfer Date are assigned to the organised grouping of resources and employees to the Services and which are the subject of transfer in accordance with the Regulations and who shall transfer by the virtue of the application of the Regulations to the Replacement Provider;

**“Transferring Original Employees”** means the employees whopreviously transferred to the employment of the Former Provider and who will transfer to the employment of the Provider as a result of the application of the TUPE Regulations in relation to this Contract;

**“TUPE Regulations”**  means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or modified from time to time).

**“UK GDPR”** means the retained UK Law version of the General Data Protection Regulation Brought into effect by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI: 2019 419);

**“VAT”** means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function;

**“Variation”** means any change to:

(i) the terms and Conditions of Contract or Schedules;

(ii) the Services or any part of them; and/or

(iii) the standard of performance required of a Party materially over and above that expressly stated or provided for under this Contract;

**“Warning Notice”** has the meaning attributed to it in Clause 36.14; and

**“Working Day”** means Monday to Friday excluding public and bank holidays in England and Wales.

1. INTERPRETATION OF THIS CONTRACT
   1. Except as otherwise expressly provided, the documents comprising this Contract are to be taken as mutually explanatory of one another.
   2. Any references to any Act of Parliament or other Law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force.
   3. Headings are included for ease of reference only and shall not affect the construction or interpretation of any provision to which they refer.
   4. The expression ‘person’ used in this Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
   5. In this Contract, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
   6. References to Clauses or Schedules shall be to Clauses and Schedules of this Contract.
   7. Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the control of the Provider.
   8. Any reference to a month or day shall unless otherwise specified shall be to a calendar month or day respectively.
   9. Words preceding “include”, “includes” or “including” shall be construed without limitation to the words which followed those words.
   10. In the event of any inconsistency or conflict between the main body of this Contract and the Schedules, the order or precedence as set out below shall prevail:
       1. the Conditions of this Contract;
       2. Schedule 1 (Specification);
       3. the remaining Schedules of this Contract with the exception of Schedule 5 (Tender Response Document) and;
       4. Schedule 5 (Tender Response Document) including any clarification questions issued by the Council and responses provided by the Provider) save that where Schedule 5 contains any higher or more onerous commitments, standards or obligations in which case those commitments, standards or obligations will prevail.

B. THE SERVICES AND PERSONNEL

1. DURATION OF CONTRACT
   1. The Contract shall commence on 1st July 2025 (“the Commencement Date”).
   2. The Provider shall provide the Services to the Contract Standard from the Commencement Date for a period of 24 months (“the Initial Term”) unless the Contract is terminated: (i) earlier in accordance with Clause 37.10 (Break Clause), or (ii) in accordance with its terms or otherwise terminated.
   3. The Council shall be entitled at its absolute discretion to extend the Contract Period for a further period or periods of up to a total of 24 months upon giving the Provider written notice of its intention no later than six (6) months prior to the end of the Initial Term upon which the Contract Period is so extended and the Provider shall be obliged to provide the Services for that extended Contract Period in accordance with the Contract.
   4. In the event the Contract Period is extended pursuant to Clause 3.3 above, the definition of Contract Period shall be amended to include the further term and all the other terms of the Contract shall continue to apply un-amended for the remainder of the Contract Period
   5. The Provider shall execute the Contract promptly and shall not, save unless and to the extent that it may be expressly authorised in advance in writing by the Council, commence the provision of the Services or to be entitled to any part of the Price(s) or any remuneration whatsoever until it has so executed the Contract.

**Pre-Commencement Date Obligations**

* 1. The Provider shall liaise with the Former Provider(s) and Fellow Providers to ensure that any handover and contract mobilisation is carried out successfully and to the best of their ability. In addition, the Provider shall arrange and attend as many meetings with the Council, the Former Provider(s) and any Fellow Provider as are reasonably necessary for the successful handover and mobilisation of the Services.
  2. To the extent that the Provider has not already done so, the Provider shall carry out, or provide to the Council’s satisfaction, as soon as reasonably practicable after the Commencement Date:
     1. proof of insurances held;
     2. measures to ensure that the Provider, its Sub-Contractors, Staff and agents are fully familiar with the provisions of the Contract, their obligations under the Contract, the Council's computer systems (if applicable) and the identities of all relevant Fellow Provider;
     3. actions necessary to comply with its obligations under TUPE (if applicable); and
     4. the identities, positions and responsibilities and contact details of all relevant Staff including, in particular, the Provider’s Authorised Representative and authorised delegates.
  3. The Council shall as soon as possible after the Commencement Date:
     1. notify to the Provider in writing the name and contact telephone number of the Contract Manager as at the Commencement Date and any persons holding such other positions as may be specified in the Specification; and
     2. provide the Provider with such Council Data and information as the Provider may, in the Council's opinion, reasonably require in order for it to commence the Services on the Services Commencement Date.
  4. The Council shall provide all reasonable assistance to the Provider prior to the Commencement Date through the Mobilisation period, to include, where possible, the following:-
     1. allowing the Provider to interview appropriate Council staff; and
     2. reporting to the Provider on current issues which may affect the Services.

**Mobilisation Obligations**

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

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

1. THE SERVICES
   1. The Provider shall provide the Services throughout the Contract Period in accordance with the following (“the Contract Standard”):
      1. this Contract and in particular the Specification, which forms part of the Contract;
      2. in co-operation with Fellow Providers and any other Council contractors as required to perform the Services;
      3. in a manner that does not damage the Council’s reputation;
      4. in accordance with Law;
      5. in accordance with Good Practice and national guidelines where available;
      6. in accordance with the Council’s Policy Statements and the Council’s policies;
      7. using all due skill care and diligence as would a competent provider carrying out services of the same scope or nature as the Services;
      8. as a minimum, meeting (and with the aim of exceeding) the minimum thresholds (targets) of the KPIs;
      9. where applicable, and subject to the Council’s prior written consent, in accordance with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
      10. respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
      11. consider and respond to the recommendations arising from any audit, death or Serious Incident Report;
      12. comply with the recommendations issued from time to time by a Competent Body;
      13. in accordance with the Council’s Policy Statements and the Council’s Policies;
      14. using all due skill care and diligence as would a competent contractor carrying out services of the same scope or nature as the Services; and
      15. in accordance with the reasonable written instructions of the Contract Manager pursuant to or in connection with the Contract.

In the event of any conflict between these requirements, the highest or most onerous of these shall apply. The Provider shall obtain and maintain for the entire Contract Period such registration with any relevant bodies required by Law in order to provide the Services.

* 1. The Provider shall discharge its obligations under this Contract by deploying appropriate, competent, qualified and trained Staff. Except as otherwise specified in this Contract, the Provider shall provide all Staff and a sufficient number of Staff, the Provider’s Equipment, information and data and anything else whatsoever required for the provision of the Services within the Contract Price to the standards in Clause 4.1.

* 1. The Provider shall provide the Services in a manner that conserves energy, water, wood, paper and other resources to reduce waste and phases out the use of ozone depleting substances and minimises the release of greenhouse gases volatile organic compounds and other substances damaging to health and the environment.
  2. In recognition of the Best Value Duty, the Parties to this Contract shall work together to identify how the Services can be continuously improved. Reviews shall be conducted in accordance with Clause 17 (Performance Monitoring and Contract Review) and these Conditions of Contract generally. The Provider agrees to co-operate fully and assist the Council at no extra charge in any manner reasonably required by the Council in connection with the Council’s performance of this duty. The Provider shall observe and facilitate the Council’s request of cost savings. Where appropriate, a Variation shall then be made in accordance with Clause 16 (Variations and Change Control), provided that such Variation does not constitute a material change to the Contract.
  3. The Provider shall not undertake any act or omission which has or could reasonably be expected to have an adverse impact upon the security of any of the Services or the Council’s System, the Council’s Equipment or services of the Council.

**Continuous Improvement Plan**

* 1. The Council may at its absolute discretion request at any time and/or frequency throughout the Contract Period a continuous improvement plan and the Provider shall provide a continuous improvement plan for the approval of the Council which has the objective of securing continuous improvement in the way in which the Services are provided and shall be reviewed by the Council in accordance with the provisions specified in Schedule 2.

**Withholding and/or Discontinuation of Service**

* 1. Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:
     1. who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
     2. who displays abusive, violent or threatening behaviour unacceptable to the Provider (acting reasonably and taking into account the mental health of that Service User);
     3. in that Service User’s domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
     4. where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.
  2. If the Provider proposes not to provide or to stop providing a Service to any Service User under Clause 4.7:
     1. where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Working Days);
     2. the Provider must tell the Service User of the right to challenge the Provider’s decision through the Provider’s complaints procedure and how to do so;
     3. the Provider must inform the Council in writing without delay and wherever possible in advance of taking such action;

provided that nothing in this Clause 4.8 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

* 1. If the Provider gives a notification of a death or other incident to the CQC or any other Regulatory Body which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council within five (5) Working Days.

**Efficiency Gain Plan**

* 1. Pursuant to Clause 4.4, the Council may at its absolute discretion request at any time and/or frequency throughout the Contract Period an efficiency gain plan and the Provider shall provide an efficiency gain plan for the approval of the Council having regard to a combination of economy, efficiency and effectiveness and which shall demonstrate the intention to deliver the Council no less than 2% savings per annum year on year.

**Exclusivity**

* 1. This Contract shall not be exclusive and the Council reserves the right to place work constituting all or any part of the Services with a third party at any time during the Contract Period or to carry out that work itself. The Council offers no warranties, guarantees or assurances in relation to the volume or value of any work to be carried out by the Provider under the Contract. The Council also reserves the right to omit any part or parts of the Services pursuant to the variation provisions in Clause 16.

1. PROVIDER’S WARRANTIES, RESPONSIBILITY AND KNOWLEDGE
   1. The Provider warrants, undertakes and represents that:
      1. it has the full capacity power and authority and all necessary consents to enter into and perform this Contract;
      2. it is not and has not been in the three (3) years prior to the Commencement Date in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal accounting or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract;
      3. it has not committed a Prohibited Act at all in connection with the Tender Response Document or generally within the five (5) years immediately before the Commencement Date;
      4. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Provider in connection with the tendering process, and this Contract are true, complete and accurate in all respects;
      5. it has in all respects complied with the conditions of tendering set out in the invitation to tender, including, without limitation, not doing any of the acts or matters prohibited by such conditions of tendering;
      6. it has made its own enquiries and has satisfied itself as to the accuracy and adequacy of any information whatsoever supplied to it by or on behalf of the Council and all other matters relating to the Contract including, without limitation, any employment issues and/or the application of TUPE and the Price and in each case the Provider is not reliant on such information;
      7. it is of sound financial standing and is not aware of any circumstances (other than such circumstances as expressly disclosed by the Provider when submitting the Tender Response Document) that may adversely affect such financial standing in the future;
      8. it has or has made arrangement to ensure that it will have sufficient working capital, skilled Staff, equipment, machinery and other resources available to it in order to carry out the Services in accordance with the Contract Standard;
      9. it has obtained or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the Contract Period obtain and maintain all further and necessary consents, licences and permissions to enable it to carry out the Services in each case at its own expense;
      10. it has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Services so as to assess the full scope and volume of the work involved in performing the Services to the Contract Standard;
      11. 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; and
      12. it will not at any time during the Contract Period or at any time thereafter claim or seek to enforce any lien, charge or encumbrance over any property of whatever nature aimed or controlled by the Council and which is for the time being in the possession of the Provider.
   2. The Provider shall be responsible for the accuracy of all drawings, documentation and information or anything else supplied to the Council by the Provider and the Provider shall pay the Council any extra costs incurred by the Council as a result of any discrepancies, errors or omissions therein.
   3. The Provider shall alert the Council to the risk or the existence of any reason which may prevent the Provider from performing the Services as required in whole or in part as long in advance (and as fully) as reasonably practicable in the circumstances.
   4. The Provider shall be deemed to have examined the documents constituting the Contract, including the Conditions of Contract, the Specification and the other Schedules and to have satisfied itself before tendering as to the correctness and sufficiency of its tender submission to cover all its obligations under this Contract and for all matters and things necessary for the proper completion of the Services.
2. THE COUNCIL’S CONTRACT MANAGER
   1. The Council shall appoint a Contract Manager to administer this Contract and act as its representative. The Council may from time to time replace the Contract Manager and shall notify the Provider in writing of this change.
   2. The Contract Manager shall upon written notice to the Provider be entitled to delegate their role to other persons as they see fit.
   3. Where this Contract authorises the Contract Manager to instruct the Provider, the Provider shall comply with these instructions.
3. THE PROVIDER’S AUTHORISED REPRESENTATIVE
   1. The Provider shall provide in writing the name, telephone number and contact address for the Provider’s Authorised Representative who will be the Council’s main point of contact for the Provider. The Provider shall not be entitled to remove or replace the Provider’s Authorised Representative without the prior consent of the Council, such consent not to be unreasonably withheld or delayed.
   2. The Provider’s Authorised Representative must be empowered by the Provider to take decisions in respect of this Contract and must be available to the Council during reasonable working hours. The Provider’s Authorised Representative shall upon reasonable notice attend any meetings relating to the Services at the request of the Council.
   3. The Provider’s Authorised Representative must have sufficient knowledge of this Contract and the Services to act as the Provider’s main representative.
4. STAFF
   1. The Provider shall ensure that the Staff shall be sufficient in number, be properly and suitably qualified, competent, skilled, honest, instructed, trained, experienced and supervised and shall at all times exercise due care in the execution of their duties as well as procuring that such Staff shall:
      1. comply with the relevant provisions of the Contract;
      2. comply with all relevant Law, national guidelines, policies, codes, rules, procedures and standards of the Provider and all relevant rules, codes, policies, procedures and standards of the Council, notified to the Provider by the Contract Manager from time to time; and
      3. enable the Provider to perform its obligations under the Contract during periods of absence of staff due to sickness, parental leave, holidays, training or otherwise; and
      4. comply with the rules, regulatory and statutory requirements in relation to health and safety at work.
   2. The Provider shall be liable for all costs relating to its Staff and any acts, omissions or defaults of its Staff howsoever arising in connection with the Services.
   3. If and when directed by the Council, the Provider shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with this Contract to any of the Council’s Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Council may reasonably desire.
   4. The Council reserves the right under this Contract to refuse to admit, or withdraw permission to remain on the Council’s Premises any Staff member whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
   5. The Provider shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Provider by the Council for entry to any Council Premises and shall only permit such keys, passes and other means of access to be used in accordance with the Contract Manager’s instructions and then only to the extent required for the purposes of providing the Services.
   6. The Provider shall ensure that the Contract Manager is informed as soon as reasonably practicable of the loss of any keys, passes and other means of access to or around the Council’s Premises and shall reimburse to the Council any cost of replacement and/or any reasonable security measures implemented as a direct or indirect result of such loss.
   7. The Provider shall at all times during the Contract Period provide sufficient supervisory Staff to ensure that Staff are adequately supervised and able to perform their duties to the Contract Standard.

* 1. The Provider shall give the maximum possible advance warning of prospective industrial action and/or industrial dispute by its Staff likely to affect the performance of this Contract and shall take all reasonable steps to mitigate any impact on the Services. For the avoidance of doubt, industrial action by Staff shall not relieve the Provider of the obligation to provide the Services to the Contract Standard.
  2. The Provider shall not (and shall take all reasonable steps to ensure that no member of Staff shall not) in any circumstances solicit or accept gratuity, tips or any other form of money taking or reward, from any person in connection with the provision of all or any part of the Services other than pursuant to the terms of the Contract.
  3. The commission of any act prohibited by Clause 8.9 by the Provider or any member of Staff will be regarded by the Council as a matter of serious misconduct and, without prejudice to any of the Council’s other rights under this Contract or at law:
     1. the Council shall be entitled in respect of the commission of any such act by a member of Staff to require the removal forthwith from the provision of the Services such member or members of Staff and the Provider shall comply with this requirement; and
     2. the Council shall be entitled in respect of the commission of any act by the Provider to terminate this Contract forthwith or on such period of notice as the Council may decide.
  4. For the avoidance of doubt, Clause 8.10.1 shall operate without prejudice to any rights the Council may have under Clause 37 to terminate this Contract.

**Pre-Employment Checks**

The Provider shall carry out appropriate pre-employment checks prior to the appointment of an individual in connection with the Services (including but not limited to references, medical clearance, proof of right to work in the UK, professional registration/qualifications and the issuing of a satisfactory Disclosure and Barring Certificate by the Disclosure and Barring Service, where relevant). Prior to making any offer of employment, the Provider shall carry out a risk assessment in a form equal to or exceeding the risk assessment form found in Schedule 15: in relation to any non-UK citizen and any UK citizen who requires a Criminal Records Check and who has lived abroad for six (6) months or more in the five (5) year period prior to being considered for appointment in connection with the Services.

* 1. The Provider shall obtain consent prior to the commencement of any work by any Staff member employed to work in connection with this Contract, to carry out all necessary checks under this Clause 8and shall obtain consent of the Staff member to provide evidence upon the request of the Council that such checks have been carried out.
  2. Without affecting the Provider’s rights and obligations as an employer, the Council or the Contract Manager may, to the extent reasonably necessary to protect the standards and reputation of the Council and following consultation with the Provider, request the Provider to remove from the Services or relevant part of it any person or member of Staff (including the Provider’s Authorised Representative) and the Provider shall forthwith comply with such request. The Council shall not in any circumstances be liable to any such person or member of Staff or to the Provider in relation to any such removal, and the Provider shall fully and promptly indemnify the Council in respect of any claims brought by any such person or member of Staff arising from it.
  3. The Provider through monitoring of its compliance with this Clause 8 shall ensure that the Council is kept advised at all times of any Staff member who, subsequent to his/her commencement of and during employment as a Staff member, commits any criminal act whatsoever or whose previous convictions become known to the Provider or commits any act which puts or could put users of the Service or the Council at risk.

**Offer of Employment**

* 1. The Provider shall not, for the Contract Period or a period of twelve (12) months afterwards, employ or offer employment to any of the Council’s employees and/or personnel who have been associated with the procurement and/or the contract management of the Services. This Clause shall not affect an offer of employment which results from a response by the employee and/or personnel member to any public advertisement.

**Status of Staff**

* 1. This Contract constitutes a contract for the provision of services and not a contract of employment.
  2. For the avoidance of doubt, the Parties do not intend Staff working on or for this Contract to be off-payroll working through an intermediary for the purposes of IR35. The Provider must promptly notify the Council in writing if the status of any Staff changes in the case where they fall within IR35.
  3. The Council may at its absolute discretion request from the Provider or Sub-Contractor at any time throughout the Contact Period until six (6) years after the Contract has been terminated, information in order to determine whether Staff fall within IR35. The Provider or Sub-Contractor shall provide the requested information promptly and in sufficient detail to the satisfaction of the Council.
  4. The Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council for and in respect of:

8.19.1 any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where recovery is not prohibited by law;

8.19.2 all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

8.19.3 any liability arising from any employment related claim or any claim based on worker status or IR35 (including reasonable costs and expenses) brought by the Provider or Sub-Contractor against the Council arising out or in connection with the provision of the Services.

**TUPE and Pensions**

8.21 Both Parties shall comply with their respective obligations in accordance with the provisions specified in Schedule 10 (TUPE and Pensions Schedule).

1. SAFEGUARDING
   1. The Provider shall maintain and keep up to date appropriate policies on child protection and the protection of adults at risk. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health & Social Care guidelines, Statutory guidance and national good practice guidelines, including those of the Norfolk Safeguarding Adults Board guidelines and policies and Norfolk Safeguarding Children Partnership, and also with policies, procedures and guidelines issued by the Council. The Provider shall ensure that these policies, procedures and guidelines are communicated to Staff and that appropriate training is provided to Staff in relation to them.

9.1A. The Provider shall comply with the safeguarding obligations in accordance with the provisions specified in Schedule 1, Schedule 11 and the relevant sections of Schedule 12.

9.2. The Provider shall have in place comprehensive procedures for reporting of and managing allegations against Staff which demonstrates the promotion of the safety and welfare of children and/or adults at risk and are compliant with statutory requirements. The Provider must be able to evidence safe and robust recruitment procedures and practice for all Staff working with children and/or adults at risk. The Provider shall ensure that Staff know about and comply with the requirements to make accurate, factual and contemporaneous records to ensure compliance with this Clause 9. The Provider shall comply with the Council’s Adult and Child Safeguarding procedures in relation to this Clause 9, details of which are available using the following link and may be amended from time to time and notified to the Provider: [Norfolk Safeguarding Adults Board (NSAB)](https://www.norfolksafeguardingadultsboard.info/) <https://norfolklscp.org.uk/>

9.3. The Provider shall fulfil its legal obligations in relation to carrying out Criminal Records Checks and checking Staff through the DBS or Disclosure Scotland (as appropriate) and the relevant national or local safeguarding authority, where necessary and appropriate and complete a risk assessment form in respect of each Staff member when making decisions in relation to convictions revealed by the Criminal Records Check, using a form equivalent to or exceeds the risk assessment form which can be found in Schedule 15. The Provider is required to pay the full cost of any such registration and related costs. The Provider acknowledges that the Council has legal responsibilities under the SVG and that the Provider must check the Protection of Children list and the Protection of Vulnerable Adults list and comply with all other relevant Law in relation to safeguarding children and/or vulnerable adults and shall provide such evidence of compliance with this Clause 9 as the Council shall reasonably require. The Provider shall carry out and repeat the checks specified in this Clause 9.3 on every three (3) year anniversary from the Commencement Date. If it is a requirement of the Contract for the Staff member to be registered with the DBS Update Service, the Provider shall be responsible for ensuring that the Staff member maintains their annual subscription of the DBS Update Service.

9.4. The Provider shall nominate and name a designated senior officer or manager and make arrangements during the provision of the Services under this Contract to ensure that it complies with the provisions of the SVG.

9.5. The designated senior officer or manager referred to in Clause 9.4above shall comply with the provisions of *“Working together”* for safeguarding children, young people and adults in dealing with allegations of abuse made against the Provider’s employees who work with children, young people and adults. The Provider shall have in place a safeguarding policy, which is equal to or exceeds the Council’s safeguarding policy (except where a conflict arises between the Council’s safeguarding policy with the Conditions and/or the Specification, in which case the order of precedence of documents specified in Clause 2of the Contract shall apply).

9.6. The Provider shall be entirely responsible for the employment and conditions of service of its Staff and all obligations relating thereto. In addition to the pre-employment checks to be carried out under this, the Provider shall ensure that suitable references reflecting the Staff member’s suitability to work with children and/or vulnerable adults are taken up as part of the recruitment process. All Staff members proposed for the Service shall be subject to an appropriate Criminal Records Check, which should be carried out and results obtained prior to the Staff member being employed in connection with the Service. Should an adverse entry be revealed as a result of the Criminal Records Check and/or should any convictions including those that would otherwise be spent under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 be revealed, the Provider shall notify the Contract Manager of these immediately. The Council shall have a right to veto the employment or engagement of any Staff member proposed for the Service as a result of the adverse entry/convictions, but not unreasonably or vexatiously.

9.7. The Provider shall use one of the following methods for the advice, processing and storage of each Criminal Records Check:

9.7.1. by the Provider directly (if DBS registered);

9.7.2 through an external DBS umbrella body.; or

9.7.3 through the Council’s DBS Umbrella Body;

9.8. The Provider shall comply with and observe all relevant Law in relation to Criminal Records Checks and follow all recommendations and general guidance issued including by any Central Government Department on Criminal Records Checks and carrying out Criminal Records Checks in relation to any person engaged in a role that meet the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations, when deciding whether the outcome of the Criminal Records Check is satisfactory and whether the individual concerned is suitable to carry out the role in connection with the Services.

9.9. The Provider shall maintain and disclose to the Council a record of the outcome of the Criminal Records Check, in relation to each Staff member where a Criminal Records Check is required, setting out the disclosure number, level of Criminal Records Check and the date the disclosure was made. The Provider shall store the record of the disclosure securely within the Provider’s organisation in accordance with Data Protection Legislation and DBS Code of Practice. The Provider warrants, undertakes and represents to the Council that each disclosure number will be unique and can, if necessary, be reconciled against a Staff member’s name engaged or appointed in connection with the Services.

9.10. If visits are taking place as part of the recruitment process, potential staff of the Provider must be accompanied by a member of Staff at all times and the checks specified in Clause 9 shall have been completed by the Provider prior to such visits taking place.

9.11. The Provider must have a robust system which evidences when Staff are suspended or dismissed that safeguarding children and/or vulnerable adults guidance including government guidance is followed and relevant professional bodies informed in the event of non-compliance. The Provider will ensure that it has appropriate procedures in place that support:

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

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

9.12. The Provider shall have codes of conduct in place for all Staff that set out clear standards of conduct especially in relation to personal and sexual relationships between Staff and Service Users or other children and/or vulnerable adults.

9.13. The Provider must provide evidence of robust and effective complaints and whistle-blowing policies including a guarantee to Staff and Service Users that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.

9.14. If abuse of an individual is taking or has taken place or is suspected the Provider must comply with the “duty to refer” by immediately notifying the Contract Manager and the safeguarding children and adults lead of the Council as well as the Provider’s safeguarding children and vulnerable adults lead and should consider suspension of the Staff member(s) and take emergency measures (for example, inform police/seek medical assessment/treatment (as appropriate)). The Provider must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Contract Manager. The Provider must also notify the DBS and/or Disclosure Scotland (as appropriate) if a Staff member is dismissed or removed from working in connection with the Services for the reasons described in the “Duty to Refer” section of the DBS website.

9.15. The Provider shall seek the consent of each Service User to forward the Service User’s records to the Replacement Provider(s) and/or one or more third parties determined by the Council on termination or expiry of the Contract. For the avoidance of doubt, the consent should be sought by the Provider from each Service User during the life of the Contract but the transfer(s) of these records shall (if required by the Council) be effected by the Provider (at no cost to the Council) as part of the exit and handover arrangements in accordance with clause 38.2.14.

**Requests for Information from the Disclosure and Barring Service (DBS)**

9.16. The Council shall be entitled under its duty to the DBS to respond to requests from the DBS for further information already held by the Council in relation to the Staff.

9.17. The Provider shall respond to requests from the Council within a reasonable time about Criminal Records Checks in relation to the Staff and shall cooperate with the Council to enable the Council to comply with its duty to the DBS.

9.18. Failure by the Provider to comply with the safeguarding provisions of this clause 9 shall entitle the Council to terminate the Contract in accordance with Clause 37.

1. PROVIDER’S EQUIPMENT
   1. Notwithstanding the provisions of this Clause 10, the Provider shall ensure that throughout the Contract Period it supplies or makes available and maintains in good condition and in working order and within the Prices all such resources and equipment as may be necessary for the proper provision of the Services to the Contract Standard including, without limitation, Staff, labour, machinery, equipment, materials, transport and delivery facilities, consumables, premises, software, hardware and vehicles (the “Provider's Equipment”).
   2. The Provider shall ensure that all licence fees, consent fees, maintenance fees and royalties relevant to the provision of the Services are paid and up to date throughout the Contract Period and that the Provider's Equipment is properly maintained and replaced when necessary.
   3. Any vehicles used in the performance of the Contract shall be maintained by the Provider in a safe condition, must be fully insured and must be certified as roadworthy.
   4. Any specialist equipment used in the performance of the Contract shall be maintained by the Provider in accordance with the manufacturer’s instructions, and must not be used or modified in such a way as to negate or diminish any insurance cover which may relate to the equipment or create an additional risk to users of that equipment.
   5. The Provider shall be responsible for the security, insurance and storage of the Provider’s Equipment and the Council shall be under no liability in respect thereof including where the Provider’s Equipment is used and/or stored on Council Premises save where any damage or loss is caused to the Provider’s Equipment by the acts or omissions of the Council.
   6. The Provider shall ensure that any hired or leased equipment is clearly marked with the name of the hirer or owner or that this information is provided to the Contract Manager.
   7. The Provider shall keep all hazardous Provider’s Equipment provided for use by the Provider under proper control and safekeeping and shall ensure that all Provider’s Equipment is properly and clearly labelled.
   8. Should the Provider engage, use or rely upon the equipment or resources of a Fellow Provider or other party then this shall be an arrangement between the Provider and that other party and the Provider shall be responsible for that equipment or resource as part of the Provider’s Equipment and the risk of engaging, using or relying upon such equipment or resources shall for the purpose of this Contract be entirely the Provider’s.

1. USE OF COUNCIL PREMISES/ COUNCIL EQUIPMENT
   1. The Provider may be permitted access to some of the Council’sPremises from time to time in connection with the provision of the Services at the Council’s sole discretion. The Council is under no obligation to provide access to the Council Premises. If permitted by the Council, the Provider will use the Council’s Premises only in connection with the proper performance of the Services and will ensure that its Staff and Sub-Contractors and agents use the CouncilPremises, only for such purpose.
   2. The Provider shall ensure that the CouncilPremises it uses are left clean and tidy at all times.
   3. Access to or use of any of the CouncilPremises by the Provider or any of its Staff will not create a tenancy of any nature whatsoever in favour of the Provider or its Staff or agents.
   4. The Provider shall vacate the Council Premises on the Expiry Date, earlier termination or abandonment of this Contract.
   5. The Provider shall ensure that it complies with all Laws relating to the health and safety and welfare of all persons using or employed on or about the Council Premises (including for the avoidance of doubt Service Users and other visitors), including ensuring that all relevant documents relating to the Council Premises are placed in the health and safety file at the same premises and made available at any time to the Council upon request.
   6. In the event that, and to the extent that, the Provider is to provide all or any part of the Services from its own premises, the Provider shall ensure that such premises are safe, secure and suitable for the provision of the Services. Any CouncilEquipment or Council Data situated at the Provider's premises shall be clearly marked as the property of the Council. The Provider shall afford the Councilaccess upon reasonable notice to inspect the Provider's premises including any security, fire protection and disabled access systems. The Provider shall not provide all or any part of the Services nor store any Council Data at any premises which have not been approved by the Contract Manager.
   7. The Provider shall use the CouncilEquipment solely in connection with the provision of the Services and shall make good any damage to the CouncilEquipment caused by the Provider, its Sub-Contractors, Staff, servants or agents. Any damage shall be remedied by the Provider in accordance with the reasonable instructions of the Contract Manager and all costs incurred in complying with this Clause shall be borne by the Provider. The Provider shall inform the Contract Manager immediately of any act of vandalism or damage to the CouncilEquipment observed by the Provider or its Staff or Sub-Contractors and the Provider shall use its reasonable endeavours to ensure that the vandalism or damage ceases and to ascertain the identity of the perpetrators and to inform the Contract Manager immediately and the police or fire brigade, if appropriate, of the same.
   8. The Councildoes not guarantee, warrant or give any assurances as to the age or state of repair or suitability for use in the Service of any item of CouncilEquipment and the Provider hereby acknowledges that it has carried out its own due diligence including inspections of such equipment and has satisfied itself as to the condition and suitability of each item of such equipment for use in the provision of the Service and accordingly the Provider shall not be relieved from any liability in relation to any failure to provide the Service or any part of it where such failure is caused by a failure in of or the unsuitability of any CouncilEquipment.
   9. The Provider shall be responsible for the maintenance of the CouncilEquipment at its own expense except where it is stated in this Contract that any such maintenance shall be carried out at the Council's expense. In such circumstances, and for the avoidance of doubt, the Councilshall be entitled to cease to maintain any item of CouncilEquipment when it considers, in its absolute discretion that such CouncilEquipment has reached the end of its useful life and is no longer economically viable to maintain.
   10. Unless expressly stated to the contrary in this Contract, the Councilshall not be obliged to replace any item of CouncilEquipment and if it does not replace any such item the Provider shall make such arrangements as are necessary including the provision of Provider’s Equipment to provide the Service in accordance with this Contract without the relevant piece of CouncilEquipment.
   11. The Council's Equipment shall remain the property of the Counciland shall be delivered up to the Councilat the end of the Contract Period or earlier termination except insofar as it has reached the end of its useful life and has been disposed of. Any item of equipment which was not CouncilEquipment shall remain the property and responsibility of the Provider or relevant third party and shall not, unless expressly provided to the contrary in the Contract, be delivered up to the Councilat the end of the Contract Period.

C. FINANCIAL ARRANGEMENTS

1. PRICES AND PAYMENT
   1. Subject to the Provider fulfilling its obligations under the Contract and in consideration of the Provider properly performing the Services, the Council shall pay to the Provider the Price in accordance with this Clause 12 and Schedule 4, which shall be exhaustive of any amounts due to the Provider in respect of its provision of the Services and performance of its obligations under this Contract.
   2. Payment of the Price shall be made within 30 (thirty) calendar days of receipt of a correct and undisputed invoice by automated payment mechanism (BACS). Payment is deemed to have been made when the Council transmits payment for processing to its BACS Bureau and the Provider accepts that if a non-working day falls near the transmission of payment, this may extend the period before the payment will arrive in the Provider’s account.
   3. In addition to the Provider’s obligations under clause 4.4, and in recognition of the Best Value Duty, the Council may request, and the Provider shall provide within ten (10) Working Days, such financial and other information as required by the Council, including a breakdown of its costs, to enable the Council to assess and assure itself that it is receiving value for money (efficiency, effectiveness and economy) from the Contract. The Provider agrees to co-operate fully and assist the Council at no extra charge in any manner reasonably required by the Council in connection with this clause 12.4..

**General Invoicing and Payment Provisions**

* 1. All invoices submitted by the Provider shall specify the relevant rate or rates and the quantity of service provided during the period or periods to which the invoice relates. Invoices shall be uniquely numbered and shall contain all appropriate references including the Council’s official order number and a detailed breakdown of the Mobilisation Services or the Services and shall be supported by any other documentation reasonably required to substantiate the invoice.
  2. The Council will endeavour to identify to the Provider any invoices it disputes and considers to be incorrect (and the reasons why this is the case), in which case the Provider shall submit a replacement correct invoice as soon as practicable. It shall however be the entire responsibility of the Provider to submit a correct and undisputed invoice in a timely fashion in accordance with this Clause 12, and the Council shall bear no responsibility or liability for any losses the Provider may incur as a result of its failure in respect of this responsibility. The Council shall not have any obligation to pay any incorrect or undisputed invoices, in whole or in part under this Clause 12.
  3. The Council may withhold payment of any disputed amount pending agreement or determination of the Provider's entitlement to the disputed amount. The Provider shall not suspend the provision of the Services for failure by the Council to pay disputed charges in connection with this Contract.
  4. In the event of any dispute regarding an invoice which has been notified to the Provider, the Provider shall issue a new invoice for the disputed amount and a new separate invoice for the undisputed amount.
  5. Without prejudice to any other rights or remedies of the Council whether in contract, tort, or under statute, or otherwise, the Council shall be entitled to withhold or reduce, or make deductions from, the Price:
     1. pursuant to Clause 36;
     2. where the Provider has been overpaid by the Council by virtue of an error or fraudulent conduct by a Council employee, agent or Fellow Provider; or
     3. where the Council has suffered financial loss by virtue of the Provider overpaying a third party including, without limitation, where the Provider in the course of carrying out its obligations under the Contract makes an overpayment of salary or makes duplicate credit payments.
  6. Any disputes in relation to whether or not a KPI has been achieved, or in relation to any invoice, payment or reduction may be referred to the Dispute Resolution Procedure as set out in Clause 40.

VAT

* 1. All sums payable under this Contract are exclusive of VAT or any tax replacing it.
  2. If this Contract or anything in it gives rise to a taxable supply for Value Added Tax purposes by the Provider to the Council under Law from time to time in force, on the production of a valid Value Added Tax invoice, the Council will pay the Provider a sum equal to that Value Added Tax in addition to the Price or any other consideration.
  3. The Provider shall provide to the Council any information reasonably requested in relation to the amount of VAT chargeable in accordance with this Contract.
  4. A VAT invoice will not be valid for the purposes of charging VAT if more than forty-eight (48) months have elapsed since the time of supply.
  5. It is agreed that neither Party shall be liable for any penalties or interest arising from the accounting nor the failure of the other to account to HM Revenue and Customs at the correct time for any VAT correctly due in relation to the consideration referred to in this Clause. The Provider shall be liable to the Council for any losses, costs, expenses the Council incurs as a result of the Provider accounting nor the failure of the other to account to HM Revenue and Customs at the correct time for any VAT correctly due in connection with this Contract.

1. PRICE THROUGHOUT THE CONTRACT PERIOD/INDEXATION
   1. The Price shall be uplifted in accordance with the Council’s yearly uplift process and for the avoidance of doubt the process may result in a zero uplift. In the event of an uplift, it shall take effect on the yearly anniversary of the contract the with first being 1st July 2026.
2. RECOVERY OF SUMS DUE
   1. Wherever under this Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract), the Council may deduct that sum from any sum then due, or which at any later time may become due to the Provider under this Contract or any other contract with the Provider.
   2. Any overpayment by the Council to the Provider shall be recoverable by the Council.
   3. The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has obtained the prior written approval of the Council to such deduction.

D. CONTROL OF THIS CONTRACT

1. ASSIGNMENT AND SUBCONTRACTING
   1. The Provider shall not sub-contract the whole of the Services. The Provider shall not sub-contract a part of the Services without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).
   2. If the Provider should sub-contract the provision of any part of the Services to any person, neither that nor the Council’s consent to that sub-contracting under Clause 15.1 above shall relieve the Provider from any liability or obligation under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-Contractor or agents in all respects as if they were the acts, defaults or neglect of the Provider.
   3. Where the Council has consented to the use of a Sub-Contractor or Sub-Contractors, such Sub-contract(s) shall reflect the same terms of this Contract and for the avoidance of doubt the Sub-Contract(s) shall not contain any terms which are incompatible and/or conflict with this Contract.
   4. The Council may, as a condition of giving its consent under Clause 15.1 require the Provider to procure from that Sub-Contractor any direct warranties, indemnities or guarantees from that Sub-Contractor in relation to their provision of the Service and performance of their obligations under the Sub-Contract. For the avoidance of doubt, this may also include a requirement for the Sub-Contractor to grant licences or sub-licences in favour of the Council in respect of any land, premises, Intellectual Property Rights or software which are necessary to provide or which benefit from the Services.
   5. The Provider shall not be entitled to assign, novate or otherwise transfer the Contract or its rights and obligations thereunder without the prior written consent of the Council and such consent shall be at the absolute discretion of the Council.

* 1. The Provider shall not without the prior written consent of the Council change or replace any Sub-Contractor that it has appointed to provide any part of the Services. Any consent required from the Council in accordance with this Clause may be withheld at the Council’s absolute discretion.
  2. Any breach by the Provider of Clauses 15.1 to 15.6 shall constitute a substantial and material breach of Contract by the Provider.
  3. The Council may, in its absolute discretion, novate or assign this Contract or any part thereof and will give written notice of any such novation or assignment to the Provider. This Clause in this Contract executed by the Provider shall stand as the Provider’s consent to any such novation or assignment.
  4. In the event the Council consents to any assignment, Sub-Contracting, novation or other arrangement under this Clause 15, it shall be entitled to require and the Provider shall pay the reasonable administrative and legal costs to the Council of formalising this change, including without limitation relating to the new contractual relationship between the Council and the Provider or any third party. For the avoidance of doubt, any such costs may be set-off pursuant to Clause 14 from sums due to the Provider.

1. VARIATIONS AND CHANGE CONTROL

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

**Council Variations**

* 1. The Council may by notice in writing to the Provider, from time to time, require minor and/or non-substantial changes to the Services, the way the Services are provided or any of the Contract Documents; such changes shall not be nor be considered to be a Variation to this Contract nor shall the Prices be affected thereby.
  2. The Councilmay propose a Variation by giving written notice to the Provider (“the Council Variation Notice”).
  3. The Council Variation Notice shall:
     1. set out the Variation required in sufficient detail to enable the Provider to calculate and provide an estimate of any adjustment to the Prices in accordance with Clause 16.6 below (the “Estimate”);
     2. state the date on or by which the Council wishes the Variation to be implemented.
  4. The Council shall consult with the Provider with respect to the Variation, and the Provider shall provide the Council on or before the date falling ten (10) Working Days after the date of the Council Variation Notice with a reasonable Estimate of the increase or reduction in the Prices (if any), or proposal of other changes to the terms set out herein, which it believes should occur as a result of the changes set out in the Council Variation Notice.

**The Estimate**

* 1. The Estimate shall be accompanied by a reasonably detailed breakdown of the manner in which the Estimate is calculated and shall include details of any redundancy costs which are reasonably expected to be incurred by reason of the proposed change together with any information which the Council may reasonably require including without limitation breakdowns of price and supporting material for the purpose of satisfying the Council that the proposed revised price is fair and reasonable.
  2. To the extent it is possible to do so the Estimate shall be calculated:
     1. based on rates and prices that represent the market price current at the date on which the Council Variation Notice is issued.
  3. The Estimate shall include a statement of the Provider’s opinion on:-
     1. any impact on the provision of the Services;
     2. any amendment required to the Contract as a result of the change in the Services; and
     3. any capital expenditure that is required or no longer required as a result of the change in the Services.
  4. As soon as practicable after the Council receives the Estimate, the Parties shall discuss and attempt to agree the issues set out in the Estimate. In such discussions the Council may:
     1. agree the Estimate in which case the Variation shall be implemented in accordance with the Council Variation Notice; or
     2. modify the Council Variation Notice in which case the Provider shall as soon as practicable and in any event not more than ten (10) days after receipt of such modification, notify the Council of any consequential changes to the Estimate.
  5. If the Parties cannot agree on the effects and consequences of the Estimate then the dispute will be resolved in accordance with the Dispute Resolution Procedure.
  6. As soon as practicable after the effects and consequences of the Estimate have been agreed or otherwise determined pursuant to Clause 16.10 the Council shall:
     1. confirm in writing the Estimate (as modified); or
     2. withdraw the Council Variation Notice.
  7. If the Council does not confirm in writing the Estimate (as it may have been modified) within twenty (20) days of the Estimate being agreed in accordance with Clause 16.9 or determined pursuant to Clause 16.10 above then the Council Variation Notice shall be deemed to have been withdrawn.

**Provider Variations**

* 1. If the Provider wishes to introduce a Variation to the Services it must serve a notice on the Council (“the Provider Variation Notice”).
  2. The Provider Variation Notice must:
     1. set out the proposed Variation in sufficient detail to enable the Council to evaluate it in full;
     2. specify the Provider’s reasons for proposing the Variation;
     3. request the Council to consult with the Provider with a view to deciding whether to agree to the Variation and, if so, what consequential changes the Council requires as a result;
     4. include an Estimate in accordance with Clauses 16.6 and 16.7; and
     5. indicate if there is any date by which a decision by the Council is critical.
  3. As soon as reasonably practicable after the Council receives the Provider Variation Notice the Parties shall meet to discuss the issues in such notice. During such discussions either Party may propose modifications to the proposed Variation.
  4. If the Council accepts the Provider Variation Notice (with or without modification) the relevant Variation shall be implemented by any date specified in the Provider Variation Notice or in the event that it is not practicable for any reason to implement the Variation by such date it shall be implemented by such other date as the Parties acting reasonably may agree.
  5. If the Council rejects the Provider Variation Notice it shall not be obliged to give its reasons for such a rejection.
  6. Unless the Council's acceptance of the Provider’s proposed Variation specifically agrees to an increase in the Prices, there shall be no increase in the Prices as a result of a Variation proposed by the Provider.
  7. If the Variation proposed by the Provider causes or will cause the Provider's costs or those of one of its Sub-Contractors to decrease, there shall be a corresponding decrease in the Prices.
  8. Neither Party shall be entitled to reject any Variation which has been proposed to enable the provision of the Services to conform to a change in law.

1. PERFORMANCE MONITORING AND CONTRACT REVIEW
   1. Contract review meetings will be held between the Provider’s Authorised Representative and the Contract Manager at regular intervals specified in advance by the Council and monitoring visits shall also take place in order to monitor the Provider’s performance both on this Contract as a whole and against any Performance Targets.
   2. The Council may undertake monitoring visits with other strategic partners. The Council shall also be entitled to share information on the Provider’s performance and other aspects of the Provider’s delivery of the Services with other strategic partners.
   3. The Council shall wherever possible provide five (5) Working Days’ notice of monitoring visits but reserve the right to make unannounced monitoring visits at any time (in which circumstances the Council shall respect the rights of any Service Users who may be receiving Services at the time of an unannounced visit).
   4. The Provider shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews (including procuring the attendance of the Provider’s Authorised Representatives at such meetings), monitoring visits (including PAMMS Assessments) and any further reasonable methods which the Council undertakes to assess the Provider’s performance and contract compliance. The Provider shall provide all reasonable cooperation, facilitation and information required at no additional cost to the Council.
   5. The Provider shall monitor and report to the Council its performance against any Performance Targets and provide all information required therein in the format required. This includes the requirement for the Provider to use PAMMS to prepare and update Actions Plans in Clause 36.
   6. The Council shall be entitled to make deductions or other adjustments to the Contract Price as a consequence of the Provider’s performance against the Performance Targets and as provided for in the Performance Mechanism.
   7. The Council may elect, at its own cost, to undertake its own performance monitoring at any stage for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract. The Provider will use its reasonable endeavours to assist the Council in such an exercise. The Council shall notify the Provider of the outcome of the performance monitoring exercise, and (without prejudice to the Council's other rights under this Contract) the Provider shall have due regard to the Council’s findings in relation to the future provision of the Services.
2. INTELLECTUAL PROPERTY RIGHTS
   1. The Provider hereby expressly acknowledges that the Councilalone has (subject to such third party rights as may at any time be notified to the Provider by the Council) exclusive ownership and ultimate control of:
      1. the format and content of the documentation comprising the Contract;
      2. the Council's logos, insignia and letter heads;
      3. Council Data however and wherever stored and processed by the Provider; and
      4. any Intellectual Property Rights pertaining to any of the above.

(collectively the “Property Rights”).

* 1. Any goodwill pertaining to or arising from the use of the Property Rights shall at all times ensure and accrue to the exclusive benefit of the Councilabsolutely.
  2. The Provider shall at the request of the Councilpromptly execute such documents and take or desist from such action as the Councilmay require in order to assure to the Councilthe full benefit of its Property Rights and/or to confirm the Council's title thereto.
  3. The Council hereby licences the Provider to use the Property Rights solely:
     1. to the extent and upon the terms provided by this Contract; and
     2. for the purposes of performing the Services for the Council.
  4. The Provider shall notify the Councilon becoming aware of:
     1. any information prejudicial to, and/or actual, threatened or suspected complaint or proceedings brought by any third party (including, without limitation, by any user or recipient of the Services) in any way connected with the Services and relating to the Council, the Provider or its Sub-Contractors or any Fellow Provider; or
     2. any actual, threatened, attempted or suspected infringement by any third party of any of the Property Rights including (without limitation) any seizure of or other interference with Council Data (an “Infringement”).
  5. The Provider shall use its best endeavours to assist, co-operate with and follow the instructions of the Councilin relation to any Infringement, including (without limitation) in protecting and/or defending the Property Rights against any infringing party and, at the Council's request or the request of the Council’s insurers, the Provider shall entrust the conduct of any proceedings in relation to any such Infringement to the Council.
  6. Save for any Pre-Existing Intellectual Property Rights owned by the Provider, all Intellectual Property Rights in any data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or developed by the Provider in connection with provision of the Services shall vest in and be the property of the Council and the Provider hereby assigns all such Intellectual Property Rights to the Council provided that in the event that any such Intellectual Property Rights do not vest in the Council by operation of law, the Provider shall execute or cause to be executed, including by any employee or agent of its any and all deeds, documents and acts required to assign such Intellectual Property Rights to the Council.
  7. Neither Party shall acquire Pre-Existing IPR Rights of the other Party.
  8. Subject to clause 18.8, the Provider shall grant the Council a fully paid-up, royalty-free non-exclusive licence to use the Provider’s logos and insignia in relation to the Services, including the promotion and reporting thereof.

**Intellectual Property Rights Indemnity**

* 1. The Provider warrants, undertakes and represents to the Council that:
     1. it has not given and will not give permission to any third party to use any of the material to which Clause 18.1 relates nor any of the Intellectual Property Rights in such material; and
     2. neither the provision of the Services by the Provider nor its receipt by the Council will infringe the Intellectual Property Rights of any third party.
  2. The Provider agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any claim by any third party that their Intellectual Property Rights have been infringed by the provision of the Services or anything supplied, created or done by the Provider in connection with such provision.
  3. The Provider waives any moral rights in relation to any materials it creates in connection with the provision of the Services to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such material or other materials, infringes the Provider's moral rights.

1. ICT AND COMPUTER SYSTEMS
   1. In relation to any computer system which the Provider uses in connection with its provision of the Services, the Provider shall ensure that the Provider’s System(s) is at all times throughout the Contract Period such as to enable the Provider to comply with its obligations under the Contract and in particular (but without limitation) to perform the Services to the Contract Standard. On the reasonable instructions of the Council, the Provider shall ensure that the Provider’s System is capable of being rendered compatible with and is in all respects capable of interfacing with the Council’s System and, where reasonably practicable, the relevant computer systems of other partners of the Council and Fellow Providers.
   2. The Provider shall ensure that at all times during the Contract Period (and until any computerised Council Data has been returned to the Councilin accordance with the provisions of the Contract) it has in place adequate and robust business continuity and disaster recovery procedures that are in accordance with good data management and security practice and that shall include as a minimum undertaking a full back up of all Council Data at least once per day so that in the event of the partial or total failure of the Provider's computer system the Provider shall be able to continue to provide the Services without interruption and comply with its remaining obligations under this Clause 19.
   3. The Provider shall ensure that any licences in relation to software to be used in connection with the provision of the Services allow for the software to be tested by the Councilon a machine and at a location to be determined by the Counciland allow the Councilto so test all such software before it is used operationally by the Provider if it so requests.
   4. The Provider shall ensure that at all times during the Contract Period it has in place a good quality robust firewall and virus protection software so as to guard against any virus, worm, Trojan horse, logic bomb, time bomb, back door, trap, disabling device, malicious code, or other contaminants or similar form of code intended (or having that effect) to cause harm, damage, or to prevent or restrict the use of the Council Data, the Council’s System or any other computer system relevant to this Service (together, “Contaminants”). The Provider warrants, undertakes and represents that it shall not introduce any Contaminants into the Council’s System, nor any systems of Collaboration Partners, Fellow Providers or other systems which the Provider is provided access to for the purpose of performing the Services.
   5. The Councilshall, free of charge, either in hard copy or in computerised form (as appropriate) provide the Provider with such Council Data as is necessary in the Council’s opinion for the Provider to perform the Services.
   6. The Provider shall at all times ensure that the Staff use the Council’s System and Council’s Equipment in accordance with the terms and conditions of this Contract and the Provider shall be solely responsible for any of the Staff’s breach of this Contract.
   7. The Provider shall indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, arising out of or in connection with the Staff’s use of the Council’s System and/or the Council’s Equipment.
2. AUDIT AND MONITORING RIGHTS
   1. The Provider shall permit or procure permission for any authorised representative of the Council (including such other nominated officer and/or the Council’s internal auditors and external auditors) and representatives of the Council’s partners (at the Council’s request), to have reasonable access for audit and monitoring purposes to information, documents, data, systems, the Provider’s Premises or the Provider’s Equipment used in the provision of the Services and any information, documents, reports, Sub-Contractors and their staff, assets or information, or anything else reasonably required for inspection by the Council and/or its authorised representatives.
   2. Access shall include (without limiting the generality of the foregoing):
      1. reasonable access to the Staff who are engaged in the provision of the Services;
      2. inspection of the materials, premises and arrangements being made by the Provider to comply with its obligations under this Contract;
      3. access to the Provider’s Premises and any other locations where the Services are being provided; and
      4. access to such financial and other records kept as part of the provision of the Services by the Provider as may be reasonably required from time to time by the Council to enable the Council to verify the sums due and payable under the terms of this Contract and how the Services are being provided. The Provider shall keep and maintain for a period of six (6) after the end of the Contract Period, or a longer period as may be agreed between the Parties, full and accurate records of this Contract including Services provided under it, all expenditure reimbursed by the Council and all payments made by the Council. For the avoidance of doubt this Clause 20 is in addition to any legal requirement and does not negate the need for any such retention of records. If the Council’s audit of financial records reveals that the Council has overpaid all or part of the Price then the Provider shall immediately pay the Council the balance of such overpayment and the reasonable cost of such audit.
   3. Access may be at any time without notice, provided there is good cause for access without notice, and provided that the Contract Manager shall comply with all reasonable requirements of the Provider for the purpose of protecting the confidentiality of the information of third parties, and no information will be divulged to any third party save in pursuance of statutory or other legal obligations.
   4. The Council reserves the right to jointly with the Provider audit or monitor the performance of a Sub-Contractor.
3. RECORDS
   1. The Provider shall maintain current and accurate records of all work carried out in the provision of the Services and shall ensure that these records shall be available for inspection by an authorised representative of the Council at all reasonable times in accordance with Clause 20. Such records shall be Council Data and shall be provided to the Council in such searchable and identifiable form as the Council may request at any stage during the Contract Period.
   2. The Provider shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of records irrespective of the storage media which are under the Provider’s control as part of the Services including the Council Data.
   3. The Provider shall ensure that access to records is only provided to Staff as is necessary in connection with the provision of Services. The Provider shall, prior to providing such access, ensure that those Staff members are made aware of the obligations upon the Provider in their dealings with the records, including the safeguards the Staff members must comply with.
   4. If any records are accidentally or wilfully destroyed otherwise than by the Council or on the authorisation of the Council and in the event that the Provider does not have in place a method for reinstatement or replacement of such records, within five (5) Working Days of receipt of a notice from the Council and without prejudice to the Council’s other rights at law, the Provider shall reimburse the Council’s reasonable costs in restoring such records and/or the Council Data such costs are to be accounted for during the term of this Contract by way of rebate in subsequent invoices for the sums paid pursuant hereto.
4. PUBLICITY
   1. Except with the prior written approval of the Council, the Provider shall not make any press announcements or responses or publicise this Contract or any part thereof in any way.
   2. Where requested, the Provider shall comply with the Council’s local brand policy and guidelines, as revised, updated or re-issued from time to time.
   3. The Provider shall take reasonable steps to ensure the observance of the provisions of this Clause 22 by all of its Staff.
   4. The Council shall have the right to publish the results of the Provider’s ratings on the Public Portal and elsewhere and to publicly share information in relation to these ratings (and the Provider acknowledges that such information is not confidential information.

E. FREEDOM OF INFORMATION CONFIDENTIALITY AND DATA PROTECTION

1. FREEDOM OF INFORMATION
   1. The Provider acknowledges that the Council is subject to the requirements under the Freedom of Information Act 2000 (“FOIA”) and the Environment Information Regulations 2004 (“EIR”) and shall cooperate with the Council (at the Provider’s expense) to enable the Council to comply with these information disclosure requirements and any requests for information under the FOIA and/or EIR (“Request(s)”).
   2. The Provider shall give reasonable assistance to the Council to comply with the FOIA and EIR. The Provider shall not do any act either knowingly or recklessly that would cause the Council to be in breach of the FOIA and/or the EIR.
   3. In particular, the Provider shall supply all such information to the Council (together with reasonable assistance to locate the same) which is needed by the Council to comply with its obligations under the FOIA and EIR within a timescale to be agreed on a case by case basis, but in any event, not to exceed the timescale that the Council must comply with as specified in the FOIA and/or EIR (as appropriate).
   4. The Provider shall advise the Council of any requests for information received by the Provider where the information requested is subject to the Services provided under this Contract and shall follow the Council’s access procedures in fulfilling the request.
   5. The Provider shall be required to follow all Council processes and procedures that provide for compliance with the FOIA and EIR where information held is subject to the Services.
   6. Without prejudice to the generality of its obligations under this Clause 23,the Provider shall:
      1. transfer all Requests for Information that it or its sub-contractor receive, to the Contract Manager of the Council as soon as practicable after receipt and in any event within two (2) Working Days following receipt of the Request;
      2. provide the Council with a copy of all information in its or its Staff members’ possession or power that the Council reasonably considers relevant to the Request and in the form that the Council requires as soon as practicable and in any event within five (5) Working Days following receipt of the Council’s request for that information (and any follow-up information required by the Council thereafter within two (2) Working Days following receipt of the Council’s follow-up request); and
      3. provide all necessary assistance as reasonably requested by 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 EIR.
   7. In the event that the Council or the Provider receiving a request for information pursuant to Clause 23.6 reasonably believes that any information required to be disclosed by the Council is exempt from the provisions of the FOIA the Provider may notify the Council accordingly, specifying the reasons for the belief that the information is exempt, such notification to be given within two (2) Working Days of the date on which the Request for information is received.
   8. In the event that the Provider notifies the Council in accordance with Clause 23.7 the Council shall acting in good faith consider the reasons given by the Provider and following such consideration shall either:
      1. withdraw its request in the event that it agrees the information is exempt; or
      2. confirm its request in which case the Provider shall provide the information so requested within such period as may reasonably be specified by the Council.
   9. Subject to the provisions of Clause 24 the Council shall have the discretion to disclose any information which is the subject of this Contract to any person who makes a request under the FOIA and/or EIR and which, in the opinion of the Council, it has to disclose to discharge its responsibilities under the FOIA and/or EIR.
   10. When exercising its right under Clause 23.9, the Council shall consult the Provider and may take account of any reasonable suggestions made by the Provider, however the final decision as to whether any information shall be withheld or disclosed shall lie with the Council.
2. CONFIDENTIALITY
   1. The Parties to this Contract each agree to keep confidential all information that ought to be considered as confidential that is shared between them (however it is conveyed or on whatever media it is stored) in relation to the Services and any Service Users.
   2. Each Party:
      1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
      2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
   3. The Provider shall ensure that in the event its Staff are in receipt of any of the Council’s Confidential Information, such Staff are under the same legal obligations and undertakings in respect of such Confidential Information as those imposed on the Provider under this Clause.
   4. The Provider and/or its Staff shall not use any Confidential Information it receives from the Council otherwise than in providing the Services in accordance with this Contract.
   5. The foregoing restriction set out in Clause 24.2 relating to Confidential Information shall not apply to:
      1. information which at the time of disclosure is generally available to the public other than by breach of this Clause 24 by the Council and/or Provider;
      2. information which is in possession of the disclosing party (without restrictions) before the date on which the disclosing party received that information as a result of or in connection with this Contract;
      3. information which is required to be disclosed by Law and/or compliance with a Court order; and
      4. information which is reasonably required by any person engaged in the performance of their obligations in relation to the Contract for the performance of those obligations.
   6. The Council shall not disclose information, which has been forwarded to it by the Provider and designated by the Provider as confidential, including, but not limited to, technical or trade secrets.
   7. Clause 24.6is without prejudice to -:

24.7.1 any other provision inthe Procurement Act 2023 and the Procurement Regulations 2024;;

26.7.2 the purpose of the examination and certification of the Council’s accounts;

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

26.7.4 any government department or any other contracting authority(as defined in theProcurement Act 2023)). All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is Confidential Information and is not to be disclosed to a third party which is not part of any government department or any contracting authority;

24.7.5 the Council complying with its legal responsibilities to allow the re-use of public sector information under the Re-Use of Public Sector Information Regulations 2005; and

24.7.6 any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Contract provided that in disclosing information the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

* 1. The Provider shall take all necessary steps to enable the Council to comply with its obligations under the Re-Use of Public Sector Information Regulations 2005 and at the Provider’s own expense.

1. DATA PROTECTION

25.1 The Parties shall comply with their obligations under Data Protection Legislation at all times and in particular as set out below and having due regard to the information in Schedule 14.

**Information Governance – General Responsibilities**

25.2 The Service Provider acknowledges that it will comply with Data Protection Legislation which includes UK GDPR and the DPA.

25.3 For the purposes of this clause, the terms "Controller", "Processor", "Data Subject", "Personal Data", "Process" and "Processing” shall have the meaning prescribed under the DPA and the UK GDPR.

25.4 The Parties also acknowledge their respective obligations arising under the DPA and UK GDPR and must assist each other as necessary to enable each other to comply with these obligations.

25.5 The Service Provider undertakes to:

25.5.1 treat as confidential all Personal Data which may be derived from or be obtained in the course of the Services or which may come into the possession of the Service Provider or a Staff member, servant or agent or Sub-Contractor of the Service Provider as a result or in connection with the Services;

25.5.2 provide all necessary precautions to ensure that all such information is treated as confidential by the Service Provider, its Staff members, servants, agents or Sub-Contractors;

25.5.3 ensure that it, its Staff members, servants, agents and Sub-Contractors are aware of the provisions of the DPA and UK GDPR and that any personal information obtained in the course of the performance of this Contract shall not be disclosed or used in any unlawful manner;

25.5.4 indemnify the Commissioners against any loss arising under the DPA and UK GDPR caused by any action, authorised or unauthorised, taken by the Service Provider, its Staff members, servants, agents or Sub-Contractors; and

25.5.5 have in place adequate mechanisms to ensure that Sub-Contractors, agents and subsidiaries to whom personal information is disclosed comply with their obligations under this Contract to keep Personal Data and information secure and confidential in accordance with Data Protection Legislation.

F. ADDITIONAL STATUTORY OBLIGATIONS AND REGULATIONS

1. BRIBERY, CORRUPTION AND FRAUD
   1. The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
   2. The Provider shall take all reasonable steps to prevent any fraudulent activity (including but not limited to the submission of inaccurate, incomplete, misleading or falsified management information) by the Staff, the Provider (including its shareholders, members and directors) and/or any of the Provider’s Sub-Contractors or suppliers, and including in connection with the receipt of monies from the Council.
   3. The Provider shall not, and shall procure that its Staff shall not, in connection with this Contract commit a Prohibited Act as defined in Clause 26.4 below.
   4. The following constitute a Prohibited Act:

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

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

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

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

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

26.4.3 committing any offence:

26.4.3.1 under the Bribery Act;

26.4.3.2 under legislation creating offences concerning fraudulent acts;

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

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

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

* 1. The Provider shall have an anti-bribery policy.

* 1. If any breach of this [Clause](http://uk.practicallaw.com/9-506-3728?q=bribery%20act#a754740#a754740) 26 is suspected or known, the Provider must notify the Council immediately.

1. EQUALITY

* 1. The Provider shall comply with Equalities Legislation in its performance of the Services.
  2. The Provider shall:
     1. not discriminate against any person or for any reason within the meaning and scope of Equalities Legislation;

* + 1. comply with any official guidance and codes of practice in relation to promoting equality in employment and the provision of services;
    2. have an equal opportunities policy approved by the Council or shall have adopted the Council’s own equal opportunities policy and procedures as may be amended from time to time and notified to the Provider;
    3. take all reasonable steps to secure the observance of this Clause 27by its Staff employed in connection with the Contract; and
    4. provide such information as the Council may reasonably require for the purpose of assessing the Provider’s continued compliance with thisClause 27 and to assist in the Council’s reporting obligations in respect of equal opportunities.
  1. If a Court, tribunal or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) shall make a serious finding of unlawful discrimination against the Provider in connection with similar services to the Services performed in the United Kingdom such that the Council would acting reasonably find it difficult to continue in contract with the Provider without a real and significant risk to its reputation, the Council shall:
     1. have a right to terminate the Contract pursuant to Clause 37; or
     2. shall be entitled to require all reasonable steps from the Provider to mitigate such risks and ensure that any repetition of the circumstances leading to the finding does not occur.

1. HEALTH AND SAFETY
   1. The Provider shall at all times comply with the Health and Safety at Work etc Act 1974 and all other Law relating to the health and safety of Staff and others who may be affected by the Provider’s acts or omissions in providing the Services under this Contract.
   2. The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work etc. Act 1974 and all relevant Law relating to health and safety and provisions within this Clause 28.
   3. The Provider shall notify the Council in writing if any method or practice set out in any method statement within Schedule 5 (Tender Response Document) shall be or shall become an unsafe method of practice and shall propose and implement such steps as are necessary to improve or rectify such unsafe methods of practice as soon as possible.
2. WHISTLEBLOWING
   1. The Provider confirms that the Provider’ Authorised Representative is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 (“PID Act”) and declares that any of its Staff making a protected disclosure (as defined by PID Act) shall not be subjected to any detriment and the Staff will be made aware of this provision. The Provider further declares that any provision in any contract purporting to preclude a member of its Staff from making a protected disclosure is void.
   2. The Provider shall review its whistleblowing policy and procedure on an annual basis and discuss and review with the Contract Manager on request and shall reflect in its own policy the Council’s Whistleblowing Procedure and Guidance which can be found: [Whistleblowing policy - Norfolk County Council](https://www.norfolk.gov.uk/whistleblowingpolicy).
3. ADDITIONAL SPECIFIC STATUTORY OBLIGATIONS

**Human Rights Act 1998**

* 1. In the performance of the Services the Provider shall comply with the Human Rights Act 1998 as if it was a “Public Authority” within the meaning of the Human Rights Act 1998 and where necessary, comply with any modifications to this Contract to enable the Parties to comply with such obligations.

**Modern Slavery Act 2015**

* 1. The Provider undertakes, warrants and represents that:

30.2.1 neither the Provider nor any of its Staff, agents or Sub-Contractors has:

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

30.2.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

30.2.1.3 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

30.2.2 it shall comply with the Modern Slavery Act 2015 at all times;

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

30.2.4 it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it or any of its Staff, agents or Sub-Contractors have breached or potentially breached any of Provider’s obligations under this Clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider’s obligations.

* 1. Any breach of clause 30.2 by the Provider shall be deemed a material breach of the Contract and shall entitle the Council to terminate the Contract in accordance with Clause 37.2.2.

**Mental Capacity Act and Deprivation of Liberty Safeguards**

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

30.4.1 the Provider, including all Staff, shall comply with the provisions set out in the MCA when delivering Services;

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

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

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

30.5 In relation to the Deprivation of Liberty Safeguards:

30.5.1 the Provider shall have regard to the MCA Code of Practice including the supplementary DoL Safeguards Code of Practice in its role as a Managing Authority;

30.5.2 the Provider shall have a clear written policy approved by the Council and reviewed from time to time on its approach to the DoL, which shall follow national guidelines and includes but is not limited to the following:

30.5.2.1 a clear procedure for the recording of information;

30.5.2.2 the process for applying for an Authorisation to the Council;

30.5.2.3 the process once a Authorisation request has been made; and

30.5.2.4 the process once an Authorisation has been granted for review and ensuring compliance with any condition attached to the Authorisation.

30.5.3 the Provider shall appoint a lead contact to act on behalf of the Provider for all purposes connected with the MCA and DoL. The Provider shall notify the Council of the lead contact details prior to the Commencement Date;

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

30.5.5 the Provider shall give maximum possible notice to the Council before changing its lead contact.

G. INSURANCE AND INDEMNITY

1. INSURANCE
   1. Without prejudice to the general indemnity given at Clause 32 and without thereby limiting its responsibilities under this Clause 31the Provider shall take out and maintain throughout the Contract Period as a minimum the following insurance cover with a reputable insurance company:

**Public Liability Insurance**

* + 1. Public liability insurance of a minimum of five million pounds (£5,000,000) in respect of each and every claim; and

**Employers Liability Insurance**

* + 1. The Provider shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

**Professional Indemnity Insurance**

31.1.3. Professional indemnity insurance of a minimum of two million pounds (£2,000,000) in respect of each and every claim and which insurance shall continue in place throughout the Contract Period and for a period of twelve (12) years from the final date on which the Services are provided under this Contract.

* 1. In the event that such insurance cover required by this Clause 31 ceases to be available to the Provider at all or on commercially reasonable rates, the Provider shall notify the Council immediately and the Parties shall acting reasonably consider alternative arrangements. In the event that there are no alternative arrangements that are acceptable to the Council, the Council shall be entitled to terminate the Contract under Clause 37.
  2. The Provider shall supply to the Council at the Commencement Date forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming that the Provider’s insurance policies comply with each of the insurance requirements set out in Clauses 31.1.
  3. Where this is possible for the type of insurance cover, the insurance policies shall contain an indemnity to principal clause in favour of the Council.
  4. If the Provider fails to comply with the requirements of this Clause 31, then without prejudice to the Council’s other rights under this Contract in respect of such breach, the Council shall be entitled to obtain equivalent insurance cover for the Services on behalf of the Provider and shall be entitled to recover from the Provider as a debt those reasonable costs of obtaining and maintaining such cover.

1. LIABILITY AND INDEMNITY
   1. Neither Party shall exclude or limit its own liability for:-
      1. death or personal injury caused by its negligence, or that of its own personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors);
      2. acts of fraud or fraudulent misrepresentation by it or its personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub- contractors);
      3. breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
      4. any other matter where such limit or exclusion is not permitted under Legislation.
   2. The Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its employees and agents against all liabilities, demands, proceedings, actions, damages, costs (including legal costs), losses, fines, monetary penalty notices, claims, charges, expenses and any other liabilities whatsoever in any way arising out of or in connection with the Services and/or this Contract and including but not limited to:
      1. any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider;
      2. the Provider's failure to provide all or any part of the Services in accordance with the Contract or at all;
      3. any breach by the Provider of any of the provisions of the Contract;
      4. the use or occupation by the Provider of any of the Council’s Premises;
      5. the use by the Provider of the Council’s Equipment; and
      6. any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Provider.
   3. The liability set out in Clause 32.2 shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services so far as the management of, or instructions issued to, such third parties is the responsibility of the Provider.
   4. Subject to Clause 32.1, the Council’s liability under this Contract shall be limited to an aggregate annual sum of five million pounds (£5,000,000.00).The Council’s liability for any indirect or consequential losses shall, subject to Clause 32.1, be excluded.
   5. Subject to clause 32.1 and 32.6, the Provider’s liability in respect of claims arising out of or in connection with this Contract or any collateral contract, or under tort (including negligence) or otherwise shall be limited to the aggregate sum of five million pounds (£5,000,000.00).
   6. In the event of a breach of Clause 25 (Data Protection), the Provider’s indemnity shall be limited to five million pounds (£5,000,000.00) for each and every claim arising from or in connection with such data breach.

H. REMEDIES FOR POOR PERFORMANCE AND TERMINATION

1. FORCE MAJEURE
   1. No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and for that reason it is prevented from carrying out all or a material part of its obligations under this Contract by that Force Majeure Event.
   2. On the occurrence of a Force Majeure Event, the Party affectedshall notify the other Party within twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
   3. Within forty-eight (48) hours of the Force Majeure Event, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
   4. If the Force Majeure continues for more than twenty one (21) days the Council shall be entitled to terminate this Contract under Clause 37.
   5. This Clause 33 does not affect the Council's other rights to terminate this Contract set out in Clause37.
2. BUSINESS CONTINUITY
   1. The Provider shall provide no later than sixty (60) Working Days after the Commencement Date a Business Continuity Plan capable of acceptance by the Council which shall ensure that the Provider can restore or regenerate full business activity in the event of an internal or external threat within a reasonable period of time as specified by the Council.
   2. The Business Continuity Plan shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of a major failure of the Services or any part thereof, such content shall be agreed and / or determined by the Contract Manager as appropriate.
   3. The Provider shall review and assess the Business Continuity Plan, which shall include the identification and testing of the critical elements of the Business Continuity Plan, every twelve (12) months and produce a report to the Council within ten (10) Working Days of the success or failure thereof. If the Council is not at that time satisfied with the Business Continuity Plan provided by the Provider, the Provider shall be required to take all reasonable steps to improve the Business Continuity Plan to the Council’s satisfaction.
   4. Any costs incurred in the preparation and implementation of the Business Continuity Plan shall be the responsibility of the Provider.
3. COMPLAINTS
   1. The Provider shall ensure that it has a complaints procedure in place from the Commencement Date in respect of complaints about the Services, which is in accordance with the Ombudsman guidance on a complaints system, which shall be approved by the Council from time to time.
   2. The Provider shall notify the Contract Manager within ten (10) Working Days (or sooner if the urgency or significance of the complaint justifies it) if it receives any complaints in relation to the Services with details of how the Provider proposes to resolve the complaint. If the complaint is not resolved to the satisfaction of the Contract Manager within the time specified by the Contract Manager, the Contract Manager may take action in accordance with Clause 36.
4. DEFAULTS AND REMEDIES

**Remedies Available to the Provider:**

**Interest**

* 1. In the event that any undisputed invoice correctly rendered by the Provider remains unpaid by the Councilafter thirty (30) days the Provider shall notify the Councilin writing giving the Councilfifteen (15) further calendar days to pay such an invoice. If the invoice remains unpaid, the Provider shall be entitled to charge interest from the date on which the fifteen (15) day period expired at a rate of two per cent (2%) above the base lending rate published by the Bank of England. The Parties agree that this Clause constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998.

**Relief from Liability**

* 1. The Provider shall not be liable to the Councilfor a Performance Default to the extent that it is directly caused by a breach of contract by the Councilor Fellow Provider provided that the Provider has notified the Councilin writing as soon as it has come to the Provider's attention that such an event has or will occur.

**Termination by Provider**

* 1. Without prejudice to the Provider's rights pursuant to this Clause 36, if the Councilcommits a repudiatory breach of contract, the Provider shall be entitled to terminate the Contract by notice in writing provided it first notifies the Councilin writing of the breach of contract, stating its intention to issue a termination notice and giving the Councila period to remedy the breach, such period being reasonable in the circumstances and, in any event not less than twenty(20) Working Days or such other longer period as may be reasonable in the circumstances having regard to the nature and effect of the breach. If the Councilremedies the breach within such period the Provider shall not be entitled to accept the repudiation and/or terminate the Contract.

Remedies available to the Council:

* 1. For the avoidance of any doubt, the following remedies set out in Clause 36.5 through 36.16 shall be without prejudice to the other rights and remedies of the Council.

**Performance Defaults**

* 1. In the event of a Performance Default the Councilshall issue a Default Notice to the Provider which shall state on its face whether, in the reasonable opinion of the Contract Manager, the Performance Default is either a Critical Performance Default or Non-Critical Performance Default. For the avoidance of doubt, a single Default Notice covering more than one Performance Default may be issued validly under this Cause 36.5 and further a PAMMS Assessment finding of “poor” for the Provider is a Critical Performance Default and a finding of “requires improvement” is a Non-Critical Performance Default and this Clause 36 shall be applied accordingly.
  2. If the Provider disputes whether a Performance Default is a Critical Performance Default, the matter shall be referred to the Dispute Resolution Procedure and if the dispute remains unresolved, to the Courts.

**Critical Performance Defaults**

* 1. In the event that a Default Notice states that a Performance Default is a Critical Performance Default, it shall also state how and by when the Provider, at its own expense, shall remedy, make good or mitigate the Performance Default. Such action and time period shall be fair, reasonable and commensurate with the nature of the Critical Performance Default and the effect that such Critical Performance Default had or continues to have on the provision of the Services and the services provided by Fellow Providers. For the avoidance of doubt in the event that a Provider receives an overall rating of ‘poor’ following a PAMMS assessment the report published in the Provider Portal shall be considered to be a Default Notice as issued by the Council under Clause 36.5.
  2. On receipt of a Default Notice stating that the Performance Default is a Critical Performance Default, or following a PAMMS assessment where the Provider receives an overall rating of ‘poor’ the Provider shall take the action required by the Default Notice / PAMMS report at its own cost and expense within the time period set out in the Default Notice and/or the PAMMS report and as agreed in any subsequent Action Plan. The Provider shall, in addition, attend a meeting with the Contract Manager to discuss the Performance Default and the Provider shall give an assurance in writing to the Contract Manager.
  3. If the Provider considers that the time and/or measures stated in the Default Notice to remedy, make good or mitigate a Critical Performance Default are unreasonable or impossible to comply with, the Provider shall notify the Contract Manager within twenty-four (24) hours of receipt of the Default Notice and the Parties shall attend a meeting at a chief officer and director level to discuss the matter and to agree a time period in which and measures by which the Critical Performance Default shall be remedied, made good or mitigated. Thereafter, if unresolved, the matter shall be referred to the Dispute Resolution Procedure that the Critical Performance Default shall be remedied, made good or mitigated within the time scale set out in the Default Notice.
  4. If the Provider fails to remedy a Critical Performance Default within the time period set out in the Default Notice (or subsequently agreed or determined), or in the case of a PAMMS assessment and poor rating fails to submit a sufficiently robust Action Plan via the Provider Portal within ten (10) working days then the Council may serve a Warning Notice in accordance with Clause 36.14 below.

**Non-Critical Performance Defaults**

* 1. If a non-critical default has been identified the Provider will follow one of the two processes as set out below:

**Non-Critical Defaults identified via a PAMMS Assessment**

* + 1. Following a PAMMS assessment where a Provider is rated ‘requires improvement’, the Provider shall prepare a plan (an “Action Plan”) using the PAMMS Provider Portal, and in accordance with 36.11.2, setting out the steps which the Provider shall take to ensure that each area identified within the PAMMS report as either requires improvement and / or poor (“Performance Default”) is remedied, and does not occur again. The Provider shall set out the reasonable timescale within which the Action Plan shall be implemented identifying who shall be responsible for each of the action(s). The Provider shall prepare and submit the Action Plan via the PAMMS Portal to the Council within ten (10) Working Days of the report being published on the Provider’s Portal, or such other time limit as specified by the Council.
    2. The Action Plan for both Critical and Non-Critical Performance Defaults identified following a PAMMS assessment shall be submitted to the Contract Manager for his approval via PAMMS. The Contract Manager shall be entitled to specify and make amendments to the Action Plan which the Provider shall incorporate. If the amendments required are significant, then the Provider shall pay to the Council the reasonable costs of preparation of any such amendments made by the Council or the costs of preparation of the Action Plan itself or any parts of it in the event that the Action Plan is not submitted (or only submitted partially) by the Provider within the timescale specified by the Council. The Provider shall implement the approved Action Plan and performance by the Provider will be monitored and measured in accordance with the Action Plan by both parties via PAMMS.

**Or;**

* 1. **Any other non-critical Performance Default:**
     1. If a Default Notice states that a Performance Default is a Non-Critical Performance Default (‘Non-Critical Default Notice’), the Provider shall, if requested to do so, prepare a plan (an “Action Plan”) setting out the steps which the Provider shall take to ensure that the Performance Default is remedied, and does not occur again, and the reasonable timescale within which the Action Plan shall be implemented. The Provider shall prepare and submit the Action Plan to the Council within ten (10) Working Days, or such other time limit as specified by the Council, of receipt of the Default Notice.
     2. The Action Plan for Critical Performance Defaults and Non-Critical Performance Defaults shall be submitted to the Contract Manager for his approval which shall not be unreasonably withheld or delayed. The Contract Manager shall be entitled to specify amendments to the Action Plan which the Provider shall incorporate. The Provider shall pay to the Council the costs of preparation of any such amendments made by the Council or the costs of preparation of the Action Plan itself or any parts of it in the event that the Action Plan is not submitted (or only submitted partially) by the Provider within the timescale specified by the Council. The Provider shall implement the approved Action Plan and performance by the Provider will be monitored and measured in accordance with the Action Plan by both parties.
  2. Failure to submit or comply with an Action Plan shall constitute a Critical Performance Default for the purposes of this Clause 36. The only exception to this is in respect of PAMMS Assessments which identifies certain non-compliances by a provider with an Action Plan as a Non-Critical Performance Default. In the event of any doubt, inconsistency or conflict then the Council (acting reasonably) shall at its absolute discretion have the final say in respect of whether any non-compliance by the Provider with an Action Plan shall constitute a Critical Performance Default or a Non-Critical Performance Default.

**Escalation**

* 1. If:
     1. the Provider fails to remedy a Non-Critical Performance Default in accordance with an Action Plan;
     2. the Provider fails to remedy a Critical Performance Default in accordance with the Default Notice (‘Critical Default Notice’) or as subsequently agreed or determined;
     3. any Critical Performance Default having been remedied, occurs again; or
     4. two (2) or more Critical Default Notices; three (3) Non-Critical Default Notices or one (1) Critical Default Notice and four (4) Non-Critical Default Notices (in each case not necessarily relating to the same breach or failure) have been issued to the Provider in any continuous [ix (6) month period;

then the Contract Manager shall be entitled to serve a warning notice (a “Warning Notice”) on the Provider. The Warning Notice shall state on its face that it is a Warning Notice and shall set out the measures which the Contract Manager requires the Provider to take to ensure that the Performance Default(s) are remedied, do not occur again and the time scales within which the Provider is to effect such measures. The Provider shall comply with the terms of the Warning Notice.

* 1. In the event that the Contract Manager serves more than one (1) Warning Notices within any continuous twelve (12) month period or the Provider fails to remedy a Warning Notice within the specified timescales, the Councilshall be entitled to terminate the Contract in whole or in part in accordance with the provisions of Clause 37 (“Termination”).

**Other Remedies**

* 1. In addition to the matters set out above, if the Provider commits a Performance Default (whether a Critical Performance Default or Non-Critical Performance Default) the Councilshall be entitled, without prejudice to any of its rights or remedies whether in contract, tort or under statute or otherwise, to take all or any of the following measures:
     1. withhold any further payments or instalments of the Price until the Provider has remedied, or mitigated the Performance Default as stated in a Default Notice or Warning Notice;
     2. require the Provider to suspend performing the Services (whether in full or in part) without compensation until the Provider has remedied or mitigated the Performance Default as stated in a Default Notice or Warning Notice;
     3. stop entering into any new Individual Placements for Service Users with the Provider until satisfactory resolution of the Performance Default in accordance with this Clause 36;
     4. terminate existing Individual Placements of Service Users with the Provider either permanently or temporarily until satisfactory resolution of the Performance Default in accordance with this Clause 36 where, in the sole opinion of the Council, it is most appropriate for the care of the Service User to do so;
     5. deduct from any future payment to the Provider or from any future instalment of the Price or recover as a debt due any reasonable, justifiable and demonstrable losses, costs and expenses of the Councilor any Fellow Provider suffered directly as a result of the Provider's Performance Default together with an administration charge of ten per cent (10%) of such sum or sums. If there is any dispute between the Counciland the Provider as to the amount of such deduction, the matter shall be referred to the Dispute Resolution Procedure; and
     6. remedy the Performance Default itself or engage a third party to do so and to recover from the Provider by way of deduction from the Price or otherwise the reasonable cost that the Councilincurs in so doing.

**Additional Critical Performance Defaults**

* 1. Without prejudice to any other right the Council may have to terminate this Contract and/or to any other rights or remedies the Council may have, the Council may serve a Default Notice stating a Critical Performance Default on the Provider in the following circumstances:
     1. the Council considers that the Provider’s ability to maintain provision of the Services to a satisfactory standard to its existing Service Users;
     2. The Council is instigating its local safeguarding adults from abuse procedure;
     3. If there are unsatisfactory reports from statutory and other relevant agencies (including but not limited to the Registration Authority, Environmental Health, Fire Authority and the Authority’s Procurement, Quality Assurance or Commissioning Units)

1. TERMINATION
   1. The Council may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Contract in whole or in part if any one of the events set out in Clause 37.2occurs.
   2. The events are:
      1. if the Provider commits a Prohibited Act or otherwise breaches Clause 26;
      2. if an express right to terminate has arisen within Section F (Clauses 26 to 30);

* + 1. if an express right to terminate has arisen under Clause 36;
    2. if the Provider:
       1. ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services;
       2. undergoes a Change in Control;
       3. suffers one or more of the following:

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

insolvency or winding up within the meaning of relevant Legislation;

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

the suspension of any publicly offered equities;

the freezing of substantial assets; or

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

* + - 1. has a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of the Provider’s affairs approved in accordance with the Insolvency Act 1986;
      2. has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
      3. commits a serious and material breach of contract;
      4. fulfils those conditions under the Performance Mechanism which entitle the Council to terminate the Contract;
      5. commits a serious breach of Clauses 8 (including the commission of any act by Staff contrary to Clause 8.9), 24, 25 or 28;
      6. loses any statutory licence or certification which is required for the performance of the Services or as otherwise required by the Contract;
      7. commits an act or omission which means it would now be excluded from the procurement process for this Contract on a mandatory exclusion ground as specified in Regulation 57(1) of the Public Contracts Regulations 2015;
      8. the majority of shares carrying a right to vote in the Provider or its holding or parent company are acquired by a person who is not at the Commencement Date a majority shareholder and the Council has reasonable concerns that it may suffer damage to its reputation as a result of any contractual association; and
      9. fails to comply with the safeguarding provisions of Clause 9;
      10. is unable to provide alternative arrangements that are acceptable to the Council under Clause 31.2;
      11. fails on repeated occasions to work with the Council in relation to the PAMMS Assessment or other performance management process;
    1. the Council has reasonable grounds to consider the Provider or Sub-contractor working on this Contract to fall within the scope of IR35 off-payroll working through an intermediary rules;
    2. the Force Majeure continues for more than twenty (20) Working Days
    3. (without prejudice to Clause 37.2.4.9.) if any of the Provider’s necessary registrations are cancelled by the CQC or other Regulatory Body as applicable.
  1. If the Contract is determined in part, the Price shall be adjusted to reflect fairly the Services which remain and if the Parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt the Provider shall not be entitled to recover through the adjusted Price any profit that, but for the termination, would have accrued to the Provider in respect of the terminated Services.
  2. The rights of the Councilunder this Clause 37 and Clause 38 below are in addition and without prejudice to any right that either Party may have for prior breach and to any right the Councilmay have against the Provider for the breach, default, negligence or event leading to the termination.
  3. The remedies of the Councilunder this Clause (and Clause 38 below) may be exercised successively in respect of any one or more defaults by the Provider.

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

* 1. In the event that this Contract is subject to a bona fide and substantive legal challenge of any nature relating to the process by which the Provider was awarded this Contract (a “Legal Challenge”), then the Parties shall co-operate in good faith to determine the best way to mitigate the impact of the Legal Challenge, which may include varying some or all of the Contract and/or terminating the Contract in whole or in part.
  2. In the event that this Contract is declared ineffective by a court of competent jurisdiction:
     1. this Contract shall be terminated and the provisions of Clause 39 shall apply; and

* + 1. the Council shall pay to the Provider all sums lawfully due to the Provider in consideration of its proper performance of the Services up until the date and time of the declaration of ineffectiveness. The Council shall pay such sums within thirty (30) days of the receipt by it of a correct invoice for the same from the Provider.
  1. The sums paid to the Provider by the Council under Clause 37.7.2 above shall be in full and final settlement of the Council’s liability for any loss and/or expense incurred by the Provider as a result of the Court declaring this Contract ineffective. The Council shall have no further liability to the Provider, including without limitation, in relation to any loss of profit of the Provider.

* 1. The Council shall also be entitled to terminate this Contract in the event:
     1. this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with the Procurement Act 2023 and/or the Public Contract Regulations 2024; or; or

in which case the provisions of Clause 37.7.2 and Clause 37.8 shall apply.

**37.10 Break Clause**

**A;**

* 1. In addition to its rights of termination under the Contract, the Council shall be entitled to terminate this Contract in whole or in part by giving to the Provider not less than [three (3) months] advance notice to that effect in which case the provisions of Clause 38 only shall apply. No further compensation or remedy shall be available to the Provider.

**Individual Placements**

* 1. An Individual Placement can be terminated:
     1. Upon expiry of this Contract, or in anticipation thereof, the Council shall notify the Provider of the impact of this upon any Individual Placement(s) in place at that time and the Provider shall provide the Council with all information which the Council shall reasonably require in order for it to make decisions. The Council shall decide, and the Provider shall comply with such a decision, as to whether the Provider shall continue to provide Services to the Service User in accordance with the Individual Placement(s) or whether the Individual Placement is varied or terminated in accordance with the provisions of this Contract or the Individual Placement.
     2. Upon written notice by the Council to terminate this Contract and/or any Individual Placement, the Provider shall continue to provide the Services in accordance with the terms of the Contract and/or any Individual Placement for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the Council Data in respect of that Service User to be successfully migrated to the Council's System or the systems of a third party. The Provider shall give all such assistance as is reasonably required by the Council and third party to ensure a smooth, successful and seamless transition of the Services and conversion and migration of the Council Data. Insofar as such assistance is required after the Contract has expired, the Council shall pay the Provider's reasonable costs and expenses (the Council shall not pay should the Contract have been terminated in accordance with Clause 37).

1. CONSEQUENCES OF TERMINATION
   1. If the Contract expires or is terminated in accordance with Clause 37, the provisions of this Clause 38 and the Exit Plan shall apply.
   2. Notwithstanding the provisions of the Exit Plan, upon termination or expiry:
      1. the Provider shall forthwith cease to provide the Services (subject to clause 4.16);

* + 1. the Provider shall submit to the Council within five (5) Working Days of terminationor expiryat the Provider's own cost a comprehensive status report which shall be current as at the date of submission relating to the Services;
    2. the Provider shall cease to use the Council’s Data and hand over to the Council a complete and uncorrupted version of all Council Data and all records, information, documents howsoever held and including any media used to store such data including, without limitation, correspondence with Staff, the Council’s service departments, any users of the Services and any other relevant third party and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Council (in which event the Council shall reimburse to the Provider the Council’s reasonable data conversion expenses) whether such Council Data is on hard copy or on a disk or on any computer systems;
    3. the Provider shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with the specific instructions issued by the Council; for the avoidance of doubt, Personal Data shall include but not be limited to that data which is Personal Data and for which the Council retains its Data Controller responsibilities;
    4. the Provider shall cease to use and return any Council Equipment (and in the event the Provider fails to comply, the Council may recover possession thereof and the Provider grants a licence to the Council and its authorised representatives to enter (for the purposes of such recovery) any of the Provider’s Premises where any such items may be held);
    5. the Provider shall vacate any Council’s Premises;
    6. the Provider shall allow the Counciland any new provider, reasonable right of access to the Provider's and Sub-Contractor's premises, systems, procedures and Staff, where appropriate; and
    7. the Provider shall deliver to the Councilupon request all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted Sub-Contractors, including any Council Data and in default of compliance with this provision, the Councilmay recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter for the purpose of any such recovery any premises of the Provider or its permitted Sub-Contractors where any such documents, information or materials may be held. For the avoidance of doubt, this material identified by this Clause shall be in an identifiable and searchable format (and include metadata) and in such form and medium as the Council may reasonably request;
    8. the Councilshall immediately cease to be under any obligation to make further payment to the Provider until the costs, loss and/or damage to the Councilresulting from or arising out of the termination shall have been calculated;
    9. the Council shall have the option to purchase at book value any of the assets or equipment used by the Provider solely in performance of its obligations under this Contract. Where the Council wishes to exercise this option it shall notify the Provider in writing accordingly not less than twenty (20) Working Days following the date on which this Contract expires or is terminated;
    10. the Provider shall promptly pay in full the cost of providing the Service or having the Service provided or any part thereof as would have been provided by the Provider during the remainder of the Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to the Provider for providing the Services if the termination is due to an act, omission, default, negligence or breach of the Provider or any of its Staff;
    11. the Provider shall continue to make the Provider's System available to the Council for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the Council Data to be successfully migrated to the Council's System or the systems of one or more third parties. The Provider shall give all such assistance as is reasonably required by the Council and its Service Users to ensure a smooth, successful and seamless transition of the Services and Service Users and conversion and migration of the Council Data. Insofar as such assistance is required after the Contract has expired, the Councilshall pay the Provider's reasonable costs and expenses (the Council shall not pay should the Contract have been terminated in accordance with Clause 37). For the avoidance of doubt, the Provider's compliance with the provisions of this Clause shall include, inter alia, assistance by the Staff, access to the Provider's System and the provision of information and documentation;
    12. if the Contract expires or is terminated early for any reason, the Provider shall immediately repay to the Council the full amount pre-paid by the Council in respect of the unexpired portion of the Contract;
    13. at the Council’s written request, the Provider shall transfer the Service User records to the Replacement Provider(s) and/or one or more third parties as determined by the Council; such transfer may be in whole or in part, howsoever determined by the Council.
    14. the Council shall be entitled to give written notice to the Provider in accordance with its right under clause 4.16 and the Provider shall comply with such notice.
  1. If the Provider is unable or fails to provide the Services or any part thereof in accordance with this Contract, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due to the Provider under the Contract or shall be recoverable from the Provider by the Council as a debt. The Council's right under this Clause 38.3 shall be without prejudice to any other rights or remedies which it may possess.
  2. The Council shall be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination of the Contract, to deduct the same from any sum or sums which would but for Clause 37 have been due from the Council to the Provider under the Contract or any other contract or be entitled to recover the same from the Provider as a debt. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof when the total costs, loss and/or damage resulting or arising out of the termination of the Contract have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would but for Clause 37have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt or alternatively, the Council, subject to Clause 14, shall pay the Provider any balance due to the Provider;
  3. Expiry or earlier termination of this Contract shall not affect the continuing rights and obligations of the Parties under Clauses 1, 2, 5, 8.21, 14, 18, 20, 21, 23, 24, 25, 31, 32, 37, 38 and 39 or under any other provision of this Contract that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination.
  4. When the total costs, loss and/or damage resulting from or arising out of such termination as is referred to in this Clause 38 have been calculated and deducted so far as practicable from any sum or sums which would but for Clause 38 have been due to the Provider, any balance shown as due to the Councilshall be recoverable as a debt, or alternatively, the Council shall pay to the Provider any balance shown as due to the Provider.

1. EXIT AND HANDOVER ARRANGEMENTS
   1. On expiry or termination of this Contract the Exit Plan shall apply and the parties shall comply with the provisions of the Exit Plan. The Provider shall not charge the Council or any Replacement Providers for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this Clause 39 and the Exit Plan on expiry or earlier termination (or for complying with any other provisions in Clause 38 above upon termination or expiry).
   2. The plan for the orderly handover of the Services to the Council or its Replacement Providers following termination or expiry of this Contract shall include compliance by the Provider of the provisions specified in Clause 38.
   3. The Provider shall forthwith upon the request of the Contract Manager, supply to the Council any information reasonably specified by the Council as being necessary for the re-tendering of this Contract.
   4. On giving written notice to the Provider and after twelve (12) months of the date of the expiry or earlier termination of this Contract unless the individual is responding to a job advert the Council shall have the right:
      1. to offer any of the Staff who has previously been involved in performing the Services employment or a contract for services with the Council and the Provider agrees that if such person accepts such offer the Provider shall release such person from any contractual restriction with it which such acceptance may otherwise contravene; and
      2. to require the Provider to provide for a period of four (4) months following the date of expiry or termination such advice assistance and co-operation as the Council may reasonably require to enable the Council to provide the Services in-house or to procure their provision by a Replacement Provider.

TUPE Compliance on Termination

* 1. During the twelve (12) months prior to the expiry of the Contract or after the Council has given notice to terminate this Contract and within ten (10) Working Days of being requested to do so, the Provider shall fully and accurately disclose to the Council any and all information in relation to all persons engaged in providing the Service including:
     1. a list in electronic format of each employee employed by the Provider in the provision of the Service including each employee’s start date;
     2. a list of agency workers, agents and independent contractors engaged by the Provider in the provision of the Services;
     3. the total payroll bill (i.e. total taxable pay and allowances including employer’s contributions to pension schemes) of each employee included in the list to be provided under Clause 39.5.1; and
     4. the terms and conditions of employment of each Employee / Transferring Employee; their age and identity; the information that must be included in the employee's written statement of employment particulars under s.1 of the Employment Rights Act 1996; information on any disciplinary procedure taken in relation to the employee or grievance procedure taken by the employee within the previous two (2) years in relation to which the ACAS code of practice on disciplinary and grievance procedures applies; information on any Court or tribunal claim brought by the employee against the transferor within the previous two (2) years and any potential claim against the transferee arising out of the employee's employment with the transferor; information about any collective agreements that will have effect after the transfer in relation to the Transferring Employee.
  2. During the twelve (12) months prior to the expiry of the Contract or where notice to terminate this Contract for whatever reason has been given, the Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:
     1. vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
     2. materially increase or decrease the number of employees employed in connection with the Services;
     3. increase the remuneration of employees;
     4. assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services; or
     5. otherwise improve terms and conditions of employment of any of its employees without economic justification towards the end of the Contract Period.

I. GENERAL PROVISIONS

1. DISPUTE RESOLUTION PROCEDURE
   1. The Parties shall each use reasonable endeavours to resolve any dispute by means of prompt bona fide discussion first between the Contract Manager and the Provider’s Authorised Representative. Failure to agree a settlement within five (5) Working Days shall result in the dispute being escalated to both Parties’ managerial level appropriate to the dispute in question. In the event that such a dispute is not resolved within five (5) Working Days, thereafter it shall be escalated to each Parties’ appropriate director for resolution. The respective directors shall meet within five (5) Working Days to resolve the dispute. Failure to reach a settlement shall invoke the rest of this Clause 40.
   2. Nothing in this Clause 40 shall prevent the Parties from seeking from any Court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
   3. If the dispute cannot be resolved by the Parties pursuant to Clause 40.1 the dispute may

be referred to mediation pursuant to the procedure set out in Clause 40.5.

* 1. The performance of this Contract by the Provider shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its Staff shall comply fully with the requirements of this Contract at all times.
  2. The procedure for mediation and consequential provisions relating to mediation are as follows:
     1. a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he/she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator;
     2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
     3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
     4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be confirmed in writing and shall be binding on the Parties once it is signed by their duly authorised representatives; and
     5. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the agreement without the prior written consent of both Parties.
  3. If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
  4. Unless agreed otherwise in any mediation each Party shall bear its own costs of such mediation.

1. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999
   1. Save where indicated under any clause set out in this Contract which relates to TUPE and pensions, no term of the Contract shall be enforceable by or confer any benefit on any person other than the Parties.
2. LEGAL PROCEEDINGS
   1. If requested to do so by the Contract Manager the Provider shall provide to the Council within the timescale set by the Contract Manager any relevant information or assistance (including but not limited to documents and statements from the Provider and/or its Staff) in connection with any legal inquiry, dispute resolution or Court proceedings in which the Council may become involved or any relevant Council internal disciplinary hearing arising out of the provision of the Services or the Provider’s presence on any of the Council’s Premises and shall give evidence in such inquiries, arbitration or proceedings or hearings.

* 1. Where the Provider or any of its Staff becomes aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services it shall notify the Contract Manager immediately in writing. Such notification shall include all relevant information to enable the Contract Manager to investigate the matter fully.

1. OMBUDSMAN
   1. In the event of a complaint to the Ombudsman involving activities the subject of this Contract, the Provider shall at its own expense give to the Council and to the Ombudsman every assistance in the investigation of the complaint.
   2. Where any investigation by the Ombudsman takes place the Provider shall:
      1. provide any information requested in the timescale specified;
      2. attend any meetings as required and permit its Staff to attend;
      3. promptly allow access to an investigation of any documents deemed to be relevant to the investigation and/or the complaint;
      4. allow itself and any Staff deemed to be relevant to be interviewed;
      5. allow itself and any of its Staff to appear as witness in any ensuing proceedings; and
      6. co-operate fully and promptly in every way required by the Ombudsman during the course of that investigation.
   3. Where any financial redress, compensation or award is recommended by the Ombudsman in the course of or following any investigation, or is agreed to by the Council following a complaint to the Ombudsman, and which investigation or complaint arises directly or indirectly out of the provision of the Services or any other action or omission by the Provider and/or its Staff then the Council shall be entitled to recover the cost of that financial redress, compensation or award from the Provider.
2. AGENCY

* 1. Neither the Provider nor its Staff shall say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Council. The Provider shall not be the agent of the Council.
  2. The Provider shall make not any representations or give any warranties to third parties on behalf or in respect of the Council, or bind or hold itself out as having authority or power to bind the Council.
  3. This Contract shall not create any relationship between the Parties of partnership, employment or landlord and tenant.

1. ENTIRE AGREEMENT
   1. Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings (whether oral or written) concerning the subject matter of this Contract.
   2. Nothing in this Clause 45 is intended to exclude or limit liability for any statement, representation or warranty made fraudulently or to any provision of this Contract which was induced by fraud for which the remedies available shall be all those available under the law governing this Contract.
2. CONFLICT OF INTEREST
   1. The Provider shall take appropriate steps to ensure that neither it nor any of its Staff are placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Provider or such persons and the duties owed to the Council under the provisions of this Contract. The Provider shall disclose to the Council full particulars of any such conflict of interest which may arise and take all reasonable steps to remove any such conflict to the satisfaction of the Contract Manager.
3. LIEN OR ENCUMBRANCE
   1. The Provider shall not create, or allow any other person to create, any lien or encumbrance on any property belonging to the Council, the Council’s Equipment and/or on the Council’s Premises.
4. SEVERANCE
   1. If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.
   2. Pursuant to Clause 48.1, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which as nearly as possible validly gives effect to their intentions as expressed in this Contract.
5. WAIVER
   1. The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
   2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 50**.**
   3. A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.
6. NOTICES
   1. Except as otherwise expressly provided within this Contract, no notice from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
   2. Any notice which is to be given by either Party to the other shall be given by letter (sent by hand or signed for special delivery post); such letters shall be addressed to the other Party in the manner referred to in Clause 50.3.Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was hand delivered or posted or sooner where the Party acknowledges receipt of such letters. Notices under the Contract may not be sent or received by email.
   3. For the purposes of Clause 50.2, the address of each Party shall be as follows:
      1. The Council:

[INSERT TITLE OF POST]

[INSERT POSTAL ADDRESS FOR SERVICE]

* + 1. The Provider:

[INSERT TITLE OF POST]

[INSERT POSTAL ADDRESS FOR SERVICE]

Either Party may change its address for service by serving a notice on the other Party in accordance with this Clause 50.

1. LAW AND JURISDICTION
   1. The Parties accept the exclusive jurisdiction of the English Courts and agree that the Contract, and all non-contractual obligations and other matters arising from or connected with the Contract, are to be governed and construed according to English Law.

J. CONTRACT SPECIFIC CONDITIONS

1. PARENT COMPANY GUARANTEE
   1. Not Used
2. PERFORMANCE BOND

53.1. Not Used

1. FLUENCY DUTY
   1. The Provider shall:
      1. comply with the requirements of Part 7 of the Immigration Act 2016 (“**IA**”) as if it were a “Public Authority” within the meaning of the IA and where necessary, comply with any modifications to this Contract to enable the Parties to comply with such obligations;
      2. give all reasonable assistance to the Council necessary to enable the Council to comply with its obligations under the IA;
      3. comply with all reasonable directions given by the Council which the Council deems necessary to comply with its obligations under the IA; and
      4. not do or omit to do any act that that would put or would be likely to put the Council in breach of the IA,

in each case at all times, at the Provider’s sole expense, and in connection with the provision of the Services.

1. PREVENT DUTY
   1. The Provider shall:
      1. comply with the requirements of the Counter-Terrorism and Security Act 2015 (“**CTA**”) as if it were a “Public Authority” within the meaning of the CTA and where necessary, comply with any modifications to this Contract to enable the Parties to comply with such obligations;
      2. give all reasonable assistance to the Council necessary to enable the Council to comply with its obligations under the CTA;
      3. comply with all reasonable directions given by the Council which the Council deems necessary to comply with its obligations under the CTA; and
      4. not do or omit to do any act that that would put or would be likely to put the Council in breach of the CTA, in each case at all times, at the Provider’s sole expense, and in connection with the provision of the Services.
2. SERIOUS INCIDENTS PROTOCOL
   1. The Provider shall comply with the Serious Incidents Protocol set out in Schedule 13 at all times throughout the Contract Period.
   2. If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
   3. If the Provider gives a notification to the CQC or any other Regulatory Body under clause 54 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council within five (5) Working Days or within the timescale set out in Schedule 11.
   4. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the lessons learned from Serious Incidents, and non-Service User safety incidents that are agreed between the Provider and the Council and set out in Schedule 11.
   5. Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this clause 56 and Schedule 13.

**SCHEDULE 1**

**SPECIFICATION**

[To be inserted at Contract Award]

**SCHEDULE 2**

**PERFORMANCE MONITORING AND KEY PERFORMANCE INDICATORS**

[To be inserted at Contract Award / Agreed during mobilisation]

**SCHEDULE 3**

**THE COUNCIL'S POLICY STATEMENTS**

Not applicable

**SCHEDULE 4**

**PAYMENT SCHEDULE**

1. Subject to the Provider fulfilling its obligations under the Contract and in consideration of the Provider properly performing the Services, the Council shall pay to the Provider the Price in accordance with this Schedule 4, which shall be exhaustive of any amounts due to the Provider in respect of its provision of the Services and performance of its obligations under this Contract.
2. The Council shall pay the Charges set out below:



1. Payment for each Lot will be paid annually on the anniversary of the contract commencement date as per the table above.
2. There is potential scope for additional funding throughout the duration of this contract based on future assessments and availability of additional resources. Consequently, the contract is designed to be adaptable, allowing for modifications and enhancements in response to evolving needs and circumstances. This flexibility ensures that the programme can effectively meet its objectives and deliver optimal outcomes. The funding is likely to come from Integrated Care Partners for example the Integrated Care Board or a District Council. If funding does become available for proactive intervention work and the Council deems this contract to be a suitable fit, the Council may may increase the funding available for this contract to expand the scope of the services being delivered.

**SCHEDULE 5**

**TENDER RESPONSE DOCUMENT**

[To be inserted at Contract Award]

**SCHEDULE 6**

**COPY CONTRACT AWARD LETTER AND** **OTHER RELEVANT CORRESPONDENCE**

[To be inserted at Contract Award]

**SCHEDULE 7**

**Not Used**

**SCHEDULE 8**

**Not Used**

**SCHEDULE 9**

**Not Used**

**SCHEDULE 10**

**TUPE AND PENSIONS SCHEDULE**

**Introduction**

The Parties agree to comply with their respective obligations in accordance with this Schedule 10 together with the remainder of the Contract and:

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

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

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

For the avoidance of doubt, different Transferring Employees and Transferring Original Employees may fall into the different categories set out above depending upon their individual circumstances; notwithstanding this, the Provider shall ensure that where TUPE applies that it shall meet its statutory obligations (including the TUPE Regulations and the LGPS Regulations) as well as its contractual obligations under this Schedule 10 and the remainder of the Contract.

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

* 1. **Application of TUPE**

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

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

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

* 1. **Emoluments and Outgoings**

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

* 1. **Pensions**

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

## A.3.2. The provisions of Clauses A.3, A.4 and A.5 shall be directly enforceable by an affected employee against the Provider or any relevant sub-contractor and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Provider or sub-contractor under those Clauses in his/her own right under Section 1(1) of the Contracts Rights of Third Parties Act 1999.

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

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

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

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

* 1. **Provider Pension Scheme**

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

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

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

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

### A.7.1. maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);

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

### A.7.3. fully cooperate (and procure that the trustees of the 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 Provider or any sub-contractor in the provision of the Services on expiry or earlier termination of the Contract.

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

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

* 1. **Indemnities**

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

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

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

A.9.4. The Provider shall indemnify and hold harmless the Council from and against all losses,

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

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

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

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

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

* 1. **Sub-contractors**

A.10.1. In the event that the Provider enters into any sub-contract in connection with this

Contract, it shall impose obligations on its sub-contractor on the same terms as those

imposed on it pursuant to this Clause A.

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

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

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

**TUPE transfer from the Provider to the Provider where ex Council or public sector staff are involved**

**B.1. Application of TUPE**

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

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

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

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

**B.2. Emoluments and Outgoings**

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

**B.3. Pensions**

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

## B.3.2. The provisions of Clauses B.3, B.4 and B.5 shall be directly enforceable by an affected employee against the Provider or any relevant sub-contractor and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Provider or sub-contractor under those Clauses in his/her own right under Section 1(1) of the Contracts Rights of Third Parties Act 1999 and Clause 49 of the Contract shall be construed accordingly.

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

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

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

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

**B.5. Provider Pension Scheme**

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

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

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

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

## B.5.3. The Provider shall and shall procure that each relevant sub-contractor shall:

## B.5.3.1. maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);

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

## B.5.3.3 fully cooperate (and procure that the trustees of the 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 Provider or any sub-contractor in the provision of the Services on expiry or earlier termination of the Contract.

**B.6 Provider to inform the Council of any measures**

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

**B.7 Indemnities**

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

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

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

B.7.4. The Provider shall indemnify and hold harmless the Council from and against all

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

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

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

B.7.5.2. any employee of the Provider who has transferred to the Provider’s

employment under the TUPE Regulations brings a claim against the Provider that relates wholly or partially to his or her employment with the Provider; and/or

B.7.5.3. at the end of the Contract Period, if the Provider does not secure a further

contract with the Council.

**B.8 Sub-contractors**

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

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

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

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

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

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

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

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

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

**C.2 Emoluments and Outgoings**

C.2.1. The Provider shall be responsible for all emoluments and outgoings in respect of the

Transferring Employees and the Transferring Original Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of any Relevant Transfer.

**C.3 Indemnities**

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

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

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

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

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

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

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

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

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

## C.4.2. The provisions of Clauses C.4, and C.5 shall be directly enforceable by an affected employee against the Provider or any relevant sub-contractor and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Provider or sub-contractor under those Clauses in his/her own right under Section 1(1) of the Contracts Rights of Third Parties Act 1999 and Clause 49 of the Contract shall be construed accordingly.

**C.5 Provider Pension Scheme**

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

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

### C.5.2.1. maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);

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

### C.5.3. fully cooperate (and procure that the trustees of the 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 Provider or any sub-contractor in the provision of the Services on expiry or earlier termination of the Contract.

**C.6 Sub-contractors**

C.6.1. In the event that the Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its sub-contractor on the same terms as those imposed on it pursuant to this Clause C.

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

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

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

SCHEDULE 11

SAFEGUARDING POLICY

[Norfolk Safeguarding Adults Board (NSAB)](https://www.norfolksafeguardingadultsboard.info/)

<https://norfolklscp.org.uk/>

SCHEDULE 12

NOT USED

SCHEDULE 13

NOT USED

SCHEDULE 14

**DATA PROTECTION Specific requirements for this Contract**

**JOINT CONTROLLER SCHEDULE**

1. **ORGANISATIONS**

The Council and the Provider agree to comply with this Schedule 14, together referred to as the Parties for the purposes of this Schedule.

1. **DEFINITIONS**

Definitions for the purposes of this Schedule 14 are as follows:

**Data controller, Data processor, data subject(s), personal data, processing and appropriate technical and organisational measures**: as set out in the UK GDPR.

**Data Protection Legislation:** all privacy laws applicable to the personal data which is processed under or in connection with this Contract, including the DPA, The Data Protection (Charges and Information) Regulations 2018, the UK GDPR and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019 419) (amongst others) as implemented by the applicable English and Welsh laws, and all regulations made pursuant to and in relation to such legislation together with all codes of practice and other statutory guidance on the foregoing issued by the Information Commissioner’s Office, all as amended, updated and/or replaced from time to time

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

**Shared Personal Data**: the personal data to be shared between the Parties under clause 3.1 of this agreement pursuant to the delivery of the Services which specifies categories of personal data relevant to categories of data subjects.

1. **DATA PROTECTION**
   1. **Shared Personal Data**

This clause sets out the framework for the sharing of personal data between the Parties as joint data controllers.

3.1.1 If agreed between the Provider and the Council, the Provider shall be responsible for meeting the following obligations:

(a) to be the exclusive point of contact for Data Subjects and responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;

(b) to direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;

(c) to be solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;

(d) to be responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and

(e) it shall make available to Data Subjects the essence of this Schedule (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Provider’s privacy policy.

3.1.2 If agreed between the Council and the Provider, the Council shall be responsible for meeting the following obligations:

(a) to be the exclusive point of contact for Data Subjects and responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;

(b) to direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;

(c) to be solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;

(d) to be responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and

(e) it shall make available to Data Subjects the essence of this Schedule (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Council’s privacy policy.

* 1. **Effect of Non-Compliance with Data Protection Legislation**

Each Party shall comply with all the obligations set out in clause 3.1 and imposed on a data controller under the Data Protection Legislation, and any breach of the Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other Party, give grounds to the other Party to terminate this Agreement with immediate effect.

**3.3 Particular obligations relating to data sharing**

Each Party shall:

* + 1. ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients;
    2. give full information to any data subject whose personal data may be processed under this agreement of the nature such processing, where required to do so by the Data Protection Legislation. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
    3. process the Shared Personal Data only in accordance with Data Protection Legislation;
    4. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
    5. not process or transfer any personal data outside the European Economic Area without the prior written consent of the Data Discloser, except where such processing or transfer is in/to a territory which has adequate levels of protection (as confirmed by a UK Government decision in accordance with the Data Protection Legislation) or an arrangement is in place under Articles 46 and 47 of the UK GDPR;
    6. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients unless required by Law. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Schedule;

**Mutual assistance**

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

* + 1. subject to clause 3.1, consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data;
    2. assist 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, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
    3. notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;
    4. wherever possible use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
    5. wherever possible use compatible datasets and ensure that Shared Personal Data is recorded in the same manner;
    6. maintain complete and accurate records and information to demonstrate its compliance with this clause 3.2; and
    7. provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of this agreement and the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the Data Protection Legislation.

1. **INDEMNITY**

Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) administrative fines and losses from data subject claims and all other reasonable professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with the breach of the Data Protection Legislation or any of the terms within this Schedule 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.

1. **DATA RETENTION AND DELETION**
   1. Any Shared Personal Data must only be retained for as long as strictly necessary.Each Party shall regularly review the information held by it to ensure that retention of the Shared Personal Data is still required for the stated purpose; any information that no longer needs to be retained shall be securely deleted by the relevant Party. Any such review of the Shared Personal Data must be conducted in accordance with the relevant Party’s document retention policy, as amended from time to time. (For the avoidance of doubt, the relevant Party for the purpose of this clause shall be the Party that holds the particular Shared Personal Data.)
   2. 60 days prior to the expiry of this Agreement the Provider shall share any and all relevant Personal Data acquired from Service Users during the Term in order to assist the Council in providing the Services following the termination or expiry of this Agreement.
2. **FREEDOM OF INFORMATION (FOI) REQUESTS**

6.1 Requests covered by the Freedom of Information Act 2000 are requests or recorded information held by a public authority and ALMOs that is not personal.

6.2 If the Council receives a FOI request and the data is identified as belonging to the Council, it will be the responsibility of the lead contact for Norfolk County Council to contact the other organisation, who will take the lead as far as the request is concerned. Communication must take place speedily thus allowing the servicing of the request to take place within the statutory 20 day time period.

1. **GENERAL**
   1. No waiver of any of the provisions of this agreement shall be effective unless it is expressly stated to be a waiver and communicated by the waiving Party to the other in writing.
   2. Nothing in this agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
   3. No variation to the terms of this agreement shall be effective unless approved in writing by the Parties.
   4. This agreement shall be considered as a contract made in England and according to English law, and shall be subject to the exclusive jurisdiction of the English courts to which the Parties hereby irrevocably submit.
   5. If any provision of this agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected.
   6. Neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
2. **AGREEMENT SIGNATURES**

The Parties to this Framework Agreement accept the terms of this data sharing agreement.

**Annex to Schedule 14**

|  |  |
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|  |  |
| **Purpose of Processing** | The Proactive Intervention Offer is a commissioned offer to support the delivery of the Proactive Intervention Model. Norfolk County Council will share existing data from our LAS system with the provider so that they are able to contact the individuals and discuss and agree interventions to meet their outcomes. The provider will use their own means of tracking outcomes and Norfolk County Council will be given anonymised data for us to determine the impact of the offer. This will ensure individual outcomes are met and that we can learn from the what the offer achieves. |
| **Categories of Data Subject** | Adults, vulnerable adults |
| **Categories of Personal Data** | That necessary to enable a care and support service to be undertaken. This will include appropriate service users data- for example, forename, surname, address, data of birth, NHS number, power of attorney and next of kin, carers information, social worker information, equal opportunities monitoring details of their social and physical assessed needs and how they like to be supported. Financial information. Medical information.  This may be subject to change dependent on the awarded contract as this will determine in more detail the delivery model and what elements of personal data are required to enable this. |
| **Legal Basis for Sharing Personal Data** | This is a non statutory service that supports the delivery of the prevention agenda. |
| **Method of processing** | Will involve collecting, storing, updating and using personal data only for as long as relevant and necessary. Data is received and sent to the Commissioners and other partners via secure methods.  Details of these methods will be agreed with the awarded provider. |
| **Recipients’ use of the information** | As appropriate to deliver most effective interventions to support their outcomes. |
| **Period Information will be retained for** | For the Contract Period as identified in the contract. |
| **Location where Information will be held** | UK |
| **Destruction of Information** | As set out in data protection clause of the Contract. The Provider will be required to either; return, dispose of or destroy all Personal Data in a secure manner in accordance with the Contract. |

**SCHEDULE 15**

**DISCLOSURE AND BARRING SERVICES (DBS) RISK ASSESSMENT FORM**

Pursuant to **Clause 8.11** of the Conditions of Contract the Service Provider will complete a risk assessment form which is equivalent to or exceeds the form under this Schedule 15.

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

In relation to **Clause 8.11**, the Council’s Contract Manager will also be seeking evidence that the process specified is being complied with.

There are legal requirements on the Service Provider. The Service Provider must ensure that it is aware of its legal responsibilities, including (although this list is not exhaustive):

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

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

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

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

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

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

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

**has revealed offences**

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

**on the certificate.**

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

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

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

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

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

|  |  |  |
| --- | --- | --- |
| **No.** | **Offences declared by applicant** | **Brief circumstances behind offence** |
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| --- | --- | --- |
| **Question** | **Applicable**  (Please delete as appropriate) | **Evidence relied upon to support this decision** |
| How did the applicant regard the offence(s) / trace(s) with hindsight and what is their attitude towards the matters now? | Please explain |  |
| What would they have done/do differently now? | Please explain |  |
| Have the applicant’s circumstances changed since the offence? E.g. location, friends, partner, education? | Yes / No  Please explain |  |
| Is the applicant stating any mitigating circumstances? E.g. peer pressure, financial need or lack of judgement | Yes / No  Please explain |  |

**SECTION B – Hiring Manager Assessment**

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

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

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

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

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

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

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

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

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

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

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

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

**Useful Contacts/Links**

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

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

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

**Risk Assessment Template-**

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

**What is this assessment for?**

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

**Who completes it**

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

**Where do I keep it?**

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

**Risk Assessment**

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

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

**Manager: Date:**

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