

Schedule 1 Appendix 2- Category 2 Call-Off Terms and Conditions

DATED

**AGREEMENT FOR THE PROVISION OF CARE LEAVER AND YOUNG
HOMELESS SUPPORTED ACCOMMODATION**

between

LANCASHIRE COUNTY COUNCIL

and

[INSERT DETAIL OF PROVIDER]



CONTENTS

CLAUSE

1.	Definitions and Interpretation.....	1
2.	Term	8
3.	Extending the initial term	8
4.	Consents, Service Provider's warranty and due diligence	8
5.	Supply of services	11
6.	Not Used.....	11
7.	Service standards.....	11
8.	Health and Safety	12
9.	Not Used.....	Error! Bookmark not defined.
10.	Not Used.....	Error! Bookmark not defined.
11.	Payment.....	Error! Bookmark not defined.
12.	Not Used.....	Error! Bookmark not defined.
13.	Key personnel.....	14
14.	Other personnel used to provide the services	15
15.	Safeguarding children and vulnerable adults.....	16
16.	TUPE.....	17
17.	Reporting and meetings	17
18.	Monitoring.....	17
19.	Change control	17
20.	Dispute resolution.....	17
21.	Sub-Contracting and assignment	18
22.	Indemnities	Error! Bookmark not defined.
23.	Limitation of liability	20
24.	Insurance	21
25.	Freedom of information.....	22
26.	Data protection	24
27.	Confidentiality.....	24
28.	Audit.....	26
29.	Intellectual property	28
30.	Termination on Notice or Breach	30
31.	Termination on Mandatory Grounds	31
32.	Force majeure	32
33.	Prevention of bribery.....	33
34.	Consequences of termination	35
35.	Non-solicitation	35
36.	Waiver	35
37.	Cumulative remedies	36
38.	Severability.....	36
39.	Partnership or agency	36
40.	Third party rights.....	36
41.	Publicity	36
42.	Notices.....	37

43.	Entire agreement.....	37
44.	Discrimination	
45.	Not Used	
46.	Counterparts	38
47.	Governing law and jurisdiction	38

SCHEDULE

SCHEDULE 1	SPECIFICATION	40
SCHEDULE 2	SERVICE LEVELS (NOT USED).....	41
SCHEDULE 3	SERVICE PROVIDER'S TENDER.....	42
SCHEDULE 4	CHARGES AND PAYMENT	43
1.	Payment Plan.....	Error! Bookmark not defined.
2.	Disputes, Record Keeping and Sub-Contractors	Error! Bookmark not defined.
3.	Monies due from Service Provider.....	Error! Bookmark not defined.
4.	Supplier Incentive Scheme and Inflation.....	Error! Bookmark not defined.
5.	Under Utilisation	Error! Bookmark not defined.
SCHEDULE 5	CONTRACT MANAGEMENT	44
1.	Authorised representatives	Error! Bookmark not defined.
2.	Key personnel.....	Error! Bookmark not defined.
3.	Meetings	Error! Bookmark not defined.
4.	Reports	Error! Bookmark not defined.
SCHEDULE 6	SUPPLIER INCENTIVE SCHEME	ERROR! BOOKMARK NOT DEFINED.
SCHEDULE 7	CHANGE CONTROL	52
1.	General principles.....	56
2.	Procedure.....	56
SCHEDULE 8	PREMISES	ERROR! BOOKMARK NOT DEFINED.
SCHEDULE 9	EXIT	59
SCHEDULE 10	TUPE.....	60
SCHEDULE 11	COMMERCIALLY SENSITIVE INFORMATION	65

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) LANCASHIRE COUNTY COUNCIL of PO Box 78, County Hall, Preston PR1 8XJ (**Council**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Service Provider**).

individually the "party" and together the "parties".

BACKGROUND

- (A) The Council has been seeking proposals for the provision of Care Leaver and Young Homeless Supported Accommodation by means of a public tender exercise. The Council placed a contract notice [REFERENCE] on [DATE] in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of provision of Care Leaver and Young Homeless Supported Accommodation.
- (B) Following the Service Provider's application, the Council has appointed the Service Provider as a potential provider of the Services in accordance with the PDPS.
- (C) Following the procedure outlined in the PDPS, the Council has selected the Service Provider to provide the Services on the terms set out in this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Achieved Service Levels: in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 2).

Additional Services: means services which are additional to the Services detailed within the Specification.

Agreed Purposes: the data is to be processed as part of the Services.

Applicable Laws: means all applicable laws, statutes, regulations and codes from time to time in force.

Associated Company: any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Council and the Service Provider, the first such persons being set out in 3.1.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Care Plan/ Pathway Plan/ Support Plan: The individualised plan outlining the support requirements of the Service User.

Catastrophic Failure

- (a) any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Council's Representative has or may cause significant harm to the reputation of the Council.
- (b) there is a safeguarding issue which cannot be remedied.
- (c) the minimum property requirements as set out in the PDPS are no longer being met in respect of the Premises where Service Users are placed.

Change: any change to this agreement including to any of the Services.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 6.

Charges: the charges which shall become due and payable by the Council to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4.

Commencement Date: the date of this agreement

Commercially Sensitive Information: the information listed in Schedule 11 comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or 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.

Consistent Failure: shall have the meaning set out in **Error! Reference source not found.** of Schedule 2.

Contracting Authority: shall mean any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

Contract Year: a period of 12 months, commencing on the Commencement Date.

Controller, Processor, Data Subject, Joint Controller, Personal Data, Personal Data Breach, Processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation in force at the time.

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

Data Protection Legislation: shall mean:

- i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
- ii) the DPA 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;

Default Notice: is defined in clause 5.2.

Dispute Resolution Procedure: the procedure set out in clause 20.

DPA: means the Data Protection Act 2018 as amended from time to time.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Exit Management Plan: the plan set out in Schedule 9.

Fraud: means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the agreement or defrauding or attempting to defraud or conspiring to defraud the Council

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the 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: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

GDPR: means the General Data Protection Regulation (Regulation (EU) 2016/679).

Homeless Family: means families, including couples or single people who are pregnant, aged 16 years or over who are homeless and require additional support to be able to develop the skills required to access or maintain accommodation.

Information: has the meaning given under section 84 of FOIA.

Initial Term: shall be a period of 365 days in respect of each Phase.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of

copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of the Council's, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Key Personnel: those personnel identified 3.1 who are identified by each party as being key to the success of the implementation and/or operation of the Services as a whole, as modified pursuant to clause 13.

LED: means the Law Enforcement Directive (Directive (EU) 2016/680).

Management Reports: the reports to be prepared and presented by the Service Provider in accordance with clause 17 and 3.1 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

Payment Plan: the plan for payment of the Charges as set out in Schedule 4.

PDPS: means the agreement between the Council and the Supplier dated [redacted] relating to the provision of the Services.

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

Phase: shall be each individual 1 x 365 days of Services procured by the Council under this agreement. There shall be 3 Phases in total each commencing within the timescales set out in clause 2.

Premises: means the location at which the Services are, or can be provided from as set out in Schedule 8, as amended with the consent of the Council.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;

- (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulatory Bodies 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 agreement or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Council in accordance with clause 30.2(a).

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Service Provider.

Replacement Service Provider: any third party service provider of Replacement Services appointed by the Council from time to time.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Service Failure: a failure by the Service Provider to provide the Services in accordance with any individual Service Level.

Service Levels: the service levels to which the Services are to be provided, as set out in Schedule 2.

Service Provider Party: the Service Provider's agents and contractors, including each Sub-Contractor.

Service Provider's Personnel: all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Service Provider's Tender: 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 and other associated documentation set out in Schedule 3.

Services: the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in Schedule 1 (Specification).

Service User: the recipient of the Services, being either a Young Person, a Homeless Family, or such other category of persons set out in Schedule 1.

Shared Personal Data: the personal data to be shared between the parties under clause 26.1 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a) Data Subjects to include any or all of the following: staff (including volunteers, agents and temporary workers), customers, clients, service users, service users' family, suppliers, patients, students, pupils, members of the public or any other such data subjects as detailed in the main body of the Agreement and any Schedules and Appendices as appended to it.
- b) The categories of data to be processed shall be defined only insofar as they relate to the detail of the main body of the Agreement and any Schedules and Appendices as appended to it.

Sub-Contract: any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Supplier Incentive Scheme: means the Council's programme to improve its pay to purchase processes to enable the Service Provider to benefit from the early payment of their invoices in return for a small rebate of the Charges. If the Service Provider's tender submission indicated that they wished to be part of the scheme in relation to this contract, the terms of the Supplier Incentive Scheme shall be set out at Schedule 6.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended

Unit means the individual space allocated to each Service User.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

Young People: means one of the following:

- (a) 16-21 year olds who are homeless or are threatened with homelessness, or
- (b) 16-24 year olds who are either a Child Looked After or a Care Leaver

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

- 1.3 A **person** includes a natural person, corporate or unincorporated body and partnerships (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes email but not faxes.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression **so far as a PARTY is aware or to a PARTY's knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. INITIAL TERM

- 2.1 The Agreement shall take effect on the Commencement Date in respect of Phase 1, within two months of the Commencement Date in respect of Phase 2 and within four months of the Commencement Date in respect of Phase 3.
- 2.2 Each Phase shall have an Initial Term of 365 days from commencement and shall expire automatically following the Initial Term unless:
- a) it is otherwise terminated in accordance with the provisions of the agreement, or otherwise lawfully terminated;
 - b) it is extended under clause 3.1 (Extending The Initial Term); or
 - c) a Service User is placed at the Premises in respect of that Phase, at which point the Phase shall continue until the end of the Service User's placement.

3. EXTENDING THE INITIAL TERM

- 3.1 The Council may extend each Phase beyond the Initial Term by a further period of up to 365 days in addition to the Initial Term (the "Extension Period"). If the Council wishes to extend this agreement, it shall give the Service Provider at least 1 months' written notice of such intention before the expiry of the Initial Term.
- 3.2 If the Council does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term of Phase 3 and the provisions of clause 34 shall apply.
- 3.3 If the Council does extend the Initial Term, then it shall do so on the same terms and conditions as set out in this agreement.
- 3.4 The term of each Service User's placement shall be for the period as set out within the Individual Placement Agreement or the Care Plan/ Pathway Plan/ Support Plan.

4. CONSENTS, SERVICE PROVIDER'S WARRANTY AND DUE DILIGENCE

- 4.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

- 4.3 The Service Provider acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
 - (b) it has received all information requested by it from the Council pursuant to clause 4.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
 - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.3(b);
 - (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - (e) it has entered into this agreement in reliance on its own due diligence.
- 4.4 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Service Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.
- 4.5 The Service Provider as at the Commencement Date, warrants and represents that:
- (a) all information contained in the Service Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
 - (b) it shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.
 - (c) it has full capacity and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the agreement and that the agreement is executed by a duly authorised representative of the Service Provider;
 - (d) in entering the agreement it has not committed any Fraud;
 - (e) 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 any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the agreement;

- (f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the agreement;
- (g) 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;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property that are necessary for the performance of its obligations under the agreement;
- (i) in the 3 years prior to the date of the agreement :
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the agreement.

4.6 The Service Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Service Provider in accordance with clause 4.5(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.7 Nothing in this clause 4 shall limit or exclude the liability of the Council for Fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

5.1 The Service Provider shall provide the Services to the Council with effect from [INSERT DATE] and for the duration of this agreement in accordance with the provisions of this agreement.

5.2 In the event that the Service Provider does not comply with the provisions of clause 5.1 in any way, the Council may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a **Default Notice**).

6. SERVICE LEVELS

6.1 Where any Service is stated in Schedule 2 to be subject to a specific Service Level, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.

6.2 The Service Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 17.

7. SERVICE STANDARDS

7.1 Without prejudice to clause 6, the Service Provider warrants that it shall provide the Services, or procure that they are provided:

- (a) in accordance with Best Industry Practice;
- (b) at all times in compliance with the Council's requirements set out in this agreement;
- (c) in all respects in accordance with the Council's policies set out in Schedule 1; and
- (d) in accordance with all Applicable Laws.
- (e) The Service Provider shall use as appropriate first class quality materials, skills and workmanship of their respective kinds and undertakes that the design workmanship and materials used will be fit to achieve the purpose for which the Services are required either as specified by the Council expressly in this agreement or as may be implied from this agreement and the Service Provider further acknowledges that in performing the Services the Council is reliant at all times on the Service Provider's skill and judgement

7.2 Without limiting the general obligation set out in clause 7.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall) at all times when supplying the Services do so with all due skill, care and diligence and that the Service

Provider's Personnel supplying the Services shall possess such qualifications, skills and experience as is necessary for the proper supply of the Services.

- 7.3 It shall be a condition of this agreement that the substance of the Provider's own policies and procedures shall comply with all Applicable Laws and legislative requirements.

8. HEALTH AND SAFETY

- 8.1 The Service Provider shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the agreement.

- 8.2 The Service Provider shall notify the Council immediately in the event of any incident occurring in the performance of the agreement where that incident causes any personal injury or damage to property that could give rise to personal injury.

- 8.3 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 those Service Users at the Premises.

- 8.4 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

9. (NOT USED)

10. (NOT USED)

11. CHARGES AND PAYMENT

- 11.1 The Charges for the Services shall be the full and exclusive remuneration of the Service Provider in respect of the supply of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Service Provider directly or indirectly incurred in connection with the performance of the Services.

- 11.2 The Service Provider shall invoice the Council at the end of the month in which the Services are provided. Each invoice shall include such supporting information as may be required by the Council to verify the accuracy of the invoice, the relevant invoice number, and a breakdown of the Services supplied in the invoice period.

- 11.3 In the event of an underpayment of an invoice due to the Service Provider's failure to submit the correct supporting information required pursuant to clause 11.2, the

Council's sole liability shall be to pay the underpayment within 30 days of notification of the same.

- 11.4 In the event the Council incorrectly overpays an invoice incurring a loss either accidentally or on reliance upon incorrect, misleading or false information provided by the Service Provider pursuant to clause 11.2, the Service Provider shall reimburse the Council the full overpayment within 14 days of identifying the overpayment, or being notified of the same by the Council.
- 11.5 In consideration of the supply of the Services by the Service Provider, the Council shall pay the Service Provider the invoiced amounts no later than 30 days after receipt of a valid invoice. The Council may, without prejudice to any other rights and remedies under the agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 11.6 Where the Service Provider submits an invoice to the Council in accordance with clause 11.2, the Council will consider and verify that invoice in a timely fashion.
- 11.7 The Council shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.
- 11.8 Where the Council fails to comply with clause 11.6 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.7 after a reasonable time has passed.
- 11.9 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 11.2 to 11.8 of this agreement; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 11.2 to 11.8 of this agreement.
- 11.10 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Service Provider a sum equal to the VAT chargeable in respect of the Services.
- 11.11 If there is a dispute between the parties as to the amount invoiced, the Council shall pay the undisputed amount. The Service Provider shall not suspend the supply of the Services for a failure to pay undisputed sums. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.

- 11.12 If any sum of money is recoverable from or payable by the Service Provider under the agreement (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of the agreement), that sum may be deducted unilaterally by the Council from any sum then due, or which may come due, to the Service Provider under the agreement or under any other agreement or contract with the Council. The Service Provider shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.
- 11.13 If as part of the Service Provider's Tender, the Service Provider indicated that they wished to utilise the Supplier Incentive Scheme in relation to this agreement, the supplemental terms outlined in Schedule 6 shall apply. In the event of any conflict between the terms of Schedule 6 and this clause 11, the provisions in Schedule 6 shall take priority until expiry or termination of Schedule 6 in which case only this clause 11 shall apply.
- 11.14 On the anniversary of the Agreement, the Council shall implement an adjustment to the Charges payable in respect of the Services to cover Inflation. Inflation shall be measured as the Consumer Price Index as published by the Office for National Statistics the previous quarter.

12. NOT USED

STAFF

13. KEY PERSONNEL

- 13.1 The Service Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council.
- 13.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council (which shall not be unreasonably withheld or delayed), except by reason of long-term sickness, maternity leave, paternity leave or termination of employment, resignation by the Key Personnel and other extenuating circumstances.
- 13.3 In the event that the Key Personnel stops providing the Services in accordance with clause 13.2, the Service Provider shall immediately notify the Council.
- 13.4 Any replacements to the Key Personnel shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

- 13.5 Replacements to the Key Personnel shall not have a detrimental impact on the provision of the Services. Where the Service Provider reasonably considers the change in Key Personnel will have a detrimental impact on the Services, it shall immediately notify the Council and the parties shall work in good faith to mitigate the risks to Service delivery.
- 13.6 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 28 Working Days (or such other reasonable period as may be agreed between the parties).
- 13.7 The Council may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 13.8 If the Service Provider replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Service Provider.

14. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 14.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Service Provider (having regard to any authorisation procedure agreed in writing between the parties, in the event that such exists) are involved in providing the Services; and
 - (d) all of the Service Provider's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.
- 14.2 The Council may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Service Provider shall replace any of the Service Provider's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

14.4 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

14.5 The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

15. SAFEGUARDING SERVICE USERS

15.1 The Service Provider shall ensure that all individuals engaged in the provision of the Services are:

- (a) subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
- (b) the Service Provider shall monitor the level and validity of the checks under this clause 15.1 for each member of staff.

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

15.3 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.

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

15.5 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to perform the Services or who may otherwise present a risk to service users.

15.6 The parties acknowledge that as of the Commencement Date, the provision of the Services is not considered a Regulated Activity for the purposes of the Safeguarding Vulnerable Groups Act 2006. If following the Commencement Date, there is a

change in Applicable Laws relating to the Services (including circumstances where the Services is deemed to be a Regulated Activity), the Provider shall notify the Council and shall comply with such Applicable Laws from the date they are implemented.

16. TUPE

16.1 The parties agree that the provisions of Schedule 10 shall apply to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

17. REPORTING AND MEETINGS

17.1 The Service Provider shall provide the management reports in the form and at the intervals set out in 3.1.

17.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in 3.1 and the Service Provider shall, at each meeting, present its previously circulated Management Reports and, if appropriate, financial reports in the format set out in that Schedule.

18. MONITORING

18.1 The Council may monitor the performance of the Services by the Service Provider.

18.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Council.

19. CHANGE CONTROL

Any requirement for a Change, including the need for any Additional Services shall be subject to the Change Control Procedure.

20. DISPUTE RESOLUTION

20.1 Either party may call an extraordinary meeting of the parties by service of not less than 7 days' written notice (or such other period as may be agreed in writing) and each party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Council (if any) shall attend all extraordinary meetings called in accordance with this clause.

- 20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to the Service Provider's Managing Director or the Council's nominated representative (or other senior officers of the parties as may be appropriate and agreed from time to time) who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the officers referred to in this clause 20.2 fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.
- 20.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.
- 20.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

21. SUB-CONTRACTING AND ASSIGNMENT

- 21.1 The Service Provider shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the Council, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.
- 21.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.

21.3. Subject to clause 21.5, the Council may assign, novate or otherwise dispose of its rights and obligations under the agreement or any part thereof to:

- (a) any Contracting Authority; or
- (b) any other body established by the Council or under statute in order substantially to perform any of the functions that had previously been performed by the Council ; or
- (c) any private sector body which substantially performs the functions of the Council,

provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the agreement.

21.4 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to clause 21.3, affect the validity of the agreement. In such circumstances, the agreement shall bind and inure to the benefit of any successor body to the Council.

21.5 If the rights and obligations under the agreement are assigned, novated or otherwise disposed of pursuant to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**):

- (a) the rights of termination of the Council in clauses 30 (Termination For Breach) shall be available to the Service Provider in the event of respectively, the bankruptcy or insolvency, of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the agreement or any part thereof with the prior consent in writing of the Service Provider.

21.6 The Council may disclose to any Transferee any confidential information of the Service Provider which relates to the performance of the Service Provider's obligations under the agreement. In such circumstances the Council shall authorise the Transferee to use such confidential information only for purposes relating to the performance of the Service Provider's obligations under the agreement and for no

other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such confidential information.

- 21.7 Each party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the agreement .

LIABILITY

22. INDEMNITIES

- 22.1 Subject to Clause 22.2, the Supplier shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:

(a) the Supplier's breach or negligent performance or non-performance of this agreement;

(b) any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;

(c) the enforcement of this agreement.

- 22.2 The indemnity under Clause 22.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this agreement by the Council or its Representatives.

23. LIMITATION OF LIABILITY

- 23.1 Subject to clause 23.55, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, savings (whether anticipated or otherwise), goodwill or business opportunities whether direct or indirect.

- 23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

- 23.3 Subject to clause 23.55, the Council's total aggregate liability:
- (a) in respect of the indemnities given by the Council in Schedule 10 is unlimited; and
 - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable), shall in no event 100% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.
- 23.4 Subject to clause **Error! Reference source not found.**, the Service Provider's total aggregate liability:
- (a) in respect of the indemnities given by the Service Provider in clause **Error! Reference source not found.**5 and Schedule 10 is unlimited;
 - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed 150% of the aggregate Charges paid (or due to be paid) under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.
- 23.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) Fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of Data Protection Legislation;
 - (d) breach of any obligation as to title implied by statute; or
 - (e) any other act or omission, liability for which may not be limited under any Applicable Law.

24. INSURANCE

- 24.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance covering the following:-
- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in relation to any one claim arising out of each and every event without limit on the number of claims in any one year or other period and such insurance shall expressly by its terms confer its benefits on the Council. Such insurance policy shall not limit or exclude any claims relating to sexual abuse, exploitation, molestation or emergency first aid;

- (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS);
- (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- (d) product liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION) in relation to any one claim or series of claims.
- (e) appropriate compulsory motor insurance; where the Services involves the transportation of Service Users.

(the "**Required Insurances**") in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the agreement, 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.

- 24.2 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 Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.
- 24.5 The Service Provider shall hold and maintain the professional indemnity insurance for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

25. FREEDOM OF INFORMATION

- 25.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.

- 25.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 25.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 25.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 25.5 The Service Provider acknowledges that the Council may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice (issued under section 45 of the FOIA, July 2018), be obliged under the FOIA or the EIRs to disclose Information:
- (a) without consulting with the Service Provider; or
 - (b) following consultation with the Service Provider and having taken its views into account,
- provided always that where clause 25.5(b) 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.
- 25.6 The Service Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 25.7 The Service Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.5.

26. DATA PROTECTION

- 26.1 This clause sets out the framework for the sharing of Personal Data between the parties as Controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 26.2 Each party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 26.3 Each party shall:
- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - (b) give full information to any Data Subject whose Personal Data may be processed under this agreement of the nature such Processing. This includes giving notice that, on the termination of this agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - (c) process the Shared Personal Data only for the Agreed Purposes;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, Personal Data.
 - (g) not transfer any Personal Data received from the Data Discloser outside the EEA unless the transferor:
 - (i) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a Joint Controller); and
 - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 26.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) consult with the other party about any notices given to Data Subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any Data Subject Access Request. Data subjects have a right of access and a right of correction in respect of their personal data which the Service Provider holds about them, in accordance with Data Protection Law and the Service Provider shall be the contact point for Data Subjects wishing to exercise their rights in respect of Personal Data held about them in connection with the delivery of the Services;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- (e) assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data Breach notifications, Data Protection Impact Assessments and consultations with supervisory authorities or regulators;
- (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the other party or the other party's designated auditor; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

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

27. CONFIDENTIALITY

27.1 Subject to clause 27.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

27.2 Clause 27.1 shall not apply to any disclosure of information:

- (a) required by any Applicable Law, provided that clause 25.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
- (d) by the Council of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 20;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Council to any other department, office or agency of the Government; and
- (h) by the Council relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

27.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

28. AUDIT

28.1 During the Term and for a period of 7 years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Service Providers (including Sub-Contractors) of the Services at the level of detail agreed in Schedule 4 (Charges and Payment);
- (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;

- (c) to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 26 (Data Protection) and clause 25 (Freedom of Information) and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the Council's accounts;
 - (g) to carry out an examination pursuant to sections 7ZA of the National Audit Act 1983 (as amended) of the economy, efficiency and effectiveness with which the Council has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 28.2 Except where an audit is imposed on the Council by a Regulatory Body, the Council may not conduct an audit under this clause 28 more than twice in any calendar year.
- 28.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 28.4 Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Service Provider's Personnel.
- 28.5 The Council shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 28.7 If an audit identifies that:

- (a) the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Council has overpaid any Charges, the Service Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
- (c) the Council has underpaid any Charges, the Council shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Service Provider in relation to invoicing within 20 days.

29. INTELLECTUAL PROPERTY

29.1. All Intellectual Property in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

- (a) furnished to or made available to the Service Provider by or on behalf of the Council shall remain the property of the Council; and
- (b) prepared by or for the Service Provider on behalf of the Council for use, or intended use, in relation to the performance by the Service Provider of its obligations under the agreement shall belong to the Council;

and the Service Provider shall not, and shall ensure that the Service Provider's Personnel shall not, (except when necessary for the performance of the agreement) without prior written approval of the Council, use or disclose any Intellectual Property in the IP Materials.

29.2 The Service Provider hereby assigns to the Council, with full title guarantee, all Intellectual Property which may subsist in the IP Materials prepared in accordance with clause 29.1 (b). The Service Provider shall execute all documentation necessary to execute this assignment.

29.3 The Service Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by the agreement or the performance of the agreement.

29.4 The Service Provider shall ensure that the third party owner of any Intellectual Property that are or which may be used to perform the agreement grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property in the same. Such licence or sub-licence shall be

non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the replacement service provider or to any other third party supplying services to the Council.

- 29.5 The Service Provider shall not infringe any Intellectual Property of any third party in supplying the Services and shall, during and after the agreement, indemnify and keep indemnified and hold the Council harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the Council ; or
 - (b) the use of data supplied by the Council which is not required to be verified by the Service Provider under any provision of the agreement.
- 29.6 The Council shall notify the Service Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property in materials supplied or licensed by the Service Provider.
- 29.7 The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property in materials supplied or licensed by the Service Provider, provided always that it:
- (a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Council; and
 - (c) shall not settle or compromise any claim without the prior written approval of the Council (not to be unreasonably withheld or delayed).
- 29.8 The Council shall at the request of the Service Provider afford to the Service Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or by a third party for infringement or alleged infringement of any third party Intellectual Property in connection with the performance of the Service Provider's obligations under the agreement and the Service Provider shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Service Provider shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 29.5(a) or (b).
- 29.9 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property by the Council or the Service Provider in connection with the performance of its obligations under the agreement.

29.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property is made in connection with the agreement or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or

(b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,

and in the event that the Service Provider is unable to comply with clauses 29.7(a) or (b) within 20 Working Days of receipt of the Service Provider's notification the Council may terminate the agreement with immediate effect by notice in writing.

29.11 The Service Provider grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property that the Service Provider owned or developed prior to the Commencement Date and which the Council reasonably requires in order exercise its rights and take the benefit of this agreement including the Services provided.

TERMINATION

30. TERMINATION ON NOTICE OR BREACH

30.1 Either party may voluntarily terminate this agreement by giving the other party not less than 6 months' written notice at any time after the Commencement Date.

30.2 The Council may terminate this agreement in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:

(a) if the Service Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Council may only terminate this agreement under this clause 30.1 if the Service Provider has failed to remedy such breach within 14 days (or such other longer period if stipulated by the Council in writing) of receipt of notice from the Council (a **Remediation Notice**) to do so;

(b) if a Consistent Failure has occurred;

(c) if a Catastrophic Failure has occurred;

(d) if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration

order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment;

- (e) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Council reasonably objects.

30.3 The Council may terminate this agreement in accordance with the provisions of clause 32 and clause 33.

30.4 If this agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Service Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

31. TERMINATION ON MANDATORY GROUNDS

31.1 The Council is required by virtue of Regulation 73 of the Public Contracts Regulations 2015 to ensure that all contracts which it awards contain provisions enabling the Council to terminate those contracts under certain circumstances. Thus the Council will terminate the whole of this agreement with immediate effect by the service of a written notice on the Service Provider in the following circumstances:

31.1.1 where the agreement has been subject to a substantial modification which will include any change in the agreement irrespective of the monetary value and which meets one or more of the following conditions:

- i) materially alters the character of the agreement; or
- ii) would have allowed other potential service providers to participate in the procurement procedure other than those initially selected or allowed for the acceptance of a tender other than that originally accepted; or
- iii) attracted additional service providers in the procurement procedure; or
- iv) the modification changes the economic balance of the agreement in favour of the Service Provider in a manner which was not provided for in the original agreement; or
- v) the modification extends the scope of the agreement considerably; or
- vi) a new service provider replaces the Service Provider other than where the change arises from a clear and precise unequivocal review clause or the exercising of an option which outlines the scope and nature of the possible modification as well as the conditions under which the option can be exercised and that the option exercised does not alter the overall nature of the

agreement or following a universal or partial succession into the position of the Service Provider following corporate restructuring such as a takeover, merger, acquisition or insolvency and provided that this does not entail other substantial modifications and where the purpose of the modification is not aimed at circumventing procurement law.

31.1.2 where post-award of the agreement it is discovered that the Service Provider should have been excluded from the procurement procedure on certain mandatory exclusion grounds for a breach of Regulation 57 of the Public Contracts Regulations 2015. These exclusion grounds are where the Service Provider has been convicted of any of the offences that are detailed in Regulation 57.

31.1.3 where the Court of Justice of the European Union has declared the agreement was awarded in 'serious infringement' of the Council's obligations under EU law and Directive 2014/24/EU in infringement proceedings brought by the European Commission against the Member State concerned under Article 258 TFEU.

32. FORCE MAJEURE

32.1 Subject to the remaining provisions of this clause 32, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

32.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

32.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

32.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.

- 32.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 32.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 32.7 The Council may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

33. PREVENTION OF BRIBERY

- 33.1 The Service Provider:
- (a) shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 33.2 The Service Provider shall:
- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - (b) within 14 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 33 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

- 33.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Service Provider Party or Service Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 33.4 If any breach of clause 33.1 is suspected or known, the Service Provider must notify the Council immediately.
- 33.5 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 33.1, the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this Agreement.
- 33.6 The Council may terminate this Agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 33.1. In determining whether to exercise the right of termination under this clause 33.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:
- (a) with the authority; or,
 - (b) with the actual knowledge;
- of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or
- (c) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.
- 33.7 Any notice of termination under clause 33.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - (c) the date on which this Agreement will terminate.
- 33.8 Notwithstanding the provisions of clause 20 (Dispute resolution), any dispute relating to:
- (a) the interpretation of clause 33; or
 - (b) the amount or value of any gift, consideration or commission,

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

- 33.9 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

34. CONSEQUENCES OF TERMINATION

- 34.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Service Provider.

- 34.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Service Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Service Provider's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.

- 34.3 The provisions of clause 6.2 (provision of records), clause **Error! Reference source not found.** (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 34 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

35. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the Term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

36. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the

foregoing, any prior acceptance or approval communicated by the Council to the Service Provider in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

37. CULMINATION OF REMEDIES

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

38. SEVERABILITY

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

39. PARTNERSHIP OR AGENCY

At all times during for the duration of the Agreement the Service Provider shall be an independent contractor and nothing in the agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and accordingly neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the agreement.

40. THIRD PARTY RIGHTS

A person who is not a party to the agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

41. PUBLICITY

41.1 The Service Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Council's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Council.

the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

44 DISCRIMINATION

44.1 The Service Provider shall not unlawfully discriminate either directly or indirectly within the meaning and scope of any Law. Furthermore the Service Provider will ensure that it provides equality of treatment for anyone who shares a protected characteristic (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise in the provision of the Services and in the employment of the Service Provider's Personnel) including but not limited to the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

44.2 The Service Provider shall take all reasonable steps to secure the observance of clause 44.1 by all Service Provider Personnel.

45 NOT USED

46 COUNTERPARTS

46.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

47 GOVERNING LAW AND JURISDICTION

47.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.

This agreement has been entered into on the date stated at the beginning of it.

IN WITNESS WHEREOF this agreement has been executed by the duly authorised representatives of the parties on the date shown at the beginning of this Contract

THE COMMON SEAL OF

LANCASHIRE COUNTY COUNCIL)

Was hereunto affixed in the presence of)

SIGNED on behalf of

[the Service Provider])

Director/Partner/Sole Trader*)

Print name)

)

SIGNED on behalf of

[the Service Provider])

Director/Company Secretary/Partner/Witness*)

Print name)

Address**)

*delete as applicable

**if signing as a witness

Schedule 1 Specification

Schedule 2 Service levels (Not Used)

Schedule 3 Service Provider's Tender

Schedule 4 Charges and payment

1. PAYMENT PLAN

- 1.1 The Charges are based upon an annual block contract price of [] for each 1 x 365 days ("**Block Price**") submitted as part of the Service Provider's Tender.
- 1.2 The Service Provider shall invoice the Council for the payments due to them based on the Services provided during the previous month. In respect of each Block Price will be made in arrears on the last working day of each month, each instalment being calculated as follows:-
(a) [Block Price] / 365 x No of days the Service is provided in the month
- 1.3 Where a contract for a service commences or ends prior to the expiry of the Term, pro-rata payments will be made accordingly. The Service Provider must notify the Council as soon as is reasonably possible of any expected end of service date or a date from which it will be unable to deliver the service so that payment of charges can be adjusted where necessary.
- 1.5 The charges outlined in clause 1.1 are paid exclusive of VAT. Where it is deemed that VAT is payable, the Council shall pay VAT in addition to the Charges provided that the Provider shall at all times supply the Council with a valid VAT invoice. This valid VAT invoice should be received by the Council's finance team at the end of each month and dated in line with the payment period to which the VAT relates.

2. DISPUTES, RECORD KEEPING AND SUB-CONTRACTORS

- 2.1 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.
- 2.2 Subject to clause 2.1, interest shall be payable on the late payment of any undisputed Charges due and payable under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue.
- 2.3 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to the Agreement. Such records shall be retained for inspection by the Council for 7 years from the end of the Contract Year to which the records relate.
- 2.4 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in

such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.

3. MONIES DUE FROM THE SERVICE PROVIDER

- 3.1 If any sum of money is recoverable from or payable by the Service Provider under the agreement (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of the agreement), that sum may be deducted unilaterally by the Council from any sum then due, or which may come due, to the Service Provider under the agreement or under any other agreement or contract with the Council. The Service Provider shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.
- 3.2 The Council may, without prejudice to any other rights and remedies under the agreement, withhold or reduce payments in the event of unsatisfactory performance.

4. SUPPLIER INCENTIVE SCHEME AND INFLATION

- 4.1 If as part of the Service Provider's Tender, the Service Provider indicated that they wished to utilise the Supplier Incentive Scheme in relation to this agreement, the supplemental terms outlined in Schedule 6 shall apply. In the event of any conflict between the terms of Schedule 6 and this Schedule 4, the provisions in Schedule 6 shall take priority until expiry or termination of Schedule 6 in which case only Schedule 4 shall apply.
- 4.2 On the anniversary of the Agreement, the Council shall implement an adjustment to the Charges payable in respect of the Services to cover Inflation. Inflation shall be measured as the Consumer Price Index as published by the Office for National Statistics 3 months prior to the anniversary of the Agreement.

3. UNDER-UTILISATION

- 3.1 The Service Provider acknowledges that the Council shall be the sole recipient of the Services in respect of each Unit it has procured under this Agreement.
- 3.2 The Service Provider shall at all times comply with the requirements of clause 4 of Schedule 1 in relation to Service Users admission to the Service.
- 3.3 Where the Council identifies that the Service Provider rejects a significant percentage of Service Users applications for admission to the Service compared to comparable service providers providing the same Services within Lancashire, the parties shall:

- (a) meet to discuss and gain further understanding as to why the number of rejections by the Service Provider are higher than comparable service providers; and
- (b) work in good faith to agree and implement further options and proposals to maximise the future utilisation of the Unit for the benefit of all parties.

3.4 If following the procedure outlined within clause 1.3, the Council identifies that the number of rejections by the Service Provider are still significantly higher than other comparable service providers and the Service Provider is unable to justify why the rejections are reasonable, the Council shall be entitled to recover a pro-rata deduction of the net contract amount up to a maximum of the total percentage shortfall of un-occupied household units.

3.5 The Council shall not exercise its right to recover a pro-rata deduction of the net contract amount until a period of no less than 3 month has elapsed since the meeting set out at clause 5.3.

Schedule 5 Contract management

1 AUTHORISED REPRESENTATIVES

1.1 The Council's initial Authorised Representative: Talha Wadee (ART Manager)

1.2 The Service Provider's initial Authorised Representative: [NAME]

2 SERVICE STANDARDS AND REQUIRED LEVELS OF PERFORMANCE

2.1 The Service Provider shall provide evidence of quality, performance and outcomes of the Service as requested by the Council.

2.2 The Service Provider shall use the guidance set out in clause 3 to achieve the quality of service required.

2.3 The Service Provider shall collect and analyse data on the inputs, outputs and outcomes described throughout the service specification and utilise the contract monitoring tools set out in clause 4 in order to provide the required level and standard of reporting on operational performance at the required quarterly frequency.

2.4 The Service Provider shall strive to achieve the following performance indicators:

Indicator	Applicable to Categories	Source of Performance Monitoring Data	Frequency of Reporting	Target	Tolerance Level
Utilisation: Accommodation units available and occupied (based on nights utilised as a % of available nights in the period)	1,2,3,4,5	Quarterly Return – PI Workbook & Service Records	Quarterly	98%	94%
Support Hours- Delivery of annual support hours in accordance with Contract requirements	1,2,3,4,5	Quarterly Return – Staffing PI	Quarterly	100%	N/A – target to be met

<p>Adequacy of Support: Service Users open to the Service reported as progressing suitably in accordance with their support plan</p>	All 1-6	Quarterly Return – Service Records	Quarterly	No target Yr 1 – quarterly reporting and evaluation requirement	No target Yr 1 – quarterly reporting and evaluation requirement
<p>Successful move-on to more independent living: Service Users exiting the service with a positive outcome of moving towards, or achieving, more independent living</p>	All 1-6	Quarterly Return – PI Workbook	Quarterly	Indicative 85% - to review at end year 1	Indicative 75% - to review at end year 1
<p>Successful move from the support service: Service Users successfully exiting the Service in accordance with their support plan objectives</p>	All 1-6	Quarterly Return – Service Outcomes	Quarterly	Indicative 85% - to review at end year 1	Indicative 75% - to review at end year 1
<p>Successful engagement in EET: Service Users exiting the Service are</p>		Quarterly Return – Service Outcomes	Quarterly	100%	65%

in education, paid employment or training	All 1-6				
Suitable accommodation: Care Leavers sustaining suitable subsequent accommodation for over 6 months	All 1-6	Collated by the Council	Quarterly	100%	95%
Service User feedback: Service Users on exit of the service reporting to have received a good level of support	All 1-6	Questionnaire to Service User (from the Council)	Quarterly summary of questionnaire responses	Target to be set at end of Year 1	To be set at end of Year 1

3. OPERATIONAL FRAMEWORKS AND SERVICE STANDARDS FOR SERVICE DELIVERY

- 3.1 The Service Provider shall use the following frameworks and guidance to inform the quality and shape of service delivery:
- 3.1.1 Supported Accommodation Service for YP Aged 16+ Checklist
 - 3.1.2 Supported Accommodation Service for YP Aged 16+ Visit Template
 - 3.1.3 Supported Accommodation Service for YP Aged 16+ Policies and Procedures Checklist
 - 3.1.4 Supported Accommodation Service for YP Aged 16+ Improvement Plan Template
 - 3.1.5 Supported Accommodation Service for YP Aged 16+ Flowchart
 - 3.1.6 Unregulated Accommodation Criteria Checklist
 - 3.1.7 Accommodation Suitability Checklist
 - 3.1.8 Schedule 1- Specification
 - 3.1.9 Psychologically Informed Environment (PIE) – detailed in appendix
 - 3.1.10 Adverse Childhood Experiences (ACE) – detailed in appendix

- 3.2 The guidance described in 3.1 may be reviewed throughout the lifetime of the contract. The Council reserves the right to amend or replace the guidance and tools following consultation with the Service Provider on alternative approaches.

4. CONTRACT PERFORMANCE MONITORING TOOLS

- 4.1 The Service Provider shall complete all of the following structured datasheets within the Quarterly Return Workbook to capture performance and outcomes:

4.1.1 **Access Records:** Information on all Service Users presenting to the Service

4.1.2 **Service Records:** Information on all Service Users who receive a Service

4.1.3 **Service Outcomes:** Outcome information for all Service Users exiting the Service

- 4.2 The Service Provider is required to submit the completed Quarterly Return Workbook to the Council within **21 calendar** days of the quarter end date.

- 4.3 The Service Provider will be required to complete an annual self-assessment in a format requested by the Council to reflect on service developments over the previous 12 months. The assessment will cover the challenges presented, the progress achieved, and Service User / partner involvement in the direction of the service. A completed self-assessment will be requested from the Service Provider prior to the Quality Standards Visit.

- 4.4 The Service Provider shall complete and submit a Notifiable Incidents Form to report any major incidents, safeguarding issues or major risks to the Service of which the Council should be made aware. For the purposes of clarification the use of the Notifiable Incidents Form in respect of the reporting of safeguarding issues is intended as a secondary reporting mechanism only. In the first instance all safeguarding issues should be reported using the Council's standard reporting policies and procedures.

- 4.5 Quarterly Return Workbooks and Notifiable Incidents forms should be sent to the following email address artenquiries@lancashire.gov.uk unless specifically requested to use an alternative method.

5. FREQUENCY OF CONTRACT MANAGEMENT MEETINGS

- 5.1 The Council will conduct the following contract management meetings with the Service Provider.

Quality Standards Visit

A Quality Standards visit will be held between the Council and the Service Provider once a year at which the Supported Accommodation Service for YP Aged 16+ Visit Template will be completed.

The Quality Standards visit will include engagement with Service Users currently receiving a service, individually and /or collectively.

Contract Monitoring Meeting

A Contract Monitoring Meeting will be carried out by the Council with the Service Provider at least once a year but may take place at more frequent levels where the Council considers it necessary.

These Contract Monitoring Meetings will include the following agenda items:

- Engagement of provider in ART Referral process, including number of offers being made and refusals;
- The prioritisation profile of Service Users receiving a service;
- Feedback from Service Users who have left the service on the quality of service received by the Service Provider and the impact the Service Provider has had on their outcomes.
- Data from the Quarterly Return Workbook
- Feedback from partners / other stakeholders
- Insurances
- Notifiable Incidents

6. REVIEW OF CONTRACT MANAGEMENT APPROACH

- 6.1 The approach to contract management is likely to be reviewed during the period of the contract the type and therefore the format of the Quarterly Returns may be revised during the life of the contract, in consultation with the Service Provider. The Service Provider shall complete any jointly agreed performance returns as required.
- 6.2 The Council reserves the right to share information on contract performance with other local authorities, as defined by the Information Sharing Protocol(s) available for that purpose at any time.

Appendix

Psychologically Informed Environment (PIE)

The key objectives of each of these elements are expanded on below:

Key element 1: Development of a Psychological Framework

The aim is to develop a service culture that is reflective, thoughtful and compassionate. To achieve this, staff are introduced to insights and principles from psychological approaches to working with people with complex needs. The aim is for staff to understand, and keep in mind, the connections between thoughts, emotions and behaviour. The organisational commitment to becoming a PIE should also be made clear.

Key element 2: The physical environment and social spaces

The aim is to create a non-institutional, safe and welcoming service that facilitates interaction between staff and clients. Clients should have choice and control over how and when they engage. There should be a sense of physical and emotional safety for both clients and staff, with a culture of health and wellbeing.

Key element 3: Staff Training and Support

The service reflects on its working practices to support continuous improvement. Staff competencies and confidence are developed in working with complex trauma, and all staff share an understanding of complex trauma. Staff manage and reflect on their own thoughts, emotions and behaviours and those of their clients, feeling confident and supported to work with risk and challenging behaviour.

Key element 4: Managing Relationships

Relationships are recognised as the key tool for change. The impact of positive peer relationships is harnessed and clients with complex needs are not excluded.

Key element 5: Evaluation of outcomes

Outcomes are collated and analysed in order to understand and verify what works and to support continuous learning and improvement. This also enables evidence to be made available to clients, staff and commissioners to increase understanding of the value of psychologically informed approaches.

Additional element: Reflective Practice

Group reflective practice is a process of continuous learning from professional experiences. There is a robust evidence base demonstrating that teams who regularly meet to reflect on their practice are more effective than those who do not. Furthermore, literature indicates that effective teams achieve better outcomes for their client group.

Extract taken from <https://thelondonvawgconsortium.org.uk/wp-content/uploads/2017/05/PIE-Ascent-good-practice-briefing.pdf>

Additional resources on PIE can be found at homeless link:

<HTTPS://WWW.HOMELESS.ORG.UK/TRAUMA-INFORMED-CARE-AND-PSYCHOLOGICALLY-INFORMED-ENVIRONMENTS>

(Adverse Childhood Experiences (ACE))

ACE is a tool which will enable early identification of service users who may be at higher risk of crisis due to historic trauma and can be used as a risk stratification tool where appropriate. It should also be used to support the delivery of trauma informed approaches and interventions.

A link to the Lancashire Care e-learning course which provides an overview of ACE and its links to trauma informed practice has been provided here http://www.walkgroveonline.com/LCFT2/Final_Release/MECC2_ACE_V1_00/index.htm

The use of the operational frameworks and standards described in this Schedule may be reviewed within the life of the contract. The Council reserves the right to amend or replace the operational frameworks and standards as needed following consultation with the Service Provider on alternative approaches.

The Service Provider may also propose changes to the use of the operational frameworks and standards outlined above as part of their continuous improvement activities. Any major changes must be agreed by the Council prior to implementation.

Schedule 6 SUPPLIER INCENTIVE SCHEME

[TO ONLY BE INCLUDED WHERE THIS SCHEME IS OFFERED WITHIN THE ITT AND THE SERVICE PROVIDER HAS INDICATED IN THE ITT THAT THEY WISH TO BE A MEMBER OF THIS SCHEME]

1. DEFINITIONS

In this Schedule the following words and expressions have the following meanings unless the context otherwise requires:

- “Debt”** the gross amount (including, without limitation, all fees, charges, expenses and other sums invoiced, including any applicable VAT and other taxes), that is invoiced to the Council by the Service Provider, or otherwise due to the Service Provider under the terms of this agreement.
- “Rebate”** shall have the definition given to it in clause 3.1.1 of this Schedule 6.

2. TERM

- 2.1 This Schedule 6 shall be in force for a minimum period of two (2) years from the Commencement Date and will continue thereafter unless and until:
- (a) terminated by either party giving not less than six (6) months' written notice to that effect to the other party, such termination to be effective no earlier than the date that is two (2) years from the Commencement Date; or
 - (b) This agreement as a whole is terminated or expires in accordance with its terms.

3. PARTICIPATION IN SUPPLIER INCENTIVE SCHEME

- 3.1 The parties agree that the terms in this Schedule 6 take precedence over those terms of the agreement which relate to payments (and the timing of payments) as follows:
- 3.1.1 the Service Provider acknowledges and agrees that in consideration of the Council paying a Debt owed to the Service Provider under or in connection the agreement prior to the date by which such payment would otherwise be required to be made under the terms of the agreement, the Council shall be entitled to deduct and retain from that Debt, for its own benefit, such percentage of that Debt (the **“Rebate”**) that is calculated in accordance with clause 7.5 of this Schedule 6.
- 3.2 For the avoidance of doubt, nothing in this agreement shall:
- 3.2.1 affect the date by which payment of a Debt is required to be made by the Council; or
 - 3.2.2 require the Council to make early payment to the Service Provider in respect of any Debt.

- 3.3 The terms of this Schedule shall continue to apply to all Debts that remain unpaid up to and including the date of expiry or termination of the agreement (including where the agreement has terminated or expired). The terms of this agreement shall survive termination in respect of such Debts until payment has been effected.

4. INCORRECT APPLICATION OF REBATES

- 4.1 In the event the Service Provider, acting reasonably, considers that the Council has incorrectly applied a Rebate it shall raise a query in respect of that Rebate with the Council's accounts payable team (whose details will be provided to the Service Provider by the Council, as updated from time to time) within seven (7) days of the relevant payment being received by the Service Provider.
- 4.2 If the Service Provider does not raise a genuine query under clause 4.1 within seven (7) days of the relevant Rebate being applied, the Council shall be deemed to have applied the Rebate correctly in that instance and shall be entitled to retain that Rebate.
- 4.3 The parties shall use reasonable endeavours to resolve any query raised in accordance with clause 4.1 in a timely manner, including making relevant personnel available for the purpose.

5. E-INVOICING

The Council may make proposals to implement e-invoicing with the Service Provider and the Service Provider agrees to consider such proposals in good faith and not refuse reasonable amendments to this Schedule to reflect such proposals.

6. SET OFF

The Council may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under the agreement.

7. REBATES WHICH THE CUSTOMER MAY DEDUCT AND RETAIN

- 7.1 For any undisputed Debt received by way of an invoice, the Calculation Trigger Date shall be the date the relevant invoice is received by the Council, such date being the date recorded in the Council's accounts payable system as the registration date. For any other Debt the Calculation Trigger Date shall be the last day of the month in respect of the relevant Service received. For any disputed Debt, the Calculation Trigger Date shall be the date on which the dispute has been resolved to the mutual satisfaction of the parties.
- 7.2 The **Payment Date** shall be the date on which the Council executes its payment run in respect of the relevant Debt.

Calculation of the Rebate

- 7.3 The Rebate is calculated by establishing the number of days that have elapsed between the Calculation Trigger Date and the Payment Date and comparing the number of days elapsed within the first column of the table below to determine the Rebate to be applied to the invoiced amounts. The Rebate percentage (%) is

calculated to 14 decimal places and it is this value that is applied in all calculations. However, for simplicity, the Rebate % displayed in the table below has been rounded to 2 decimal places.

- 7.4 Rebates applied to invoices are calculated at an invoice line item level. Rebates are applied in the manner described at clause 7.3, against the value of each line item. The result of this calculation is rounded to the nearest pence. Once the Rebates for all line items have been calculated, they are aggregated to provide the total Rebate value to be deducted from the Supplier’s invoice on early payment of the invoice.
- 7.5 The Council shall issue a debit note indicating the value of the Rebate that has been applied.

Number of days elapsed between the Calculation Trigger Date and the Payment Date	% of the amount owed that may be deducted and retained by the Customer as the Rebate
0	[●]%
1	[●]%
2	[●]%
3	[●]%
4	[●]%
5	[●]%
6	[●]%
7	[●]%
8	[●]%
9	[●]%
10	[●]%
11	[●]%
12	[●]%
13	[●]%
14	[●]%
15	[●]%
16	[●]%
17	[●]%
18	[●]%
19	[●]%
20	[●]%
21	[●]%
22	[●]%
23	[●]%
24	[●]%
25	[●]%
26	[●]%
27	[●]%
28	[●]%
29	[●]%

30	[●]%
----	------

]

Schedule 7 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Service Provider sees a need to change this agreement, the Council may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Service Provider.

2. PROCEDURE

- 2.1 Discussion between the Council and the Service Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Council; or
 - (c) a recommendation to change this agreement by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Council, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Council within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Service Provider shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.

- 2.4 Each Change Control Note shall contain:
- (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, of the Change;
 - (f) a timetable for implementation, together with any proposals for acceptance of the Change;
 - (g) a schedule of payments if appropriate;
 - (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
 - (i) the date of expiry of validity of the Change Control Note; and
 - (j) provision for signature by the Council and the Service Provider.
- 2.5 For each Change Control Note submitted by the Service Provider the Council shall, within the period of the validity of the Change Control Note:
- (a) allocate a sequential number to the Change Control Note; and
 - (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Service Provider; or
 - (iii) notify the Service Provider of the rejection of the Change Control Note.
- 2.6 A Change Control Note signed by the Council and by the Service Provider shall constitute an amendment to this agreement.

Schedule 8 Premises

Schedule 9 Exit

Schedule 10 TUPE

1. DEFINITIONS

The definitions in this paragraph apply in this Schedule 10:

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

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

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

Redundant Transferring Employees: Transferring Employees whom the Service Provider has dismissed following a lawful redundancy within 12 months of the Effective Date.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider by virtue of the application of TUPE.

Service Provider's Final Staff List: the list of all the Service Provider's and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Service Provider's Provisional Staff List: the list prepared and updated by the Service Provider of all the Service Provider's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

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

Staffing Information: in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Service Provider or Sub-contractor by virtue of the application of TUPE.

Third Party Employer: a service provider engaged by the Council to provide [some of the] Services to the Council and whose employees will transfer to the Service Provider on the Effective Date.

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

2. TRANSFER OF EMPLOYEES TO THE SERVICE PROVIDER

2.1 The Council and the Service Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Service Provider or Sub-contractor. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The Relevant Transfer shall occur on the Effective Date.

2.2 The Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date. The Council shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Service Provider, as required by TUPE. The Council shall warrant that such information is complete and accurate as it is aware or should reasonably have been aware as at the date it is disclosed.

2.3 Subject to paragraph 2.4, the Council shall indemnify and keep indemnified the Service Provider against any losses, except indirect losses incurred by the Service Provider or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Council in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Service Provider or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.

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

- (a) any proposed changes to terms and conditions of employment the Service Provider or Sub-Contractor may consider taking on or after the Effective Date;
- (b) any of the employees informing the Council and any Third Party Employer they object to being employed by the Service Provider or Sub-Contractor; and
- (c) any change in identity of the Transferring Employees' and Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Service Provider or Sub-Contractor may consider taking on or after the Commencement Date.

2.5 The Service Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, the Third Party Employees, and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.

2.6 The Service Provider shall immediately on request by the Council and/or the Third Party Employer provide details of any measures that the Service Provider or any Sub-Contractor of the Service Provider envisages it will take in relation to any Transferring Employees and the employees of any Third Party Employer including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider shall give confirmation of that fact, and shall indemnify the Council and any Third Party Employer

against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3. EMPLOYMENT EXIT PROVISIONS

3.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.2 The Service Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Contract or otherwise on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Service Provider shall notify the Council of any material changes to this information as and when they occur.

3.3 At least 14 days prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.

3.4 The Council shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.

3.5 The Service Provider warrants that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.

3.6 The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Service Provider shall and shall procure that any Sub-Contractor shall

supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

3.8 The Service Provider shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Service Provider against all Employment Liabilities relating to:

- (a) any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or
- (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Service Provider and/or any Sub-Contractor),

arising from or connected with any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

3.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.10 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.11 Despite paragraph 3.10, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Schedule 11 Commercially sensitive information

DETAILS OF ANY SERVICE PROVIDER INFORMATION TO BE CLASSIFIED AS
COMMERCIALLY SENSITIVE]