



DATED: XXXX

**PROVISION OF CARE AND SUPPORT IN LEARNING DISABILITY/MENTAL
HEALTH SUPPORTED LIVING ACCOMMODATION –**

SOMERSET COUNTY COUNCIL

and

PARTY 2

CONTRACT NO:

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THIS CONTRACT is dated [REDACTED]

PARTIES

- (1) **SOMERSET COUNTY COUNCIL** of County Hall, Taunton, Somerset TA1 4DY (**Council**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**).

BACKGROUND

- (A) [REDACTED] The Council placed a contract notice [REFERENCE] on [DATE] on its e-tendering portal seeking expressions of interest from potential providers for the provision of care and support in Extra Care Housing Scheme / LD Support Living Accommodation at [REDACTED].
- (B) The Council has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Contract.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

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

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

Authorised Representatives: the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in Schedule 5.

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

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

Catastrophic Failure

- (a) a failure by the Supplier for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster.
- (b) any action by the Supplier, whether in relation to the Services and this Contract 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.

CEDR: the Centre for Effective Dispute Resolution

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

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure: the procedure for changing this Contract, as set out in Schedule 7.

Charges: the charges which shall become due and payable by the Council to the Supplier in respect of the Services in accordance with the provisions of this Contract, as such charges are set out in Schedule 4, being the entire charges payable by the Council inclusive of all costs in delivering the Services.

Commencement Date: the date of this Contract.

Commercially Sensitive Information: the information listed in Schedule 11 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

Consistent Failure: shall have the meaning set out in Part 3 of Schedule 2.

Contract: this Contract, including all Schedules and Appendices

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

Council Assets: any materials, plant or equipment owned or held by the Council and provided by the Council for use in providing the Services as identified in Schedule 12 together with any materials, plant or equipment purchased by the Supplier for the purpose of delivering the Services, the purchase of which has been wholly funded by the Council in addition to the Charges.

Council's Premises: any premises identified in Schedule 12 and which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Contract.

Council's Website: the principal website of the Council from time to time, being at the date of this Contract - <http://www.somerset.gov.uk>

Data Protection Legislation / DPA: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Date of Service Commencement: [REDACTED]

Default Notice: is defined in clause 5.2.

Disaster: an event defined as a disaster in the Disaster Recovery Plan.

Disaster Recovery Plan: a plan which sets out the procedures to be adopted by the Supplier in the event of a Disaster (including the procedures to be taken by the Supplier in planning and providing for any such event), the Disaster Recovery Plan at the date of this Contract being set out in Schedule 6.

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

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

Exit Data: means the information identified as such in Schedule 9 and all other information which is agreed (whether in the Exit Management Plan or otherwise) to be provided to the Council by the Supplier

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

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

Force Majeure: any cause affecting the performance by a party of its obligations under this Contract 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 Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

Health and Safety Policy: the health and safety policy of the Council as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably

reconciled to ensuring compliance with applicable Law regarding health and safety.

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

Initial Period: the period of twelve calendar months from [the Commencement Date] [the Date of Service Commencement]

Initial Term: the period of **5 years** commencing on the Commencement Date.

Insolvency Event: where:

- (a) the Supplier 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 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier 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 other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party;
- (c) 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) 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 Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (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 Supplier or a receiver is appointed over the assets of the Supplier;
- (f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any

part of the other party's assets and such attachment or process is not discharged within 14 days;

- (h) any event occurs, or proceeding is taken, with respect to the other party 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);
- (i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (j) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 17 and Schedule 5

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

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

Prevent Duty: means the Council's duty under the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism

Prevent Lead: means a named individual from amongst the Supplier's Personnel who has authority and responsibility for providing or procuring advice, support and training to the Supplier and the Supplier's Personnel on

the Prevent Duty and who acts as the Supplier's main point of contact with the Council in relation to the Prevent Duty on any matter arising from the supply of the Services

Prohibited Act: the following constitute Prohibited Acts:

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

or engaging in any activity, practice or conduct which would constitute one of the offences listed in (i) (ii) or (iii) above, if such activity, practice or conduct had been carried out in the UK.

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

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

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

Remediation Notice: a notice served by the Council in accordance with clause 30.1(a).

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

Replacement Supplier: any third party supplier of Replacement Services appointed by the Council from time to time.

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

Safeguarding Policies: means:

- (a) “Safeguarding Adults Multi-Agency Policy” issued by the Somerset Safeguarding Adults Board, as amended or replaced from time to time and available from the Council’s Website
- (b) South West Safeguarding and Child Protection Procedures as amended and replaced from time to time and available from the Council’s Website

together the “Safeguarding Policies”

Service Credits: the sums (if any) attributable to a Service Failure as specified in Part 2 of Schedule 2

Service Failure: a failure by the Supplier to provide the Services in accordance with any Target KPIs.

Service Levels: the service levels to which the Services are to be provided in accordance with key performance indicators set out in Schedule 2.

Service Recipients: any users, recipients or beneficiaries of the Services

Services: the services to be delivered by or on behalf of the Supplier under this Contract, as more particularly described in Schedule 1.

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

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

Supplier's Tender: the tender submitted by the Supplier and other associated documentation (including any clarifications and agreed changes during the procurement process) all as set out in Schedule 3.

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

Sub-Contractor: the contractors or suppliers that enter into a Sub-Contract with the Supplier.

Target KPI: the minimum level of performance for a Service Level which is required by the Council as set out against the relevant Service Level in Schedule 2.

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

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

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

Termination Period: means the period commencing on the date of notice of termination by the Council, or where there is no such notice, six (6) months before the end of the Term

Termination Payment Default: is defined in paragraph 7 of Schedule 4.

Termination Services: means any services, other than the Services, that the Supplier provides to the Council in connection with the termination of this Contract and the implementation of the Exit Management Plan

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

VAT: Value Added Tax as defined and further described in the Value Added Tax Act 1994 (as amended)

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)[and that person's legal and personal representatives, successors and permitted assigns].
- 1.4 The schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-

enactment and includes any subordinate legislation for the time being in force made under it.

- 1.9 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.10 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Contract) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Contract; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression **so far as [PARTY] is aware** or **to [PARTY]'s knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

COMMENCEMENT AND DURATION

2. TERM

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

3. EXTENDING THE INITIAL TERM

- 3.1 The Council may extend this Contract beyond the Initial Term by two further periods (one period of up to 36 months and a second period of up to 24 months) ("**Extension Period**"). If the Council wishes to extend this Contract, it shall give the Supplier at least three months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.

- 3.3 If the Council does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of clause 34 shall apply.

4. DUE DILIGENCE AND SUPPLIER'S WARRANTY

- 4.1 The Supplier acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
 - (b) it has received all information requested by it from the Council pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
 - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.1(b);
 - (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - (e) it has entered into this Contract in reliance on its own due diligence.
- 4.2 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Supplier:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract; and
 - (b) shall promptly notify the Council in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 4.4 The Supplier shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Supplier

in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Council and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

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

4.6 The exception described in clause 4.4 shall not apply to TUPE information which the Council has received from an incumbent supplier and then provided to the Supplier in good faith to assist the Supplier in undertaking its own due diligence in relation to TUPE matters.

THE SERVICES

5. SUPPLY OF SERVICES

5.1 The Supplier shall provide the Services to the Council with effect from the Commencement Date and for the duration of this Contract in accordance with the provisions of this Contract.

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

6. SERVICE LEVELS

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

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

6.3 In the event that any Achieved Service Level falls short of the relevant Target KPI, without prejudice to any other rights the Council may have, the provisions of clause 12 (Service Credits) (if used) shall apply.

7. SERVICE STANDARDS

- 7.1 Without prejudice to clause 6, the Supplier shall provide the Services, or procure that they are provided:
- (a) with reasonable skill and care and in accordance with Best Industry Practice from time to time;
 - (b) in all respects in accordance with the Council's policies set out in Schedule 1; and
 - (c) in accordance with all applicable Law.
- 7.2 The Supplier shall, in performing the Services, use reasonable care and endeavours to:
- (a) Use working practices, equipment, material and consumables which minimise any harm to the environment;
 - (b) Reduce consumption of and re-use, recycle or conserve energy, water, wood, paper and other resources;
 - (c) Reduce waste; and
 - (d) Have due regard to the creation of social value benefits
- 7.3 The Council may require the Supplier to provide evidence of the Supplier's working practices and procedures relating to the matters described in clause 7.2.

8. COMPLIANCE

- 8.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 8.2 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 8.3 The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at Council premises.

- 8.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at Council premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.5 Without limiting the general obligation set out in clause 8.3, the Supplier shall (and shall procure that the Supplier's Personnel shall):
- (a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Council's equality and diversity policy as provided to the Supplier 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 Contract. The Supplier 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.
- 8.6 The Supplier shall at all times have due regard to the Council's statutory obligations in relation to the Prevent Duty and provide the Council with such information and assistance as it may reasonably require to satisfy those obligations and, but only where so requested by the Council:
- (a) nominate or appoint a Prevent Lead;
 - (b) procure timely and sufficient training for the Prevent Lead and the Supplier's Personnel on the Prevent Duty;
 - (c) submit to the Council for approval and thereafter implement a policy on the Prevent Duty, including but not limited to a procedure for raising concerns, sanctions and the maintenance of records; and

- (d) disclose to the Council on request copies of such records and any other information the Council may reasonably require from the Supplier in the discharge of the Prevent Duty

8.6 The Council has a statutory duty under Section 17 of the Crime and Disorder Act 1998 and the Police and Justice Act 2006 to prevent crime, disorder and the misuse of drugs, alcohol and other substances in the County of Somerset. The Supplier will take reasonable and appropriate action to inhibit the causes and consequences of criminal, abusive, intimidatory and antisocial behaviour in the course of performing the Services and the Council may require the Supplier to include reporting on such matters in the management reports submitted pursuant to clause 17.2 and Schedule 5.

8.7 The Supplier shall at all times during the Term comply with its obligations under the Modern Slavery Act 2015 and shall provide the Council with evidence of such compliance as the Council may reasonably require within fourteen (14) days (or such longer period as the parties may agree) of receiving a request in writing

9. COUNCIL'S PREMISES AND ASSETS

9.1 The Council shall, subject to clause 8 and clause 14 and the provisions of the lease **OR** licence set out in Schedule 12, provide the Supplier (and its Sub-Contractors) with access to such parts of the Council's Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.

9.2 The Council shall provide the Supplier with such accommodation and facilities in the Council's Premises as is specified in Schedule 12 or which is otherwise agreed by the parties from time to time.

9.3 Subject to the requirements of clause 34 and the Exit Management Plan, in the event of the expiry or termination of the Contract, the Council shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Council's Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.

9.4 The Supplier shall ensure that:

- (a) where using the Council's Premises and any Council Assets they are kept properly secure and it will comply and cooperate with the

Council's Authorised Representative's reasonable directions regarding the security of the same;

- (b) only those of the Supplier's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so;
- (c) any Council Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Council Premises unless expressly permitted under this Contract or by the Council's Authorised Representative.

9.5 The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Supplier as a debt.

9.6 The Supplier shall notify the Council immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.

10. DISASTER RECOVERY

10.1 The Supplier shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

10.2 Following the declaration of a Disaster in respect of any of the Services, the Supplier shall:

- (a) implement the Disaster Recovery Plan;
- (b) continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and
- (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

To the extent that the Supplier complies fully with the provisions of this clause 10 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Contract on the part of the Supplier), the Service Levels to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in clause 6, but shall be the Service Levels set out in the Disaster Recovery

Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

CHARGES AND PAYMENT

11. PAYMENT

11.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this Contract, the Council shall pay the Charges to the Supplier.

11.2 The Supplier shall invoice the Council for payment of the Charges at the end of each calendar month but where there is a Payment Plan, invoices shall be given at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall include the name of the Council's Authorised Representative and a valid purchase order number and be sent to:

Somerset County Council – PO Box 868 Taunton TA1 9GU

11.3 Where the Supplier submits an invoice to the Council in accordance with clause 11.2, the Council will consider and verify that invoice within 14 days.

11.4 The Council shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

11.5 Where the Council fails to comply with clause 11.3, the invoice shall be regarded as valid and undisputed 14 days after the date on which it is received by the Council.

11.6 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

- (a) provisions having the same effect as clause 11.3 to clause 11.5 of this Contract; and
- (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 11.3 to clause 11.5 of this Contract.

In this clause 11.6, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting

chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

- 11.7 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the parties.
- 11.8 Subject to clause 11.7, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Contract under clause 30.4 for failure to pay undisputed charges.
- 11.9 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 Supplier 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 Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Contract.
- 11.10 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council for 12 years from the end of the Contract Year to which the records relate.
- 11.11 The Council may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this Contract or any other Contract pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Council.
- 11.12 The Supplier shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.

12. SERVICE CREDITS

Not Used

STAFF

13. KEY PERSONNEL

- 13.1 Each party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 13.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Council;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
 - (d) the person resigns from their employment with the Supplier; or
 - (e) the Supplier obtains the prior written consent of the Council.
- 13.3 The Supplier shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within ten (10) Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 13.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 40 (forty)] consecutive Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Council becoming aware of the role becoming vacant.

13.5 The Council may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

13.6 If the Supplier replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Supplier.

14. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

14.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier's Personnel receive suitable training prior to the Commencement Date on the matters described in clause 8 (Compliance) and each of the Council's policies specifically described in this Contract and, where subsequently notified by the Council of additional Council policies which apply to the performance of the Services, such further training and within such a timeframe as the Council and Supplier may agree is reasonable and necessary in the circumstances.

14.2 The Council may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

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

14.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the

right to provide these records in compliance with the applicable Data Protection Legislation.

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

15. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 15.1 The Supplier shall comply with the Safeguarding Vulnerable Groups Act 2006 and, in the case of Regulated Activity, the Supplier will be a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006

- 15.2 The Supplier shall comply with the Safeguarding Policies.

- 15.3 The Supplier shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service (DBS); and
- (b) monitor the level and validity of the checks under this clause 15.2 for each member of staff;
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Recipients.

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

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

- 15.6 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry

out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Recipients.

16. TUPE

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

CONTRACT MANAGEMENT

17. REPORTING AND MEETINGS

17.1 The Supplier shall provide the management reports in the form and at the intervals set out in Schedule 5.

17.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 and the Supplier shall, at each meeting, present its previously circulated Management Reports (and where applicable Financial Reports) in the format set out in that Schedule.

18. MONITORING

18.1 The Council may monitor the performance of the Services by the Supplier by:

- (a) requiring the supply of such information held by the Supplier (or its Sub-Contractors) as the Council may reasonably require in order to monitor performance, such information to be provided to the Council within 20 Working Days of date the Supplier receives the Council's request, unless otherwise agreed in writing with the Council; and
- (b) carrying out such other acts of monitoring, including but not limited to, monitoring visits, mystery shopping and other enquiries designed to enable the Council to gauge the Supplier's performance of the Contract

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

19. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT

19.1 Any requirement by either Party for a Change shall be subject to the Change Control Procedure.

- 19.2 The parties shall comply with the provisions of Schedule 8 (Benchmarking).
- 19.3 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Council's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the [quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.
- 19.4 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 19.3 shall be addressed by the parties using the Change Control Procedure.

20. DISPUTE RESOLUTION

- 20.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Strategic Commissioning Manager – Adult Social Care and the Supplier's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and

- (c) if the Council's Strategic Commissioning Manager – Adult Social Care and the Supplier's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within [30] 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 Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.

20.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 45 which clause shall apply at all times.

21. SUB-CONTRACTING AND ASSIGNMENT

21.1 Subject to clause 21.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this Contract except with the express prior written consent of the Council.

21.2 In the event that the Supplier enters into any Sub-Contract in connection with this Contract it shall:

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

21.3 The Council shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Supplier.

21.4 Provided that the Council has given prior written consent, the Supplier shall be entitled to novate the Contract where:

- (a) the specific change in contractor was provided for in the procurement process for the award of this Contract;
- (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency ("**Succession Event**"), by another economic operator ("**Successor**") that meets the criteria for qualitative selection applied in the procurement process for the award of this Contract.

21.5 Where a Succession Event has taken place, the Successor shall give the Council notice in writing within 48 hours of the Succession Event and, within 14 days of receiving a request in writing, provide the Council with such information as it may at its absolute discretion require in order to assess whether the criteria for qualitative selection applied in the procurement process for the award of this Contract will continue to be met following the Succession Event.

21.6 If, within 30 days of being notified of a Succession Event or, where no such notice has been given, the date the Council first becomes aware that a Succession Event has occurred, the Council -

- (a) having carried out its assessment under clause 21.5, the Council concludes that the criteria for qualitative selection are not met, or
- (b) has not received all the information requested by the Council under clause 21.5
- (c) has not received the notice required under clause 21.5,

the following procedure shall apply:

- (i) the Council shall notify the Successor in writing that it does not consent to the novation of the Contract with its reasons;
- (ii) the Successor shall have 14 days from receiving notice under clause 21.6(i) in which to provide the Council with its written response to the notice; and
- (iii) if the Council has received the Successor's written response in accordance with clause 21.6(ii), it shall notify in writing of its final decision, which decision shall be final. If the Council does not agree to the novation of the Contract to the Successor, this Contract will terminate with immediate effect; or
- (iv) if the Successor has not provided its written response in accordance with clause 21.6(ii), the Contract will terminate with immediate effect.

LIABILITY

22. INDEMNITIES

The Supplier shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Contract, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract or applicable law by the Council or its Authorised Representatives (excluding any Supplier's Personnel).

23. LIMITATION OF LIABILITY

- 23.1 Subject to clause 23.5, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 23.3 Subject to clause 23.5, the Supplier's total aggregate liability:
- (a) is unlimited in respect of any claims made against the Council relating to personal injury or death in connection with the Contract for which the Supplier is fully or partially responsible; and
 - (b) shall not exceed five million pounds (£5,000,000) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract
- 23.4 Subject to clause 23.5, the Council's maximum aggregate liability to the Supplier for all claims arising in any Contract Year (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable) shall not in any circumstances exceed £[].
- 23.5 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;

- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

24. INSURANCE

24.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £20,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000;
- (c) professional indemnity insurance where relevant to the Services with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover; and
- (d) business interruption insurance at a level appropriate to the size and turnover of the Supplier's business

(the **Required Insurances**) in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

24.2 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

24.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

24.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

INFORMATION

25. FREEDOM OF INFORMATION

25.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (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 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.

25.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

26. DATA PROTECTION

26.1 The following definitions and rules of interpretation apply to this Data Protection clause:

- (a) **Processor Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

- (b) **Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- (c) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR.
- (d) **Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
- (e) **Data Subject Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- (f) **DPA 2018:** Data Protection Act 2018
- (g) **GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679)
- (h) **Joint Controllers:** where two or more Controllers jointly determine the purposes and means of processing
- (i) **LED:** Law Enforcement Directive (Directive (EU) 2016/680)
- (j) **Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
- (k) **Sub-processor:** any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement

26.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor unless otherwise specified in Schedule 13. The only processing that the Processor is authorised to do is listed in Schedule 13 by the Controller and may not be determined by the Processor.

26.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

26.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to

commencing any processing. Such assistance may, at the discretion of the Controller, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

26.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 13, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
- (c) ensure that:
 - i. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);

- ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - 1. are aware of and comply with the Processor's duties under this clause;
 - 2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - 3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - 4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the

Agreement unless the Processor is required by Law to retain the Personal Data.

26.6 Subject to clause 26.7 the Processor shall notify the Controller immediately if it:

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

26.7 The Processor's obligation to notify under clause 26.6 shall include the provision of further information to the Controller in phases, as details become available.

26.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 26.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- a) the Controller with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by the Controller following any Data Loss Event;
 - e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 26.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- a) the Controller determines that the processing is not occasional;
 - b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 26.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 26.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 26.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- a) notify the Controller in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Controller;
 - c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 26 such that they apply to the Sub-processor; and

- d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

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

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

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

26.16 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

27. CONFIDENTIALITY

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

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

- (a) required by any applicable law, provided that clause 25.2 shall apply to any disclosures required under the FOIA or the EIRs;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
- (d) by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 20;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

- (g) by the Council to any other department, office or agency of the Government; and
- (h) by the Council relating to this Contract and in respect of which the Supplier has given its prior written consent to disclosure.

27.3 Subject to clause 27.4, on or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or Service Recipients, are delivered up to the Council or, where requested by the Council, be securely destroyed.

27.4 In some circumstances, either the Council or the Exit Management Plan may specify that certain records about Service Recipients be transferred directly to the Replacement Supplier(s) and that they should not be delivered up to the Council

28. AUDIT

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

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all suppliers (including Sub-Contractors) of the Services [at the level of detail agreed in Schedule 4 (Payment)];
- (b) to review the integrity, confidentiality and security of any data relating to the Council or any Service Recipients;
- (c) to review the Supplier's compliance with the DPA, the FOIA, in accordance with clause 26 (Data Protection) and clause 25 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created [during the provision of the Services];
- (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Council's accounts;
- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this Contract.

- 28.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 28 more than twice in any calendar year.
- 28.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 28.4 Subject to the Council's obligations of confidentiality, the Supplier shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Supplier's Personnel.
- 28.5 The Council shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Supplier in which case the Supplier shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 28.7 If an audit identifies that:
- (a) the Supplier has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Council has overpaid any Charges, the Supplier shall pay to the Council the amount overpaid within 30 days. The Council may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and

- (c) the Council has underpaid any Charges, the Council shall pay to the Supplier the amount of the under-payment, less the cost of audit incurred by the Council if this was due to a default by the Supplier in relation to invoicing, within 30 days.

29. INTELLECTUAL PROPERTY

29.1 In the absence of prior written Contract by the Council to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:

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

shall vest in the Council on creation.

29.2 The Supplier 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 Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

TERMINATION

30. TERMINATION FOR BREACH

30.1 The Council may terminate this Contract [in whole or part] with immediate effect by the service of written notice on the Supplier in the following circumstances:

- (a) if the Supplier is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Council may only terminate this Contract under this clause 30.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;
- (b) if a Consistent Failure has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if there is an Insolvency Event;
- (e) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010; or
- (f) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

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

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

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

31. TERMINATION ON NOTICE

31.1 Without affecting any other right or remedy available to it:

- (a) the Council may terminate this Contract at any time by giving not less than six months' written notice to the Supplier; and
- (b) the Supplier may terminate this Contract by giving not less than nine months' written notice to the Council, provided that the Supplier shall have no right to give such notice during the Initial Period

32. FORCE MAJEURE

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

32.2 In the event that either party is delayed or prevented from performing its obligations under this 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 Contract; and

- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 32.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 32.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 32.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this 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.
- 32.7 The Council may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 60 Working Days.

33. PREVENTION OF BRIBERY

- 33.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:
 - (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 33.2 The Supplier shall not during the term of this Contract:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 33.3 The Supplier shall during the term of this Contract:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause 33.3(a) and make such records available to the Council on request.
- 33.4 The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of clause 33.1 and/or clause 33.2, or has reason to believe that it has or any of the Supplier's Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 33.5 If the Supplier makes a notification to the Council pursuant to clause 33.4, the Supplier shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 28.
- 33.6 If the Supplier is in Default under clause 33.1 and/or clause 33.2, the Council may by notice:
- (a) require the Supplier to remove from performance of this Contract any Supplier's Personnel whose acts or omissions have caused the Default; or

(b) immediately terminate this Contract.

- 33.7 Any notice served by the Council under clause 33.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).

34. CONSEQUENCES OF TERMINATION AND EXIT MANAGEMENT

- 34.1 Within three (3) months of the Commencement Date, the Supplier shall prepare and submit a draft Exit Management Plan for approval by the Council.
- 34.2 The Supplier shall incorporate such changes to the draft Exit Management Plan as the Council may reasonably require and, following approval of the Exit Management Plan, it shall be adopted for the Term of this Contract unless amended pursuant to clause 34.3.
- 34.3 Either party may propose amendments to the Exit Management Plan at any time during the Term using the Change Control Procedure
- 34.4 The Supplier shall review the Exit Management Plan every 12 months during the Term and, where changes are found to be necessary or desirable, submit such changes to the Council using the Change Control Procedure.
- 34.5 On the commencement of the Termination Period, the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Supplier.
- 34.6 On termination of this Contract and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Supplier shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Supplier's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.
- 34.7 The provisions of clause 6.2 (provision of records), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data

Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 34 (Consequences of termination) shall survive termination or expiry of this Contract.

GENERAL PROVISIONS

35. NON-SOLICITATION

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

36. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this 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.

37. RIGHTS AND REMEDIES

Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

38. SEVERABILITY

38.1 If any provision or part-provision of this Contract is or becomes invalid, unlawful or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, lawful 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 shall not affect the validity and enforceability of the rest of this Contract.

38.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract appears invalid, unlawful or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as

amended, it is lawful, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

39. PARTNERSHIP OR AGENCY

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

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

40. THIRD PARTY RIGHTS

40.1 No one other than a party to this Contract shall have any right to enforce any of its terms.

41. PUBLICITY

The Supplier shall not:

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

except as required by law, any government or regulatory Council, any court or other Council of competent jurisdiction, without the prior written consent of the Council.

42. NOTICES

42.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.

42.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;

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

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

43. ENTIRE CONTRACT

43.1 This Contract and the documents annexed to it or otherwise referred to in it constitutes the entire Contract between the parties and supersedes and extinguishes all previous Contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

43.2 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 Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

43.3 Where there is any conflict between Schedule 3 (the Supplier's Tender) and any other provision in this Contract ("the Principal Terms"), any inconsistency between them shall be resolved in favour of the Principal Terms.

44. COUNTERPARTS

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

45. GOVERNING LAW

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

46. JURISDICTION

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

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

Signed by a Director
for and on behalf of SOMERSET
COUNTY COUNCIL

.....

Print name:

Director of Adult Social Services

Signed by an Authorised Officer for
and on behalf of SOMERSET
COUNTY COUNCIL

.....

Print name:

An Authorised Officer

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
SUPPLIER]

.....

Director

Schedule 1 Specification

Schedule 2 Performance regime

Part 1. Service Levels

1. THE SERVICE LEVELS – CONTAINED IN SERVICE SPECIFICATION

- 1.1 The Service Levels which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the below table.

| KPI Description | Method of calculating service delivery/ measurement period | Target KPI | KPI category (Red/ green) |
|-----------------|--|------------|---------------------------|
| | | [NUMBER]% | |
| | | [NUMBER]% | |
| | | [NUMBER]% | |

- 1.2 The Supplier shall monitor its performance against each Target KPI and shall send the Council a report detailing the Achieved Services Levels in accordance with Schedule 5.

Part 2. Service credits

Not Used

Part 3. Consistent failure

1. CONSISTENT FAILURE

In this Contract, **consistent failure** shall mean:

- (a) [the Council serving 3 Remediation Notices in a rolling 6 month period or 3 Default Notices in a rolling 6 month period.

AND/OR

- (b) the Supplier repeatedly breaching any of the terms of this 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 Contract.

Schedule 3 Supplier's Tender

Schedule 4 Charges and payment

1. CALCULATION OF THE CHARGES

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

2. MENU PRICING

| Type of Fixed Cost | Charges (£) |
|--|---|
| [INSERT TYPE OF SERVICE TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE] |
| [INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE] |
| [INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE] |
| [INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED] | [INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE] |

3. PAYMENT PLAN

Payment will be made in arrears on receipt of invoice and delivery notes sent to the below:

Ben Casson
Adults Finance Team
County Hall
Taunton
TA1 4DY

4. TERMINATION PAYMENT DEFAULT

In the event that at any time undisputed Charges of £100,000 have been overdue for payment for a period of 60 days or more, the Council will have committed a Termination Payment Default.

5. PAYMENT REVIEW

- 5.1 The prices submitted by the service provider will be held for the first two (2) years of the contract, unless 5.2 applies, there will be no change in price. At the end of Year 2 and each year thereafter, the price will be reviewed by the Council, and any uplift will be linked to any % increases agreed by Cabinet to Somerset County Council fees and charges payable to care providers.
- 5.2 During the initial term and in any subsequent permitted extensions any changes in legislation which may have an effect on the prices submitted will be reviewed in accordance with the change control procedure.

Schedule 5 Contract management

1. AUTHORISED REPRESENTATIVES

- 1.1 The Council's initial Authorised Representative: [INSERT DETAILS]
- 1.2 The Supplier's initial Authorised Representative: [INSERT DETAILS]

2. KEY PERSONNEL [INSERT DETAILS]

3. MEETINGS

- 3.1 Type
- 3.2 Quorum
- 3.3 Frequency
- 3.4 Agenda

4. REPORTS

- 4.1 Type
- 4.2 Contents
- 4.3 Frequency
- 4.4 Circulation list

Schedule 6 Disaster recovery

Schedule 7 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Supplier sees a need to change this Contract, the Council may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

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

2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) the Services;
 - (viii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Council and the Supplier; and
- (k) details of how the costs that would be incurred by the parties if the Change subsequently results in the termination of this Contract under clause 30.1(f) will be apportioned.

2.5 For each Change Control Note submitted by the Supplier the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Supplier; or
 - (iii) notify the Supplier of the rejection of the Change Control Note.

- 2.6 A Change Control Note signed by the Council and by the Supplier shall constitute an amendment to this Contract.
- 2.7 The Supplier acknowledges that the Council is and will continue to be subject to directions of Central Government regarding its finances and funding, which may result in the Council needing to find savings, including savings in its contractual arrangements with suppliers. In such circumstances, the Council may follow the procedure set out in the preceding paragraphs, subject to the following:
- (a) where as a result of a written request the Supplier provides the Council with a Change Control Note which the Council rejects in accordance with paragraph 2.5(b)(iii), the Council will notify the Supplier of the reasons for the rejection and how the Change Control Note must be modified in order to address those reasons;
 - (b) the Supplier shall submit to the Council two copies of a revised Change Control Note signed by the Supplier and incorporating the modifications sought by the Council within ten (10) Working Days of receiving the reasons given under the preceding paragraph 2.7(a) OR within five (5) Working Days commence the procedure for resolving Disputes in clause 28

Schedule 8 Benchmarking

1. INTERPRETATION

The definitions in this paragraph apply in this schedule.

Benchmark Review: shall have the meaning in paragraph 2.

(a)

Benchmarked Services: the Services taken as a whole.

Benchmarker: the independent third party appointed by the Council following discussions with the Supplier under paragraph 4 of this Schedule 8.

Benchmarking Report: the report produced by the Benchmarker following a Benchmark Review.

(b)

Comparison Sample: a sample of organisations providing Equivalent Services identified in accordance with paragraph 5.1(d) of this Schedule 8.

Equivalent Services: services that are identical, or similar in all material respects, to the Services (including in terms of scope, specification, volume and quality of performance) that are generally available within the UK and are supplied to a customer similar in size and nature to the Council over a similar period.

Median Price: in relation to the Equivalent Services provided by a Comparison Sample, the median price of the relevant services over the previous 12-month period. In the event that there are an even number of organisations in the Comparison Sample then the Median Price will be the arithmetic mean of the middle two prices.

2. BENCHMARK REVIEW

2.1 The Council may, by written notice, require a Benchmark Review of the Services in accordance with the provisions of this Schedule 8. The first Benchmark Review may not take place until at least 18 months after the Commencement Date and each subsequent Benchmark Review must be at least 12 months after the previous one.

2.2 Subject to paragraph 2.4, if any Benchmark Review determines that the Charges do not represent Good Value (as defined in paragraph 3.2), then the Supplier shall, in accordance with Schedule 7 (Change Control) and within three months of completion of the Benchmark Review, make a proposal for a changes to the Services, with Charges representing Good Value in accordance with the recommendations of the Benchmarker under paragraph

6.1(c), under which there will be a new Initial Term, and modifications may be made to the Services and the Service Levels.

2.3 On receipt of the proposal from the Supplier under paragraph 2.2 the Council shall have the option to:

- (a) accept the new proposal in which case the Parties shall record the change in accordance with Schedule 7;
- (b) reject the proposal and elect to continue to receive the Services on the existing basis; or
- (c) reject the proposal and terminate this Contract on three months' notice in writing to the Supplier without cost other than the Charges up to the date of such termination.

2.4 If the Supplier reasonably believes the Benchmarker has not complied with the provisions of this Schedule 8 in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Supplier may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

3. **PURPOSE AND SCOPE OF BENCHMARK REVIEW**

3.1 The purpose of the Benchmark Review shall be to establish whether the Services as a whole are **Good Value**.

3.2 The Benchmarked Services as a whole shall be Good Value if the Fees attributable to the Services are, having regard to the Service Levels, less than or equal to 10% more than the Median Price for Equivalent Services provided by a Comparison Sample.

4. **APPOINTMENT OF BENCHMARKER**

4.1 Each Benchmark Review shall be performed by an independent third party appointed by Contract between the parties. If the parties cannot agree on the independent third party within 14 days of receipt by the Supplier of the Council's written request, then the Benchmarker shall be appointed by the Council.

4.2 The Council has the right at any time to require the Benchmarker to enter into an appropriate and reasonable confidentiality undertaking directly with it.

- 4.3 Each party shall bear its own costs relating to a Benchmark Review, save that the costs and expenses of the Benchmarker shall be shared equally by the parties.
- 4.4 The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:
- (a) benchmarking shall be carried out in an independent and objective manner;
 - (b) the Benchmarker shall be jointly instructed by the parties;
 - (c) benchmarking shall be truly comparative in respect of the technology, services and Service Levels;
 - (d) benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
 - (e) immediately following selection of the Benchmarker, the parties and the Benchmarker shall agree the general principles and method of benchmarking.
- 4.5 The Supplier shall not be deemed to be in breach for any failure to perform any obligation under this Contract (nor will it be liable for Service Credits) where such failure results from any disruption to the Supplier's performance as a result of disruption caused by the Benchmarker.

5. BENCHMARKING PROCESS

- 5.1 The Council's instructions to the Benchmarker shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within 30 days after the date of appointment of the Benchmarker. The plan shall include:
- (a) a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);
 - (b) a description of the information that the Benchmarker requires each party to provide;
 - (c) a description of the benchmarking methodology to be used; and
 - (d) details of any organisations providing Equivalent Services which the Council proposes, having consulted with the Supplier (and including any organisations providing Equivalent Services reasonably proposed by the Supplier), are included within the Comparison Sample.

- 5.2 In carrying out the benchmarking analysis, the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services:
- (a) the contractual and business environment under which the Equivalent Services are being provided;
 - (b) any front-end investment and development costs;
 - (c) the Supplier's risk profile, including the financial, performance or liability risk (including any limitation or exclusion or limitation of the Supplier's liability under this Contract) associated with the provision of the Equivalent Services as a whole; and
 - (d) any other factors reasonably identified by the Supplier which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.
- 5.3 Each party shall give notice in writing to the Benchmarker and to the other party within 14 days after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold its approval of the draft plan and any suggested amendments shall be reasonable.
- 5.4 Where a party suggests amendments to the draft plan under paragraph 5.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 5.2 shall apply to any amended draft plan. If the Benchmarker believes that the suggested amendments are not reasonable then the Benchmarker shall discuss the amendments with the parties to reach a resolution. If the parties are unable to agree a resolution within 30 days of the matter first being referred to each of them by the Benchmarker for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.5 Failure by a party to give notice under paragraph 5.3 shall be treated as approval of the draft plan by that party.
- 5.6 Once the plan is approved by both parties, the Benchmarker shall carry out the Benchmark Review in accordance with it. Each party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarker.
- 5.7 The Benchmarker shall share with the parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.

- 5.8 In conducting the Benchmark Review, the Benchmarker shall apply correction factors to the information to take account of reasons for difference in accordance with his professional judgement. Such normalisation information shall be available for approval by the parties before the production of the Benchmarking Report.
- 5.9 The Benchmarker shall perform the Benchmark Review in a fully transparent and open manner, and shall promptly provide the Council and the Supplier with full details of all data and methodologies employed at all stages of the Benchmark Review.

6. BENCHMARK REPORT

- 6.1 The Benchmarker shall prepare a Benchmark Report setting out its findings. Those findings shall:
- (a) include a finding as to whether or not the Benchmarked Services as a whole are Good Value;
 - (b) include other findings regarding the quality and competitiveness or otherwise of the Services; and
 - (c) if the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Services, and in particular to the Charges, that would be required to make the Benchmarked Services Good Value.
- 6.2 If the Benchmark Report states that the Services, Charges or Service Levels (or any part of them) that are benchmarked are not Good Value then paragraph 2.2 shall apply.

Schedule 9 Exit Management

1. OBJECTIVES

1.1 The objectives of the Exit Management Plan are to:

- (a) achieve the orderly transfer of responsibilities for the provision of any replacement, or equivalent of the Services or part thereof, from the Supplier to Replacement Supplier or the Council; and
- (b) minimise any material disruption to the Council (or failure to achieve the Service Levels) during, and as a result of, the transfer;

(the "**Transfer Objectives**").

2. THE EXIT MANAGEMENT PLAN

2.1 The parties shall implement and comply with the Exit Management Plan during the Termination Period.

2.2 Without prejudice to the Council's obligations under this Contract, the Supplier shall provide such access as the Council may reasonably require in furtherance of the Transfer Objectives.

3. IMPLEMENTATION OF THE EXIT MANAGEMENT PLAN

3.1 The Exit Management Plan and any subsequent revisions thereof shall set out the activities required to be undertaken by the Supplier and the Council in order to facilitate the smooth handover of the Services. Without prejudice to the generality of the foregoing, the Exit Management Plan shall contain as a minimum:

- (a) provision for the identification of and a timetable for the transfer to the Council of copies of the documents reasonably necessary to accomplish the Transfer Objectives;
- (b) provision for the identification of the Supplier's staff and other resources that will be used to provide Termination Services;
- (c) provision for the identification of the Exit Data and the transfer to the Council (and, subject to compliance by the Council with paragraph 4, if so requested by the Council, to the Replacement Supplier) of:
 - (i) the Exit Data not less than 30 days prior to the termination of this Contract (or, where termination of this Contract is on less

than 30 days' notice as soon as reasonably practicable after receipt of the notice of termination); and

- (ii) updated version of the Exit Data as at termination and at such other times as the Exit Management Plan shall specify;
 - (d) a timetable setting out the processes for the phased transfer of the Services during the Termination Period from the Supplier to the Council or Replacement Supplier including a detailed description of the activities to be undertaken by the Supplier and the Council in order to effect the orderly transfer of responsibility of the Services from the Supplier to the Council or the Replacement Supplier;
 - (e) provision for the performance by the Supplier of the Exit Obligations referred to in paragraph 5;
 - (b) appropriate measures to minimise disruption to the supply of Services until the Termination Date;
 - (c) appropriate measures to minimise the costs payable to third parties by the Council, as a result of termination.
- 3.2 Versions of the Exit Management Plan (and updates) produced during the Termination Period shall be as detailed as possible, assigning precise dates and individuals to particular activities.
- 3.3 If the terms of the Exit Management Plan are incomplete, unclear or ambiguous, they shall be interpreted and construed by reference to this Schedule 9.

4. CONFIDENTIALITY

Prior to providing assistance to Replacement Supplier or any other party (except the Council) in connection with the implementation of the Exit Management Plan or the Termination Services, the Supplier will first seek the prior written approval of the Council (to ensure, inter alia, that appropriate confidentiality provisions are in place).

5. EXIT DATA

- 5.1 The Exit Data, which the Supplier will provide to the Council (and if so requested by the Council, to a Replacement Supplier) shall comprise the following:
- (a) a list of all existing Sub-Contracts entered into by the Supplier (and other arrangements of the Supplier) relating to the provision of the Services;

- (b) a list of data sets held (whether by the Supplier or a Sub-Contractor) and details of the data system and format used in accordance with clause 41.6;
 - (c) a list detailing the assets and all other resources (including software manuals, operating manuals, instruction codes, and documents), licences and Intellectual Property (together with details of ownership thereto) used to provide the Services;
 - (d) information relating to those employees of the Supplier (if any) who are expected to transfer to the Council or Replacement Supplier as required by Schedule 10 and TUPE; and
 - (e) details of all Services being provided by the Supplier at the Termination Date.
- 5.2 The Supplier shall ensure that the information provided in accordance with paragraph 4.1 is accurate at the time that it is provided.
- 5.3 The Council accepts that such Exit Data may constitute Commercially Sensitive Information of the Supplier and, as such, may be confidential information.

6. EXIT OBLIGATIONS

- 6.1 During the Termination Period, the Supplier shall:
- (a) continue to provide the Services in accordance with the Service Levels on the terms set out in this Contract;
 - (b) co-operate with the Council, and where applicable Replacement Supplier to ensure the orderly transfer of responsibility for the Services;
 - (c) provide all reasonable assistance and appropriate resources to the Council and Replacement Supplier to facilitate the orderly transfer of Services;
 - (d) promptly and diligently answer any questions about the Services which may be asked by the Council or by a Replacement Supplier with a view to:
 - (i) explaining the manner in which the Services have been provided;
 - (ii) supporting the development by the Council of an invitation to tender for services and in certain cases for inclusion in an invitation to tender; or
 - (iii) allowing the Council or the Replacement Supplier to conduct due diligence; and

- (iv) carry out such security tasks as are appropriate to identify security and operator risks inherent in the transfer of the Services and inform the Council of such risks and possible preventative and curative measures necessary to deal with such risks.
- 6.2 The Supplier will provide information (and, subject to payment of the Supplier's reasonable charges therefore, training) to the Council personnel as directed by the Council to enable the Council (to the extent possible) to provide services similar to the terminated Services with minimum disruption and in accordance with service levels similar to the Service Levels. This training includes the Council assigning the Council personnel to work with the Supplier's employees to facilitate knowledge transfer from the Supplier to the Council.
- 6.3 The Supplier shall carry out its obligations under this Schedule 9 and the Exit Management Plan in such a manner so as to cause as little disruption as possible to the business of the Council and any other Service Recipients.
- 6.4 If, for any reason, there is no Exit Management Plan at the start of the Termination Period, then the Supplier shall provide, at the request of the Council, all reasonable assistance to the Council, including by performing its obligations under this Schedule 10, to accomplish the Transfer Objectives during the Termination Period and shall nevertheless provide the Exit Data to the Council within the timescales envisaged by paragraph 4.

7. BUSINESS CONTINUITY DURING TRANSFER

- 7.1 The Supplier will provide reasonable assistance to support the Council and any other Service Recipients requirements for business continuity during the Termination Period. This includes, to the extent not already documented in this Schedule:
 - (a) updating and supplying documentation used by the Supplier to provide business continuity services, testing procedures and frequencies, redundancy diagrams and plans;
 - (b) training and informing the Council of then-current policies and procedures with regard to backup and business continuity;
 - (c) arranging for additional overlapping coverage or support through the Termination Period to minimise disruption in the event of an outage during that period; and
 - (d) as requested by the Council, participating in business continuity testing after the Termination Period until a successful test has been accomplished.

Schedule 10 TUPE

Not Used

Schedule 11 Commercially sensitive information

[DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS
COMMERCIALY SENSITIVE]

Schedule 12 Council's Premises and Assets

[DETAILS OF COUNCIL PREMISES AND ANY APPLICABLE LEASES OR
LICENCES TO BE INSERTED ANY COUNCIL ASSETS]

Schedule 13

Schedule of Processing, Personal Data and Data Subjects

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

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

| Description | Details |
|--|---|
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 26. |
| Subject matter of the processing | <i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.]</i> <i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i> |
| Duration of the processing | <i>[Clearly set out the duration of the processing including dates]</i> |
| Nature and purposes of the processing | <i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i> <i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i> <i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i> |

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|---|--|
| | |
| Type of Personal Data being Processed | <i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i> |
| Categories of Data Subject | <i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i> |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <i>[Describe how long the data will be retained for, how it be returned or destroyed]</i> |