
FORM OF CONTRACT

**[TO BE COMPLETED AND SIGNED POST-AWARD BY COUNCIL AND SUCCESSFUL
TENDERER TO FORMALISE CONTRACT]**

THIS CONTRACT ("Contract") dated [] 2022

BETWEEN THE PARTIES:

(1) Melton Borough Council of Parkside, Burton Street, Melton Mowbray, Leicestershire, LE13 1GH ("the Council").

(2) [] (a company registered in England and Wales, No. []) whose registered office is [] ("the Service Provider")

individually "a Party", together "the Parties".

INTRODUCTION:

The Council wishes to engage the Service Provider to provide certain Services, in accordance with this Contract.

IT IS AGREED THAT:

The Provider shall provide the Services set out in Schedule 1 (Services and Payment) in compliance with the Conditions of Contract set out in Schedule 3 (Conditions of Contract)

completed in accordance with Schedule 2 (Contract Particulars) and in return for the Fee set out in Schedule 1 (Services and Payment).

Where the Contract Particulars so state, the Provider's performance of the Services will be measured according to the KPIs set out in Schedule 4 (KPI Schedule) and the Service Provider shall provide the Services to meet or exceed the KPI Target set out in the KPI Schedule.

AS WITNESS of the above both Parties have signed this Contract on the date set out at the start of it.

SIGNED for and on behalf of)

Melton Borough Council:)

[.....]

Signature

[.....]

Print Name

SIGNED for and on behalf of)

[.....]

)

[.....]

Signature

[.....]

Print Name

SCHEDULE 1

SERVICES AND PAYMENT

1. SERVICES

The Services to be provided comprise:

- those set out in Appendix A – Specification.

2. PAYMENT

The Fee for the Services is:

- as set out in Appendix B - Pricing Information.

APPENDIX A

SPECIFICATION

[ATTACHED]

APPENDIX B

PRICING INFORMATION

[ATTACHED]

**SCHEDULE 2
CONTRACT PARTICULARS**

[HIGHLIGHTED SECTIONS TO BE COMPLETED POST-AWARD IN LINE WITH SUCCESSFUL TENDER]

Clause 1: Definitions

Commencement Date: [1st April 2023]

Contract Documents: [Form of Contract and Schedules
Any additional Contract Documents to be listed here.]

Contract Manager: []

Expiry Date: 2 years from the Commencement Date

Clause 2: Term

In accordance with Clause 2.2, the Council may extend the Contract Period by up to 3 years, by way of one or more extensions of 1 year each.

In accordance with Clause 2.2, the Council must give at least 30 days' written notice of intention to extend the Contract Period.

Clause 7: Service Levels and Remedies in the Event of the Inadequate Performance of the Services

In accordance with Clause 7, the Provider's delivery of the Services under this Contract

will
~~will not~~

be monitored through KPIs as set out in the KPI Schedule (Schedule 4).

Clause 9: Payment and Fee

In accordance with Clause 9, the Fees set out in Schedule 1:
are not subject to adjustment.

Clause 12: Intellectual Property

The Service Provider:

assigns
does not assign

Intellectual Property Rights in Documents and Data created specifically for the Services as referred to in Clause 12.1.

Clause 12: Data Protection

For the purposes of this contract, the following Data Protection Condition will apply:

Clause 12 - Personal Data will be processed as a result of the provision of the Services under this Contract

Clause 14: Insurance

The minimum insurance levels required to be maintained by the Provider are:

- public liability cover - £10,000,000. (ten million pounds) for each and every claim.
- employer’s liability cover -£10,000,000. (ten million pounds) for each and every claim.
- professional indemnity insurance cover - £5,000,000.00 (five million pounds) for each and every claim.
- medical malpractice cover - £5,000,000 for each and every claim.

Clause 15: Termination

In accordance with Clause 15 .1, the minimum notice period is 3 months.

Clause 30.3: Email address for service

Email addresses for service under Clause 30.1 are:

- for the Council: [redacted]
- for the Provider: [redacted]

Clause 31.2: Dispute Escalation Table

Council	Service Provider	Time to reach agreement
[redacted]	[redacted]	5 Working Days

Schedule 3- Conditions of Contract

MELTON BOROUGH COUNCIL

- and -

[OPTIMA HEALTH]

TERMS & CONDITIONS

relating

OCCUPATIONAL HEALTH SERVICES

TERMS & CONDITIONS

1. DEFINITIONS AND INTERPRETATION

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

"BCDR Plan"	means any plan relating to business continuity and disaster recovery;
"Commencement Date"	means the date set out in the Contract Particulars;
"Commercially Sensitive Information"	means any Confidential Information listed in a Contract Document comprising of commercially sensitive information relating to the Service Provider, its IPR or its business, which the Service Provider has indicated to the Council that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss;
"Confidential Information"	means the Council's Confidential Information and/or the Service Provider's Confidential Information;
"Contract"	means the contract entered into by the Council and the Service Provider comprising of the Form of Contract Document, these Terms & Conditions, the schedules and any other Contract Document;
"Contract Document"	means all documents listed in the Form of Contract Document, the Contract Particulars and/or within a schedule referred to in the Form of Contract Document;
"Fee"	means the fees (exclusive of any applicable VAT), payable to the Service Provider for the full and proper performance by the Service Provider of the Services under the Contract;
"Contracting Authority"	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Council;
"Controller"	shall take the meaning given in the GDPR;
"Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);

"Council Data"	<p>means:</p> <p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:</p> <p>(i) are supplied to the Service Provider by or on behalf of the Council; or</p> <p>(ii) the Service Provider is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(b) any Personal Data for which the Council is the Data Controller;</p>
"Council Pre-Existing IPR"	<p>shall mean any Intellectual Property Rights vested in or licensed to the Council prior to or independently of the performance by the Service Provider of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;</p>
"Council's Premises"	<p>the premises (if any) which are to be made available at any time during the Term for use by the Service Provider for the provision of the Services on the terms set out in the Contract;</p>
"Council's Confidential Information"	<p>means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Service Providers of the Council, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;</p>
"Data Loss Event"	<p>means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;</p>
"Data Protection Legislation"	<p>means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;</p>
"Data Protection Impact Assessment"	<p>means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;</p>
"Data Protection Officer"	<p>shall take the meaning given in the GDPR;</p>
"Data Subject"	<p>shall take the meaning given in the GDPR;</p>

"Data Subject Access Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Default"	means any breach of the obligations of the Service Provider (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Service Provider or Service Provider's Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Service Provider is liable to the Council;
"Delay Payments"	means the amounts set out (if any) or amounts calculated in accordance with the formula (if any) set out in the Contract;
"Deliverables"	means those deliverables listed in the Specification or any other Contract Document (if any);
	means the time at which the Services have been provided by the Service Provider and the Council has issued the Service Provider with confirmation in respect thereof and "Deliver" and "Delivered" shall be construed accordingly;
"Dispute"	means either a dispute concerning this Contract or an allegation by a Party that the other has committed a breach of this Contract;
"Dispute Escalation Table"	means the dispute escalation table set out in the Contract Particulars;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in clause 31;
"DPA 2018"	means Data Protection Act 2018;
"Employment Checks"	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Equality Legislation"	means the Equality Act 2010, the Human Rights Act 1998 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws;

"Equipment"	means the Service Provider's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Service Provider (but not hired, leased or loaned from the Council) in the performance of its obligations under the Contract which, for the avoidance of doubt does not include the Goods;
"Expiry Date"	means the date set out in the Contract Particulars;
"Form of Contract"	means the document set out in the Tender to be signed by the Council and the Service Provider post-award to formalise the Contract and which, inter alia, lists all of the Contract Documents;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Force Majeure"	<p>means any event, occurrence or cause affecting the performance by either the Council or the Service Provider of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party; b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of government, local government or Regulatory Bodies; d) fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party; e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> i) any industrial dispute relating to the Service Provider, the Service Provider's Staff or any other failure in the Service Provider or the Sub-Contractor's supply chain; and ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);

"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Services"	means the Services as specified in the Specification to be provided in accordance with this Contract;
"Implementation Plan"	means the plan referred to in the Specification;
"Information"	has the meaning given under section 84 of the FOIA;
"Initial Term"	the period commencing on the Commencement Date and ending on the Expiry Date;
"Intellectual Property Rights" or "IPRs"	means: <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Service Provider's or the Council's possession before the Commencement Date;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply;
"LED"	means Law Enforcement Directive (Directive (EU) 2016/680);
"Milestone"	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;

"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan;
"Month"	means calendar month and "monthly" shall be interpreted accordingly;
"Party"	means the Service Provider or the Council and "Parties" shall mean both of them;
"Personal Data"	shall take the meaning given in the GDPR;
"Personal Data Breach"	shall take the meaning given in the GDPR;
"Premises"	means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in Contract or any other Contract Document;
"Processor"	shall take the meaning given in the GDPR;
"Prohibited Act"	Means: <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Council and/or ESPO a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; or b) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010; or ii) under legislation creating offences concerning fraudulent acts; or iii) at common law concerning fraudulent acts relating to the Contract or any other contract with ESPO and/or Council and/or any other Contracting Body; or c) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Council or any other Contracting Body

"Project Specific IPRs"	<p>means:</p> <p>(a) IPRs in the Services, Deliverables and/or Goods provided by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of the Contract and all updates and amendments of these items created during the Term; and/or</p> <p>(b) IPRs arising as a result of the provision of the Services, Deliverables and/or Goods by the Service Provider (or by a third party on behalf of the Service Provider) under the Contract,</p>
"Property"	means the property (if any), other than real property and IPR, issued or made available to the Service Provider by the Council in connection with the Contract;
"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
"Public Contracts Directive"	means Directive 2014/24/EU of the European Parliament and of the Council;
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with and any other applicable quality standards, Government codes of practice and guidance;
"Regulated Activity"	means any work which is currently defined as a regulated activity relating to children or vulnerable adults within the meaning of Schedule 4 Part 1 (Children) or Part 2 (Vulnerable Adults) of the Safeguarding Vulnerable Groups Act 2006;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council;
"Related Service Provider"	means any person who provides services to the Council which are related to the Services from time to time;
"Replacement Service Provider"	any third party Service Provider of Replacement Services appointed by the Council from time to time;

"Replacement Service"	any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry or termination of the Contract, whether those services are provided by the Council internally and/or by any third party;
"Request for Information"	means a request for information or an apparent request relating to the Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Service Levels"	means any service levels applicable to the provision of the Services as referred to Schedule 2;
"Service Provider"	means the person, firm or company with whom the Council enters into the Contract as identified in the Form of Contract;
"Service Provider Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;
"Service Provider Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Service Provider prior to or independently of the performance by the Council of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
"Service Provider's Representative"	means the representative appointed by the Service Provider from time to time in relation to the Contract;
"Service Provider Solution"	means the Service Provider's solution for the provision of the Services as referred to in the Contract Particulars
"Service Provider's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Service Providers of the Service Provider, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Services"	means the services as detailed in the Specification to be provided in accordance with the Contract;
"Sites"	means any premises from which the Services are provided or from which the Service Provider manages, organises or otherwise directs the provision or the use of the Services;
"Staff"	means all persons employed by the Service Provider and/or any Sub-Contractor to perform its obligations under the Contract together with the Service Provider's and/or any Sub-Contractor's servants, consultants, agents, Service Providers and Sub-Contractors used in the performance of its obligations under the Contract;

"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof or facilities, goods or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Sub-Contractor"	means the third party with whom the Service Provider enters into a Sub-Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
"Sub-processor"	means any third party appointed to process Personal Data on behalf of the Service Provider related to this Contract;
"Technical Standards"	means the technical standards set out in the Specification (if any);
"Tender"	means the tender submitted by the Service Provider to the Council in response to the Council's invitation to Service Providers for formal offers to supply it with the Services pursuant to this Contract;
"Term"	the period of the Initial Term as may be varied by: <ul style="list-style-type: none"> (a) any extensions to this Contract which are agreed pursuant to clause 3; or (b) the earlier termination of this Contract in accordance with its terms;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales.

1.1 Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

- 1.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.1.2 words importing the masculine include the feminine and the neuter;
- 1.1.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.1.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of

whatever kind and however constituted and their successors and permitted assigns or transferees;

1.1.5 the schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes the schedules;

1.1.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.1.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;

1.1.8 references to "clauses" and "schedules" are, unless otherwise stated, references to the clauses of and schedules to this Contract. References to "paragraphs" are, unless otherwise stated, references to paragraphs in the schedules to this Contract.

1.1.9 reference to a clause is a reference to the whole of that clause unless stated otherwise; and

1.1.10 in the event of and only to the extent of any conflict between the documents comprising the Contract, the conflict shall be resolved in accordance with the following order of precedence:

1.1.10.1 the Contract Particulars

1.1.10.2 these Terms and Conditions

1.1.10.3 any other Contract Document

2. TERM

2.1 This Contract shall take effect on the Commencement Date and shall continue for the Term.

2.2 The Council may extend this Contract beyond the Initial Term by a further period or periods as stated in the Contract Particulars. If the Council wishes to extend this Contract, it shall give the Service Provider the period of notice stated in the Contract Particulars of such intention before the expiry of the Initial Term or Extension Period.

2.3 If the Council gives such notice, then the Term shall be extended by the period set out in the notice.

2.4 If the Council does not wish to extend this Contract beyond the Initial Term or Extension Period this Contract shall expire on the expiry of the said Initial Term or Extension Period.

3. SUPPLY OF SERVICES

3.1 Supply of the Services

- 3.1.1 The Service Provider shall supply the Services in accordance with the Implementation Plan (if any).
- 3.1.2 The Service Provider shall supply the Services during the Term in accordance with the Specification in consideration for the payment of the Fees.
- 3.1.3 If the Council informs the Service Provider in writing that the Council reasonably believes that any part of the Services do not meet the requirements of or differs in any way from the Specification, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the Specification within such reasonable time as the Service Provider may be instructed by the Council.
- 3.1.4 The Service Provider agrees that the Council relies on the skill and judgment of the Service Provider in the supply of the Services and the performance of its obligations under the Contract.

3.2 Provision and Removal of Equipment

- 3.2.1 Unless otherwise stated in this Contract or expressly agreed in writing by the Parties, the Service Provider shall provide all the Equipment necessary for the supply of the Services.
- 3.2.2 The Service Provider shall not deliver any Equipment nor begin providing Services on the Premises without the Council's prior written consent.
- 3.2.3 All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Service Provider is able to demonstrate that such loss or damage was caused by or contributed to by the Council. The Service Provider shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required and in each case at the Service Provider's sole cost. Unless otherwise stated in the Contract or agreed expressly between the Parties in writing, Equipment brought onto the Premises will remain the property of the Service Provider.
- 3.2.4 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 3.2.5 Upon termination or expiry of the Contract, the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which arises from the use of the Equipment for the provision of the Services at the Premises by the Service Provider.

3.3 **Quality**

- 3.3.1 The Service Provider shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Services must be provided has not been specified in the Contract, the Service Provider shall agree the relevant standard for the provision of the Services with the Council prior to the supply of the Services commencing and in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 3.3.2 The Service Provider shall ensure that the Staff shall at all times during the Term:
- 3.3.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Services;
 - 3.3.2.2 obey all lawful instructions and reasonable directions of the Council and provide the Services to the reasonable satisfaction of the Council; and
 - 3.3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
- 3.3.3 The Service Provider shall perform its obligations under the Contract in a timely manner.
- 3.3.4 The Service Provider shall supply the Services in accordance with the Specification and any other Contract Document and in accordance with all applicable Laws.
- 3.3.5 The Service Provider shall at all times during the Term ensure that:
- 3.3.5.1 the Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Contract;
 - 3.3.5.2 the Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;

3.4 **Delivery**

- 3.4.1 The Service Provider shall provide the Services in accordance with the Implementation Plan and Milestones (if any).
- 3.4.2 Time of delivery in relation to commencing and/or supplying the Services shall be of the essence and if the Service Provider fails to deliver the Services within the time specified in accordance with the Specification or other Contract Document, without prior written approval, the Council may release itself from any obligation to accept and pay for the Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Council.

- 3.4.3 Except where otherwise provided in the Contract Particulars, the Services shall be provided by the Staff or the Sub-Contractors at such place or places as the Council may require or as the Parties may agree.
- 3.4.4 In the event that not all of the Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("**Undelivered Services**") then the Council shall be entitled to withhold payment of the Fee for any Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Services are Delivered,

4. ASSISTANCE ON EXPIRY OR TERMINATION

- 5.1 In the event that the Contract expires or is terminated the Service Provider shall, where so requested by the Council, provide assistance to the Council to migrate the provision of the Services to a Replacement Service Provider.

5. DISASTER RECOVERY AND BUSINESS CONTINUITY

- 6.1 The Service Provider will maintain in place throughout the Term a BCDR Plan setting out business continuity arrangements and will review those arrangements at appropriate intervals and, if necessary, update them, so as to ensure as far as reasonably practical that in the event of unexpected circumstances, either within or external to the Service Provider's organisation, delivery of the Services to the Council is subject to a minimum of disruption.

6. DISRUPTION

- 6.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- 6.2 The Service Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by the Service Provider's own employees or others, which affects or might affect the Service Provider's ability at any time to perform its obligations under the Contract.
- 6.3 In the event of industrial action by the Staff, the Service Provider shall seek approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.

7. SERVICE LEVELS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

- 7.1 The Service Provider shall provide the Services to meet or exceed the Service Levels as set out in the KPIs.
- 7.2 The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 7.3 Without prejudice to any other right or remedy which the Council may have, if any Services are not supplied in accordance with, or the Service Provider fails to

comply with any of the terms of the Contract then the Council may (whether or not any part of the Services have been Delivered) do any of the following:

- 7.3.1 at the Council's option, give the Service Provider the opportunity at the Service Provider's expense to either remedy any failure in the performance of the Services together with any damages resulting for such failure (and where such failure is capable of remedy) or to supply replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Council's instruction.
- 7.3.2 refuse to accept any further Services to be delivered, without any liability to the Council;
- 7.3.3 if the Contract provides for the payment of Delay Payments, then the Service Provider shall pay such amounts on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is met;
- 7.3.4 carry out at the Service Provider's expense any work necessary to make the Services comply with the Contract;
- 7.3.5 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Council that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
- 7.3.6 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Fee shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- 7.3.7 charge the Service Provider for and the Service Provider shall on demand pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

8. PREMISES

8.1 Inspection of Premises

- 8.1.1 The Service Provider acknowledges that (if applicable) it has inspected the Council's Premises and has advised the Council of any aspect of the Council's Premises that is not suitable for the provision of the Services.
- 8.1.2 If the Service Provider has either failed to inspect the Council's Premises or failed to notify the Council of any required remedial actions in accordance with clause 8.1.1 then the Service Provider shall not be entitled to recover any additional costs or charges from the Council relating to any unsuitable aspects of the Council's Premises.

8.2 Licence to Occupy Premises

- 8.2.1 Any Council's Premises made available from time to time to the Service Provider by the Council in connection with the Contract shall be made available to the Service Provider on a non-exclusive licence basis free of charge and shall be used by the Service Provider solely for the purpose of performing its obligations under the Contract. The Service Provider shall have the use of such Council's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of the Contract and no tenancy or right of tenure shall arise.
- 8.2.2 The Service Provider shall limit access to the Council's Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Service Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Council's Premises as the Council may reasonably request.
- 8.2.3 The Service Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Council's Premises and conduct of personnel at the Council's Premises as determined by the Council, and the Service Provider shall pay for the cost of making good any damage caused by the Service Provider or its Staff other than fair wear and tear.

8.3 Property

- 8.3.1 If the Council issues Property free of charge to the Service Provider such Property shall be and remain the property of the Council and the Service Provider irrevocably licences the Council and its agents to enter upon any premises of the Service Provider during normal business hours on reasonable notice to recover any such Property. The Service Provider shall not in any circumstances have a lien or any other interest on the Property and at all times the Service Provider shall possess the Property as fiduciary agent and bailee of the Council. The Service Provider shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.
- 8.3.2 The Property shall be deemed to be in good condition when received by or on behalf of the Service Provider unless the Service Provider notifies the Council otherwise within five (5) Working Days of receipt.
- 8.3.3 The Service Provider shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without approval.
- 8.3.4 The Service Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.

- 8.3.5 The Service Provider shall be liable for all loss of, or damage to, the Property, (excluding fair wear and tear), unless such loss or damage was caused by the Council's default. The Service Provider shall inform the Council within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Property.

9. PAYMENT AND FEE

9.1 Fee

- 9.1.1 In consideration of the Service Provider's performance of its obligations under the Contract, the Council shall pay the Fee in accordance with this clause 9.
- 9.1.2 The Council shall, in addition to the Fee and following delivery by the Service Provider of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- 9.1.3 The Service Provider shall submit VAT invoices in respect of the Services provided and shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services provided and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 9.1.4 The Council shall pay the Service Provider any sums due no later than 30 days from the date of receipt of the valid VAT invoice.
- 9.1.5 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:
- (a) provisions having the same effect as clauses 9.1.1 – 9.1.4 above;
 - (b) a provision requiring the counterparty to that Sub-Contract to include any Sub-Contract which it awards provisions have the same effect as clauses 9.1.1 – 9.1.4 of this Contract.

For the purposes of this sub clause 9.1.5, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or part of the Services.

- 9.1.6 The Service Provider shall indemnify the Council on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for or to pay any VAT that may be payable in connection with the provision of the Services. Any amounts due under this clause shall be paid by the Service Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.
- 9.1.7 The Service Provider shall not suspend the supply of the Services and/or Goods (as applicable) unless the Service Provider is entitled to terminate

the Contract under clause 15 (Termination on Default) for failure to pay undisputed sums of money.

9.1.8 Interest shall be payable by the Council on the late payment of any undisputed sums of money properly invoiced at 3% above the Bank of England base rate.

9.2 **Recovery of Sums Due**

9.2.1 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Contract or under any other agreement or contract with the Council.

9.2.2 The Service 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 Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.

9.3 Unless specified to the contrary in any Contract Document or the Contract Particulars, the Fees shall remain fixed for Term.

10. **SERVICE PROVIDER'S STAFF**

10.1 The Council may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Council's Premises:

10.1.1 any member of the Staff; or

10.1.2 any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

10.2 At the Council's written request, the Service Provider shall provide a list of the names and addresses of all persons who may require admission to the Council's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

10.3 Staff engaged within the boundaries of the Council's Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Council's Premises.

10.4 The decision of the Council as to whether any person is to be refused access to the Premises and as to whether the Service Provider and Staff have failed to comply with this Clause shall be final and conclusive.

Children and Vulnerable Adults

- 13.6 Where the provision of the Services requires any of the Service Provider's employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Service Provider will make checks in respect of such employees and volunteers with the Disclosure & Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the existence of any Convictions or other relevant information and that the appropriate check of the Children's Barred List relating to the protection of children.
- 13.7 The Service Provider will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees and volunteers that work in a Regulated Activity.
- 13.8 The Service Provider will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three years.
- 13.9 The Service Provider will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such activities under the Safeguarding of Vulnerable Groups and will notify the Council immediately of any decision to employ such a person in any role connected with this Contract or any other agreement or arrangement with the Council.
- 13.10 Where the provision of the Services does not require any of the Service Provider's employees or volunteers to work in a Regulated Activity but where the Service Provider's employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Service Provider will in respect of such employees and volunteers:
 - a) carry out Employment Checks; and
 - b) carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Term.

11. STAFFING SECURITY

- 11.1 The Service Provider shall comply with the Council's staff vetting procedures (if any) in respect of all Service Provider Staff employed or engaged in the provision of the Services. The Service Provider confirms that all Staff employed or engaged by the Service Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Council's staff vetting procedures.
- 11.2 The Service Provider shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services to ensure compliance with the Council's staff vetting procedures.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Save as granted under this Contract, neither the Council nor the Service Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 12.2 The Service Provider shall ensure and procure that the availability, provision and use of the Services and the performance of the Service Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

- 12.3 With respect to the Service Providers obligations under the Contract, the Service Provider warrants and represents that:
- 12.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Contract;
 - 12.3.2 it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Council's Confidential Information (held in electronic form) owned by or under the control of, or used by the Council;
- 12.4 The Service Provider shall during and after the Term indemnify and keep indemnified the Council on demand in full from and against all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages and any other liabilities whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
- 12.4.1 availability, provision or use of the Services (or any parts thereof); and
 - 12.4.2 performance of the Service Provider's responsibilities and obligations hereunder.
- 12.5 The Service Provider shall promptly notify the Council if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Services (or any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder.
- 12.6 If a claim or demand is made or action brought to which clause 12.3 and/or 12.4 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:
- 12.6.1 modify any or all of the affected Services without reducing the performance and functionality of the same, or substitute alternative Services of equivalent performance and functionality for any or all of the affected Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted Services; or
 - 12.6.2 procure a licence to use the Services on terms that are reasonably acceptable to the Council; and
 - 12.6.3 in relation to the performance of the Service Provider's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
- 12.7 **Council Data**
- 12.7.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Council Data.

- 12.7.2 The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under the Contract or as otherwise expressly Approved by the Council.
- 12.7.3 To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council as requested by the Council and in the format specified in this Contract (if any) and in any event as specified by the Council from time to time in writing.
- 12.7.4 To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data.
- 12.7.5 The Service Provider shall ensure that any system on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the security policy reasonably requested by the Council.
- 12.7.6 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Council may:
- 12.7.6.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Council Data to the extent and in accordance with any BCDR Plan and the Service Provider shall do so as soon as practicable but in accordance with the time period notified by the Council; and/or
 - 12.7.6.2 itself restore or procure the restoration of Council Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any BCDR Plan.
- 12.7.7 If at any time the Service Provider suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Council immediately and inform the Council of the remedial action the Service Provider proposes to take.

12.8 Protection of Personal Data

- 12.8.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, where the Contract Particulars Council specify the processing of Personal Data it requires the Service Provider to perform, the Council is the Controller and the Service Provider is the Processor unless otherwise specified. The only processing that any Processor is authorised to do under this Contract is set out in the Contract Particulars by the Controller and may not be determined by the Processor. The terms Processor and Controller below in this Clause shall apply to the appropriate Party.

- 12.8.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 12.8.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 12.8.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 12.8.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 12.8.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 12.8.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 12.8.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 12.8.4.1 process that Personal Data only in accordance with the Contract Particulars unless the Service Provider is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 12.8.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - nature of the data to be protected;
 - harm that might result from a Data Loss Event;
 - state of technological development; and
 - cost of implementing any measures;
 - 12.8.4.3 ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular the Contract Particulars);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;

- (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

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

- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

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

12.8.5 Subject to clause 12.8.6, the Service the Processor shall notify the Controller immediately if it:

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

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

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

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

- 12.8.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 12.8.5.6 becomes aware of a Data Loss Event.
- 12.8.6 The Processor's obligation to notify under clause 12.8.5 shall include the provision of further information to the Controller in phases, as details become available.
- 12.8.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 12.8.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - 12.8.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 12.8.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 12.8.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 12.8.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 12.8.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 12.8.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - 12.8.8.1 the Controller determines that the processing is not occasional;
 - 12.8.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to Convictions and offences referred to in Article 10 of the GDPR; and
 - 12.8.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 12.8.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

- 12.8.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 12.8.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- 12.8.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 12.8.11.2 obtain the written consent of the Controller;
 - 12.8.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 12.8 such that they apply to the Sub-processor; and
 - 12.8.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 12.8.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 12.8.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 12.8.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

12.9 Security of Premises

- 12.9.1 The Council shall be responsible for maintaining the security of the Council's Premises in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements of the Council while on the Council's Premises and shall ensure that all Staff comply with such requirements.
- 12.9.2 The Council shall provide the Service Provider upon request copies of its written security procedures and shall afford the Service Provider upon request an opportunity to inspect its physical security arrangements.

12.10 Confidentiality

- 12.10.1 Except to the extent set out in this clause 12.10 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 12.10.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 12.10.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

12.10.2 Clause 12.10.1 shall not apply to the extent that:

12.10.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 12.11 (Freedom of Information);

12.10.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

12.10.2.3 such information was obtained from a third party without obligation of confidentiality;

12.10.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

12.10.2.5 it is independently developed without access to the other Party's Confidential Information.

12.10.3 The Service Provider may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

12.10.4 The Service Provider shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

12.10.5 At the written request of the Council, the Service Provider shall procure that those members of Staff identified in the Council's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

12.10.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Service Provider shall provide such evidence to the Council as the Council may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Service Provider is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

- 12.10.7 Nothing in this Contract shall prevent the Council from disclosing the Service Provider's Confidential Information:
- 12.10.7.1 to any Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;
 - 12.10.7.2 to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
 - 12.10.7.3 for the purpose of the examination and certification of the Council's accounts; or
 - 12.10.7.4 for 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.
- 12.10.8 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause 12.10.7 is made aware of the Council's obligations of confidentiality.
- 12.10.9 Nothing in this clause 12.10 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 12.10.10 In the event that the Service Provider fails to comply with clause 12.6.1 to clause 12.6.6, the Council reserves the right to terminate the Contract with immediate effect by notice in writing.
- 12.10.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Service Provider undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

12.11 Freedom of Information

- 12.11.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 12.11.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- 12.11.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

- 12.11.2.2 provide the Council with a copy of all Information in its possession, or control in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
- 12.11.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 12.11.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other Contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 12.11.4 In no event shall the Service Provider respond directly to a Request for Information unless authorised in writing to do so by the Council.
- 12.11.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 12.10) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Goods and Services:
- 12.11.5.1 in certain circumstances without consulting the Service Provider; or
- 12.11.5.2 following consultation with the Service Provider and having taken their views into account,
- provided always that where clause 12.11.5 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 12.11.6 The Service Provider shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Council to inspect such records as requested from time to time.
- 12.11.7 The Service Provider acknowledges that the Commercially Sensitive Information is of indicative value only and that the Council may be obliged to disclose it in accordance with clause 12.11.5.

12.12 Transparency

- 12.12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether

any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

- 12.12.2 Notwithstanding any other term of the Contract, the Service Provider hereby gives his consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.
- 12.12.3 The Council may consult with the Service Provider to inform its decision regarding any redactions but the Council shall have the final decision in its absolute discretion.
- 12.12.4 The Service Provider shall assist and cooperate with the Council to enable the Council to publish this Contract.

13. WARRANTIES AND REPRESENTATIONS

- 13.1 The Service Provider warrants, represents and undertakes to the Council that:
 - 13.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its ultimate holding company) to enter into and perform its obligations under the Contract;
 - 13.1.2 the Contract is executed by a duly authorised representative of the Service Provider;
 - 13.1.3 in entering the Contract it has not committed any Fraud;
 - 13.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
 - 13.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
 - 13.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to execution of the Contract and it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;
 - 13.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
 - 13.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
 - 13.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the

Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;

13.1.10 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;

13.2 The Service Provider warrants represents and undertakes to the Council that:

13.2.1 the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

13.2.2 it shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;

13.2.3 the Services are and will continue to be during the Term:

13.2.3.1 of satisfactory quality; and

13.2.3.2 in conformance with the relevant specifications set out in this Contract, the relevant order and (if applicable) the manufacturer's specifications and documentation;

13.2.4 in the three (3) Years prior to the Commencement Date:

13.2.4.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and

13.2.4.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

13.2.4.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract; and

13.2.4.4 for the Term that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.

13.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Council may have in respect of breach of that provision by the Service Provider.

13.4 The Service Provider acknowledges and agrees that:

- 13.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Council into entering into this contract; and
- 13.4.2 the Council has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

14. LIABILITIES

14.1 Liability

- 14.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
 - 14.1.1.1 death or personal injury caused by its negligence or that of its Staff;
 - 14.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;
 - 14.1.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 14.1.1.4 any claim under clause 13.1;
 - 14.1.1.5 any claim under the indemnities in clauses 9.1.6, 12.4, 14, 17.5, 20.5, in respect of a breach of clause 12.10; or
 - 14.1.1.6 any other matter which, by Law, may not be excluded or limited.
- 14.1.2 Subject to clause 14.1.4 and clause 14.1.5 the Service Provider shall on demand indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non-supply, of the Services or the performance or non-performance by the Service Provider of its obligations under the Contract or the presence of the Service Provider or any Staff on the Premises, including in respect of 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 Service Provider, or any other loss which is caused directly by any act or omission of the Service Provider.
- 14.1.3 The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.
- 14.1.4 Subject always to clause 14.1.1 and clause 14.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:
 - 14.1.4.1 all defaults resulting in direct loss to the property of the other Party shall in no event exceed ten million pounds (£10,000,000); and

- 14.1.4.2 in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed ten million pounds sterling (£10,000,000).
- 14.1.5 Subject to clause 14.1.1, in no event shall either Party be liable to the other for any:
- 14.1.5.1 loss of profits;
 - 14.1.5.2 loss of business;
 - 14.1.5.3 loss of revenue;
 - 14.1.5.4 loss of or damage to goodwill;
 - 14.1.5.5 loss of savings (whether anticipated or otherwise); and/or
 - 14.1.5.6 any indirect, special or consequential loss or damage.
- 14.1.6 The provisions of 14.1.5 shall not be taken as limiting the right of the Council to recover as a direct loss:
- 14.1.6.1 any additional operational and/or administrative expenses arising from the Service Provider's Default;
 - 14.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Service Provider's Default;
 - 14.1.6.3 the additional cost of procuring replacement services for the remainder of the Term following termination of the Contract as a result of a Default by the Service Provider; and
 - 14.1.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Council which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Council Data by the Service Provider.
- 14.1.7 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.]

14.2 Insurance

- 14.2.1 The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Service Provider, arising out of the Service Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss . Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be maintained for the Term.

- 14.2.2 The Service Provider shall hold employers liability insurance in respect of Staff with a minimum limit of ten million pounds sterling (£10,000,000) for each individual claim.
- 14.2.3 The Service Provider shall effect and maintain a public liability insurance policy to cover all risks in the performance of this Contract from time to time with a minimum limit of ten million pounds sterling (£10,000,000) for each individual claim.
- 14.2.4 The Service Provider shall effect and maintain a professional indemnity insurance policy to cover all risks in the performance of this Contract with the minimum limit of indemnity of five million pounds sterling (£5,000,000) for each individual claim, or such higher limit as required by law from time to time and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Term.
- 14.2.5 The Service Provider shall effect and maintain a medical malpractice insurance policy to cover all risks in the performance of this Contract from time to time with a minimum limit of five million pounds sterling (£5,000,000) for each individual claim.
- 14.2.6 The Service Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 14.2.7 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 14.2.8 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability under this Contract.
- 14.2.9 The Service Provider shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Service Provider shall use all reasonable endeavours to notify the Council (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

14.3 Taxation, National Insurance and Employment Liability

- 14.3.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Council and keep

the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Term or arising from termination or expiry of the Contract.

15. TERMINATION

- 15.1 Without limiting or affecting any other right of remedy available to it, the Council shall be entitled to terminate the Contract at any time by giving three months written notice in accordance with the Contract Particulars.
- 15.2 The Council may terminate this Contract either with immediate effect or with effect from a future date specified by the Council by giving the Service Provider written notice if:
- 15.2.1 the Service Provider commits a material breach of this Contract which is not remedied to the satisfaction of the Council within 10 (ten) Working Days of written notice from the Council notifying the Service Provider of the breach and stating that if it is not remedied this Contract will be terminated for material breach;
 - 15.2.2 The Service Provider fails to meet the KPI Target and fails to remedy this to the the satisfaction of the Council within 10 (ten) Working Days of written notice from the Council notifying the Service Provider of the failure and stating that if it is not remedied this Contract will be terminated;
 - 15.2.3 there is a change of control of the Service Provider;
 - 15.2.4 the Service Provider's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
 - 15.2.5 the Service Provider or anyone for whom the Service Provider is responsible has acted fraudulently or made a fraudulent misrepresentation in connection with the Services;
 - 15.2.6 the Service Provider or anyone for whom the Service Provider is responsible has offered or agreed to give any person working for or engaged by the Council any gift or consideration in relation to this Contract or any other Contract between the Service Provider and the Council;
 - 15.2.7 the Service Provider is in breach of Health and Safety Law or is considered by the Council to be working or to have worked in a way that

does not fully comply with Health and Safety Law or any guidance or best practice approved in relation to Health and Safety Law

- 15.2.8 any of the insurances the Service Provider is required to maintain under the Minimum Insurance Levels cease to be available at commercially reasonable rates;
 - 15.2.9 the Service Provider is found to have committed any of the offences listed in Regulation 57(1) of the Public Contracts Regulations 2015, any of the Service Provider's directors, officers or senior managers commit or are found to have committed any of those offences, the European Court of Justice orders that this Contract is set aside or a court orders that this Contract is set aside because it has been subject to a substantial modification; or
 - 15.2.10 the Service Provider is found to have committed any offence involving slavery or human trafficking.
- 15.3 Without limiting or affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business.
- 15.4 Termination of this Contract is without prejudice to the rights and duties of either Party accrued due before termination or to any provisions which are intended to survive termination.
- 15.5 The Dispute Resolution Procedure shall not apply to any issues concerning termination of this Contract
- 15.6 The Service Provider must deliver all materials that have been produced as part of the Services to the Council or as the Council directs within 10 (ten) Working Days of the Termination Date.
- 15.7 Within 5 (five) Working Days of the Termination Date, the Service Provider must:
- 15.7.1 return all Council Data and Documents and Data provided by the Council;
and
 - 15.7.2 provide copies of all other Council Data and Documents and Data used in connection with the Services to the Council and delete any Council Data from the Service Provider's IT System.
- 15.8 Where the Contract is terminated in accordance with Clause 17.2 any provisions of the Contract which require any payment to be made to the Service Provider

in respect of the Services will cease to apply until the Council has quantified its costs and losses resulting from termination.

16. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 16.1 The Service Provider shall not make any press announcements or publicise the Contract in any way without approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, Service Providers, professional advisors and consultants comply with this clause. Any such press announcements or publicity proposed under this clause shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 16.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Council shall be entitled to publicise the Contract in accordance with any legal obligation upon the Council, including any examination of the Contract by the Auditor.
- 16.3 The Service Provider shall not do anything or permit to cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.

17. ANTI-DISCRIMINATION

- 17.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 17.2 The Service Provider shall take all reasonable steps to secure the observance of clause 17.1 by all Staff employed in performance of this Contract
- 17.3 The Service Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under Equality Legislation or any other law, enactment, order or regulation.
- 17.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Provider's performance of this Contract being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Service Provider shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Service Provider's Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Service Provider and any of the Service Provider's Staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 17.5 Where any investigation is conducted or proceedings are brought under Equality Legislation or any other law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Service Provider, its agents or Sub-Contractors, or the Service Provider's Staff, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider shall indemnify the Council with respect to all

costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.

- 17.6 The Service Provider must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 17.7 The Service Provider acknowledges that the Council may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Service Provider shall provide all necessary assistance and information to the Council as may be required in relation to the performance of an impact analysis by the Council. The Service Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Council.

18. HEALTH AND SAFETY

- 18.1 The Service Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Council's Premises and which may affect the Service Provider in the performance of its obligations under the Contract.
- 18.2 While on the Council's Premises, the Service Provider shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 18.3 The Service Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 18.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Services under the Contract.

19. ENVIRONMENTAL POLICY

- 24.1 The Service Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which the Service provider will be deemed to have received, which includes, but is not limited to, taking measures to conserve energy, water, wood, paper and other resources and reduce waste.

20. PREVENTION OF BRIBERY AND CORRUPTION

- 20.1 The Service Provider shall not:
- 20.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Council, or any other public body or person employed by or on behalf of the Council, any gift or other consideration of any kind which could act as an inducement or a reward for any act or

failure to act in relation to this Contract or any other contract with the Council or other public body;

20.1.2 engage in and shall procure that all Service Provider's Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption; and

20.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

20.2 The Service Provider warrants, represents and undertakes that it has not:

20.2.1 paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or a public body in connection with the Contract; and

20.2.2 entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Council or any other public body or any person employed by or on behalf of the Council in connection with the Contract, or that an agreement has been reached to that effect;

20.3 The Service Provider shall:

20.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

20.3.2 immediately notify the Council if it suspects or becomes aware of any breach of this clause;

20.3.3 respond promptly to any of the Council's enquiries regarding any breach, potential breach or suspected breach of this clause and the Service Provider shall co-operate with any investigation and allow the Council to audit Service Provider's books, records and any other relevant documentation in connection with the breach;

20.3.4 if so required by the Council, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing of the Service Provider and all persons associated with it or other persons who are supplying the Goods and Services in connection with this Contract compliance with this clause. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request;

20.3.5 have and maintain an anti-bribery policy (which shall be disclosed to the Council on request) to prevent it any of its Staff, consultants, agents or Sub-Contractors, or any person acting on the Service Provider's behalf from committing a Prohibited Act and shall enforce it where appropriate.

20.4 If the Service Provider, its Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf, in all cases whether or not acting with the Service Provider's knowledge breaches:

20.4.1 this clause; or

20.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Council or any other public body or any person employed by or on behalf of the Council or a public body in connection with the Contract,

the Council shall be entitled to terminate this Contract by written notice with immediate effect.

20.5 Without prejudice to its other rights and remedies under this clause, the Council shall be entitled to recover in full and the Service Provider shall on demand indemnify the Council in full from and against:

20.5.1 the amount of value of any such gift, consideration or commission; and

20.5.2 any other loss sustained by the Council in consequence of any breach of this Clause, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Term.

21. RECORDS AND AUDIT ACCESS

21.1 The Service Provider shall keep and maintain for six (6) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, and the amounts paid by the Council.

21.2 The Service Provider shall keep the records and accounts referred to in clause 21.1 above in accordance with Good Industry Practice and generally accepted accounting principles and, when requested by the Council, the Service Provider shall make any records it maintains under Clause 21.1 available for inspection and analysis by the Council's internal or external auditors or representatives of any regulatory body to which the Council is subject.

22. ASSIGNMENT AND SUBCONTRACTING

22.1 The Service Provider may not assign, transfer, subcontract or deal in any other manner with its rights and obligations under this Contract or any part, share or interest in this Contract without the prior written consent of the Council.

22.2 The Council may assign or transfer the benefit of any of its rights under this Contract.

22.3 Where the Service Provider enters into a Subcontract, the Service Provider shall include in that Subcontract provisions:

22.3.1 requiring the payment of valid and undisputed invoices within 30 (thirty) calendar days;

22.3.2 requiring the Subcontractor to include provisions having the same effect as this Clause 22.3 in any subcontract relating to the Services.

22.4 Prior to the entering into any Subcontract, the Service Provider will notify to the Council in writing the names, contact details of its proposed Subcontractors. The Service Provider shall notify the Council within 5 (five) Working Days of any change to that information.

22.5 The Service Provider shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chains and in connection with this the Service Provider shall:

22.5.1 implement due diligence procedures for its Subcontractors;

22.5.2 require all Subcontractors to warrant that, neither the Subcontractor nor any of the Subcontractor's officers or employees:

22.5.2.1 (a) have been convicted of any offence involving slavery or human trafficking; or

22.5.2.2 (b) have, to the best of the Subcontractor's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative, or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and

22.5.3 require all Subcontractors to include provisions having the same effect as in this Clause 22.5 in all Subcontracts (at any stage of remoteness from the Council in the supply chain) relating to the Services.

23. FORCE MAJEURE

23.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 2 Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.

23.2 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in clause 23.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue and must use all reasonable endeavours to mitigate its severity.

23.3 The Service Provider will not have the right to any payment from the Council under this Contract where the Service Provider is unable to provide the Services because of an event of Force Majeure.

24. WAIVER

24.1 A failure or delay in exercising any rights, powers or privileges under this Contract will not operate as a waiver of them.

24.2 The single or partial exercise of any right, power or privilege does not prevent any other exercise of that right, power or privilege or the exercise of any other

right, power or privilege (whether arising out of the same factual situation or otherwise).

24.3 Any waiver of a breach of this Contract is not to be effective unless given in writing signed by the Party waiving its entitlement.

24.4 No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Contract.

24.5 The receipt of money does not prevent the Party receiving it questioning the correctness of the amount or any other statement in respect of money.

25. VARIATION

33.1 No variation of this Contract shall be effective unless it is in writing and signed on behalf of the Parties.

26. SEVERABILITY

26.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

27. CONFLICTS OF INTEREST

27.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Council under the provisions of the Contract.

27.2 The Service Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in clause 27.1 above arises or is reasonably foreseeable.

27.3 The Council may consider a breach of this Clause 27 as constituting a material breach under Clause 15.

28. ENTIRE AGREEMENT

28.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

28.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

28.3 The Service Provider acknowledges that it has:

28.3.1 entered into the Contract in reliance on its own due diligence alone; and

28.3.2 has raised (or has had the opportunity to raise) all relevant due diligence questions with the Council and has received sufficient information

required by it in order to determine whether it is able to provide the Services in accordance with the terms of the Contract.

28.4 Nothing in clauses 28.1 and 28.2 shall operate to exclude Fraud or fraudulent misrepresentation.

29. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999/STATUS

29.1 Any organisation within Council's Group on whose behalf the Services are procured under this Contract may enforce this Contract against the Provider.

29.2 Other than as set out in Clause 29.1, nothing in this Contract shall confer any benefit on a person who is not a Party to it or give any such third party a right to enforce any of its terms.

29.3 Nothing in this Contract is to constitute or be deemed a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other law concerning partnerships or limited liability partnerships.

29.4 No Party shall hold itself out as the agent of any other or have any authority to bind the other except to the extent that this Contract expressly provides otherwise.

30. NOTICES

30.1 Notices or other communications under this Contract will be duly served if given by and sent to the nominated representative of the Party to be served in accordance with the following:

30.1.1 Personal delivery of a letter addressed to the Party to be served at the address for service. Deemed served on the day of delivery if before 16.00 on a Working Day, otherwise 10.00 on the next Working Day thereafter.

30.1.2 First class letter addressed to the Party to be served at its address for service. Deemed served 48 hours after posting if that is a Working Day otherwise 10.00 on the next Working Day thereafter, unless returned through the Post Office undelivered service within 21 days of posting.

30.1.3 Email (requesting a "read receipt") addressed to the Party to be served and sent to its email address for service. Deemed served on the day of transmission if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter. Proof of sending email to the correct email address plus proof of read receipt, will be taken as proof of posting.

30.2 Each Party's address for service is its registered office where it has one. Where the Provider does not have a registered office the Provider's address for service is the address set out at the start of this Contract or such other address as it notifies to the Council in writing.

30.3 Each Party's email address for service is as set out in the Contract Particulars.

30.4 Email shall not be a valid method of service for notices relating to termination under Clause 15 (Termination) or relating to any Dispute.

31. DISPUTES AND LAW

31.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

31.2 Informal Dispute Resolution

- 31.2.1 Each Party should attempt to resolve any Disputes which it has with the other amicably.
- 31.2.2 If a Party considers that a Dispute has arisen it may write a letter to the other Party specifying:
 - 31.2.2.1 what the Dispute is alleged to be;
 - 31.2.2.2 what steps should be taken to resolve the Dispute; and
 - 31.2.2.3 within what reasonable period such steps should be taken.
- 31.2.3 If the Dispute is not resolved within the period set out in the letter, then representatives of the Parties will seek to resolve the Dispute in accordance with the Dispute Escalation Table set out in the Contract Particulars.
- 31.2.4 The individuals/postholders named in the Dispute Escalation Table shall have the period stated in the Schedule 2 (Contract Particulars) to agree a solution with the individual/postholder stated alongside their respective names, failing which the Dispute is to be escalated to the next named individuals/postholders (if any).
- 31.2.5 This Clause 31 does not apply to any Disputes over a decision to terminate this Contract or over any Party's entitlement to do so.
- 31.2.6 Any compromise of a Dispute which is certified in writing by solicitors advising the Council on that Dispute as a settlement which is based on a permissible interpretation of the respective rights and obligations of the Parties under it this Contract is to be regarded as having been derived from the terms of this Contract and is not to be regarded as a variation to it.

32. COUNTERPARTS

- 32.1 This Contract may be executed in two or more counterparts each of which shall be deemed to be an original, but the counterparts shall together constitute one and the same contract.

SCHEDULE 4 - KPI SCHEDULE

SCHEDULE 6 OF SPECIFICATION

Performance Standards

1. This schedule defines a non-exhaustive set of performance criteria with which the Service Provider will be expected to comply in order to satisfy the Contract.
2. The liaison meetings referred to in Section 2 shall include a review of the Service Provider's performance in the delivery of the Service having regard, without limitation, to the following criteria and matters:
 - Timely response in-service delivery (see table below for example timescales).
 - Quality and usefulness of advice given (see table below for example quality criteria).
 - Ability to respond to the Customer's needs, in particular the need to reduce sickness absence rates amongst the workforce.
 - Proactive approach to seeking information on behalf of the Customer.
 - Accuracy and clarity of records and accounts.
 - Number, type and resolution of complaints.
 - Ability to secure service development and refinement on a basis of continuous improvement.
 - Production of monthly reports for liaison meetings.
 - Advice and reports should be within the scope of the Customer's attendance management policy. All medical staff dealing with the Customers employees must be trained by the Customers relevant HR team.
 - Any amendments or clarifications needed to medical reports should be discussed in the first instance with the appropriate HR team and not the employee or reporting manager.
 - All enquiries in relation to clarification of issues within a report made by the provider must be undertaken via the relevant HR team.
 - Doctors and nurse reports to be delivered on the same template.
 - All medical staff must have a detailed knowledge and understanding of mental health conditions and how the conditions effect the employee in the workplace.
 - Customer reserves the right to a single appointment to ask 10 related questions within each referral.
 - Other and additional performance standards as required by each Customer (to be mutually agreed with the Provider).

Timely response in-service delivery	
Pre-employment check for safety critical or statutory posts	Response received within 2 working days of the referral date.
In-service Referral	<p>Employees should be given 5 working days' notice of referral appointments.</p> <p>Advice should be received within 2 working days of appointment and followed up with a reminder to the employee (text message or phone call) 24 hours in advance. This is when the employee has requested to see the report first.</p> <p>Appointments should take place within 8 working days of the receipt of referral.</p> <p>Terminally ill staff to be seen within 3 working days of diagnosis in relation to ill health retirement.</p> <p>Ill health retirement staff (non-terminal) should be within 8 working days of the receipt of referral.</p> <p>If the provider cancels any appointment with less than 48 hours' notice, the total cost of that appointment will be paid to the Customer so that the cancelled appointment does not become an additional cost to the client. To clarify, the provider does not charge for any appointments they cancel.</p> <p>If the provider is unable to provide the most economical and appropriate service for whatever reason and therefore implements a more expensive level of service to fulfil the appointment, then the Customer is not charged extra for this; e.g. if no nurse is available to deliver the appointment and it is therefore referred to a doctor to carry out, then the Customer in this circumstance is only charged for a nurse appointment.</p>
Obtaining GP and Specialists reports	<p>A GP or consultant report is requested within 2 working days of the obtaining consent from the employee.</p> <p>Every effort to minimise delays in obtaining GP's reports e.g. initial chase after 5 working days and a further two chases after 5 working days. If no response the Service Provider should go back to the HR team to agree how to progress.</p>
Case Conferences	Case conference is scheduled within 3 working days of request and held within 10 working days of the request.
Response times to queries	The Customer is informed of the reason for any delays and is given an indication of when a response will be received. Queries are responded to within 2 working days

<p>Quality of advice given</p>	<p>Reports focus on factual information and answer any specific questions asked (or give reasons why specific questions cannot be answered).</p> <p>Reports give clear information in relation to timescales using definite terms – e.g. days, months, years or indefinite.</p> <p>Reports do not use colloquial terms that are open to different interpretations – e.g. unlucky, eventually, light duties.</p> <p>Reports give clear independent but actionable advice to managers. For example an in service referral will need to include some indication of when a staff member will be considered fit to return to work or what tasks should be undertaken to progress the case.</p> <p>The report must enable the employer to move the case through the relevant HR policy.</p> <p>Reports should be appropriate for submission to an employment tribunal if required.</p> <p>Reports do not contain any spelling or grammar errors.</p> <p>Reports must be sufficiently detailed to enable the manager to implement the recommendations without the need to refer back to the provider. Reports must have a fair balance between the employee’s condition and recommendations for the employer.</p>
<p>Feedback from the employee referred</p>	<p>Simple questionnaires can be used to obtain feedback from employee regarding the quality of the service provided.</p>

3. Prior to the liaison meeting the Customer shall have assessed the Service Provider’s performance with regard to the above using a score of 1 (Very Poor) to 10 (Excellent).
4. These scores shall be recorded using the Customer’s Performance Monitoring Report (See example – following page).
5. Without limiting the generality of the definition of “Unsatisfactory”, a score of 4 or less for any item shall be deemed unsatisfactory performance.

A more detailed Service Level Agreement (SLA) may be agreed as part of the terms and conditions of contract.