

This agreement is dated [DATE]

## **PARTIES**

- (1) [CEC] of [ADDRESS] (“CEC”);
- (2) [CWAC] of [ADDRESS] (“CWAC”);

Together the “Councils”; and

- (3) [FULL COMPANY NAME] incorporated and registered in [England and Wales] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“Provider”).

## **BACKGROUND**

- (A) On [DATE], the Councils advertised on the UK e-notification service (reference [FIND A TENDER NUMBER]), inviting prospective suppliers to submit proposals for the provision of [DESCRIPTION OF SERVICES].
- (B) On the basis of the Provider’s response to the advertisement and subsequent tender process, the Councils selected the Provider to provide the services and the Provider is willing and able to provide such services in accordance with the terms of this agreement.
- (C) Accordingly, the parties have agreed to enter into a contract for the provision of the Services (as defined below) on the terms and conditions of this agreement.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

The following definitions and rules of interpretation apply in this agreement.

#### **1.1 Definitions**

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

**Activity:** any levels of services and/or Service User flows set out in a Schedule 1.

Authorised Representatives:	the persons respectively designated as such by the Councils and the Provider, the first such persons being set out in Schedule 2 – PMF.
Business Continuity Plan:	the business continuity plan for the Services (and the people and facilities used to provide them) to minimise the effect of any unplanned interruption or event that would significantly impact on the ability of the Provider to perform the Services, in whole or in part, in accordance with the terms of this agreement as set out in Schedule 5 and amended from time to time in accordance with the Change Control Procedure.
Caldicott Guardian:	the senior health professional responsible for safeguarding the confidentiality of patient information.
Carers:	a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage.
Catastrophic Failure:	<ol style="list-style-type: none"> <li>a. a failure by the Provider for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms;</li> <li>b. any action by the Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Councils’ Authorised Representatives has or may cause significant harm to the reputation of the Councils.</li> </ol>
CEC Administrative Area	the area defined by the map at Figure 1 of Schedule 1 labelled “Cheshire East” being CEC’s current administrative area as at the Commencement Date (as amended by notification to the Provider from time to time).
CEC Charges	the cost of the Services carried out within the CEC Administrative Area or otherwise attributable to CEC.
Change:	any change to this agreement including to any of the Services.
Change Control Note:	the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.
Change Control Procedure:	the procedure for changing this agreement, as set out in

Schedule 7.

Change in Law:	any change in any Law which impacts on the performance of the Services and which comes into force after the Commencement Date.
Charges:	the charges which shall become due and payable by the Councils to the 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 pricing of the Services, the Provider's intellectual property rights or the Provider's business operations which the Provider has indicated to the Councils that, if disclosed by the Councils, would cause the Provider significant commercial disadvantage or material financial loss.
Competent Body:	anybody that has Councils to issue standards or recommendations with which either Party must comply.
Confidential Information:	means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to: <ul style="list-style-type: none"><li>a. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;</li><li>b. any information developed by the parties in the course of carrying out this agreement;</li><li>c. any Commercially Sensitive Information.</li></ul>
Consistent Failure:	shall have the meaning set out in Schedule 2 – PMF .
Contracts Finder:	the UK government's publishing portal for public sector

procurement opportunities.

Contract Year:	any 12-month period starting on the Service Commencement Date and on each anniversary of the Service Commencement Date.
Controller:	as defined in the Data Protection Legislation.
CWAC Administrative Area:	the area defined by the map at Figure 1 of Schedule 1 labelled "Cheshire West" being CWAC's current administrative area as at the Commencement Date (as amended by notification to the Provider from time to time).
CWAC Charges:	the cost of the Services carried out within the CWAC Administrative Area or otherwise attributable to CWAC.
Data Loss Event:	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
Data Protection Impact Assessment:	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
Data Protection Legislation:	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
Data Protection Officer:	takes the meaning given in the GDPR.
Data Subject:	as defined in the Data Protection Legislation.
Data Subject Request:	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
DBS:	the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012;

Detailed Mobilisation Plan:	the detailed plan for the mobilisation and implementation of the Services that is developed in accordance with Clause 4 as amended from time to time in accordance with the Change Control Procedure.
Detailed Transition Plan:	the detailed plan for the implementation of the Known Changes that is developed and amended from time to time in accordance with Clause 6.
Dispute Resolution Procedure:	the procedure set out in Clause 19.
Domestic law:	the law of the United Kingdom or part of the United Kingdom.
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.
Employment Checks:	the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.
Exit Management Plan:	the plan set out in Schedule 6.
FOIA:	the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Force Majeure:	any circumstance not within a party's reasonable control including, without limitation: <ul style="list-style-type: none"> <li>a. acts of God, flood, drought, earthquake or other natural disaster;</li> <li>b. epidemic or pandemic;</li> <li>c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;</li> <li>d. nuclear, chemical or biological contamination or sonic boom;</li> </ul>

- e. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- f. collapse of buildings, fire, explosion or accident; and

but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Provider or the Provider Personnel or any other failure in the Provider's or a Sub-Contractor's supply chain.

GDPR:	the General Data Protection Regulation (Regulation (EU) 2016/679).
General Change in Law:	a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.
Good Industry Practice:	the standards, practices, methods and procedures conforming to the Law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced supplier, or a person providing services the same as or substantially similar to the Services or the relevant part of them, at the time the Services are provided, as applicable, having regard to factors such as the nature and size of the parties, the KPIs, the Term, the pricing structure and any other relevant factors.
Local Healthwatch:	the local independent consumer champion for health and social care in England.
Independent Control:	where a Controller has provided Personal Data to another party which is not a Processor or Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data.
Information:	has, for the purposes of Clause 24, the meaning given under section 84 of FOIA.
Initial Term:	means the duration of the agreement starting at 00.01 am on the Commencement Date and ending at 11.59 pm on 31 <sup>st</sup> August 2026.

Insolvency Event:

where:

- a. the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- b. the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- c. the Provider applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- d. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company, limited liability partnership or partnership);
- e. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company, partnership or limited liability partnership);
- f. the holder of a qualifying floating charge over the assets of the Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- g. a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- h. a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- i. any event occurs, or proceeding is taken, with respect to

the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);

- j. the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Joint Controllers:** where two or more Controllers jointly determine the purposes and means of Processing.

**KPIs:** the key performance indicators for all and each part of the Services as specified in Schedule 2 – PMF.

**Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Provider is bound to comply.

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

**Mandatory Policies:** the Councils' policies listed in Schedule 1 , as amended by notification to the Provider from time to time or, in substitution, any policy of the Provider that complies with the Councils' equivalent policy in all material respects and has been reviewed and approved by the Councils for use in this agreement as a replacement for the Councils' equivalent policy.



Necessary Consents:	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services.
NICE:	National Institute for Health and Clinical Excellence being the special health Councils responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body).
Outline Mobilisation Plan:	the outline plan set out in Schedule 8 (Outline Mobilisation Plan) containing the key activities and tasks, completion dates and responsibilities of the Provider for the implementation and mobilisation of the Services.
Outline Transition Plan:	the Provider's outline proposals for the implementation of the Known Changes as set out in Schedule 9 (Outline Transition Plan).
Partner Organisations:	NHS Cheshire Clinical Commissioning Group or any successor body.
Personal Data:	as defined in the Data Protection Legislation.
Personal Data Breach:	takes the meaning given in the GDPR.
Processor:	as defined in the Data Protection Legislation.
Processor Personnel:	means all directors, officers, employees, agents, consultants and providers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this agreement.
Prohibited Act:	the following constitute Prohibited Acts: <ul style="list-style-type: none"> <li>a. to directly or indirectly offer, promise or give any person working for or engaged by the Councils a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;</li> <li>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;</li> </ul>

- c. committing any offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Councils;
- d. any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

Protective Measures:	appropriate technical and organisational measures which may include: pseudonymisation of and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
QPM:	the Advocacy Quality Performance Mark awarded by <a href="https://qualityadvocacy.org.uk/">https://qualityadvocacy.org.uk/</a> or an equivalent quality standard or accreditation for organisations offering independent advocacy.
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.
Regulated Activity Provider:	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
Relevant Requirements:	all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
Relevant Transfer:	a relevant transfer for the purposes of TUPE.
Improvement Notice:	a written notice given by the Councils to the Provider pursuant to Clause 29 to initiate the Improvement Action Plan Process.
Improvement Action Plan:	the plan agreed in accordance with Clause 29 for the resolution of a Provider's default in complying with its obligations under this agreement.

Improvement Action Plan Process:	the process for resolving certain of the Provider's defaults as set out in Clause 29.
Replacement Services:	any services that are identical or substantially similar to any of the Services and which the Councils receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Councils internally or by any Replacement Provider.
Replacement Provider:	any third party supplier of Replacement Services appointed by the Councils from time to time.
Representatives:	means, in relation to party, its employees, officers, contractors, subcontractors, representatives and advisors.
Request for Information:	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
Service Commencement Date:	1 <sup>st</sup> September 2022.
Services:	the services to be delivered by or on behalf of the Provider under this agreement, as more particularly described in Schedule 1.
Service Failure:	a shortfall or failure by the Provider to deliver any part of the Services in accordance with any Target KPI.
Service Users:	means the person receiving the Services provided by the Provider and includes their Carer and Legal Guardian where appropriate.
Provider Personnel:	all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.
Provider's Tender:	the tender submitted by the Provider and other associated documentation set out in Schedule 3.
Sub-Contract:	any contract or agreement (or proposed contract or agreement) between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

- Sub-Contractor:** a person with whom the Provider enters into a Sub-Contract, and any third party with whom that third party enters into a subcontract or its servants or agents.
- Sub-processor:** any third party appointed to process Personal Data on behalf of that Processor related to this agreement.
- Target KPI:** the minimum level of performance for a KPI which is required by the Councils as set out against the relevant KPI in Schedule 2 – PMF.
- Term:** the period of the Initial Term as may be varied by:
- a. any extension pursuant to Clause 2.2; or
  - b. the earlier termination of this agreement in accordance with its terms.
- Termination Date:** the date of expiry or termination of this agreement.
- Termination Notice:** any notice to terminate this agreement which is given by either party in accordance with Clause 30 or Clause 31.
- Termination Payment Default:** is defined in Schedule 4.
- TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).
- UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- Working Day:** Monday to Friday, excluding any public holidays in England and Wales.
- Working Hours:** the period from 9.00am to 5.00pm on any Working Day.
- 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 (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 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9 A reference to writing or written excludes fax and e-mail.
- 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 this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.14 If there is any conflict or ambiguity between any of the provisions in the main body of this agreement and the schedules, 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;
  - (d) Schedule to this agreement.

Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Provider has notified the Councils in writing.

## COMMENCEMENT AND DURATION

### 2. COMMENCEMENT AND DURATION

- 2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.
- 2.2 The Councils shall be entitled at their absolute discretion to extend this agreement as follows:
- (a) by 12 months to 11.59 pm on 31<sup>st</sup> August 2027 by giving notice in writing to the Provider on or before 28<sup>th</sup> February 2026;
  - (b) in the event that the Term has been extended to 31<sup>st</sup> August 2027, by 12 months to 11.59 pm on 31<sup>st</sup> August 2028 by giving notice in writing to the Provider on or before 28<sup>th</sup> February 2027; and
  - (c) in the event that the Term has been extended to 31<sup>st</sup> August 2028, by 12 months to 11.59 pm on 31<sup>st</sup> August 2029 by giving notice in writing to the Provider on or before 29<sup>th</sup> February 2028.

### 3. DUE DILIGENCE AND PROVIDER'S WARRANTY

#### 3.1 The Provider acknowledges and confirms that:

- (a) the Councils have delivered or made available to the Provider all of the information and documents that the Provider considers necessary or relevant for the performance of its obligations under this agreement;
- (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Councils pursuant to Clause 3.1(a);
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Councils before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Councils' Premises); and
- (d) it has entered into this agreement in reliance on its own due diligence.

#### 3.2 No representations, warranties or conditions are given or assumed by the Councils in respect of any information which is provided to the Provider by the Councils and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

#### 3.3 The Provider:

- (a) warrants and represents that all information and statements made by the Provider

as a part of the procurement process, including without limitation the Provider's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Councils prior to execution of the agreement; and

- (b) shall promptly notify the Councils in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Councils during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.

3.4 The Provider shall not be entitled to recover any additional costs or charges from the Councils arising as a result of, nor be relieved from any of its obligations under this agreement on the ground of, any matters or inaccuracies notified to the Councils by the Provider in accordance with Clause 3.3(b), save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Councils and the 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 Provider may recover such reasonable additional costs from the Councils or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

## THE SERVICES

### 4. MOBILISATION and SUPPLY OF SERVICES

4.1 The Detailed Mobilisation Plan shall be agreed as follows:

- (a) The Provider shall develop the Outline Mobilisation Plan in order to prepare and deliver to the Councils for the Councils' approval a draft of the Detailed Mobilisation Plan on or before [1<sup>st</sup> July 2022];
- (b) The Provider shall not be entitled to propose any variations to any key milestone dates set out in the Schedule 1 (Specification);
- (c) The Councils shall review and comment on the draft Detailed Mobilisation Plan as soon as reasonably practicable;
- (d) Following such review and consultation, the Councils shall formally approve or reject the draft Detailed Mobilisation Plan no later than 10 Working Days after the date on which the draft Detailed Mobilisation Plan is first delivered to the Councils. If the Councils reject the draft Detailed Mobilisation Plan, the provision of Clause 4.2 shall apply.

- 4.2 The following shall apply if the Councils reject the draft Detailed Mobilisation Plan:
- (a) The Councils shall inform the Provider in writing of its reasons for their rejection; and
  - (b) The Provider shall then revise the draft Detailed Mobilisation Plan (taking reasonable account of the Councils' comments) and shall re-submit a revised draft Detailed Mobilisation Plan to the Councils for the Councils' approval within 5 Working Days of the date of the Councils' notice of rejection.

The provisions of Clause 4.1 and this Clause 4.2 shall apply again to any resubmitted draft Detailed Mobilisation Plan, provided that any party may refer any disputed matters for resolution in accordance with Clause 19 at any time.

- 4.3 The Provider shall co-operate with the Councils (and their outgoing supplier) in connection with the transition and migration of any Personal Data that is in the possession of the Councils (or their outgoing supplier) to the Provider, and in all other respects, such that there is a seamless transition of the responsibility of providing the Services with minimal disruption to the Councils' working.
- 4.4 The Provider shall perform each of the tasks identified in the Detailed Mobilisation Plan by the applicable milestone date assigned to the particular task in the Detailed Mobilisation Plan.
- 4.5 If, at any time, the Provider becomes aware that it will not (or is unlikely to) successfully achieve any milestone by the applicable milestone date, it shall immediately notify the Councils of the fact of the delay, the reasons for the delay, the consequences of the delay for the rest of the Detailed Mobilisation Plan and how the Provider proposes to mitigate the delay.
- 4.6 Whether the delay is due to the Councils or not, the Provider shall deploy all additional resources and efforts, and take all reasonable steps, to eliminate or mitigate the consequences of the delay.
- 4.7 Any disputes about or arising out of delays shall be resolved in accordance with Clause 19. Pending the resolution of the dispute, all parties shall continue to work together to resolve the causes of, and mitigate the effects of, the delay.
- 4.8 The Provider shall be the exclusive supplier of the Services to the Councils and provide the Services to the Councils with effect from the Service Commencement Date for the duration of the Term in accordance with the provisions of this agreement, including without limitation Schedule 1 and Schedule 2.
- 4.9 In providing the Services, the Provider shall at all times:



- (a) without prejudice to Clause 5, provide the Services with reasonable care and skill and in accordance with Good Industry Practice;
- (b) ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
- (c) obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Councils).
- (d) allocate sufficient resources to provide the Services in accordance with the terms of this agreement;
- (e) ensure that any of the Provider's Personnel who are engaged in the provision of any of the Services shall, if required by the Councils, attend such meetings at the premises of the Councils or elsewhere as may be reasonably required by the Councils;
- (f) comply, where applicable, with the registration and regulatory compliance guidance of any regulatory body;
- (g) respond, where applicable, to all requirements and enforcement actions issued from time to time by any regulatory body;
- (h) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
- (i) comply with the recommendations issued from time to time by a Competent Body;
- (j) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
- (k) respond to any reports and recommendations made by Local HealthWatch;
- (l) comply with the relevant regulations for complaints relating to the provision of the Services; and
- (m) provide such co-operation and information in relation to the Services to such of the Councils' other suppliers as the Councils may require for the purposes of enabling any such person to create and maintain any interfaces required by the Councils.

4.10 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this agreement, then the Councils may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider and any regulatory body. Without prejudice to any other rights the Councils may have under this agreement, the Councils may, in its sole discretion, uphold the complaint and take any action specified in Clause 29.

5. KPIS

- 5.1 Where any Service is stated in Schedule 2 to be subject to a specific KPI, the Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 5.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within Schedule.
- 5.3 The Provider shall provide monthly reports summarising the Achieved KPIs as provided for in Clause 17.

## 6. COMPLIANCE AND CHANGE IN LAWS

- 6.1 In performing its obligations under this agreement, the Provider shall at all times comply with:
  - (a) all applicable Law;
  - (b) the Mandatory Policies.

The Provider shall maintain such records as are necessary pursuant to the Laws and Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Councils (or its authorised representative).

- 6.2 Without limiting the generality of the obligation under Clause 6.1, the Provider shall (and shall procure that the Provider Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with all applicable Law regarding health and safety.
- 6.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Councils Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Provider shall instruct the Provider Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 6.4 Without limiting the general obligation set out in Clause 6.1, the Provider shall (and shall procure that the Provider Personnel shall):
  - (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
    - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief,
    - (ii) any other requirements and instructions which the Councils reasonably

imposes in connection with any equality obligations imposed on the Councils at any time under applicable equality Law;

- (b) take all necessary steps, and inform the Councils of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation;
- (c) in the event the Provider has not already been awarded the QPM by the Commencement Date, obtain the QPM no later than the first anniversary of the Commencement Date; and
- (d) once awarded, maintain the QPM for the Term.

6.5 The Provider shall monitor and shall keep the Councils informed in writing of any changes in the Law which may impact the Services and shall provide the Councils with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Provider shall only implement such changes in accordance with the Change Control Procedure.

6.6 The Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor, subject to Clauses 6.7 to 6.13 inclusive, be entitled to an increase in the Charges as the result of a General Change in Law.

6.7 The parties agree and acknowledge that the following General Changes in Law (as further detailed in Schedule 1) are foreseeable at the Commencement Date but the timetable for their implementation cannot clearly be anticipated as at the Commencement Date:

- (a) The Mental Capacity (Amendment) Act 2019, which will replace Deprivation of Liberty Safeguards (DoLS) with Liberty Protection Safeguards (LPS);
- (b) the introduction of a revised Mental Capacity Act Code of Practice; and
- (c) proposed legislative reforms to the Mental Health Act 1983.

Together the “Known Changes”.

6.8 The Provider’s outline proposals for the implementation of the Known Changes are set out in the Outline Transition Plan which includes details of the likely impact, if any, of the Known Changes on this agreement and the Charges.

6.9 The Provider shall develop the Outline Transition Plan in order to prepare for the Known Changes and deliver to the Councils for the Councils’ approval a draft of the Detailed Transition Plan at regular intervals, at no less than every six months, during the Term. The Councils shall review and comment on the draft Detailed Transition Plan as soon as reasonably practicable.

6.10 Following such review and consultation, the Councils shall formally approve or reject the draft Detailed Transition Plan no later than 10 Working Days after the date on which the draft Detailed Transition Plan is first delivered to the Councils. If the Councils reject the draft Detailed Transition Plan, the provision of Clause 6.11 shall apply.

6.11 The following shall apply if the Councils reject the draft Detailed Transition Plan:

- (a) The Councils shall inform the Provider in writing of its reasons for their rejection; and
- (b) The Provider shall then revise the draft Detailed Transition Plan (taking reasonable account of the Councils' comments) and shall re-submit a revised draft Detailed Transition Plan to the Councils for the Councils' approval within 10 Working Days of the date of the Councils' notice of rejection.

The provisions of Clause 6.10 and this Clause 6.11 shall apply again to any resubmitted draft Detailed Transition Plan, provided that any party may refer any disputed matters for resolution in accordance with Clause 19 at any time.

6.12 In the event that any of the Known Changes become Law, the Provider shall perform each of the relevant tasks identified in the Detailed Transition Plan by the applicable milestone date assigned to the particular task in the Detailed Transition Plan.

6.13 In the event that the implementation of the Detailed Transition Plan requires a Change to this agreement, this Change shall be subject to the Change Control Procedure.

## 7. SERVICE USER INVOLVEMENT, CONSENT and RECORDS

7.1 The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Industry Practice and their human rights.

7.2 As soon as reasonably practicable following any reasonable request from the Councils, the Provider must provide evidence to the Councils of the involvement of Service Users, Carers and Provider Personnel in the development of Services.

7.3 The Provider must carry out Service User surveys (or Carer surveys where a Service User lacks capacity) and shall carry out any other surveys reasonably required by the Councils in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with any requirements agreed between the parties in writing from time to time.

7.4 The Provider must publish, maintain and operate a Service User consent policy which

complies with Good Industry Practice and the Law.

- 7.5 The Provider must create, maintain, store and retain Service User records for all Service Users. The Provider must retain Service User records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable guidance.
- 7.6 The Provider must:
- (a) use Service User records solely for the execution of the Provider's obligations under this agreement; and
  - (b) give each Service User full and accurate information regarding his/her support and Services received.
- 7.7 The Provider shall co-operate with the Councils (and their Replacement Provider) in connection with the transition and migration of any Service User records to the Replacement Provider, and in all other respects, such that there is a seamless transition of the responsibility of providing the Services with minimal disruption.
- 7.8 The Provider must at all times during the term of this agreement have a Caldicott Guardian and shall notify the Councils of their identity and contact details prior to the Service Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this agreement, it shall promptly notify the Councils of the identity and contact details of such replacements.

## 8. MANAGING ACTIVITY

The Provider must manage Activity in accordance with any activity planning assumptions and any caseloads set out in a Schedule 1 and must comply with all reasonable requests of the Councils to assist them with understanding and managing the levels of Activity for the Services.

## 9. BUSINESS CONTINUITY

- 9.1 The Provider shall ensure that it is able to implement the provisions of the Business Continuity Plan at any time in accordance with its terms.
- 9.2 The Provider shall test the Business Continuity Plan on a regular basis (and, in any event no less than once every 12 months period from the Commencement Date). The Councils shall be entitled to participate in such tests as it may reasonably require.
- 9.3 Following each test, the Provider shall send to the Councils a written report summarising the results of the test and shall promptly implement at the Provider's expense any actions or remedial measures which the Councils reasonably considers to be necessary as a result of those tests.

9.4 The Provider shall implement the Business Continuity Plan if the Services are not available for more than [NUMBER] [hours OR days].

## 10. CHARGES, INVOICING AND PAYMENT

10.1 Subject to the Provider fulfilling its obligations under this agreement and in consideration of the Provider properly performing the Services, CEC shall pay to the Provider the CEC Charges and CWAC shall pay to the Provider the CWAC Charges, which shall be exhaustive of any amounts due to the Provider in respect of its provision of the Services and performance of its obligations under this agreement. The Charges shall be calculated in accordance with Schedule 4.

10.2 The Charges:

- (a) subject to paragraph 3 of Schedule 4, shall remain fixed during the Term; and
- (b) are the entire price payable by the Councils to the Provider in respect of the Services and include, without limitation, any royalties, consents, licence fees, supplies and all consumables used by the Provider, travel costs, accommodation expenses and the cost of Provider Personnel.

10.3 Not used

10.4 Except as otherwise provided in this agreement, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this agreement.

10.5 The Provider shall invoice the Councils for payment of the Charges at the time the Charges are expressed to be payable in accordance with Schedule. All invoices shall be directed to the CEC's Authorised Representative and shall:

- (a) specify the relevant rate or rates;
- (b) specify the quantity of service provided during the period or periods to which the invoice relates;
- (c) specify Services carried out within CEC Administrative Area
- (d) specify Services carried out within CWAC Administrative Area
- (e) specify the CEC Charges;
- (f) specify the CWAC Charges; and
- (g) contain such information as the Councils may inform the Provider from time to time.

10.6 The Councils shall accept for processing any electronic invoice submitted by the Provider that complies with the standard on electronic invoicing provided that it is valid and

undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.

- 10.7 Where the Provider submits an invoice to the Councils in accordance with Clause 10.5, the Councils will consider and verify that invoice in a timely fashion. Where the Councils fail to do so, 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 10.8 after a reasonable time has passed.
- 10.8 The Councils shall pay the Provider any Charges due under any invoice submitted to it by the Provider within 30 days of verifying that the invoice is valid and undisputed.
- 10.9 Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
  - (a) provisions having the same effect as Clause 10.7 and Clause 10.8 of this agreement; and
  - (b) a provision requiring the counterparty to that Sub-Contract to include in any subcontract which it awards provisions having the same effect as Clause 10.7 to Clause 10.9 of this agreement.
- 10.10 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 19. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the parties.
- 10.11 Subject to Clause 10.10, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with Clause 11. The Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under Clause 30.3 for failure to pay undisputed charges.
- 10.12 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Councils following delivery of a valid VAT invoice. The Provider shall indemnify the Councils against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Councils at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this agreement.
- 10.13 The Provider shall maintain complete and accurate records of, and supporting

documentation for, all amounts which may be chargeable to the Councils pursuant to this agreement. Such records shall be retained for inspection by the Councils for six years from the end of the Contract Year to which the records relate.

10.14 The Councils may at any time, set off any liability of the Provider to the Councils against any liability of the Councils to the Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Councils of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

## 11. INTEREST

11.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:

- (a) Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) Period. From when the overdue sum became due, until it is paid.

## 12. EXTENSION OF AGREEMENT TO PARTNER ORGANISATIONS

12.1 The parties agree and acknowledge that the Councils enter into this agreement for itself and for the benefit of Partner Organisations.

12.2 In addition to the specific Services expressly required to be provided to the Councils pursuant to this agreement, any Partner Organisation, with the prior written consent of the Councils (which consent the Councils may in its absolute discretion refuse), may require the provision by the Provider of any of the Services under this agreement subject to the same or substantially the same terms and conditions contained herein and subject to the additional conditions set out in Clause 12.3.

12.3 If and to the extent that any such additional Services under this agreement are required to be provided by the Provider to any Partner Organisation:

- (a) each and every such Partner Organisation shall enter into a specific contract with the Provider for such additional Services incorporating by reference or otherwise the same or substantially the same terms and conditions contained in this agreement (but not the provisions of this Clause 12);
- (b) any non-substantial amendments to the terms and conditions in this agreement agreed between the Provider and the Partner Organisation shall be clearly set out in such specific contract;
- (c) in order to enter into a specific contract with the Provider the Partner Organisation may, in accordance with relevant public procurement regulations, consult the Provider in writing requesting the Provider to supplement the Provider's Tender as



may be necessary.

- 12.4 The Councils do not guarantee that any Partner Organisation will require the Provider to provide any additional Services under this agreement or otherwise and nothing in this agreement shall give the Provider a right to receive such requirement for additional Service.
- 12.5 The Councils shall not in any circumstances be liable to the Provider or any Partner Organisation for payment or otherwise in respect of any such additional Services required to be provided by the Provider to any Partner Organisation.
- 12.6 It shall be the responsibility of any Partner Organisation to satisfy itself that entering into any contract with the Provider under Clause 12.3(a) of this agreement does not breach any relevant public procurement Law.

### 13. NOT USED

### 14. PROVIDER PERSONNEL

14.1 Before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:

- (a) the Employment Checks; and
- (b) such other checks as required by the DBS.

14.2 At all times, the Provider shall ensure that:

- (a) each of the Provider Personnel is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Provider Personnel to provide the Services properly;
- (c) where applicable, Provider Personnel are registered with the appropriate professional regulatory body;
- (d) Provider Personnel are aware of and respect equality and human rights of colleagues and Service Users;
- (e) only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (f) all of the Provider Personnel comply with the Mandatory Policies.

14.3 The Councils may refuse to grant access to, and remove, any of the Provider Personnel

who do not comply with any of the Mandatory Policies, or if they otherwise present a security threat.

14.4 The Provider shall replace any of the Provider Personnel whom the Councils reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

14.5 The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Provider Personnel involved in the provision of the Services receives:

- (a) proper and sufficient continuous professional and personal development, training and instruction; and
- (b) full and detailed appraisal (in terms of performance and on-going education and training),

each in accordance Good Industry Practice and the standards of any applicable relevant professional body.

14.6 The Provider shall maintain up-to-date personnel records on the Provider Personnel engaged in the provision of the Services and shall provide information to the Councils as the Councils reasonably requests on the Provider Personnel including but not limited to evidence of compliance with Clauses 14.1, 14.2 and 14.5 above. The Provider shall ensure that the Provider Personnel cannot be individually identified from the information so provided.

14.7 The Provider shall use its reasonable 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 at the prevailing industry norm for similar services, locations and environments.

## 15. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

15.1 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

15.2 The Provider shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the DBS

- (“DBS Check”);
- (b) monitor the level and validity of the checks under this Clause 15.2 for each member of staff;
  - (c) 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 carry out Regulated Activity or who may otherwise present a risk to Service Users;
  - (d) at the reasonable written request of the Councils and by no later than 10 Working Days following receipt of such request, the Provider must provide evidence to the Councils that it is addressing any safeguarding concerns; and
  - (e) If requested by the Councils, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.
- 15.3 The 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 Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 15.4 The Provider shall immediately notify the Councils of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 15 have been met.
- 15.5 The Provider shall refer information about any person carrying out the Services to the DBS 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 the Service Users, children or vulnerable adults.
- 15.6 All parties will comply with all applicable requirements of the Data Protection Legislation. The parties acknowledge that, for the purposes of the Data Protection Legislation, the Provider is the Controller in respect of DBS Checks carried out on individuals. The Provider will ensure that it has all necessary appropriate consents and notices in place to obtain the DBS Checks and to enable lawful disclosure of the DBS certificates and any other relevant personal data to the Provider for the duration and purposes of this agreement.

## 16. TUPE

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

## CONTRACT MANAGEMENT

## 17. REVIEW AND MONITORING

- 17.1 Each party shall nominate an Authorised Representative who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of this agreement. The first Authorised Representatives are listed in Schedule 2 – PMF . The Authorised Representatives will co-ordinate and manage the provision of the Services and work with each other to address any problems that arise in connection with the Services (including by signing Change Control Notes).
- 17.2 Each party shall use all reasonable endeavours to ensure that the same person acts as its Authorised Representative throughout the Term, but may, following reasonable notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business.
- 17.3 The Authorised Representatives shall meet at not less than monthly intervals to monitor and review the performance of this agreement, including the achievement of the Target KPIs. Such meetings shall be minuted by the Councils' Authorised Representative and copies of those minutes shall be circulated to and approved by all parties.
- 17.4 Without prejudice to any other reports required under this agreement, in advance of each meeting to be held in accordance with Clause 17.3:
- (a) the Provider shall provide the Councils with a monthly written report detailing its performance against each of the KPIs and identifying any issues regarding the performance of the agreement for discussion at the meeting; and
  - (b) the Councils shall notify the Provider of any concerns it has regarding the performance of the agreement for discussion at the meeting.
- 17.5 At the meeting, the parties shall agree a plan to address any problems identified in the performance of the agreement. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in Clause 29 shall apply. Progress in implementing the plan shall be included in the agenda for the next monthly meeting.
- 17.6 A review meeting to assess the Provider's performance of its obligations under this agreement shall be held at six-monthly intervals throughout the Term. Each meeting shall be attended by senior representatives of each party, together with the Authorised Representatives.
- 17.7 The Councils may increase the extent to which it monitors the performance of the Services if the Provider fails to meet the Target KPIs or fails to fulfil its other obligations under this agreement. The Councils shall give the Provider prior notification of its intention to increase the level of its monitoring. The Provider shall bear its own costs in complying with such enhanced monitoring as is conducted by the Councils pursuant to this Clause 17.7.

17.8 The Provider shall submit any other management reports to the Councils in the form and at the interval specified in Schedule 2 – PMF, or as specified elsewhere in this agreement.

## 18. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

18.1 Any requirement for a Change shall be subject to the Change Control Procedure.

18.2 Not used.

18.3 The Provider shall throughout the Term seek ways to derive efficiencies with respect to delivery of the Services, and use all reasonable endeavours to ensure that the Councils receives the benefit of any such efficiencies.

18.4 Where the Provider identifies a potential efficiency:

- (a) it shall promptly inform the Councils and shall advise the Councils whether, in the Provider's professional opinion, the implementation of any change necessary to enable the Councils to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price); and
- (b) if the Councils concludes that the implementation of the necessary change is desirable, the Provider shall implement the change.

18.5 Where the achievement of the benefit by the Councils would necessitate the making of a Change Control Note, the Change Control Procedure shall apply but the Provider shall not be entitled to object to the proposed change. Any benefits arising from any such change as is referred to in this Clause 18 (including any consequent reductions in the Charges) shall accrue solely to the Councils.

## 19. DISPUTE RESOLUTION

19.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then, except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 20 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Councils' [OFFICER TITLE] and the Provider's [OFFICER TITLE] who shall attempt in good faith to resolve it;

- (c) if the Councils' [OFFICER TITLE] and the Provider's [OFFICER TITLE] are for any reason unable to resolve the Dispute within 10 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Councils' [SENIOR OFFICER TITLE] and the Provider's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it;
- (d) if the Councils' [SENIOR OFFICER TITLE] and the Provider's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within 10 Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 20 Working Days of referral of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR;
- (e) if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 10 Working Days from the date of the ADR notice, where appropriate, in conjunction with the mediation, CEDR will be requested to decide that point for the parties having consulted with them; and
- (f) Unless otherwise agreed between the parties, the mediation will start not later than 30 Working Days after the date of the ADR notice.

19.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

19.3 If for any reason the Dispute is not resolved within 30 Working Days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with Clause 47.

## 20. SUB-CONTRACTING

20.1 Notwithstanding Clause 41, the Provider can only enter into subcontracting arrangements in accordance with this Clause 20.

20.2 To help the Councils reach a decision on a proposed Sub-Contract, the Councils may request (and the Provider shall provide) a copy of the proposed Sub-Contract, together with any other information that the Councils may reasonably require about the proposed Sub-Contractor and the impact of the proposed Sub-Contract on this agreement.

- 20.3 [The Councils has consented to the engagement of the Sub-Contractors listed in [SCHEDULE].]
- 20.4 If the Councils agrees that the Provider may subcontract its obligations, the Provider shall implement an appropriate system of due diligence, audit and training designed to ensure the Sub-Contractor's compliance with the Mandatory Policies.
- 20.5 In the event that the Provider enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and procure that the Sub-Contractor complies with such terms; and
  - (c) provide a copy, at no charge to the Councils, of any such Sub-Contract on receipt of a request for such by the Councils' Authorised Representative.
- 20.6 The Councils may require the Provider to terminate a Sub-Contract where the acts or omission of the relevant Sub-Contractor have given rise to the Councils' right of termination of this agreement pursuant to Clause 30.1 or if there is a change of control of a Sub-Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010) or the Sub-Contractor suffers an Insolvency Event.

## LIABILITY

### 21. INDEMNITIES

- 21.1 Subject to Clause 21.2, the Provider shall indemnify and keep indemnified the Councils against all liabilities, costs, expenses, damages and losses incurred by the Councils arising out of or in connection with:
- (a) the Provider's breach or negligent performance or non-performance of this agreement;
  - (b) any claim made against the Councils 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 Provider or Provider Personnel;
  - (c) the enforcement of this agreement.
- 21.2 The indemnity under Clause 21.1 shall apply except insofar as the liabilities, costs,

expenses, damages and losses incurred by the Councils are directly caused (or directly arise) from the negligence or breach of this agreement by the Councils.

## 22. LIMITATION OF LIABILITY

22.1 Not used

22.2 References to liability in this Clause 22 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise .

22.3 The Provider acknowledges that the Councils and their Representatives shall not be liable to the Service Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to this agreement or not).

22.4 Nothing in this Clause 22 shall limit the Councils' payment obligations under this agreement.

22.5 Nothing in this Clause 22 shall limit any liability under:

- (a) Clause 28 (*IPR indemnity*)
- (b) the indemnities in Schedule 10 (*TUPE*)
- (c) breach of Clause 33 (*Bribery*)
- (d) breach of Clause 25.

22.6 Nothing in this agreement limits any liability which cannot legally be limited, including for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

22.7 Subject to Clause 22.5 and Clause 22.6, the Provider's total aggregate liability to the Councils is unlimited.

22.8 Not Used

22.9 Unless expressly provided otherwise in this agreement, the liability of CEC and CWAC for their obligations under this agreement shall be several and extend only to any loss or damage arising out of their own breaches. Subject to Clause 22.4, Clause 22.5 and Clause



22.6:

- (a) CEC's total aggregate liability in respect of all claims, (other than a failure to pay any of the CEC Charges that are properly due and payable and for which CEC shall remain fully liable), losses or damages arising in each Contract Year shall not exceed the CEC cap; and
- (b) CWAC's total aggregate liability in respect of all claims, (other than a failure to pay any of the CWAC Charges that are properly due and payable and for which CWAC shall remain fully liable), losses or damages arising in each Contract Year shall not exceed the CWAC cap.

22.10 In Clause 22.9:

- (a) The CEC cap is twenty five per cent (25%) of the total CEC charges in the Contract Year in which the breaches occurred.
- (b) The total CEC charges mean the sum of the CEC Charges paid by CEC and all CEC Charges payable under this agreement in respect of Services actually supplied by the Provider, whether or not invoiced.
- (c) The CWAC cap is twenty five per cent (25%) of the total CWAC charges in the Contract Year in which the breaches occurred.
- (d) The total CWAC charges mean the sum of the CWAC Charges paid by CWAC and all CWAC Charges payable under this agreement in respect of Services actually supplied by the Provider, whether or not invoiced.

22.11 Subject to Clause 22.4, Clause 22.5 and Clause 22.6, Clause 22.11(b) identifies the kinds of loss that are not excluded. Subject to that, Clause 22.11(a) excludes specified types of loss.

(a) Types of loss wholly excluded:

- (i) Loss of profits.
- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

(b) Types of loss and specific losses are not excluded:

- (i) Sums paid by the Councils to the Provider pursuant to the agreement in respect of any Services not provided in accordance with the agreement.
- (ii) Wasted expenditure.

- (iii) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with this agreement. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
- (iv) Losses incurred by the Councils arising out of or in connection with any third party claim against the Councils which has been caused by the act or omission of the Provider. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by Sub-Contractors, the Provider's Personnel, regulators and customers of the Councils.

22.12 The Provider has given commitments as to compliance of the Services with relevant specifications in Clause 4.9 and Clause 5. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

## 23. INSURANCE

23.1 The Provider shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this agreement providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of at least £10 million in respect of each and every claim with no abuse exclusion/inner limit;
- (b) employer's liability insurance with a limit of at least £10 million per claim;
- (c) professional indemnity insurance with a limit of indemnity of not less than £2 million in respect of each and every claim and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- (d) cyber insurance with a limit of at least £5 million per claim,

(the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the 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 Provider.

23.2 The Provider shall give the Councils, 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.

- 23.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Councils may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 23.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the agreement.
- 23.5 The Provider shall hold and maintain the Required Insurances for a minimum of six years following expiry or earlier termination of the agreement.

## INFORMATION

### 24. FREEDOM OF INFORMATION

- 24.1 The Provider acknowledges that the Councils is subject to the requirements of the FOIA and the EIRs. The Provider shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Councils to enable the Councils to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Councils all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - (c) provide the Councils with a copy of all Information belonging to the Councils requested in the Request for Information which is in its possession or control in the form that the Councils requires within 5 Working Days (or such other period as the Councils may reasonably specify) of the Councils' request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Councils.
- 24.2 The Provider acknowledges that the Councils may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Councils shall take reasonable steps to notify the Provider of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Councils shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 24.3 Notwithstanding any other term of this agreement, the Provider consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that the Councils considers is exempt from disclosure in

accordance with the provisions of the FOIA and EIRs.

24.4 The Councils shall, prior to publication, consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion. The Provider shall assist and co-operate with the Councils to enable the Councils to publish this agreement.

## 25. DATA PROCESSING

25.1 All parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 25 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

25.2 The Provider must process Personal Data and ensure that Provider Personnel process Personal Data only in accordance with Schedule 12 Processing Data.

25.3 The Provider indemnifies the Councils against any and all losses incurred if the Provider breaches Clause 25 and any Data Protection Legislation.

25.4 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this Clause 25 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## 26. CONFIDENTIALITY

26.1 The provisions of this clause do not apply to any Confidential information:

- (a) is or becomes available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) the parties agree in writing is not confidential or may be disclosed;
- (e) which is disclosed by the Councils on a confidential basis to any central government or regulatory body.

26.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (Permitted Purpose); or
- (b) disclose such Confidential information in whole or in part to any third party, except as expressly permitted by this Clause 26.

26.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this Clause 26.2.

26.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law (including under the FOIA or EIRs), by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.

26.5 The provisions of this Clause 26 shall survive for a period of two years from the Termination Date.

## 27. AUDIT

27.1 During the Term and for a period of six years after the Termination Date, the Provider shall allow the Councils (acting by itself or through its Representatives) to access any of the Provider's premises, systems, Provider Personnel and relevant records as may reasonably be required to:

- (a) fulfil any legally enforceable request by any regulatory body;
- (b) verify the accuracy of Charges or identify suspected fraud;
- (c) review the integrity, confidentiality and security of any data relating to the Councils or any service users;
- (d) review the Provider's compliance with the Data Protection Legislation and the FOIA, in accordance with Clause 25 (Data Protection) and Clause 24 (Freedom of Information), and any other legislation applicable to the Services; or
- (e) verify that the Services are being provided and all obligations of the Provider are being performed in accordance with this agreement.

- 27.2 Except where an audit is imposed on the Councils by a regulatory body or where the Councils has reasonable grounds for believing that the Provider has not complied with its obligations under this agreement, the Councils may not conduct an audit under this Clause 27 more than twice in any calendar year.
- 27.3 The Councils shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 27.4 Subject to the Councils' obligations of confidentiality, the Provider shall on demand provide the Councils 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 and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Provider Personnel.
- 27.5 The Councils shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 27.6 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 by the Provider to perform its obligations under this agreement in any material manner in which case the Provider shall reimburse the Councils for all the Councils' reasonable costs incurred in the course of the audit.
- 27.7 If an audit identifies that:
- (a) the Provider has failed to perform its obligations under this agreement, the provisions of Clause 29 shall apply;
  - (b) the Councils has overpaid any Charges, the Provider shall pay to the Councils the amount overpaid within 20 days from the date of receipt of an invoice or notice to do so. The Councils may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
  - (c) the Councils has underpaid any Charges, the Councils shall pay to the Provider the amount of the underpayment within 30 days from the date of receipt of an invoice for such amount.

## 28. INTELLECTUAL PROPERTY

28.1 In the absence of prior written agreement by the Councils to the contrary, all Intellectual Property Rights created by the Provider or Provider Personnel:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Councils on creation.

28.2 The Provider shall indemnify the Councils against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Councils' acts or omissions.

## 29. IMPROVEMENT ACTION PLAN PROCESS

29.1 Subject to Clause 29.2, if the Provider is in default in complying with any of its obligations under this agreement and the default is capable of remedy, the Councils may not terminate this agreement without first operating the Improvement Action Plan Process. If the Provider commits such a default, the Councils shall give an Improvement Notice to the Provider which shall specify the default in outline and the actions the Provider needs to take to remedy the default.

29.2 The Councils shall be under no obligation to initiate the Improvement Action Plan Process if it issues a notice to terminate in the circumstances set out in Clause 30.1(a), Clause 30.1(d), Clause 30.1(e), Clause 30.1(f), Clause 30.1(g), Clause 30.1(h) , Clause 30.1(i) Clause 30.1(j), Clause 30.1 (k) and Clause 30.1(l).

29.3 Within 10 Working Days of receipt of an Improvement Notice, the Provider shall:

- (a) submit a draft Improvement Action Plan, even if it disputes that it is responsible for the matters which are the subject of the Improvement Notice; or
- (b) inform the Councils that it does not intend to submit an Improvement Action Plan, in which event the Councils shall be entitled to serve a Termination Notice.

29.4 The Councils shall either approve the draft Improvement Action Plan within 10 Working Days of its receipt pursuant to Clause 29.3(a), or it shall inform the Provider why it cannot accept the draft Improvement Action Plan. In such circumstances, the Provider shall address all such concerns in a revised Improvement Action Plan, which it shall submit to the Councils within 5 Working Days of its receipt of the Councils' comments. If no such notice is given, the Provider's draft Improvement Action Plan shall be deemed to be

agreed.

- 29.5 Once agreed, the Provider shall immediately start work on the actions set out in the Improvement Action Plan.
- 29.6 If, despite the measures taken under Clause 29.4, an Improvement Action Plan cannot be agreed within 10 Working Days then the Councils may elect to end the Improvement Action Plan Process and serve a Termination Notice.
- 29.7 If an Improvement Action Plan is agreed between the parties, but the Provider fails to implement or successfully complete the Improvement Action Plan by the required completion date, the Councils may:
- (a) terminate this agreement by serving a Termination Notice;
  - (b) give the Provider a further opportunity to resume full implementation of the Improvement Action Plan; or
  - (c) refer the matter for resolution under the Dispute Resolution Procedure.
- 29.8 If, despite the measures taken under Clause 29.7, the Provider fails to implement the Improvement Action Plan in accordance with its terms, the Councils may elect to end the Improvement Action Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 29.9 The Councils shall not be obliged to follow the Improvement Action Plan Process if there is a repetition of substantially the same default by the Provider as had previously been addressed in an Improvement Action Plan within a period of six months following the conclusion of such previous Improvement Action Plan. In such event, the Councils may serve a Termination Notice.

## TERMINATION

### 30. TERMINATION

- 30.1 Without affecting any other right or remedy available to it, and subject to Clause 29, the Councils may terminate this agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Provider if one or more of the following circumstances occurs or exists:
- (a) if the Provider is in material breach of this agreement, which is irremediable;
  - (b) the parties fail to agree the Improvement Action Plan in accordance with the Improvement Action Plan Process;
  - (c) the Provider fails to implement or successfully complete the Improvement Action Plan in accordance with the Improvement Action Plan Process;



- (d) the circumstances referred to in Clause 29.9 occur;
- (e) a Consistent Failure has occurred;
- (f) a Catastrophic Failure has occurred;
- (g) if there is an Insolvency Event;
- (h) if the Councils elects to terminate pursuant to Clause 33.6;
- (i) if any of the Necessary Consents are cancelled, suspended, withdrawn or revoked;
- (j) the Provider fails to obtain or maintain the QPM in accordance with Clauses 6.4(c) and (d);
- (k) if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Councils reasonably objects, provided that the Councils serves its Termination Notice within three months of the date on which the Provider informs the Councils (by written notice) of the change of control or on which the Councils otherwise becomes aware of the change of control;
- (l) the Councils reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

30.2 Either party may, during the continuance of a Force Majeure Event, terminate this agreement if the circumstances in Clause 32.6 arise.

30.3 The Provider may terminate this agreement in the event that the Councils commits a Termination Payment Default by giving 30 days' written notice to the Councils. In the event that the Councils remedies the Termination Payment Default in the 30 day notice period, the Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

## 31. TERMINATION ON NOTICE

Without affecting any other right or remedy available to it, the Councils may terminate this agreement, or terminate the provision of any part of this agreement, at any time by giving six months' written notice to the Provider.

## 32. FORCE MAJEURE

32.1 Subject to the remaining provisions of this Clause 32, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

32.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected

Party.

32.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than 3 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

32.4 If the Provider is the Affected Party, it shall not be entitled to claim relief to the extent that the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of service similar to the Services, or if they are the result of the Provider's failure to comply with the Business Continuity Plan (unless such failure is also due to a Force Majeure Event affecting the operation of the Business Continuity Plan).

32.5 The Affected Party shall notify the other party in writing 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.

32.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' notice to the Affected Party.

### 33. PREVENTION OF BRIBERY

33.1 The Provider represents and warrants that neither it, nor any Provider Personnel:

- (a) has committed a Prohibited Act;
- (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
- (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

33.2 The Provider shall promptly notify the Councils if, at any time during the Term, its

circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Clause 33.1 at the relevant time.

- 33.3 The Supplier shall (and shall procure that its Provider Personnel shall) during the Term:
- (a) not commit a Prohibited Act;
  - (b) not do or omit to do anything that would cause the Councils or any of the Councils' employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
  - (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
  - (d) notify the Councils (in writing) if it becomes aware of any breach of Clause 33.3(a) or Clause 33.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage .
- 33.4 The Provider shall maintain appropriate and up to date records showing all payments made by the Provider in connection with this agreement and the steps taken to comply with its obligations under Clause 33.3.
- 33.5 The Provider shall allow the Councils and its third party representatives to audit any of the Provider's records and any other relevant documentation in accordance with Clause 27.
- 33.6 If the Provider is in default under this Clause 33 the Councils may by notice:
- (a) require the Provider to remove from performance of this agreement any Provider Personnel whose acts or omissions have caused the default; or
  - (b) immediately terminate this agreement.
- 33.7 Any notice served by the Councils under Clause 33.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Councils believes has committed the Prohibited Act and the action that the Councils has elected to take (including, where relevant, the date on which this agreement shall terminate).
34. CONSEQUENCES OF TERMINATION OR EXPIRY
- 34.1 On the expiry of the Term or if this agreement is terminated for any reason, the provisions of the Exit Management Plan shall come into effect and the Provider shall co-operate fully with the Councils to ensure an orderly migration of the Services to the Councils or, at the Councils' request, a Replacement Provider.
- 34.2 On termination or expiry of this agreement and on satisfactory completion of the Exit

Management Plan (or where reasonably so required by the Councils before such completion) the Provider shall procure that all data and other material belonging to the Councils (and all media of any nature containing information and data belonging to the Councils or relating to the Services), shall be delivered to the Councils forthwith and the Provider's Chief Executive Officer shall certify full compliance with this clause.

- 34.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including Clause 5.3 (provision of records), Clause 21 (Indemnities), Clause 22 (Limitation of Liability), Clause 23 (Insurance), Clause 24 (Freedom of Information), Clause 25 (Data Processing), Clause 26 (Confidentiality), Clause 27 (Audit) and this Clause 34 (Consequences of termination), shall remain in full force and effect.
- 34.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

#### GENERAL PROVISIONS

35. NOT USED

36. WAIVER

36.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

36.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

37. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

38. SEVERANCE

38.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

38.2 If any provision or part-provision of this agreement is deemed deleted under Clause 38.1,

the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 39. NO PARTNERSHIP OR AGENCY

39.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

39.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### 40. THIRD PARTY RIGHTS

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

#### 41. ASSIGNMENT AND OTHER DEALINGS

41.1 The Councils may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Provider.

41.2 The Councils shall be entitled to novate (and the Provider shall be deemed to consent to any such novation) this agreement to any other body which substantially performs any of the functions that previously had been performed by the Councils.

41.3 The Provider shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Councils (such consent not to be unreasonably withheld or delayed).

#### 42. PUBLICITY

The Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
  - (b) use the Councils' name or logo in any promotion or marketing or announcement of orders,
- except as required by law, any government or regulatory authority, any court or other

authority of competent jurisdiction, without the prior written consent of the Councils, which shall not be unreasonably withheld or delayed.

#### 43. NOTICES

43.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the address listed in Clause 43.2 below, or such other address as that party may notify in accordance with Clause 43.3

43.2 The addresses for service of notices are:

(a)[PARTY 1]

(i)Address: [ADDRESS]

(ii)For the attention of: [Authorised Representative]

(b)[PARTY 2]

(i)Address: [ADDRESS]

(ii)For the attention of: [Authorised Representative]

(c) [PARTY 3]

(i)Address: [ADDRESS]

(ii)For the attention of: [Authorised Representative]

43.3 A party may change its details given in the table in Clause 43.2 by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

(a) the date, if any, specified in the notice as the effective date for the change; or

(b) the date five Working Days after deemed receipt of the notice.

43.4 Any notice shall be deemed to have been received:

(a) If delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

43.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

43.6 A notice given under this agreement is not valid if sent by email.

#### 44. ENTIRE AGREEMENT

- 44.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 44.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 44.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

#### 45. VARIATION

Subject to Clause 18, no variation of this agreement shall be effective unless it is in writing and signed by the parties.

#### 46. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement.

#### 47. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

#### 48. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

[Signature block]

SCHEDULE 1  
SPECIFICATION

SCHEDULE 2  
PMF

SCHEDULE 3  
PROVIDER'S TENDER



**SCHEDULE 4**  
**CHARGES AND PAYMENT**

**1. CALCULATION OF THE CHARGES**

The Charges shall be calculated on the basis of the number of hours of advocacy interventions actually delivered by the Provider at the following agreed hourly rates:

<b>Location</b>	<b>Hourly rate (£)</b>
Within the Administrative Area	[ ]
Not within the Administrative Area but within 20 miles of the border of the Administrative Area	[ ]
Not within the Administrative Area or within 20 miles of the border of the Administrative Area but otherwise Out of Area	[ ] plus any additional fee agreed pursuant to paragraph 3 below

**2. PAYMENT PLAN**

The Provider shall submit invoices to the Councils monthly in arrears and the invoices or claims shall become payable by the Councils 30 days from receipt of an undisputed invoice. Each invoice shall include such supporting information required by the Councils to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services provided in the invoice period.

### **3. OUT OF AREA ADDITIONAL FEE PROVISION**

The parties acknowledge that the provision of Services to Services Users that are not within the Administrative Area or within 20 miles of the border of the Administrative Area but otherwise Out of Area may result in the Provider incurring additional costs above the agreed hourly rate. The Provider shall use all reasonable endeavours to provide, or procure the provision of, the Services at the agreed hourly rate and ensure value for money for the Councils. For example, if a Service User is 100 miles from the Administrative Area it could be more economical for the Provider to subcontract the provision of the Services to a local provider organisation which delivers statutory advocacy in that geographical location instead of Provider Personnel travelling to the Service User on a regular basis.

The parties agree that in exceptional circumstances and where the Provider has used all reasonable endeavours to provide, or procure the provision of, the Services at the agreed hourly rate but is unable to do so, the Provider may apply to the Councils' Authorised Representative to approve a fee (which, for the avoidance of doubt, shall not contain any administration or management charge) to be paid in addition to the agreed hourly rate. Any such application must be made before any additional fees are incurred by the Provider and include details of the steps taken by the Provider to ensure value for money.

The Councils may in their absolute discretion agree the additional fee, refuse the additional fee, require further information or evidence from the Provider or require the Provider to take further steps to ensure value for money.

If approved, the Councils will pay the additional fee in accordance with paragraph 2 above.

### **4. TERMINATION PAYMENT DEFAULT**

Subject to timely submission of invoices or claims within the agreed deadlines, if undisputed charges relating to three months activity or more have been overdue for 90 days or more the Councils will have committed a Termination Payment Default.

SCHEDULE 5  
BUSINESS CONTINUITY PLAN

SCHEDULE 6  
EXIT MANAGEMENT PLAN

## SCHEDULE 7 CHANGE CONTROL

### 1. GENERAL PRINCIPLES

- 1.1 Where the Councils or the Provider sees a need to change this agreement, the Councils may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in *Paragraph 2* of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Councils and the 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 Councils and the 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 Provider and the Provider 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 7, shall be undertaken entirely at the expense and liability of the Provider.

### 2. PROCEDURE

- 2.1 Discussion between the Councils and the 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 Councils; or
  - (c) a recommendation to change this agreement by the Provider.
- 2.2 Where a written request for a Change is received from the Councils, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Councils within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Provider shall be submitted directly to the Councils in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The Councils 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;
- (j) provision for signature by the Councils and the Provider; and
- (k) if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement under Clause 30.1(I) will be apportioned.

2.5 For each Change Control Note submitted by the Provider the Councils 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) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Councils and return one of the copies to the Provider; or
  - (iii) notify the Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Councils and by the Provider shall constitute an amendment to this agreement.

SCHEDULE 8  
OUTLINE MOBILISATION PLAN

SCHEDULE 9  
OUTLINE TRANSITION PLAN

SCHEDULE 10  
TUPE

[Note: the TUPE Schedule will comprise the Mid-Tier Contract - Schedule\_7\_-\_Staff\_Transfer\_v1.0 (<https://www.gov.uk/government/publications/the-mid-tier-contract-schedule-7-staff-transfer>) updated to ensure consistent terminology and reflect the position on commencement.]

SCHEDULE 11  
COMMERCIALY SENSITIVE INFORMATION  
[DETAILS OF ANY PROVIDER INFORMATION TO BE CLASSIFIED AS COMMERCIALY SENSITIVE]

## SCHEDULE 12

### PROCESSING DATA

#### **Status of the Controller**

1. The parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this agreement dictates the status of each party under the DPA 2018. A party may act as:
  - (a) "Controller" in respect of the other party who is "Processor";
  - (b) "Processor" in respect of the other party who is "Controller";
  - (c) "Joint Controller" with the other party;
  - (d) "Independent Controller" of the Personal Data where there other party is also "Controller",in respect of certain Personal Data under this agreement and shall specify in Annex 1 (Processing Personal Data) which scenario they think shall apply in each situation.

#### **Where one party is Controller and the other party its Processor**

2. Where a party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (Processing Personal Data) by the Controller.
3. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
4. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
5. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this agreement:
  - (a) Process that Personal Data only in accordance with Annex 1 (Processing Personal Data), unless

the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, including in the case of the Provider maintaining physical and IT security that follows Good Industry Practice to ensure there is no unauthorised access to any Confidential Information and data, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

- i. nature of the data to be protected;
- ii. harm that might result from a Data Loss Event;
- iii. state of technological development; and
- iv. cost of implementing any measures;

(c) ensure that:

- i. the Processor Personnel do not process Personal Data except in accordance with this agreement (and in particular Annex 1 (Processing Personal Data));
- ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  1. are aware of and comply with the Processor's duties under this agreement, Schedule 12, Clauses 25 (Data processing), 26 (Confidentiality) and 24 (Freedom of Information);
  2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this agreement; and
  4. have undergone adequate training in the use, care, protection and handling of Personal Data;

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

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



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

6. Subject to paragraph 7 of this Schedule 12, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this agreement it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this agreement;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

7. The Processor's obligation to notify under paragraph 6 of this Schedule 12 shall include the provision of further information to the Controller in phases, as details become available.

8. Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Schedule 12 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event; and/or
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 12. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the Processing is not occasional;
- (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

10. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

11. The parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

12. Before allowing any Sub-processor to process any Personal Data related to this agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and Processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 12 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

13. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

14. The Councils may, at any time on not less than 30 Working Days' notice, revise this Framework Agreement Schedule 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).

15. The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Councils may on not less than 30 Working Days' notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **Where the parties are Joint Controllers of Personal Data**

16. In the event that the parties are Joint Controllers in respect of Personal Data under this agreement, the parties shall implement paragraphs that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 2 to this Schedule 12 (Processing Data).

## **Independent Controllers of Personal Data**

17. With respect to Personal Data provided by one party to another party for which each party acts as Controller but which is not under the Joint Control of the parties, each party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

18. Each party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other party to be in breach of it.

19. Where a party has provided Personal Data to the other party in accordance with paragraph 17 of this Schedule 12 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other party may reasonably require.

20. The parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of this agreement.

21. The parties shall only provide Personal Data to each other:

- a) to the extent necessary to perform their respective obligations under this agreement;
- b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
- c) where it has recorded it in Annex 1 (Processing Personal Data).

22. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

23. A party Processing Personal Data for the purposes of this agreement shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other party upon reasonable request.

24. Where a party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other party pursuant to this agreement (“Request Recipient”):
- a) the other party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - b) where the request or correspondence is directed to the other party and/or relates to that other party's Processing of the Personal Data, the Request Recipient will:
    - i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
    - ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
25. Each party shall promptly notify the other party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this agreement and shall:
1. do all such things as reasonably necessary to assist the other party in mitigating the effects of the Personal Data Breach;
  2. implement any measures necessary to restore the security of any compromised Personal Data;
  3. work with the other party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  4. not do anything which may damage the reputation of the other party or that party's relationship with the relevant Data Subjects, save as required by Law.
26. Personal Data provided by one party to the other party may be used exclusively to exercise rights and obligations under this agreement as specified in Annex 1 (Processing Personal Data).
27. Personal Data shall not be retained or processed for longer than is necessary to perform each party's respective obligations under this agreement which is specified in Annex 1 (Processing Personal Data).
28. Notwithstanding the general application of paragraphs 2 to 15 of this Schedule 12 to Personal Data, where the Provider is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 16 to 27 of this Schedule 12.

**Annex 1: Processing Personal Data**

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Councils at their absolute discretion.

1. The contact details of the Councils’ Data Protection Officer are: [Insert contact details]
2. The contact details of the Provider’s Data Protection Officer are: [Insert contact details]
3. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
4. Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Councils are Controller and the Provider is Processor</b></p> <p>The parties acknowledge that in accordance with paragraph 2 to paragraph 15 and for the purposes of the Data Protection Legislation, the Councils are the Controller and the Provider is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> <li>● <i>[Insert the scope of Personal Data which the purposes and means of the Processing by the Provider is determined by the Councils]</i></li> </ul> <p><b>The Provider is Controller and the Councils are Processor</b></p> <p>The parties acknowledge that for the purposes of the Data Protection Legislation, the Provider is the Controller and the Councils are the Processor in accordance with paragraph 2 to paragraph 15 of the following Personal Data:</p>

	<ul style="list-style-type: none"> <li>● <i>[Insert the scope of Personal Data which the purposes and means of the Processing by the Councils is determined by the Provider]</i></li> </ul> <p><b>The parties are Joint Controllers</b></p> <p>The parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>● <i>[Insert the scope of Personal Data which the purposes and means of the Processing is determined by the both parties together]</i></li> </ul> <p><b>The parties are Independent Controllers of Personal Data</b></p> <p>The parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>● <i>[Insert the scope of Personal Data provided by one party who is Controller to the other party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Provider has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Councils cannot dictate the way in which Personal Data is processed by the Provider, or (3) where the Provider comes to the transaction with Personal Data for which it is already Controller for use by the Councils]</i>  <i>[Guidance where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]</i></li> </ul>
Duration of the Processing	<i>[INSERT Clearly set out the duration of the Processing including dates]</i>
Nature and purposes of the Processing	<i>[INSERT Please be as specific as possible, but make sure that you cover all intended purposes.]</i>

	<p><i>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[INSERT Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[INSERT Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	<i>[INSERT Describe how long the data will be retained for, how it be returned or destroyed]</i>

## Annex 2: Joint Controller Agreement

### 1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the parties, the parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2 to 15 of Schedule 12 (Where one party is Controller and the other party is Processor) and paragraphs 17 to 27 of Schedule 12 (Independent Controllers of Personal Data). Accordingly, the parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The parties agree that the **[select: Provider or Councils]**:

- a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
- b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- c) is solely responsible for the parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
- d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the parties having used their best endeavours to agree the terms of that essence. This must be outlined in the **[select: Provider's or Councils']** privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of clause 1.2, the parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant party as Controller.



## 2. Undertakings of both parties

### 2.1 The Provider and Councils each undertake that they shall:

#### a) report to the other party every [insert number] months on:

- i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);
- ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other party's obligations under applicable Data Protection Legislation;
- iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of this agreement during that period;

#### b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);

#### c) provide the other party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other party to comply with the relevant timescales set out in the Data Protection Legislation;

#### d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under this agreement or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;

#### e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;

#### f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

- g) take all reasonable steps to ensure the reliability and integrity of any of its personnel who have access to the Personal Data and ensure that its Personnel:
  - i) are aware of and comply with their 's duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information
  - ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that party would not be permitted to do so;
  - iii) have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;
- h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
  - i) nature of the data to be protected;
  - ii) harm that might result from a Data Loss Event;
  - iii) state of technological development; and
  - iv) cost of implementing any measures;
- i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Provider holds; and
- i) ensure that it notifies the other party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

### 3 Data Protection Breach

3,1 Without prejudice to Paragraph 3.2, each party shall notify the other party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other party and its advisors with:

a) sufficient information and in a timescale which allows the other party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

b) all reasonable assistance, including:

i) co-operation with the other party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

ii) co-operation with the other party including taking such reasonable steps as are directed by the other party to assist in the investigation, mitigation and remediation of a Personal Data Breach;

iii) co-ordination with the other party regarding the management of public relations and public statements relating to the Personal Data Breach;

and/or

iv) providing the other party and to the extent instructed by the other party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that party's own data at its own cost with all possible speed and shall provide the other party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

a) the nature of the Personal Data Breach;

b) the nature of Personal Data affected;

c) the categories and number of Data Subjects concerned;

d) the name and contact details of the Provider's Data Protection Officer or other relevant contact from whom more information may be obtained;

e) measures taken or proposed to be taken to address the Personal Data Breach; and

f) describe the likely consequences of the Personal Data Breach.

#### 4 Audit

4,1 The Provider shall permit:

a) The Councils, or a third-party auditor acting under the Councils' direction, to conduct, at the Councils' cost, data privacy and security audits, assessments and inspections concerning the Provider's

data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or

b) The Councils, or a third-party auditor acting under the Councils' direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Provider so far as relevant to this agreement, and procedures, including premises under the control of any third party appointed by the Provider to assist in the provision of the Services.

4.2 The Councils may, in their sole discretion, require the Provider to provide evidence of the Provider's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

## 5 Impact Assessments

5.1 The parties shall:

a) provide all reasonable assistance to the each other to prepare any data protection impact assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and

b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this agreement, in accordance with the terms of Article 30 GDPR.

## 6 ICO Guidance

6.1 The parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant central government body. The Councils may on not less than thirty (30) Working Days' notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant central government body.

## 7 Liabilities for Data Protection Breach

7.1 If financial penalties are imposed by the Information Commissioner on either Councils or the Provider for a Personal Data Breach ("Financial Penalties") then the following shall occur:

a) if in the view of the Information Commissioner, the Councils are responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Councils, its employees, agents,

contractors (other than the Provider) or systems and procedures controlled by the Councils, then the Councils shall be responsible for the payment of such Financial Penalties. In this case, the Councils will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Provider shall provide to the Councils and its third party investigators and auditors, on request and at the Provider's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

b) if in the view of the Information Commissioner, the Provider is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Councils are responsible for, then the Provider shall be responsible for the payment of these Financial Penalties. The Provider will provide to the Councils and their auditors, on request and at the Provider's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or

c) if no view as to responsibility is expressed by the Information Commissioner, then Councils and the Provider shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the parties do not agree such apportionment then such Dispute shall be referred to the procedure set out in Clause 19.

7.2 If either Councils or the Provider is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the parties otherwise agree, the party that is determined by the final decision of the Court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both parties are liable, the liability will be apportioned between the parties in accordance with the decision of the Court.

7.2 In respect of any losses, cost claims or expenses incurred by either party as a result of a Personal Data Breach (the "Claim Losses"):

a) if the Councils are responsible for the relevant Personal Data Breach, then the Councils shall be responsible for the Claim Losses;

b) if the Provider is responsible for the relevant Personal Data Breach, then the Provider shall be responsible for the Claim Losses: and

c) if responsibility for the relevant Personal Data Breach is unclear, then the Councils and the Provider shall be responsible for the Claim Losses equally.

7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Councils and the Provider reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Councils.

## 8 Termination

8.1 If the Provider is in material default under any of its obligations under this Annex 2 (Joint Controller Agreement), the Councils shall be entitled to terminate this agreement by issuing a Termination Notice to the Provider in accordance with Clause 30.

## 9 Sub-Processing

9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a party, that party shall:

- a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this agreement, and provide evidence of such due diligence to the other party where reasonably requested; and
- b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## 10 Data Retention

10.1 The parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a party for statutory compliance purposes or as otherwise required by this agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.