

(1) NOTTINGHAMSHIRE COUNTY COUNCIL

AND

(2) The PROVIDER as stated in its Tender response to questions in Section 1.1

DYNAMIC PURCHASING SYSTEM AGREEMENT

for the provision of Alternative Education Services

Nottinghamshire County Council
County Hall
West Bridgford
Nottingham
NG2 7QP
Reference:

THIS AGREEMENT is effective from the Commencement Date

PARTIES

- (1) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, Loughborough Road, West Bridgford, Nottingham NG2 7QP ("**Council**"); and
- (2) **The Provider as stated in its Tender response to questions in Section 1.1 ("Provider")**.

BACKGROUND

- (A) The Council has invited tenders to participate in a dynamic purchasing system for the provision of Services to itself.
- (B) On the basis of the Provider's Tender, the Council selected the Provider to participate in a dynamic purchasing system to provide Services in accordance with the terms of this DPS Agreement.
- (C) This is a multi-provider DPS Agreement under which the Provider will provide Services to Service Users via an award procedure set out in the Specification annexed to this DPS Agreement and in accordance with the specification set out in any mini competition for the award of a Referral Contract.
- (D) These terms and conditions shall be deemed to be incorporated into and form part of each Referral Contract from its commencement date and are in addition to any terms and conditions contained within the Referral Contract.
- (E) It is the Parties' intention that the Council in contracting with Providers under this DPS Agreement will have no obligation to make an award to provide Services to Service Users under a Referral Contract with the Provider under this DPS Agreement or at all.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Clause apply in this DPS Agreement and any Referral Contract.

Abuse: a single or repeated act, or lack of appropriate action, occurring within a relationship where there is an expectation of trust which causes or is likely to cause harm or distress to a Service User including but not limited to physical, emotional, verbal, financial, sexual or racial abuse, neglect of, or cruelty towards, Service Users or abuse through misapplication of drugs.

Approval: means the prior written approval of the Council.

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

Audit: means an audit carried out pursuant to Clause 18.

Auditor: means the National Audit Office or an auditor appointed by the Council as the context requires.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard

to factors such as the nature and size of the parties, the Performance Targets, the term, the pricing structure and any other relevant factors.

Catastrophic Failure: any action by the Provider, whether in relation to the Services and this DPS Agreement or otherwise, which in the reasonable opinion of the Council's Authorised Representative has or may cause significant harm to the reputation of the Council.

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Charges: the charges which shall become due and payable by the Council to the Provider pursuant to a Referral Contract for the provision of the Services and as set out in the Schedule to this DPS Agreement.

Commencement Date: means the commencement date of the DPS Agreement being 2 January 2017.

Complaint: means any formal complaint raised by the Council in relation to the performance under the DPS Agreement or any Referral Contract in accordance with Clause 15.

Confidential Information: means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Provider, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Consistent Failure: shall mean the Provider repeatedly breaching any of the terms of this DPS Agreement and/or a Referral Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this DPS Agreement or the serving by the Council of three or more Default Notices and/or Remediation Notices in any rolling three month period or three or more failures to meet the Performance Targets.

Council's Authorised Representative: means the person designated as such by the Council to manage the DPS Agreement as set out in the Schedule annexed to this DPS Agreement.

Data Protection and Information Sharing Terms: means the Data Protection and Information Sharing Terms set out in the Schedule to this DPS Agreement.

Data Protection Legislation: means the Data Protection Legislation more particularly defined in the Data Protection and Information Sharing Terms set out in the Schedule to this DPS Agreement and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

DBS: means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

Default: means any breach of the obligations of the relevant Party under a Referral Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Referral Contract and in respect of which such Party is liable to the other.

Default Notice: a notice in writing setting out the details of the Provider's Default.

Deliverables: all Management Information, documents, products and materials developed by the Provider or its agents, sub-contractors, consultants and employees in relation to the Services in any form, including data and reports including the reports and other records required in the Specification or as set out in the Schedule annexed to this DPS Agreement.

Dispute Resolution Procedure: the procedure set out in Clause 16.

DPS Agreement: means this agreement and all Schedules to this agreement.

DPS Agreement Variation Procedure: means the procedure set out in the Schedule annexed to this DPS Agreement.

EIR: mean 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: means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.

Enhanced DBS & Barred List Check: means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (child & adult) (as appropriate).

Enhanced DBS & Barred List Check (child): means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list.

Enhanced DBS & Barred List Check (child & adult): means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's and adult's barred list.

Enhanced DBS Check: means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for.

Enhanced DBS Position: means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted.

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Provider, the Staff or any other failure in the Provider's supply chain.

Improper Conduct: means any action that may reasonably be considered to be to the detriment of a Service User's welfare or to the delivery of the Service – either by positive action or by omission. Such action shall include but is not limited to:

- (a) Abuse
- (b) fraud and theft from Service Users
- (c) sexual misconduct or sexual exploitation
- (d) improper inducements, including inducements offered to employees of the Council
- (e) conspiracy with officer or officers of the Council to defraud or disadvantage Service Users
- (f) financial malpractice
- (g) business continuity failure.

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

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;
- (a) 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;
- (a) 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);
- (a) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- (a) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) 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;
- (a) 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 Provider's assets and such attachment or process is not discharged within 14 days;
- (a) 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 (g) (inclusive); or

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

Intellectual Property Rights: means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

Law: means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

Management Information: means the management and any other information and records specified in the Specification to be recorded and maintained by the Provider.

Material Breach: means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit the Council receives under the DPS Agreement/Referral Contract which specifically includes a breach of:

- (a) a substantial portion of this DPS Agreement or a Referral Contract; or
- (b) any of the obligations set out in this DPS Agreement;
- (c) serious (and verified) complaints raised by Service Users;
- (d) verified allegations of Improper Conduct;
- (e) failure to provide the Services under any Referral Contract in accordance with the Quality Assurance provisions;

during the term of this DPS Agreement or any Referral Contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

Month: means a calendar month.

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

Parent Company: means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. **Holding Company** shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: means the Council, or the Provider and this term shall be construed in accordance with the context of the DPS Agreement in question.

Performance Target: the performance targets set by the Council for individual Service Users as detailed in the Referral Form and or Specification or as set out in the Schedule annexed to this DPS Agreement and reviewed annually during the term of the Referral Contract.

Prohibited Act: the following constitute Prohibited Acts:

- (b) (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (c) 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 DPS Agreement;
- (d) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this DPS Agreement or any other Referral Contract with the Council; or
- (e) defrauding, attempting to defraud or conspiring to defraud the Council.

Provider(s): means the Provider(s) appointed as a service provider under this DPS Agreement.

Provider's Manager: the person appointed by the Provider to manage this DPS Agreement and any Referral Contracts as set out in the Schedule annexed to this DPS Agreement.

Quality Assurance: the quality assurance under which the Services are to be provided, this quality assurance shall be based on any inspection regime as is further detailed in the Specification.

Referral: means an order for Services sent by the Council using the Referral Form to the Provider in accordance with the award procedures in this DPS Agreement.

Referral Contract: means a legally binding agreement (made pursuant to the provisions of Clause 6) for the provision of Services and the Deliverables and Performance Targets between the Council and the Provider comprising the terms and conditions for provision of Services set out in this DPS Agreement, a Referral Form, any supporting emails/documentation and any supplemental documents related to the Referral and the terms and conditions of this DPS Agreement.

Referral Form: the referral form as set out in the Schedule to this DPS Agreement.

Referral Process: the Referral process set out in the Specification annexed as a Schedule to this DPS Agreement.

Regulations: means the Public Contracts Regulations 2015 (*SI 2015/102*).

Regulatory Body: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this DPS Agreement or any other affairs of the Council.

Remediation Notice: a notice specifying the Provider's Material Breach and requesting it to be remedied.

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

Replacement Provider means any third party supplier of Replacement Services appointed by the Council from time to time.

Requests for Information: means a request for information or an apparent request under the FOIA or the EIR.

Services: means the services to be delivered by the Provider under a Referral Contract, as more particularly detailed in the Specification annexed as a Schedule to this DPS Agreement.

Service User: means the individual to whom the Provider is providing the Services as named in the Referral Form.

Specification: means the detailed specification for the Services as set out in the Schedule to this DPS Agreement.

Staff: means all persons employed by the Provider together with the Provider's servants, agents, and sub-contractors used in the performance of its obligations under this DPS Agreement or Referral Contracts.

Standard DBS Position: means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).

Sub Contract: any contract 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: the Contractors or service providers that enter into a Sub Contract with the Provider.

Tender: means the tender submitted by the Provider to the Council electronically via the Council's nominated procurement portal.

Term: means the period of up to ten (10) years from and including the Commencement Date.

Termination Date: means the date of expiry or termination of this DPS Agreement.

Termination Payment Default: means any undisputed Charges which have been overdue for payment for a period of 60 Working Days or more by the Council.

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

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

Year: means a calendar year.

- 1.2 The interpretation and construction of this DPS Agreement shall all be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) no terms and conditions of the Provider whether stated in the Tender, on an invoice, in a catalogue or other literature shall apply override or supersede any of the terms of this DPS Agreement;
- (g) headings are included in this DPS Agreement for ease of reference only and shall not affect the interpretation or construction of this DPS Agreement;
- (h) the Schedules form part of this DPS Agreement and shall have effect as if set out in full in the body of this DPS Agreement and any reference to this DPS Agreement shall include the Schedules;
- (i) references in this DPS Agreement to any Clause or sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or sub-Clause or Schedule to this DPS Agreement so numbered;
- (j) references in this DPS Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this DPS Agreement so numbered; and
- (k) reference to a Clause is a reference to the whole of that Clause unless stated otherwise;

2. DPS AGREEMENT TERMS

3. THE TERMS IN CLAUSES 1 – 37 APPLY FROM THE COMMENCEMENT DATE.

4. TERM OF DPS AGREEMENT

The DPS Agreement shall take effect on the Commencement Date and shall continue for the Term (unless it is terminated in accordance with the terms of this DPS Agreement).

5. SCOPE OF DPS AGREEMENT

5.1 This is a multi-provider DPS Agreement and this DPS Agreement governs the relationship between the Council and the Provider in respect of the provision of the Services by the Provider to the Council.

5.2 The Council appoints the Provider to participate in a dynamic purchasing system for the Services and the Provider shall be eligible to receive Referrals to carry out the Services for the Council during the Term.

5.3 The Council may at their absolute discretion and from time to time order Services from the Provider in accordance with the procedure set out in Clause 6 during the Term. The Parties acknowledge and agree that the Council has the right to order Services pursuant to this DPS Agreement provided that it complies at all times with the Regulations and the award procedure in Clause 6. If there is a conflict between Clause 6 and the Regulations, the Regulations shall take precedence.

5.4 If and to the extent that any Services under this DPS Agreement are required the Council shall:

- (a) enter into a Referral Contract with the Provider for these Services materially in accordance with the terms of this DPS Agreement; and
- (b) comply with the procedure in Clause 6.

5.5 The Provider acknowledges that, in entering this DPS Agreement, no form of exclusivity or volume guarantee has been granted by the Council for the Services and that the Council are at all times entitled to enter into other Referral Contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

6. REFERRAL CONTRACT AWARD PROCEDURES

6.1 If the Council decide to source the Services through this DPS Agreement then they may do so in accordance with the provisions set out in the Specification

annexed to this DPS Agreement and in accordance with Regulation 34 of the Regulations.

6.2 Should the Council wish to make a Referral to a Provider the Parties shall comply with the Referral Process provisions set out in the Specification annexed to this DPS Agreement and in accordance with Regulation 34 of the Regulations.

6.3 The Parties acknowledge and agree that a Referral Contract shall be formed upon receipt by the Council of the Provider's acceptance email (or other form of written confirmation) upon completion of the Referral Process provisions set out in the Specification annexed to this DPS Agreement and in accordance with Regulation 34 of the Regulations.

7. COUNCIL'S DYNAMIC PURCHASING SYSTEM OBLIGATIONS

7.1 The Council shall:

- (a) appoint the Council's Authorised Representative to manage the DPS Agreement. The identity of the Council's Authorised Representative is set out in the Schedule annexed to this DPS Agreement;
- (b) the Council shall ensure the DPS Agreement is managed efficiently and without duplication including but not limited to decisions to extend the term of this DPS Agreement or to terminate this DPS Agreement; and
- (c) work with the Provider on start-up procedures for this DPS Agreement and this may include providing briefing sessions to the Provider on Council processes involved with the provision of the Services.

8. PROVIDER'S DYNAMIC PURCHASING SYSTEM OBLIGATIONS

8.1 The Provider shall:

- (a) appoint a Provider's Manager to manage the Referral Contracts. The identity of the Provider's Manager is set out in the Schedule annexed to this DPS Agreement; and
- (b) have in place all policies required in accordance with the Specification.

9. PRICES FOR SERVICES

9.1 The Charges for Services shall be the prices tendered by the Provider arising from a particular Referral Process carried out in accordance with the provisions set out in the Specification annexed to this DPS Agreement.

9.2 All invoices submitted by the Provider to the Council shall be in accordance with the Charges section of the Schedule annexed to this DPS Agreement.

10. WARRANTIES AND REPRESENTATIONS

The Provider warrants and represents to the Council that:

- (a) it has full capacity and authority and all Necessary Consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this DPS Agreement;
- (b) it has undertaken a due diligence exercise to determine that it is capable of providing the Services and to determine whether TUPE applies to this DPS Agreement and agrees that it shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result from, any issues associated with the application (or not) of TUPE to this DPS Agreement;
- (c) this DPS Agreement is executed by a duly authorised representative of the Provider;
- (d) in entering into this DPS Agreement or any Referral Contract it has not committed any Prohibited Act;
- (e) as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council before the execution of this DPS Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- (f) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this DPS Agreement and any Referral Contract which may be entered into with the Council;
- (g) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this DPS Agreement and any Referral Contract;
- (h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

- (i) it is capable of performing the Services in all respects in accordance with this DPS Agreement, the Law and Best Industry Practice and that it has all necessary experience, Staff and equipment to carry out the Service during the Term;
- (j) any Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as is necessary for the proper performance of the Services;
- (k) in the performance of the Services and in regard to all documents prepared by the Provider and all information provided by the Provider in connection with the Services, it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a provider experienced in carrying out services of the kind described in the Schedule annexed to this DPS Agreement. No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Council or any other party in relation to any such document, data or information and no failure of the Council or any other party to discern any defect in or omission from any such document data or information shall operate to exclude or limit the obligation of the Provider to exercise all the reasonable skill care and diligence required by this Clause 10;
- (l) it shall comply with all reasonable instructions given to it by the Council in relation to the performance of the Services;
- (m) timely provision of the Services shall be of the essence including commencing the provision of the Services within the time agreed or on a specified date;
- (n) the Council shall have the power to inspect and examine the performance of the Services at any reasonable time provided that the Council gives reasonable notice to the Provider at any premises where any part of the Services are being performed; and
- (o) the Council shall have the right after consultation with the Provider to request the removal of any person engaged in the performance of the Services if in its reasonable opinion the performance or conduct of such person is or has been unsatisfactory.

11. DYNAMIC PURCHASING SYSTEM PRE-REQUISITES

- 11.1 The Provider shall be responsible for obtaining all Necessary Consents required in relation to the performance of this DPS Agreement.
- 11.2 The Provider must be able to confirm compliance with the Specification as set out in the Schedule annexed to this DPS Agreement.

12. PUBLICITY

- 12.1 The Provider shall not undertake any activity, including any public statement in either online or offline channels, which will bring the reputation of the Council into disrepute.
- 12.2 The Provider shall notify the Council with immediate effect as soon as it becomes aware of any activity or information provided by it which, may adversely affect the involvement of the Council in this DPS Agreement or any Referral Contract; or the reputation of the Council.
- 12.3 It shall not make or consent to the making of any public statement or announcement, or engage in any promotional or marketing activity (whether through online or offline channels - including, but not limited to, posters, leaflets, flyers, media activity, websites, social media sites, signage and events), concerning this agreement without the consent of the Council.
- 12.4 Any use of the logo of the Council must be approved by the Council Communications and Marketing Team prior to use. Use of the Council's logo must comply with the Council's brand guidelines which will determine its position and size in relationship to any partner/other logos. The appropriate version of the Council's logo shall be supplied by the Council's Communications and Marketing Team who will ensure the relationship with the Council is made clear (e.g. 'funded by', 'supported by' or 'working in partnership with').

13. TERMINATION OF DPS AGREEMENT

Termination on Default

- 13.1 The Council may terminate this DPS Agreement by serving written notice on the Provider with effect from the date specified in such notice:
- (a) where the Provider commits a Material Breach and:
 - (i) the Provider has not remedied the Material Breach to the satisfaction of the Council within the longer of, 14 Working Days, or such other period as may be specified by the Council, after issue of a Remediation Notice; or
 - (ii) the Material Breach is not, in the reasonable opinion of the Council, capable of remedy; or
 - (b) not used
 - (c) if the Provider has failed to remedy a Default Notice within 20 Working Days;

- (d) if a Consistent Failure has occurred;
 - (e) if a Catastrophic Failure has occurred;
 - (f) if there is an Insolvency Event;
 - (g) any warranty given by the Provider in Clause 10 of this DPS Agreement is found to be untrue or misleading;
 - (h) if any of the provisions of Regulation 73(1) of the Regulations apply;
 - (i) failure to comply with the requirements of the Specification.
- 13.2 The Council may terminate the DPS Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing of the Provider which adversely impacts on the Provider's ability to supply Services under this DPS Agreement.
- 13.3 The Provider shall notify the Council immediately if the Provider undergoes a Change of Control. The Council may terminate this DPS Agreement by giving notice in writing to the Provider with immediate effect within six months of:
- (a) being notified that a Change of Control has occurred; or
 - (b) where no notification has been made, the date that the Council becomes aware of the Change of Control;
- 13.4 The Council shall not be permitted to terminate this DPS Agreement where an Approval was granted before the Change of Control.
- 13.5 The Council may terminate this DPS Agreement forthwith and without further liability upon written notice to the Provider if there is a breach of the provisions of Clause 22 (Prevention of bribery) and Clause 23 (Force Majeure).
- 13.6 If this DPS Agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
- 13.7 Without affecting any other right or remedy available to it, the Council may terminate this DPS Agreement without further liability at any time by giving two Months' written notice to the Provider.
- 13.8 Without prejudice to the Council's rights to terminate the DPS Agreement under this Clause 13, if a right to terminate this DPS Agreement arises in accordance with Clause 13.1, the Council may first choose to suspend the Provider's right to receive Referrals from the Council by giving notice in writing to the Provider. If the Council provides notice to the Provider in accordance with this Clause 13.8, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Council in writing

from time to time. During such suspension the Provider shall take any remedial actions as agreed between the Council and the Provider at the time of suspension. If such remedial action is not taken the Council may terminate the DPS Agreement forthwith and without further liability upon written notice to the Provider.

- 13.9 Notwithstanding the service of a notice to terminate the DPS Agreement, the Provider shall continue to fulfil its obligations under the DPS Agreement until the date of expiry or termination of the DPS Agreement or such other date as required under this Clause 13.9.
- 13.10 Unless expressly stated to the contrary, the service of a notice to terminate the DPS Agreement shall not operate as a notice to terminate any Referral Contract made under the DPS Agreement. Termination or expiry of the DPS Agreement shall not cause any Referral Contracts to terminate automatically. For the avoidance of doubt, all Referral Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 13.11 Within 20 Working Days of the date of termination or expiry of the DPS Agreement, the Provider shall return or destroy at the request of the Council any data, personal information relating to the Council or its Service Users or personnel or Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council , together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the DPS Agreement, or such period as is necessary for such compliance.
- 13.12 Termination or expiry of this DPS Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this DPS Agreement before termination or expiry.

14. NOT USED

15. COMPLAINTS HANDLING AND RESOLUTION

- 15.1 The Provider shall notify the Council of any Complaint made within two Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint
- 15.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the DPS Agreement or a Referral Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the DPS Agreement or a Referral Contract, the Provider shall use

its best endeavours to resolve the Complaint within ten Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

16. DISPUTE RESOLUTION

16.1 If a dispute arises out of or in connection with this DPS Agreement or a Referral Contract or the performance, validity or enforceability of either (**'Dispute'**) then except as expressly provided in this DPS Agreement, the Parties shall follow the procedure set out in this Clause 16:

- (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 relevant Council's Authorised Representative and the Provider's Manager shall attempt in good faith to resolve the Dispute;
- (b) if the Council's Authorised Representative and the Provider's Manager 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 a Corporate Director of the Council or officer nominated by a Corporate Director of the Council and the Managing Director of the Provider who shall attempt in good faith to resolve it; and
- (c) if a Corporate Director of the Council or officer nominated by a Corporate Director of the Council and Managing Director of the Provider are for any reason unable to resolve the Dispute within 5 Working Days of it being referred to them, the Dispute shall be referred to the Chief Executive of the Council and the Chief Executive of the Provider who shall attempt in good faith to resolve it; and
- (d) if the Chief Executive of the Council and Chief Executive of the Provider are for any reason unable to resolve the Dispute within 5 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, the mediator shall be nominated by CEDR to resolve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 10 Working Days after the date of the ADR notice.

16.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under Clause 37 (Governing Law and Jurisdiction) which Clause shall apply at all times.

16.3 If the Dispute is not resolved within 40 Working Days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 40 working Days, or the mediation terminates before the expiration of the said period of 40 Working

Days, the Dispute shall be finally resolved by the Courts of England in accordance with Clause 37 of this DPS Agreement.

PROVIDER'S INFORMATION OBLIGATIONS

17. REPORTING, MEETINGS AND MONITORING

- 17.1 The Provider shall submit Management Information to the Council in the form and at agreed and suitable intervals.
- 17.2 The Council's Authorised Representative and Provider's Manager shall meet in accordance with the requirements set out in the Specification and the Provider shall, at each meeting, present its previously circulated Management Information in the format set out in the Specification annexed in a Schedule to this DPS Agreement.
- 17.3 The Council, acting reasonably, may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least one Month's written notice of any changes.
- 17.4 The Council may share the Management Information supplied by the Provider with any Regulatory Body.
- 17.5 The Council may monitor the performance of the Services under any Referral Contract as set out in the Specification at no additional charge to the Council. This will involve (but may not be limited to) monthly update meetings and weekly telephone conferences between the Authorised Representatives.
- 17.6 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in Clause 17.5.
- 17.7 In the event that the Provider does not comply with the relevant provisions of Clause 17 in any way, the Council may serve the Provider with a Default Notice.

18. RECORDS AND AUDIT ACCESS

- 18.1 The Provider shall keep and maintain until 6 years after the date of termination or expiry (whichever is the earlier) of this DPS Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this DPS Agreement including the Services provided under it, the Referral Contracts entered into with the Council and the Charges or other sums paid by the Council.
- 18.2 The Provider shall keep the records and accounts referred to in Clause 18.1 above in accordance with good accountancy practice.

- 18.3 The Provider shall afford the Council or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 18.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of 6 years after expiry of the Term to the Council and the Auditor.
- 18.5 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Referral Contracts; save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.
- 18.6 Subject to the Council's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
 - (b) reasonable access to sites controlled by the Provider and to equipment used in the provision of the Services; and
 - (c) access to the Staff.
- 18.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 18, unless the Audit reveals a material default by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

19. CONFIDENTIALITY

- 19.1 Subject to Clause 19.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 19.2 Clause 19.1 shall not apply to any disclosure of information:
- (a) required by any applicable Law, provided that Clause 19.1 shall apply to any disclosures required under the FOIA or the EIR;
 - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this DPS Agreement;
 - (c) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 19.1
- Subject to Clause 19.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives

from making any disclosure to any person of any matters relating hereto. ;

- (d) by the Council of any document to which it is a party and which the Parties to this DPS Agreement have agreed contains no Confidential Information;
- (e) to enable a determination to be made under Clause 16 (Dispute Resolution);
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (g) by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the information; and
- (h) by the Council relating to this DPS Agreement and in respect of which the Provider has given its prior written consent to disclosure.

20. DATA PROTECTION AND INFORMATION SHARING

20.1 The Provider shall (and shall procure that any of its Staff involved in the provision of the Services shall) comply with the provisions of the Data Protection Legislation and the Data Protection and Information Sharing Terms set out in the Schedule to this DPS Agreement which arise in connection with this DPS Agreement and any Referral Contract.

21. FREEDOM OF INFORMATION

21.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Provider shall, at no additional cost to the Council:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Council all Requests for Information relating to this DPS Agreement or any Referral Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.

21.2 The Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Provider of a Request For Information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this DPS Agreement) the Council shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

22. PREVENTION OF BRIBERY

22.1 The Provider:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this DPS Agreement and any Referral Contract made under it commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this DPS Agreement or any Referral Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this DPS Agreement.

22.2 The Provider shall:

- (a) if requested, provide the Council with any reasonable assistance, at no additional cost to the Council, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 5 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with Clause 22.1 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this DPS Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

22.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of Clause 22.1 is suspected or known, the Provider must notify the Council immediately.

- 22.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of Clause 22.1, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this DPS Agreement.
- 22.6 The Council may terminate this DPS Agreement and/or any Referral Contract by written notice with immediate effect and without further liability if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches Clause 22.1. In determining whether to exercise the right of termination under this Clause 22.6, the Council shall give all due consideration, where appropriate, to action other than termination of this DPS Agreement or any Referral Contract unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or Provider not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:
- (a) with the authority or with the actual knowledge of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or
 - (b) in circumstances where any one or more of the directors of the Provider ought reasonably to have had such knowledge.
- 22.7 Any notice of termination under Clause 22.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - (c) the date on which this DPS Agreement will terminate.
- 22.8 Despite Clause 16 (Dispute Resolution), any dispute relating to:
- (a) the interpretation of this Clause 22; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 22.9 Any termination under Clause 22.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.
- 23. FORCE MAJEURE**
- 23.1 Subject to the remaining provisions of this Clause 23, neither Party to this DPS Agreement or to any Referral Contract shall be liable to the other for any delay or non-performance of its obligations under this DPS Agreement or any

Referral Contract to the extent that such non-performance is due to a Force Majeure Event.

- 23.2 In the event that either Party is delayed or prevented from performing its obligations under this DPS Agreement or any Referral Contract by a Force Majeure Event, such Party shall:
- (a) give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this DPS Agreement or any Referral Contract; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 23.3 A Party cannot claim relief if the Force Majeure Event is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 23.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- 23.5 As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this DPS Agreement and any Referral Contract. Where the Provider is the affected Party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 23.6 The affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this DPS Agreement and/or any Referral Contract. Following such notification, this DPS Agreement and any affected Referral Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 23.7 The Council may, during the continuance of any Force Majeure Event, terminate this DPS Agreement by written notice and without further liability to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 20 Working Days.

23.8 A Council may, during the continuance of any Force Majeure Event, terminate an affected Referral Contract by written notice and without further liability to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 20 Working Days.

24. SUB-CONTRACTING AND ASSIGNMENT

24.1 Subject to Clause 24.2 and Clause 24.4, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this DPS Agreement or Referral Contract without the prior written consent of the other party, neither may the Provider Sub Contract the whole or any part of its obligations under this DPS Agreement or a Referral Contract except with the express prior written consent of the Council, such consent not to be unreasonably withheld. Any such sub-contracting shall not in any way relieve the Provider from its liabilities hereunder and the Provider shall be and shall remain fully responsible in respect of the Service notwithstanding such sub-contracting.

24.2 The Council shall be entitled to novate this DPS Agreement to any other body which substantially performs any of the functions that previously had been performed by that Council.

24.3 Not used.

24.4 Provided that the Council has given prior written consent, the Provider shall be entitled to novate the DPS Agreement or a Referral Contract where:

- (a) the specific change in provider was provided for in the procurement process for the award of this agreement; or
- (b) there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this DPS Agreement.

25. TUPE

Retendering and Handover

25.1 Within 15 Working Days of being so requested by the Council, the Provider shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Council to issue invitations to offer for the future provision of the Services.

25.2 Where, in the opinion of the Council, TUPE is likely to apply on the termination or expiration of the DPS Agreement, the information to be provided by the

Provider shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to):

- (a) The number of Employees who would be transferred, but with no obligation on the Provider to specify their names;
- (b) In respect of each of those Employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those Employees individually and any outstanding claims arising from their employment; and
- (c) The general terms and conditions applicable to those Employees, including provisions, probationary periods, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity, paternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements and any other collective agreements, facility time arrangements and additional employment benefits.

- 25.3 The Provider shall advise the Council immediately of any changes to these details between the date on which they are provided and the DPS Agreement expiry date and shall ensure that the information disclosed is accurate and up to date as at the expiry date and that all known existing liabilities relating to such staff have been discharged.
- 25.4 The Provider shall indemnify the Council against any claim made against the Council at any time by any person in respect of the liability incurred by the Council arising from any deficiency or inaccuracy in information, which the Provider is required to provide under Clause 25.2.
- 25.5 The Provider shall, if required by the Council, provide an undertaking and warrant to any person to whom the Provider's Staff may transfer pursuant to TUPE to the effect the Provider has discharged all its obligations as employer.
- 25.6 The Provider shall co-operate fully with the Council during the handover arising from the completion or earlier termination of the DPS Agreement. This co-operation, during the setting up operations period of the new provider, shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.
- 25.7 Within 10 Working Days of being so requested by the Council, the Provider shall transfer to the Council, or any person designated by the Council, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the Services. The

transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Council.

26. THIRD PARTY RIGHTS

26.1 A person who is not a party to this DPS Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this DPS Agreement.

26.2 A person who is not a party to a Referral Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Referral Contract.

26.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this DPS Agreement are not subject to the consent of any other person.

27. SEVERANCE

27.1 If any provision or part-provision of this DPS Agreement or any Referral Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 27 shall not affect the validity and enforceability of the rest of this DPS Agreement or any Referral Contract.

27.2 If any provision or part-provision of this DPS Agreement or any Referral Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

28. 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.

29. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this DPS Agreement or any Referral Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

30. ENTIRE AGREEMENT AND VARIATION

- 30.1 This DPS Agreement, the Schedule and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this Clause 30.1 shall operate to exclude any liability for fraud.
- 30.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this DPS Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this DPS Agreement.
- 30.3 Any variations to this DPS Agreement must be made only in accordance with the DPS Agreement Variation Procedure set out in the Schedule annexed to this DPS Agreement.

31. NOTICES

- 31.1 Any notice required or authorised to be given by one Party (the “Notifying Party”) to another Party (the “Notified Party”) under the DPS Agreement or a Referral Contract shall be in writing and shall either be delivered personally or sent by first class pre-paid post or by electronic mail to the Notified Party at the address stated in the DPS Agreement or Referral Contract or such other address as may be specified by the Notifying Party from time to time, and shall be deemed duly served:
- (a) in the case of a notice delivered personally at the time of delivery; or
 - (b) in the case of a notice sent by first class pre-paid post, two clear Working Days after being posted; or
 - (c) in the case of an electronic mail, if sent during normal business hours then at the time of that transmission and if sent outside normal business hours then on the next following Working Day provided (in each case) that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next Working Day.
- 31.2 All Parties shall promptly notify the remaining Parties upon any change of address occasioned during the Term.

32. CONFLICTS OF INTEREST

- 32.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council) there is or may be an actual conflict, or a potential conflict, between

the pecuniary or personal interests of the Provider or its Staff and the duties owed to the Council under the provisions of this DPS Agreement or under any Referral Contract.

33. NON DISCRIMINATION

33.1 The Provider shall comply with the provisions of the Equality Act 2010 and shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, age, gender, religion, disability, sexual orientation or otherwise).

33.2 The Provider shall take all reasonable steps to secure the observance of this Clause 33 by all Staff, servants or agents of the Provider and all suppliers and Sub-Contractors employed in the execution of the DPS Agreement or, as the case may be, any Referral Contract.

34. WHISTLEBLOWING

34.1 The Provider shall ensure that it has a Whistle Blowing Procedure which shall be approved by the Council from time to time.

34.2 The Provider confirms that the Council is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and its Staff will be made aware of this provision. The Provider further declares that any provision in any Referral Contract purporting to preclude a member of its Staff from making a protected disclosure is void.

34.3 The Provider shall ensure that Staff employed by the Provider in connection with this Agreement or any Referral Contract (including any Sub Contractor staff) are aware of the Council's Whistle Blowing Policy (available on the Council's website) and the arrangements to be followed in the event of them having any concerns and wishing to make a disclosure pursuant to the policy.

35. NO PARTNERSHIP

35.1 Nothing in this DPS Agreement or any Referral Contract shall be construed as creating a partnership or a contract of employment between the Council and the Provider.

36. COUNTERPARTS

36.1 This DPS Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this DPS

Agreement, but all the counterparts shall together constitute the same agreement.

37. GOVERNING LAW AND JURISDICTION

37.1 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.

37.2 Subject to the dispute resolution procedure in Clause 16 each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this DPS Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule

SERVICES

SEE PART 3 SERVICE SPECIFICATION

Referral Form

SEE REFERRAL FORM IN APPENDIX 2 TO PART 3 SPECIFICATION

Procedure for Award of Referral Contracts

See Specification and Tender Documentation

Additional Terms and Conditions for each REFERRAL CONTRACT

These terms and conditions shall apply to each Referral Contract and are in addition to the terms and conditions of the DPS Agreement which shall be deemed to be incorporated into and form part of each Referral Contract. These additional terms and conditions shall apply from the date set out in 38.1 below.

38. TERM OF REFERRAL CONTRACT

38.1 Each Referral Contract shall come into force on the date the Provider's confirmation email (or other form of written confirmation) is received in accordance with Clause 6.3 of the DPS Agreement and shall continue until terminated in accordance with the Referral Contract or by law.

39. REFERRAL CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

39.1 The Provider shall perform all Referral Contracts entered into with the Council in accordance with:

- (a) the requirements of the DPS Agreement;
- (b) the terms and conditions of any Referral Contract;
- (c) the Specification;
- (d) any specific requirements set out in the Referral Form; and
- (e) any reasonable requirements described and notified to the Provider during the Referral Process.

39.2 In the event that the Provider does not comply with the provisions of Clause 39.1 in any way, the Council may serve the Provider with a Default Notice.

39.3 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of the DPS Agreement and the terms and conditions of a Referral Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the Referral Contract;
- (b) the Specification;
- (c) the terms of the DPS Agreement, the Schedules to the DPS Agreement ;
- (d) any other document referred to in the Referral Contract; and
- (e) the Provider's Tender.

40. COUNCIL'S REFERRAL CONTRACT OBLIGATIONS

40.1 The Council shall:

- (a) comply with its obligations set out in the Specification;
- (b) co-operate with the Provider in all matters relating to the Services and Deliverables;
- (c) provide the Provider with such information and data as may reasonably be requested by that Provider and agreed with the Council in writing in advance, for the purposes of the Services; and
- (d) appoint the Council's Authorised Representative to manage the Referral Contracts.

41. PERFORMANCE TARGETS

41.1 The Provider shall provide the Services and any relevant Deliverables in accordance with the Performance Targets.

41.2 Time shall be of the essence for the performance of the Services.

41.3 In the event that any of the Services for a particular Referral Contract falls short of the relevant Performance Targets, without prejudice to any other rights the Council may have under the DPS Agreement or the Referral Contract, the Council shall be able to:-

- (a) withhold payment of the Charges for that Referral Contract until such time as the relevant Performance Target is met or until such time as the Council is satisfied that the breach of the relevant Performance Target has been otherwise dealt with to the satisfaction of the Council; or
- (b) Terminate the Referral Contract and move the Service User to another Provider.

42. SERVICE STANDARDS

42.1 The Provider shall:

- (a) provide the Services and Deliverables or procure that they are provided:
 - (i) in accordance with all applicable Law;
 - (ii) in accordance with the Specification;
 - (iii) in accordance with the information contained in the Referral Form;
 - (iv) in accordance with the Quality Assurance provisions;
 - (v) in accordance with Best Industry Practice;
 - (vi) in accordance with the terms of the DPS Agreement;
 - (vii) in accordance the Referral Contract;

- (viii) with all reasonable skill and care; and
- (ix) Subject to Clause 42.1(a)(i) to (viii) taking precedence, in accordance with the Tender.

42.2 In the event that the Provider does not comply with the provisions of Clause 42.1 in any way, the Council may serve the Provider with a Default Notice.

42.3 The Provider shall meet, and time is of the essence as to, any time scales and or dates specified in the Specification or other relevant provision set out in the Referral Contract. If the Provider fails to do so, the Council may (without prejudice to any other rights it may have):

- (a) terminate the relevant Referral Contract in whole or in part without liability to the Provider;
- (b) refuse to accept any subsequent performance of the Services under the relevant Referral Contract which the Provider attempts to make;
- (c) purchase Replacement Services;
- (d) hold the Provider accountable for any loss and additional costs incurred; and
- (e) have any pre-payments paid by the Council to the Provider for any Services not yet performed by the Provider under the relevant Referral Contract refunded by the Provider.

42.4 The Provider shall (and shall procure that the Provider's employees shall) co-operate with the Council in all matters relating to the Services.

43. COMPLIANCE

43.1 The Provider shall ensure that all Necessary Consents, statutory requirements, standards, accreditation and certification are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

43.2 Where there is any conflict or inconsistency between the provisions of the DPS Agreement or any Referral Contract 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.

43.3 The Provider shall perform its obligations under the DPS Agreement and any Referral Contract (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and

- (b) the Provider's Health and Safety Policy relevant to the premises used to provide the Services to the Service User.

43.4 Without limiting the general obligation set out in Clause 42, the Provider shall (and shall procure that the Staff shall):

- (a) perform its obligations under the DPS Agreement and any Referral Contract (including those in relation to the Services) in accordance with:
 - (i) the Equality Act 2010 and all other applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Council's equality and diversity policy as provided to the Provider from time to time; and
 - (iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law; and
- (b) take all necessary steps, and inform the Council 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) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

44. PAYMENT FOR SERVICES

44.1 In consideration of the provision of the Services and the Deliverables by the Provider in accordance with the terms and conditions of any Referral Contract let in accordance with the DPS Agreement, the Council shall pay the Charges to the Provider in accordance with the Charges Schedule.

44.2 In relation to any Referral Contract the Council shall pay the Charges, which have become payable within 30 days of receipt of an undisputed invoice from the Provider, such invoice must be in the form and contain the information specified in the Referral Contract save that the Council may withhold payment in accordance with Clause 44.7.

44.3 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 the Dispute Resolution Procedure.

- 44.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council 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 the DPS Agreement or any Referral Contract.
- 44.5 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to the DPS Agreement or any Referral Contract. Such records shall be retained for inspection by the Council for 6 years from the end of the Year to which the records relate.
- 44.6 Where the Provider enters into a Sub Contract with a supplier or Sub Contractor for the purpose of performing the Services under a Referral Contract, it shall cause a term to be included in such a Sub Contract that requires payment to be made of undisputed sums by the Provider to the Sub Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub Contract requirements.
- 44.7 The Council may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under a Referral Contract, or any other agreement pursuant to which the Provider or any Associated Company of the Provider provides goods or services to the Council.
- 44.8 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.

45. NOT USED

46. INSURANCE

- 46.1 The Provider shall effect and maintain with a reputable insurance company policies of insurance for the duration of any Referral Contracts and for 6 years after the expiry of the Referral Contracts, to provide a level of cover sufficient for all risks which may be incurred by the Provider under the DPS Agreement and any Referral Contract, which shall include, as a minimum, the following:

- (a) public liability insurance with a limit of indemnity of not less than **£5 million pounds** in relation to any one claim or series of connected claims;
- (b) employers' liability insurance with a limit of indemnity in accordance with the legal requirement for the time being in force in relation to any one claim or series of connected claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £2 million pounds in relation to any one claim or series of connected claims
- (d) appropriate fully comprehensive vehicle insurance for any vehicles used to be provide the Services.
- (e) 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.

46.2 The Provider shall produce on request by the Council, copies of all insurance policies referred to in this Clause 46, together with receipts or other evidence of payment of the latest premiums due under those policies.

46.3 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the DPS Agreement or Referral Contract, then the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

46.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the DPS Agreement or any Referral Contract.

47. LIABILITY

47.1 Neither the Provider nor the Council excludes or limits their liability for:-

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub Contractors;
- (b) fraud or fraudulent misrepresentation by it or its employees.
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

47.2 The Provider shall be liable for and shall indemnify and keep indemnified the Council against all and any losses suffered or incurred by the Council and

claims or demands made against the Council and/or the Provider arising directly from any defect in the Service or any act or omission by the Provider or incorrect statement or incorrect information supplied to the Council by the Provider in connection with the performance of the Services.

47.3 The Provider shall further indemnify and keep indemnified the Council against all and any losses suffered by the Council and claims made against the Council and/or the Provider in respect of personal injury to or death of any person whomsoever (including any employee of the Council or the Provider) and in respect of damage to or loss of any property whatsoever caused by, or arising out of, or in the course of the performance of, or any default in respect of the performance of the Services.

47.4 , In no event shall the Council be liable to the Provider for any:-

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect or consequential loss or damage.

47.5 The Council may, amongst other things, recover as a direct loss:-

- (a) any additional operational and/or administrative expenses arising from the Provider's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's Default; and
- (c) the additional cost of procuring Replacement Services for the remainder of the Term following termination of the DPS Agreement or Referral Contract as a result of a Default by the Provider.

47.6 Nothing in the DPS Agreement or a Referral Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of the DPS Agreement or a Referral Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.

48. STAFF USED TO PROVIDE THE SERVICES

48.1 The Provider shall:

- (a) ensure that it employs an adequate number of sufficiently qualified and experienced Staff to provide the Services to the standards specified in

the Specification and shall ensure that all of its Staff are properly and sufficiently trained and instructed with regard to all aspects of the provision of the Services including safeguarding children and vulnerable adults as further detailed in Clause 49;

- (b) ensure all Staff are made aware of and comply with the provisions the Specification, DPS Agreement and Referral Contracts;
- (c) ensure that it has sufficient Staff to provide the Services for the Term (and for the duration of any Referral Contract that may exceed the duration of the DPS Agreement) during periods of Staff absence due to sickness, maternity leave, Staff holidays and otherwise. In the event of industrial disputes or action by any Staff, it remains the Provider's responsibility to meet the requirements of the DPS Agreement and any Referral Contract. The Provider shall inform the Council immediately of impending or actual industrial disputes or action which may affect the Provider's ability to deliver the Services;
- (d) ensure that the Staff employed in and about the provision of the Services shall at all times exercise due care and diligence in the execution of their duties and the Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of Services;
- (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's Personnel comply with all of the Council's policies (such policies shall be provided to the Provider on request). The Council may refuse to grant access to, and remove, any of the Staff who do not comply with any such policies, or if they otherwise present a security threat.

48.2 The Council may, acting reasonably and to the extent reasonably necessary to protect Service Users and the standards and reputation of the Council, following consultation with the Provider, instruct the Provider to remove a member of the Provider's Staff from the provision of the Services (which, for the avoidance of doubt, may include any Referral Contract manager engaged by the Provider).

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

48.4 The Provider shall maintain up-to-date personnel records of the Staff engaged in the provision of the Services and, on request, provide reasonable information

to the Council on the Staff. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

- 48.5 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its Staff engaged in the provision or management of the Services is at least as good as Best Industry Practice for similar services, locations and environments.

49. SAFEGUARDING

- 49.1 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.

- 49.2 The Provider may not engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate).

- 49.3 The Provider must:

- (a) obtain a full employment history and 2 satisfactory references for all applicants prior to the commencement of employment. The references should be one satisfactory employment reference from the applicant's preceding employer and one satisfactory and independent character reference, validated and checked. Where the applicant has no previous employment, two satisfactory independent character references must be obtained validated and checked. The Provider will make the references available to the Council for purposes of inspection and audit. If a prospective employee is currently or has previously been by employed by the Council at any time, the Provider must seek a reference from the Council, regardless of whether or not the Council are the preceding employers and in addition to other references sought; and
- (b) confirm the applicants legal right to work in the UK; and
- (c) notify the Council immediately if any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Provider (or any employee of a Sub-Contractor involved in the provision of the Services; and

- (d) have in place a regularly updated workforce development plan that includes appropriate competencies for Staff in relation to all competencies and training requirements; and
 - (e) comply with any other reasonable requirement of the Council.
- 49.4 For the avoidance of doubt, the Parties acknowledge that Staff shall have no contractual or agency relationship with the Council and the Provider agrees to indemnify and keep indemnified the Council in respect of any claim made by Staff arising from the performance of its obligations under this Agreement or any Referral Contract.
- 49.5 Any proven Improper Conduct on the part of the Provider or Staff shall be considered to be a breach of the Referral Contract and may result in the immediate termination of the Referral Contract. The Council takes Improper Conduct very seriously and if the Referral Contract is not terminated, the Provider agrees to any measures instigated by the Council, including the appointment of a Replacement Provider to provide some or all of the Services, subject to such measures being instigated to protect Service Users.
- 49.6 All Staff shall be notified and instructed by the Provider about the Provider's obligations under the terms of the DPS Agreement, any Referral Contract and at Law.
- 49.7 The Provider shall at all times comply with its obligations pursuant to Law relating to employment.
- 49.8 The Provider shall:
 - (a) Have a procedure approved by the Council for dealing with allegations or suspicions of Abuse;
 - (b) Ensure that all Staff are trained at induction in the proactive prevention of Abuse, in the identification of relevant incidents, in following the reporting procedures and training should be updated at least annually;
 - (c) Maintain a proactive approach to prevent Abuse;
 - (d) Have in place a workforce development plan that includes appropriate competencies for Staff in relation to safeguarding children and vulnerable adults work;
 - (e) Adhere to rigorous recruitment practices to deter those who actively seek vulnerable people to exploit or abuse;
 - (f) Have robust systems in place so that Staff are familiar with and follow the safeguarding children and vulnerable adults policy and procedure of the Council;
 - (g) Address issues around bullying and have in place an anti-bullying policy which should be linked to their safeguarding procedures as

appropriate. It is expected that Staff and Service Users will be made aware of this policy and that relevant training will be given to Staff.

50. HEALTH AND SAFETY

- 50.1 The Provider shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of a Referral Contract.
- 50.2 The Provider shall take all necessary steps to secure the health and safety of its Staff, Service Users and any visitor to any premises at which the Services are provided and shall at all times comply with Law relating to health and safety .
- 50.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of a Referral Contract where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 50.4 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.
- 50.5 The Council will investigate any allegation that the Provider has failed to comply with relevant health and safety Law.
- 50.6 The Provider will maintain a pre-printed, accident records book, e.g. Form B1510, and comply with all recording and reporting legislation, including RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations). The Provider will make the accident records book available to the Council upon request.

51. PREMISES USED TO PROVIDE SERVICES

- 51.1 The Provider shall ensure that any premises used to provide the Services:
- (a) have been assessed by the Provider using appropriate risk assessments;
 - (b) comply with all applicable Law including but not limited to health and safety legislation;
 - (c) comply with the requirements of any applicable Regulatory Body.

52. INTELLECTUAL PROPERTY RIGHTS

- 52.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Provider or any employee, agent or Sub Contractor of the Provider:
- (a) exclusively for the purpose of performing the Services; and

(b) in the Deliverables,

shall vest in the Council on creation. The Provider shall grant, or procure the grant of a worldwide, royalty free, licence (with the ability for the Council to grant sub licences where it deems necessary) for the Council or its employees, servants, agents or sub-contractors to use any pre-existing Intellectual Property Rights owned by the Provider, its Sub Contractors or third party licensors, which is used in the provision of the Services by the Provider.

52.2 The Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any third party's Intellectual Property Right by the Provider, its employees, servants or agents, during the course of provision of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

53. TERMINATION OF A REFERRAL CONTRACT

Termination on Default

53.1 The Council may terminate a Referral Contract by serving written notice on the Provider with effect from the date specified in such notice:

- (a) where the Provider commits a Material Breach and:
 - (i) the Provider has not remedied the Material Breach to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a Remediation Notice; or
 - (ii) the Material Breach is not, in the reasonable opinion of the Council, capable of remedy; or
- (b) if the Provider has failed to remedy a Default Notice within 20 Working Days;
- (c) if a Consistent Failure has occurred;
- (d) if a Catastrophic Failure has occurred;
- (e) if there is an Insolvency Event;
- (f) any warranty given by the Provider in Clause 10 of the DPS Agreement is found to be untrue or misleading;
- (g) if any of the provisions of Regulation 73(1) of the Regulations apply.

53.2 The Provider may terminate A Referral Contract in the event that the Council commits a Termination Payment Default by giving 20 Working Days' written notice to the Council. In the event that the Council remedies the Termination

Payment Default in the 20 Working Day notice period, the Provider's notice to terminate a Referral Contract shall be deemed to have been withdrawn.

- 53.3 The Provider shall notify the Council immediately if the Provider undergoes a Change of Control. The Council may terminate any Referral Contract by giving notice in writing to the Provider with immediate effect within six Months of:
- (a) being notified that a Change of Control has occurred; or
 - (b) where no notification has been made, the date that the Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

- 53.4 The Council may terminate any Referral Contract by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing of the Provider which adversely impacts on the Provider's ability to supply Services.

- 53.5 The Council may terminate any Referral Contract in accordance with the provisions of Clause 22 (Prevention of Bribery) and Clause 23 (Force Majeure).

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

No Fault Termination

- 53.7 Without affecting any other right or remedy available to it the Provider may terminate any Referral Contract at any time by giving two (2) months' written notice to the Council, PROVIDED THAT any termination by the Provider under this Clause 53.7 shall entitle the Council to have any pre-payments paid by the Council to the Provider for any Services not yet performed by the Provider under the relevant Referral Contract refunded by the Provider on a pro rata basis to the remainder of the term of the Referral Contract.

- 53.8 Without affecting any other right or remedy available to it the Council may terminate any Referral Contract at any time by giving two (2) months' written notice to the Provider.

- 53.9 Without affecting any other right or remedy available to it the Council may terminate any Referral Contract with immediate effect in the following circumstances:

- (a) the provision of Services to a Service User by the Provider is no longer appropriate for that Service User's requirements;

- (b) the age of the Service User;
- (c) any changes to the Service User's long term health;
- (d) death of the Service User.

53.10 Cancellation of Referral Contract

53.11 The Council may cancel a Referral Contract at any time prior to the Provider commencing the Services under that Referral Contract by serving written notice on the Provider.

54. CONSEQUENCES OF TERMINATION AND EXPIRY

54.1 Notwithstanding the service of a notice to terminate any Referral Contract, the Provider shall continue to fulfil its obligations under the Referral Contract until the date of expiry or termination of the Referral Contract or such other date as required under this Clause 54.

54.2 Unless expressly stated to the contrary, the service of a notice to terminate the DPS Agreement shall not operate as a notice to terminate any Referral Contract made under the DPS Agreement. Termination or expiry of the DPS Agreement shall not cause any Referral Contracts to terminate automatically. For the avoidance of doubt, all Referral Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

54.3 Within 20 Working Days of the date of termination or expiry of a Referral Contract, the Provider shall return or destroy at the request of the Council any data, personal information relating to the relevant Service Users either in its then current format or in a format nominated by the Council, save that it may keep one copy of any such data or information for a period of up to 12 months to comply with its obligations under the DPS Agreement, or such period as is necessary for such compliance.

54.4 Termination or expiry of a Referral Contract shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Referral Contract before termination or expiry.

54.5 The provisions of Clause 10 (Warranties and Representations), Clause 13 (Termination of DPS Agreement), Clause 18 (Records and audit access), Clause 19 (Confidentiality), Clause 20 (Data protection), Clause 21 (Freedom of information), and Clause 47 (Liability), Clause 53 (Termination of a Referral Contract), Clause 54 (Consequences of termination and expiry), Clause 69 (Governing law and jurisdiction) shall survive the termination or expiry of Referral Contract, together with any other provision which is either expressed to or by implication is intended to survive termination.

55. SERVICE USER COMPLAINTS HANDLING AND RESOLUTION

55.1 The Provider shall develop and comply with a Service User complaints procedure as detailed in the Specification.

56. POLICIES AND PROCEDURES

56.1 The Provider shall have in place the policies and procedures detailed in the Specification and shall review and update these policies and procedures at least annually.

57. VARIATIONS TO REFERRAL CONTRACTS

57.1 Any variation to a Referral Contract or the Services provided under it shall only be effective if agreed in writing between the Parties and provided that the variation does not breach regulation 72 of the Regulations.

57.2 All agreed variations shall form an addendum to the relevant Referral Contract.

58. THIRD PARTY RIGHTS

58.1 A person who is not a party to the DPS Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the DPS Agreement.

58.2 A person who is not a party to a Referral Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Referral Contract.

58.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the DPS Agreement are not subject to the consent of any other person.

59. SEVERANCE

59.1 If any provision or part-provision of the DPS Agreement or any Referral Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 59 shall not affect the validity and enforceability of the rest of the DPS Agreement or any Referral Contract.

59.2 If any provision or part-provision of the DPS Agreement or Referral Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

60. 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.

61. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the DPS Agreement or any Referral Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

62. ENTIRE AGREEMENT

62.1 The DPS Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this Clause 62 shall operate to exclude any liability for fraud.

62.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the DPS Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the DPS Agreement.

63. NOTICES

63.1 Any notice required or authorised to be given by one Party (the "Notifying Party") to another Party (the "Notified Party") under the DPS Agreement or a Referral Contract shall be in writing and shall either be delivered personally or sent by first class pre-paid post or by electronic mail to the Notified Party at the address stated in the DPS Agreement or Referral Contract or such other address as may be specified by the Notifying Party from time to time, and shall be deemed duly served:

- (a) in the case of a notice delivered personally at the time of delivery; or
- (b) in the case of a notice sent by first class pre-paid post, two clear Working Days after being posted; or

- (c) in the case of an electronic mail, if sent during normal business hours then at the time of that transmission and if sent outside normal business hours then on the next following Working Day provided (in each case) that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next Working Day.

63.2 All Parties shall promptly notify the remaining Parties upon any change of address occasioned during the Term.

64. CONFLICTS OF INTEREST

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

65. NON DISCRIMINATION

65.1 The Provider shall not unlawfully discriminate within the meaning and scope of The Equality Act 2010 or any law, enactment, order or regulation relating to discrimination (whether in race, age, gender, religion, disability, sexual orientation or otherwise).

65.2 The Provider shall take all reasonable steps to secure the observance of Clause 65 by all Staff, servants or agents of the Provider and all suppliers and Sub-Contractors employed in the execution of the DPS Agreement or, as the case may be, Referral Contract.

66. WHISTLEBLOWING

66.1 The Provider shall ensure that it has a Whistle blowing Procedure which shall be approved by the Council from time to time.

66.2 The Provider confirms that the Council is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and its Staff will be made aware of this provision. The Provider further declares that any provision in any Referral Contract purporting to preclude a member of its Staff from making a protected disclosure is void.

66.3 The Provider shall ensure that Staff employed by the Provider in connection with this Agreement or any Referral Contract (including any Sub Contractor staff) are aware of the Council's whistle blowing policy (available on the

Council's website <HTTP://WWW.NOTTINGHAMSHIRE.GOV.UK>) and the arrangements to be followed in the event of them having any concerns and wishing to make a disclosure pursuant to the policy.

67. NO PARTNERSHIP

67.1 Nothing in the DPS Agreement or Referral Contract shall be construed as creating a partnership or a Referral Contract of employment between the Council and the Provider.

68. COUNTERPARTS

68.1 The DPS Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the DPS Agreement, but all the counterparts shall together constitute the same agreement.

69. GOVERNING LAW AND JURISDICTION

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

69.2 Subject to the dispute resolution procedure in Clause 16 each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this DPS Agreement or its subject matter or formation (including non-Referral Contractual disputes or claims).

Deliverables and Performance Targets

See Part 3 Specification

Charges Schedule

Invoice Requirements

1) Invoice Arrangements for Referral Contracts

The Council operates a policy of “No Purchase Order, No Payment”.

All invoices for County Council Referral Contracts should be sent to:

Nottinghamshire County Council

Accounts Payable

County Hall

West Bridgford

Nottingham

NG2 7QP

Email: payments@nottscc.gov.uk

Please note that only one invoice should be attached to each email submitted.

Representatives

COUNCIL AUTHORISED REPRESENTATIVES

The Council's Authorised Representative is:

Name: []

Tel: []

Email: [\[_____ \]. \[_____ \]@nottsc.gov.uk](mailto:_____@nottsc.gov.uk)

PROVIDER MANAGER

The Provider's Authorised Representative (Provider Manager) as stated in its Tender response to questions within section 1.3:

DPS Agreement Variation Procedure

1. INTRODUCTION

- 1.1 This Schedule details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the DPS Agreement.
- 1.2 The Council may propose a variation to the DPS Agreement under this Schedule only where the variation does not amount to a material change (within the meaning of Regulation 72 of the Regulations) in the DPS Agreement or the Services.

2. PROCEDURE FOR PROPOSING A VARIATION

- 2.1 Except where Paragraph Variations that are not permitted applies, the Council may propose a variation using the procedure contained in this Paragraph Procedure for proposing a variation.
- 2.2 In order to propose a variation, the Council shall serve each Provider with written notice of the proposal to vary the DPS Agreement (**'Notice of Variation'**).
- 2.3 The Notice of Variation shall:
 - (a) contain details of the proposed variation providing sufficient information to allow the Provider to assess the variation and consider whether any changes to the Charges are necessary; and
 - (b) require each Provider to notify the Council within 5 Working Days of any proposed changes to the Charges.
- 2.4 On receipt of the Notice of Variation, each Provider has 5 Working Days to respond in writing with any objections to the variation.
- 2.5 Where the Council does not receive any written objections to the variation within the timescales detailed in Paragraph On receipt of the Notice of Variation, each Provider has 5 Working Days to respond in writing with any objections to the variation., the Council may then serve each Provider with a written agreement detailing the variation to be signed and returned by each Provider within 5 Working Days of receipt.
- 2.6 On receipt of a signed agreement from the Provider, the Council shall notify all Providers in writing of the commencement date of the variation.

3. OBJECTIONS TO A VARIATION

In the event that the Council receives one or more written objections to a variation, the Council may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

4. CHANGES TO THE CHARGES

- 4.1 Where a Provider can demonstrate that a variation would result in a change to the Charges, the Council may require further evidence from the Provider that any additional costs to the Provider will be kept to a minimum.
- 4.2 The Council may require the Provider to meet and discuss any proposed changes to the Charges that would result from a variation.
- 4.3 Where a change to the Charges is agreed by the Council, the Council shall notify its acceptance of the change to the Provider in writing.

4.4 In the event that the Council and the Provider cannot agree to the changes to the Charges, the Council may:

- (a) withdraw the variation; or
- (b) propose an amendment to the variation.

5. IMPACT ON REFERRAL CONTRACTS

5.1 In the event that a variation is agreed which impacts on any existing Referral Contracts, the change shall only apply to existing Referral Contracts if the Council gives its express approval to this effect. The Council is entitled to refuse such a variation and the existing Referral Contracts shall remain unvaried.

5.2 Any variation agreed in accordance with this Schedule shall apply to any new Referral Contracts entered into after the variation has come into force.

6. VARIATIONS THAT ARE NOT PERMITTED

In addition to the provisions contained in Paragraph The Council may propose a variation to the DPS Agreement under this Schedule only where the variation does not amount to a material change (within the meaning of Regulation 72 of the Regulations) in the DPS Agreement or the Services., the Council may not propose any variation that:

- (a) may prevent one or more of the Providers from performing its obligations under the DPS Agreement; or
- (b) is in contravention of any Law.

DATA PROTECTION AND INFORMATION SHARING TERMS

1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply to these terms:

<i>Agreed Purpose</i>	means any purpose that is necessary for the performance of the parties' respective obligations under the DPS Agreement or the Referral Contract;
<i>Referral Contract</i>	means the contract between the Council and the Provider for the provision of services;
<i>Provider Data</i>	means any Shared Data relating to the employees, staff, workers, sub-contractors and/or agents of the Provider;
<i>Data Protection Legislation</i>	means the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) ("GDPR"), the Law Enforcement Directive ("LED"), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner including any amending or replacement legislation in force from time to time;
<i>Data Protection Principles</i>	means the data protection principles as set out in Article 5 of the GDPR;
<i>Data Security Breach</i>	means a breach of security leading to the accidental or unlawful processing, destruction, loss, alteration, unauthorised disclosure of, or access to personal data (including Shared Data);
<i>Shared Data</i>	means any personal data shared by either party in connection with the DPS Agreement or Referral Contract including pseudonymised and de-identified personal data;
<i>subject access request</i>	has the same meaning as "right of access to personal data" in the Data Protection Legislation;
<i>Working Day</i>	means any day (other than a Saturday or Sunday) on which businesses are generally open.

1.2. The terms personal data, special category data, processing, data controller, data processor, consent, appropriate technical and organisational measures and data protection officer shall have the same meanings as defined in the Data Protection Legislation.

1.3. In the DPS Agreement (except where the context otherwise requires):

- 1.3.1. use of the singular includes the plural (and vice versa) and use of any gender includes the other genders;
- 1.3.2. a reference to a Party shall include that Party's personal representatives, successors or permitted assignees;
- 1.3.3. a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations, and associations, organisations, governments,

states, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence);

- 1.3.4. any reference to a statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted by any subsequent statute, order, regulation or instrument;
- 1.3.5. general words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms; and
- 1.3.6. headings to clauses are for the purpose of information and identification only and shall not be construed as forming part of the DPS Agreement.

2. COMPLIANCE WITH DATA PROTECTION LEGISLATION

- 2.1. Both parties shall ensure compliance with all applicable Data Protection Legislation at all times throughout the duration of the DPS Agreement.
- 2.2. The Provider shall provide all reasonable assistance and co-operation to the Council to assist the Council in complying with its obligations under the Data Protection Legislation.

3. DATA SHARING

- 3.1. Sharing of personal data must be conducted in accordance with the Data Protection Legislation, the Human Rights Act 1998, and in compliance with the common law duty of confidence.
- 3.2. Shared Data shall only be disclosed using secure methods of system access or transfer as approved by the Council.
- 3.3. The parties shall have in place appropriate technical and organisational security measures in order to prevent unauthorised or unlawful processing of the Shared Data and its accidental loss, destruction or damage.
- 3.4. The Provider shall ensure that its staff members are appropriately trained to handle and process Shared Data in compliance with the Data Protection Legislation. The level, content and regularity of training shall be proportionate to the staff members' role, responsibility and the frequency with respect to their handling and processing of Shared Data.
- 3.5. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Provider amend the DPS Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

4. DATA SECURITY BREACHES

- 4.1. The Provider shall have in place its own policies and procedures for staff that must be followed in the event of a data security breach.

- 4.2. The Provider shall notify the Council of any potential or actual loss of or data security breach in relation to the Shared Data.
- 4.3. The Provider shall provide reasonable assistance to the Council as is necessary to facilitate the handling of any data security breach in an expeditious and compliant manner.

5. CONTROLLER TO CONTROLLER

- 5.1. This clause 5 shall apply where the Council and the Provider are each acting as data controller in relation to any Shared Data.
- 5.2. Where this clause 5 applies:
 - 5.2.1. save for any Provider Data (of which the parties agree the Provider is the lead data controller), the parties agree that the Council is the lead data controller of any Shared Data for the purposes of the Data Protection Legislation;
 - 5.2.2. in the event that, as a matter of law, the Council and the Provider are joint data controllers and/or data controllers in common, the final decision as to how the relevant personal data is to be processed will be made by the Council as lead data controller;
 - 5.2.3. the Provider shall ensure that it has paid the data protection fee to the Information Commissioner's Office such that it has a valid entry in the register of data protection fee payers;
 - 5.2.4. shared data shall only be processed fairly, lawfully, and for the Agreed Purpose, unless obliged to do so in accordance with a legal obligation or under the instructions of a court. The Provider shall seek a separate agreement for processing data for purposes other than the Agreed Purpose. Where it is exercising a statutory function, the Provider shall inform the Council of the function it is exercising and the statutory instrument under which it is exercising that function;
 - 5.2.5. where consent is required from an individual data subject to share their personal data, the Provider shall record details of how and when the consent was obtained where it is undertaking processing based on that consent;
 - 5.2.6. each of the parties shall ensure that its privacy notices are clear and that they comply with the Data Protection Legislation and that in particular they inform individual data subjects about their rights to access to personal data held about them and to correct any factual errors;
 - 5.2.7. the parties shall each designate a data protection lead contact or data protection officer (as required by Data Protection Legislation), notify the other party of that person's identity and contact details and inform the other whenever the identity or contact details of that person changes;
 - 5.2.8. Shared Data shall be relevant and proportionate to achieve the Agreed Purpose and only the minimum necessary personal data shall be shared;
 - 5.2.9. Shared Data shall be complete, accurate and up-to-date to ensure that the parties are assured that the Shared Data can be used for the Agreed Purpose;

- 5.2.10. save for any Provider Data, the Provider shall not disclose any Shared Data to any other organisation without the prior permission of the Council, unless the Provider is under a statutory obligation to do so;
- 5.2.11. the Provider shall not retain, access or process any Shared Data for longer than is necessary to carry out the Agreed Purpose or, if longer, to comply with any statutory or professional retention periods; and
- 5.2.12. any copies of Shared Data must be securely disposed of by the Provider at the later of: (i) when no longer required for the Agreed purpose, (ii) on termination of the DPS Agreement or (iii) when no longer required to meet any legal or professional obligation.

6. CONTROLLER TO PROCESSOR

- 6.1. This clause 6 shall apply where the Provider is acting as Data Processor on behalf of the Council for any Shared Data.
- 6.2. Where this clause 6 applies the Provider shall:
 - 6.2.1. only access and use those Shared Data for the Agreed Purpose and in accordance with the Council's written instructions;
 - 6.2.2. promptly comply with any request or instruction from the Council requiring the Provider to amend, transfer, delete or otherwise process those Shared Data, or to stop, mitigate or remedy any unauthorised processing;
 - 6.2.3. maintain the confidentiality of those Shared Data and not disclose those Shared Data to any third parties unless the Council or the DPS Agreement specifically authorises the disclosure, or as required by law. If a law, court, regulator or supervisory authority requires the Provider to disclose any of those Shared Data, the Provider shall first inform the Council of the legal or regulatory requirement and shall give the Council an opportunity to object to or challenge the requirement;
 - 6.2.4. reasonably assist the Council with meeting its compliance obligations under the Data Protection Legislation, taking into account the nature of the Provider's processing and the information available to the Provider, including in relation to data subjects' rights, data protection impact assessments, and reporting to and consulting with supervisory authorities under the Data Protection Legislation;
 - 6.2.5. not disclose any of those Shared Data or other information it either has access to or is provided by the Council to any third party other than on the written instructions of the Council or as otherwise required by law;
 - 6.2.6. not allow any of those Shared Data to be transferred outside the European Economic Area other than on the Council's written instructions;
 - 6.2.7. ensure that those Shared Data are accurately recorded and promptly inform the Council if inaccurate;
 - 6.2.8. immediately forward to the Council any communications from data subjects, regulatory bodies and other third parties concerning those Shared Data and shall not respond to or act on such communications without the Council's prior written agreement;

- 6.2.9. on request provide to the Council a copy of those Shared Data held by the Provider in the format reasonably specified by the Council;
- 6.2.10. notify the Council immediately if it considers that any of the Council's instructions in relation to those Shared Data infringe the Data Protection Legislation;
- 6.2.11. provide all reasonable assistance to the Council in the preparation of any data protection impact assessment prior to commencing any processing of those Shared Data. Such assistance may, at the discretion of the Council, include:
 - 6.2.11.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 6.2.11.2. a description of any processes used to anonymise and encrypt personal data;
 - 6.2.11.3. an assessment of the necessity and proportionality of the processing operations in relation to the Agreed Purpose;
 - 6.2.11.4. an assessment of the risks to the rights and freedoms of data subjects; and
 - 6.2.11.5. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Shared Data,
- 6.2.12. ensure that its staff do not process any of those Shared Data except in accordance with the DPS Agreement;
- 6.2.13. at the written direction of the Council, delete or return any of those Shared Data and any copies of them to the Council on termination of the DPS Agreement unless the Provider is required by Law to retain the relevant personal data;
- 6.2.14. keep detailed, accurate and up-to-date written records regarding any processing of those Shared Data that it carries out for or on behalf of the Council, including but not limited to the access, control and security of those Shared Data, approved sub-contractors or sub-processors or affiliates, the processing purposes, categories of processing, any transfers of those Shared Data to a third country and related safeguards, and a general description of the technical and organisational security measures in place in relation to those Shared Data to demonstrate its compliance with this clause 6; and
- 6.2.15. on reasonable notice from the Council, allow its data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by the Council (or its authorised representatives) in order to ascertain compliance with the Data Protection Legislation.
- 6.2.16. before allowing any sub-processor or other third party to process any of those Shared Data:
 - 6.2.16.1. notify the Council in writing of the intended sub-processor or third party and the processing to be undertaken by them;
 - 6.2.16.2. obtain the written consent of the Council;

- 6.2.16.3. enter into a written agreement with the sub-processor or third party which gives effect to the terms set out in this clause such that they apply to the sub-processor or third party; and
- 6.2.16.4. provide the Council with such information regarding the sub-processor or third party as The Council may reasonably require from time to time.
- 6.2.17. remain fully liable for all acts or omissions of any sub-processor or third party that it engages; and
- 6.2.18. subject to clauses 6.2.16 and 6.2.17, not share any of those Shared Data with any other organisations or individuals without the prior written agreement of the Council or unless the Provider is required to disclose the information by law. If a law, court, regulator or supervisory authority requires the Provider to process or disclose Shared Data, the Provider must first inform the Council of the legal or regulatory requirement and give the Council an opportunity to object or challenge the requirement.

7. DATA MATCHING

- 7.1. Shared Data is provided on the understanding that it will not be matched to any other datasets, even to depersonalised or aggregated datasets, unless the Council has agreed to the proposed data matching.
- 7.2. There must not be any re-identification of information that is de-identified personal data without the prior written consent of the Council.

8. DATA SECURITY

- 8.1. The Provider shall:
 - 8.1.1. at all times be responsible for ensuring that all Shared Data held by it is stored securely and that access to Shared Data exercisable by it is used securely;
 - 8.1.2. take appropriate technical and organisational measures to ensure the security of such data and guard against unauthorised access thereto or disclosure or processing thereof or loss or destruction;
 - 8.1.3. ensure that it has in place measures as appropriate to protect such personal data having taken account of the following;
 - 8.1.3.1. Nature of the data to be protected;
 - 8.1.3.2. Harm that might result from a Data Loss Event;
 - 8.1.3.3. State of technological development; and
 - 8.1.3.4. Cost of implementing any measures;
 - 8.1.4. take all reasonable steps to ensure the reliability and integrity of any of its staff who have access to the Shared Data and ensure that they:
 - 8.1.4.1. are aware of and comply with the Provider's duties under this clause;
 - 8.1.4.2. are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor or other third party;

- 8.1.4.3. are informed of the confidential nature of the Data and do not publish, disclose or divulge any of the Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by the DPS Agreement; and
- 8.1.4.4. have undergone adequate training in the use, care, protection and handling of personal data;
- 8.1.5. maintain a level of security programmes and procedures which reflect:
 - 8.1.5.1. the level of damage that might be suffered by a data subject to whom the Shared Data relates as a result of unauthorised or unlawful possession of the Shared Data or the loss or destruction of or damage to the Shared Data; and
 - 8.1.5.2. the state of technological developments and the cost of implementing such programmes and procedures; and
 - 8.1.5.3. and specifically address the nature of the Shared Data;
- 8.1.6. ensure that access to any buildings or rooms within the Provider's premises where Shared Data are stored and/or can be accessed is controlled and that casual passers-by cannot read information off screens or documents;
- 8.1.7. ensure that its staff, sub-contractors, servants, contractors, agents or any other person in the control of the Provider shall store or process the Shared Data in accordance with the Data Protection Legislation;
- 8.1.8. have in place appropriate security on external routes into its organisation, for example internet firewalls and secure dial-in facilities;
- 8.1.9. ensure that any system whereby any Shared Data may be disclosed over the telephone is protected by a procedure for authenticating identity prior to the disclosure of any Shared Data;
- 8.1.10. take adequate precautions against burglary, fire or natural disaster; and
- 8.1.11. ensure that all Shared Data are protected against corruption by viruses or other forms of intrusion.

9. DATA SECURITY BREACHES

- 9.1. The Provider shall promptly and without undue delay notify the Council if any Shared Data are lost or destroyed or become damaged, corrupted, or unusable. The Provider shall restore such Shared Data at its own expense.
- 9.2. The Provider shall immediately and without undue delay notify the Council if it becomes aware of:
 - 9.2.1. any accidental, unauthorised or unlawful processing of the Shared Data; or
 - 9.2.2. any Data Security Breach.
- 9.3. Where the Provider becomes aware of any circumstances described in Clause 9.1 or 9.2 above, it shall, without undue delay, also provide the Council with the following information:
 - 9.3.1. a description of the nature of any circumstances described in Clause 9.1 or 9.2 above, including the categories and approximate number of affected data subjects;

- 9.3.2. the likely consequences; and
 - 9.3.3. a description of the measures taken, or proposed to be taken to address 9.3.1 and/or 9.3.2, including measures to mitigate any possible adverse effects.
- 9.4. Immediately following any unauthorised or unlawful processing of Shared Data or Data Security Breach, the parties shall co-ordinate with each other to investigate the matter. The Provider shall reasonably co-operate with the Council in the handling of the matter, including:
- 9.4.1. assisting with any investigation;
 - 9.4.2. providing the Council with physical access to any facilities and operations affected;
 - 9.4.3. facilitating interviews with the Provider's employees, former employees and others involved in the matter;
 - 9.4.4. making available all relevant records, logs, files, data reporting and other materials required to comply with the Data Protection Legislation or as otherwise reasonably required by the Council; and
 - 9.4.5. taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Data Security Breach or unlawful processing of Shared Data.
- 9.5. The Provider shall not inform any third party of any Data Security Breach without first obtaining the Council's prior written consent, except when required to do so by law.
- 9.6. The Provider agrees that where clause 5 applies the Council has the sole right to determine:
- 9.6.1. whether to provide notice of the Data Security Breach to any data subjects, supervisory authorities, regulators, law enforcement agencies or others, as required by law or regulation or in The Council's discretion, including the contents and delivery method of the notice; and
 - 9.6.2. whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.
- 9.7. Where clause 5 applies, the Provider agrees to consult with the Council as to the appropriate steps to be taken to resolve the breach.
- 9.8. The Provider shall cover all reasonable expenses associated with the performance of the obligations under this clause 9 save to the extent that the matter arose from the Council's specific instructions, negligence, wilful default or breach of the DPS Agreement, in which case the Council will cover all reasonable expenses to the relevant extent.
- 9.9. The Provider shall also reimburse the Council for actual reasonable expenses that the Council incurs when responding to a Data Security Breach to the extent that the Provider caused such a Data Security Breach, including all costs of notice and any remedy.

10. DATA SUBJECT RIGHTS

- 10.1. The Provider shall, at no additional cost to the Council, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Council as the Council may reasonably require, to enable the Council to comply with:
 - 10.1.1. requests from data subjects to exercise their rights under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
 - 10.1.2. any notices served on the Council by any supervisory authority under the Data Protection Legislation.
- 10.2. The Provider shall notify the Council immediately if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Shared Data or to either party's compliance with the Data Protection Legislation.
- 10.3. The Provider shall notify the Council within 1 Working Day if it receives a request from a data subject for access to their personal data or to exercise any of their related rights under the Data Protection Legislation.
- 10.4. The Provider shall give the Council its full co-operation and assistance in responding to any complaint, notice, communication or subject access request.

11. INDEMNITY AND LIABILITY

- 11.1. The Provider indemnifies, and shall keep indemnified, the Council from and against any liability, costs (including legal costs), expenses, losses, fines, claims or proceedings whatsoever arising under any statute or at common law or for breach of contract ("Losses") arising out of or in connection with any act, omission or default of the Provider, its staff, agents or sub-contractors in relation to the Shared Data.

12. GENERAL

- 12.1. The failure of either party to insist on strict performance of any provision or the failure of either party to exercise any right or remedy to which it is entitled shall not constitute a waiver thereof and shall not affect either party's obligations under the Data Protection Legislation. No waiver of any default shall constitute a waiver of any subsequent default.
- 12.2. If any provision shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

In witness whereof this Agreement has been signed by the Parties' authorised signatories

Signed by [NAME OF SIGNATORY]

for and on behalf of **NOTTINGHAMSHIRE**
COUNTY COUNCIL

Authorised Signatory

Signed by [NAME OF DIRECTOR]

for and on behalf of [NAME OF PROVIDER]

Director