



DATED

201[]¹

SOCIAL SERVICES CONTRACT

Between

THE ROYAL BOROUGH OF KINGSTON UPON THAMES

And

[INSERT NAME OF SERVICE PROVIDER]

Relating To The Delivery Of The Warm Home, Better Health" Home Visiting Scheme

© The Royal Borough of Kingston Upon Thames
Guildhall
High Street,
Kingston Upon Thames
KT1 1EU

Ref: *[INSERT COUNCIL REFERENCE NUMBER, IF APPLICABLE]*

Insert the date in hand only after the last party has signed the agreement.

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THIS AGREEMENT is dated

201[]²

PARTIES

- (1) **THE ROYAL BOROUGH OF KINGSTON UPON THAMES** whose principal office is at Guildhall, High Street, Kingston upon Thames, KT1 (**Council**).
- (2) **[INSERT FULL COMPANY NAME]** [incorporated and registered in England and Wales with company number *[insert company number.]*] **OR** [a charity registered in England and Wales with charity number (*insert charity number.*) and company number *[insert company number.]*] whose [registered office **OR** principal address] is at *[insert address]* (**Service Provider**)³.

BACKGROUND

- (A) The Service Provider submitted a *[quotation OR tender]* on *[insert date.]* (reference: *[insert reference if applicable]*) in response to the Council's request for *[quotations OR tenders]* issued on *[insert date.]* (reference: *[insert reference if applicable]*)⁴.
- (B) The Council has (based on the Service Provider's *[quotation OR tender]*)⁵ referred to above), appointed the Service Provider to supply the Services and the Service Provider has agreed to do so on the terms and conditions of this Agreement.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION⁶

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

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.

Commencement Date: *[insert date]*.

Council Data: all Documents, information and materials provided by the Council relating to the Services *[including if relevant, please specify anything else]*

² Insert the date in hand only after the last party has signed the agreement.

³ Complete by inserting relevant details. The information to be included would normally be as provided in the Service Provider's Proposal. Amend as appropriate if the Service Provider is an individual or a partnership or an entity other than a limited liability company. Please refer to guidance notes at the beginning of this template for further guidance.

⁴ Complete by inserting relevant details. Amend as appropriate to reflect the procurement exercise undertaken. Please refer to guidance notes at the beginning of this template for direct awards.

⁵ Amend as appropriate to reflect the procurement exercise undertaken. Please refer to guidance notes at the beginning of this template for direct awards.

⁶ Delete any definition that is not used in the document (a word search on a definition will reveal whether it is used or not). Equally, consider whether additional definitions need to be added. In the interests of space, where a defined term is only used in a particular clause, and is defined in that clause, it has not been set out in clause 1.1. If you wish to list all defined terms in clause 1.1 these must be added. Check each definition carefully to make sure it means what you intend it to mean and amend where necessary to reflect the intention of the parties. Be consistent - where a capitalised term is used, don't introduce it without capitals later on or use a different form of words to mean the same thing. Definitions must be consistent thorough out the agreement i.e. definitions in the main body of the agreement and also the Schedules must always be the same e.g. use 'Council' thorough out and not 'Council' in one place and 'Commissioner' or 'Authority' in others.

which the Service Provider might develop for the Council whilst performing the contract. Otherwise please delete the wording in square brackets].

Council's Manager: the Council's manager appointed in accordance with clause 4.1 and whose details are set out in Schedule 4.

- 1 **Data Controller:** shall have the same meaning as set out in the Data Protection Legislation.
- 2 **Data Processor:** shall have the same meaning as set out in the Data Protection Legislation.
- 3 **Data Protection Legislation:** The Data Protection Act 2018 and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.
- 4 **Data Subject:** shall have the same meaning as set out in the Data Protection Legislation.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

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.

Expiry Date: *[insert date]*.

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

- 5 **GDPR:** the General Data Protection Regulation ((EU) 2016/679).

Government Prevent Strategy: a policy forming part of HM Government's counter-terrorism strategy, available at:

<http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/prevent-strategy-review?view=Binary>

as may be amended from time to time.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of

protection which subsist or will subsist now or in the future in any part of the world.

6 [KPIs: the key performance indicators set out in Schedule 1.]⁷

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.

7 **Personal Data:** shall have the same meaning as set out in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Council.
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

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

Services: the services to be provided by the Service Provider under this Agreement as set out in Schedule 1 together with any other services which the Service Provider delivers or agrees to provide pursuant to this Agreement.

Service Provider's Manager: the Service Provider's manager for the Services appointed under clause 3.2 and whose details are set out in Schedule 4.

⁷ Not all services may be subject to KPIs. Delete this definition and clause 3.2 if there will be no KPIs otherwise ensure that applicable KPIs are included in the Service Specification or as a separate schedule and insert the correct cross reference.

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

[Service Provider's Proposal: the Service Provider's document submitted in response to the Council's [request for quotations **OR** invitation to tender] and which is attached as Schedule 6 to this Agreement.]⁸

VAT: value added tax chargeable under English Law for the time being and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes fax and e-mail.
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail. Where there is any conflict between any of the other schedules and the Service Provider's Proposal, the provisions of the relevant schedule(s) will prevail over the Service Provider's Proposal.

⁸ Delete if no proposal was submitted by the Service Provider and remove all references to 'the Service Provider's Proposal' and Schedule 6 throughout the template.

2. COMMENCEMENT AND DURATION⁹

- 2.1 The Service Provider shall provide the Services to the Council from the Commencement Date until the Expiry Date and this Agreement shall terminate automatically on the Expiry Date unless extended in accordance with clause 2.2 below.
- 2.2 The Council may extend this Agreement beyond the Expiry Date by a further period or periods of up to [insert number] months. If the Council wishes to extend this Agreement, it shall give the Service Provider at least [insert number] months' written notice of such intention before the Expiry Date. If the Council gives such notice, then the term shall be extended by the period set out in the notice.

3. SERVICE PROVIDER'S OBLIGATIONS

- 3.1 The Service Provider shall provide the Services, in accordance with Schedule 1 and [and the Service Provider's Proposal (Schedule 6)]¹⁰.
- 3.2 [Where any Service is stated in Schedule 1 to be subject to a specific KPI, the Service Provider shall provide that Service in such a manner as will ensure that the achieved KPI in respect of that Service is equal to or higher than the corresponding target KPI to such specific KPI.]¹¹
- 3.3 The Service Provider shall appoint the Service Provider's Manager who shall have authority contractually to bind the Service Provider on all matters relating to the Services. The Service Provider shall use reasonable endeavours to ensure that the same person acts as the Service Provider's Manager throughout the term of this Agreement but may replace him from time to time where reasonably necessary in the interests of the Service Provider's business. The Service Provider shall ensure that at all times the Council's Manager is provided with up-to-date contact details for the Service Provider's Manager or any temporary or permanent replacement including name, work and email addresses, work and mobile telephone numbers.
- 3.4 The Service Provider's Manager or a duly authorised and competent representative of the Service Provider shall be available to meet the Council's Manager at the intervals set out in Schedule 4 and at all reasonable times as may be required by the Council and the Service Provider shall provide such written reports as set out in Schedule 4 or as the Council's Manager may reasonably require prior to any meeting or generally.¹²
- 3.5 The Service Provider shall
- operate a self-regulatory system of quality assurance and quality measures

⁹ See guidance at the beginning of this document. This is particularly important where the Council maintains the right to extend the contract beyond the initial term.

¹⁰ Delete if no proposal has been submitted. You will need to delete all other references to the Service Provider's Proposal and Schedule 6 used elsewhere in the template.

¹¹ Please refer to drafting notes for the definition of KPIs.

¹² Amend as appropriate and include all relevant information in Schedule 4.

relevant to this Agreement which ensure that the Services are provided in accordance with the requirements of this Agreement and all applicable Law.

3.6 The Service Provider shall maintain a system for receiving and investigating complaints and keeping details of how many complaints are received and how they are dealt with. The Service Provider shall:

- (a) publicise the complaints procedure to service users and their representatives;
- (b) ensure that complaints are speedily dealt with and that complainants receive a written statement of the Service Provider's response;
- (c) ensure that complainants who are not satisfied with the Service Provider's response are informed of their right to refer their complaints to the Council's Manager.

3.7 [Whilst on the Council's premises, the Service Provider shall and shall ensure that its agents, employees and subcontractors, observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Council's premises and that have been communicated to it under clause 4.1(e), provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement]¹³.

3.8 In providing the Services, the Service Provider shall:

- (a) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Service Provider's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Service Provider's obligations are fulfilled in accordance with this Agreement;
- (d) ensure that the Services will conform with all descriptions and specifications set out in Schedule 1;
- (e) provide all equipment, tools and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques,
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable Laws and regulations;
- (h) hold all Council Data in safe custody at its own risk, maintain the Council Data in good condition until returned to the Council, and not

¹³ Delete if this does not apply and remove all references made to this clause elsewhere in the template. This clause will apply where the services are being delivered at or from the Council's premises or where it is expected that the Service Provider's Personnel will be admitted to Council Premises from time to time.

dispose or use the Council Data other than in accordance with the Council's written instructions or authorisation;

- (i) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Service Provider acknowledges that the Council may rely or act on the Services;
- (j) at all times comply with the provisions of the Modern Slavery Act 2015, the Human Rights Act 1998, the Government Prevent Strategy and all equality Laws in force from time to time. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998 and all equality Laws in force from time to time;
- (k) ensure that in addition to the policies mentioned elsewhere in this agreement, it has a signed and dated copy of all of the policies set out in Schedule 3. The Service Provider shall comply with the Council's equivalent policies where the Service Provider does not have any such policies in place¹⁴;
- (l) comply with all environmental and other Laws applicable to the performance of its obligations under this Agreement; and
- (m) **[ANY OTHER RELEVANT OBLIGATIONS]**¹⁵.

4. COUNCIL'S OBLIGATIONS¹⁶

4.1 The Council shall:

- (a) co-operate with the Service Provider in all matters relating to the Services and appoint the Council's Manager in relation to the Services who shall have the authority contractually to bind the Council on matters relating to the Services;
- (b) provide, in a timely manner, such Council Data and other information as the Service Provider may reasonably require;

5. CHANGE CONTROL

5.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

5.2 If either party requests a change to the scope or execution of the Services, the Service Provider shall, within a reasonable time, provide a written estimate to the Council of:

- (a) the likely time required to implement the change;

¹⁴ If relevant, review and amend Schedule 3 as appropriate.

¹⁵ Insert any further obligations relevant to the services with which the Council wants the Service Provider to comply. These may include an obligation to observe certain protocols, codes of practice or specific quality and legal standards.

¹⁶ The provisions in square brackets are optional. The Council will need to determine whether or not they apply to the current services and delete or amend as necessary.

- (b) any necessary variations to the Service Provider's charges arising from the change;
- (c) the likely effect of the change on the Services; and
- (d) any other impact of the change on this Agreement.

5.3 If the Council wishes the Service Provider to proceed with the change, the Service Provider has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this Agreement to take account of the change and this Agreement has been varied in accordance with clause 16 (Variation).

5.4 Notwithstanding clause 5.3, the Service Provider may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Service Provider requests a change to the scope of the Services for any other reason, the Council shall not unreasonably withhold or delay consent to it.

6. CHARGES , PAYMENT AND AUDIT

6.1 The charges for the Services shall be as set out in Schedule 2 (Pricing), and shall be the full and exclusive remuneration of the Service Provider in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the charges shall include every cost and expense of the Service Provider directly or indirectly incurred in connection with the performance of the Services.

6.2 The Council shall pay each invoice submitted to it by the Service Provider, in full and in cleared funds, within thirty (30) days of receipt to a bank account nominated in writing by the Service Provider¹⁷.

6.3 All amounts payable by the Council under this Agreement are exclusive of amounts in respect of **VAT** from time to time. Where any taxable supply for VAT purposes is made under this Agreement by the Service Provider to the Council, the Council shall, on receipt of a valid VAT invoice from the Service Provider, pay to the Service Provider such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.4 If a party fails to make any payment due to the other party under this Agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the

¹⁷ *The payment terms will need to be amended on a case by case basis to reflect the understanding of the parties in respect of invoicing and payment. The Council's standard terms are payment in arrears and within 30 days of receipt of invoice. In some cases, however, payments are phased or linked to milestones and are made in advance or in arrears within a shorter period than 30 days by agreement of the parties. In other cases, payments are made four weekly or quarterly in advance.*

interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

- 6.5 The Service Provider shall maintain complete and accurate records of the resources applied to and cost of providing the Services, and the Service Provider shall allow the Council to inspect such records at all reasonable times on request.
- 6.6 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Service Provider to the Council against any liability of the Council to the Service Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.
- 6.7 Where the Service Provider enters into a sub-contract with a supplier or contractor for the purpose of performing this Agreement, it shall cause a term to be included in such a sub-contract that requires payment to be made of undisputed sums by the Service Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.
- 6.8 During the term and for a period of seven (7) years after termination or expiry of this Agreement, the Council (acting by itself or through its representatives) may conduct an audit of the Service Provider, including for the following purposes:
 - (a) to verify the accuracy of charges (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of all suppliers;
 - (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
 - (c) to review the Service Provider's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 8 (Confidentiality Freedom of Information and Transparency) and clause 9 (Data Protection) and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
 - (f) to carry out 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;
- 6.9 Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit.

- 6.10 The Council shall endeavour to (but is not obliged to) provide at least fifteen (15) Business Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 6.11 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations relating to any audits, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

7. SAFEGUARDING

- 7.1 The Service Provider shall:
- (a) ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service ("**DBS**") including a check against the adults' barred list or the children's barred list, as appropriate; and
 - (b) monitor the level, i.e. enhanced or standard, and validity of the checks under this clause 7.1 for each member of staff involved in delivering the Services.
- 7.2 The Service Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time. The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out regulated activity or who may otherwise present a risk to service users.
- 7.3 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable the Council to be satisfied that the obligations of this clause 7 have been met.
- 7.4 The Service Provider shall refer information about any person carrying out the Services to the DBS where the Service Provider removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users.
- 7.5 The Service Provider shall have in force and shall maintain a safeguarding of vulnerable adults and children policy.
- 7.6 The Service Provider shall have in place a robust safeguarding training programme for its entire staff (including volunteers) appropriate to their level of responsibility. Further, the Service Provider shall maintain appropriate

records of training for the Council's audit purposes and make these available to the Council upon request.

- 7.7 The Service Provider shall establish clear policies to deal with dangerous, exploitative or unsafe behaviour and practice and provide training to all the Service Provider's Personnel to develop appropriate skills and knowledge.
- 7.8 The Service Provider shall have in place and shall have implemented robust up-to-date procedures, (including whistle-blowing policy and recruitment checks), for avoiding and responding to actual or suspected physical, sexual, psychological, financial or material and discriminatory abuse and acts of neglect or omission. Such procedures shall be reviewed at least once every year.
- 7.9 The Service Provider shall ensure that its disciplinary procedures are compatible with the responsibility to protect vulnerable groups. This will include making provision to suspend an employee, for example, pending the outcome of a safeguarding investigation. It should be noted that suspension may be in the best interests of the employee and/or the alleged victim of abuse. Decisions on suspension from duty will be the outcome of a risk assessment, which process will incorporate consideration of the potential harms/dangers to the individual(s) concerned. The Service Provider must take account of applicable employment Law. Decisions on whether or not to suspend an employee will be the responsibility of the Service Provider and must be fully documented and communicated to the Council in writing within 24 hours.
- 7.10 The Council may require the Service Provider's Personnel to be withdrawn and an acceptable person substituted in the event of:
 - (i) the Service Provider failing to comply with the provisions set out in this clause 7 in relation to the protection of vulnerable groups; or
 - (ii) the Service Provider's Personnel refusing to complete a disclosure statement/application; or
 - (iii) the disclosure at any stage of information that in the reasonable opinion of the Council renders the Service Provider's Personnel unsuitable for the work involved.

any such decision by the Council will be taken in compliance with applicable laws.

8. CONFIDENTIALITY, FREEDOM OF INFORMATION AND TRANSPARENCY

- 8.1 A party ('**Receiving Party**') shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ('**Disclosing Party**'), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential

information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents and subcontractors comply with the confidentiality obligations set out in this clause 8.1 as though they were a party to this Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by Law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 8.2 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs and the Service Provider shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 8.3 The Service Provider shall and shall procure that its staff including its subcontractors:
- (a) transfer any Request For Information received by the Service Provider and/or any Service Provider Personnel to the Council as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request For Information;
 - (b) provide the Council with a copy of all information in the Service Provider's possession or power in the form that the Council requires within five (5) Business Days (or such other period as the Council may specify) of the Council requesting that information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request For Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 8.4 The Council shall be responsible for determining at its absolute discretion whether the information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs;
 - (b) is to be disclosed in response to a Request For Information, and in no event shall the Service Provider respond directly to a Request For Information unless expressly authorised to do so by the Council.
- 8.5 In no event shall the Service Provider respond directly to a Request For Information unless expressly authorised to do so by the Council.
- 8.6 The Service Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose information:

- (a) without consulting with the Service Provider; or
- (b) following consultation with the Service Provider and having taken its views into account,

provided always that where clause 8.6 (b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention as soon as practicable after any such disclosure.

8.7 The Service Provider shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure for six (6) years after expiry or earlier termination and shall permit the Council to inspect such records as requested from time to time.

8.8 The Council, in line with the Government's ongoing drive to open up the activities of the Public Sector to greater scrutiny, has prepared its transparency agenda and the Service Provider hereby agrees that, notwithstanding anything set out in this clause 8 or elsewhere in this Agreement, the Council shall be entitled to publish this Agreement in whole or in part (including from time to time any agreed changes to the Agreement), in whatever form the Council may decide. The Service Provider further agrees that the Council may publish any payments made by the Council to the Service Provider under this Agreement.

9. DATA PROTECTION

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

9.2 Notwithstanding the general obligation in clause 9.1, where the Service Provider is processing Personal Data as a Data Processor for the Council as Data Controller, the Service Provider shall ensure that it has in place appropriate technical, organisational and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Data Protection Legislation and the Service Provider shall:

- (a) process the Personal Data only in accordance with the documented instructions from the Council which may be specific instructions or instructions of a general nature as set out in Schedule 5 to this Agreement or as otherwise notified by the Council to the Service Provider (in writing) from time to time and for no other purpose;
- (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by the Data Protection Legislation;
- (c) obtain prior written consent from the Council in order to transfer the Personal Data to any subcontractors, agents or other third parties for the provision of the Services and oblige by way of contract or other

binding legal arrangement any such parties to comply with the same data protection obligations as those set out in this clause 9;

- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Service Provider has provided appropriate safeguards in relation to the transfer in accordance with Data Protection Legislation as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Service Provider 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 Council in meeting its obligations); and
 - (iv) the Service Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) take reasonable steps to ensure the reliability of any of the Service Provider's Personnel who have access to the Personal Data;
- (f) ensure that the Service Provider's Personnel without appropriate authority do not have access to the Personal Data;
- (g) ensure that all the Service Provider's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 9;
- (h) ensure that all the Service Provider's Personnel receive an adequate level of training in data protection;
- (i) ensure that the Service Provider's Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
- (j) notify the Council within twenty-four hours if it becomes aware of a breach or alleged breach of the Data Protection Legislation;
- (k) provide the Council with full co-operation and assistance in relation to investigating breaches to include inspection of premises and security arrangements if requested.
- (l) notify the Council (within two (2) Business Days), if it receives a Data Subject Access Request under the Data Protection Legislation or a complaint relating to the Council's obligations and promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause 9;
- (m) provide the Council with full co-operation and assistance in relation to any complaint or request made under the Data Protection Legislation including by:

- (i) providing the Council with full details of the complaint or request;
 - (ii) providing the Council with any information requested by the Council within the timescales required by the Council.
- 9.3 The Service Provider shall, upon reasonable notice, allow officers of the Council to have reasonable rights of access at all times to the Service Provider's premises, Service Provider's Personnel and records for the purposes of monitoring the Service Provider's compliance with the Data Protection Legislation including its security requirements.
- 9.4 The Service Provider shall at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of this Agreement unless the Service Provider is required by Law to retain the Personal Data.
- 9.5 The provisions of this clause 9 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

10. INDEMNITY

- 10.1 The Service Provider shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered/ incurred by the Council as a result of or in connection with:
 - (a) [any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the Services, to the extent that the claim is attributable to the acts or omissions of the Service Provider, its employees, agents or subcontractors¹⁸];
 - (b) any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, the Services are attributable to the acts or omissions of the Service Provider, its employees, agents or subcontractors; and
 - (c) any claim made against the Council by a third party arising out of or in connection with the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Service Provider, its employees, agents or subcontractors.
- 10.2 This clause 10 shall survive termination of this Agreement.

¹⁸ Delete if there are no intellectual property rights created in delivering the services or where the services do not involve use of IPR.

11. INSURANCE AND LIABILITY¹⁹

11.1 The Service Provider shall be liable for any and all losses, liabilities or costs (including reasonable legal costs) incurred by the Council in connection with the Service Provider's performance of the Services and shall maintain in force during the period of this Agreement and for six (6) years thereafter as a minimum the following insurance cover with reputable insurers acceptable to the Council:

11.1.1 Employer's Liability Insurance Policy of not less than £5 million for each and every claim, act or occurrence or series of claims, acts or occurrences; and

11.1.2 Public Liability Insurance Policy of not less than £5 million for each and every claim, act or occurrence or series of claims, acts or occurrences.

11.1.3 [Professional Indemnity Insurance Policy of not less than £250,000 for each and every claim, act or occurrence or series of claims, acts or occurrences].

11.2 The Service Provider shall give the Council, on request, copies of all insurance policies referred to in this clause 11 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

12. LIMITATION OF LIABILITY

12.1 Nothing in this Agreement limits or excludes the Service Provider's liability for:

- (a) death or personal injury caused by its negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) destruction of the Council's property; or
- (d) breach of clause 7 (Safeguarding), clause 8 (Confidentiality, Freedom of Information and Transparency), clause 9 (Data Protection) and clause 21 (Prevention of Bribery); or
- (e) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable Law.

12.2 Subject to clause 12.1, the Service Provider shall not be liable to the Council, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) loss of profits;

¹⁹ Procurement Lead will need to consult the Council's Insurance Team on a case by case basis and amend this clause as appropriate

- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) any indirect or consequential loss.

12.3 Subject to clause 12.1 and clause 12.2, the Service Provider's total liability to the Council, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to:

- (a) [£*insert amount*]²⁰ per claim; and
- (b) in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, the equivalent of the total charges paid by the Council in that period.²¹

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, the Council may terminate this Agreement with immediate effect by giving written notice to the Service Provider if:

- (a) the Service Provider commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of twenty-eight (28) days after being notified in writing to do so;
- (b) the Service Provider repeatedly breaches any of the terms of this Agreement 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 Agreement;
- (c) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **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]²²;
- (d) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a

²⁰ The amount to be inserted will need be determined on a case-by-case basis taking into consideration the nature of the services and associated risks. Some contracts set the cap as a percentage of the contract value others use a Pound equivalent.

²¹ Amend as appropriate. Legal advice must always be sought when amending this clause.

²² Ensure that you select the correct option and delete the inapplicable options. The option you select will depend on the legal status of the Service Provider i.e. the status of the Service Provider inserted under 'Parties' at the head of this template.

scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider]²³;

- (e) [a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider]²⁴;
- (f) [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 Service Provider (being a company)]²⁵;
- (g) [the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver²⁶];
- (h) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (i) [the Service Provider (being an individual) is the subject of a bankruptcy petition or order;]²⁷
- (j) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within fourteen (14) days;
- (k) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(c) to clause 13.1(j) (inclusive);
- (l) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; [or]
- (m) [the Service Provider (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]²⁸; or]
- (n) [there is a change of control of the Service Provider [(within the meaning of section 1124 of the Corporation Tax Act 2010)].]²⁹

²³ Wording in square brackets only relevant where the Service Provider is a limited liability company.

²⁴ Only relevant where the Service Provider is a limited liability company.

²⁵ Only relevant where the Service Provider is a limited liability company.

²⁶ Only relevant where the Service Provider is a limited liability company.

²⁷ Only relevant where the Service Provider is an individual/sole trader.

²⁸ Only relevant where the Service Provider is an individual/sole trader.

²⁹ Only relevant where the Service Provider is a limited liability company.

13.2 Without affecting any other right or remedy available to it, the Council may terminate this Agreement in whole or in part at any time by giving four (4) weeks' written notice to the Service Provider.

13.3 For the purposes of clause 13.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of this Agreement; or
- (b) any of the obligations set out in clauses [7 (Safeguarding), clause 8 (Confidentiality, Freedom of Information and Transparency), clause 9 (Data Protection) and clause 21 (Prevention of Bribery)].³⁰

14. CONSEQUENCES OF TERMINATION

14.1 On termination or expiry of this Agreement:

- (a) the Council shall pay to the Service Provider all of the Service Provider's outstanding undisputed invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Service Provider may submit an invoice, which shall be payable immediately on receipt;
- (b) each party shall, within a reasonable time, return all of the other party's property in its possession or under its control. Until they have been returned, the party with custody or control of such property shall be solely responsible for their safe keeping;
- (c) the following clauses shall continue in force: clause 8 (Confidentiality Freedom of Information and Transparency), clause 9 (Data Protection) clause 10 (insurance and Liability) clause 11 (Limitation of Liability), clause 25 (Notices), clause 26 (Dispute Resolution) , clause 27 (Governing Law) and Clause 28 (Jurisdiction).

14.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

15. FORCE MAJEURE³¹

15.1 Provided it has complied with clause 15.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in

³⁰ Project team to determine which additional clauses to insert here. Legal advice may be sought if required.

³¹ Insert relevant number of days/months in consultation with your service client. The number of days to be inserted will depend on the nature of the services and how long the Council or service users are able to be without the service for.

breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

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

15.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than two (2) days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

15.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving three (3) days' written notice to the Affected Party.

15.5 If the Force Majeure Event prevails for a continuous period of more than six weeks, either party may terminate this Agreement by giving three (3) days' written notice to the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

16. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. WAIVER

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

18. RIGHTS AND REMEDIES

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

19. SEVERANCE

- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 19.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. ENTIRE AGREEMENT

- 20.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 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 Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 20.3 Nothing in this 20 clause shall limit or exclude any liability for fraud.

21. PREVENTION OF BRIBERY

- 21.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or sub-contractors, have at any time prior to the commencement date:
- (a) committed a Prohibited Act or been formally notified that they are 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.
- 21.2 The Service Provider shall not during the term of this Agreement:
- (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 provisions of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

- 21.3 The Service Provider shall during the term of this Agreement:
- (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 21.3(a) and make such records available to the Council on request.
- 21.4 The Service Provider shall immediately notify the Council in writing if it becomes aware of any breach of clause 21.1 and/or clause 21.2, or has reason to believe that it has or any of the Service Provider's Personnel (including its advisors, agents and sub-contractors) 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 Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 21.5 If the Service Provider makes a notification to the Council pursuant to clause 21.4, the Service Provider 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 this Agreement.
- 21.6 If the Service Provider is in default under clause 21.1 and/or clause 21.2, the Council may by notice:
- (a) require the Service Provider to remove from performance of this Agreement any Service Provider's Personnel whose acts or omissions have caused the default; or
 - (b) immediately terminate this Agreement.
- 21.7 Any notice served by the Council under clause 21.6 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 Agreement shall terminate).

22. ASSIGNMENT AND OTHER DEALINGS

- 22.1 This Agreement is personal to the Service Provider and the Service Provider shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Council which consent shall not be unreasonably delayed or withheld.
- 22.2 The Council may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

23. NO PARTNERSHIP OR AGENCY

- 23.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute one party the agent of the other party, or authorise one party to make or enter into any commitments for or on behalf of the other party.
- 23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no one other than a party to this Agreement shall have any right to enforce any of its terms.

25. NOTICES

- 25.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to the party required to receive the notice or communication at its address and to the addressee as set out herein or as otherwise specified by the relevant party by notice in writing to the other party.

For the Council

Name:

Address:

For the Service Provider

Name:

Address:

25.2 Any notice or other communication provided that it is clearly marked for the attention of the Council's contact person or the Service Provider's contact person referred to in clause 25.1 (as the case may be) shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address referred to in clause 25.1; or
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- (d) if sent by email upon receipt of a letter sent by first class or recorded delivery post or other next Business Day delivery service confirming the content of the email.

25.3 The provisions of this clause 25 shall not apply to the service of any proceedings or other documents in any legal action.

26. DISPUTE RESOLUTION PROCEDURE³²

26.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then 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 [insert employee title] of the Council and [insert employee title] of the Service Provider shall attempt in good faith to resolve the Dispute;
- (b) if the [insert employee title] of the Council and [insert employee title] of the Service Provider are for any reason unable to resolve the Dispute within [thirty (30)] days of service of the Dispute Notice, the Dispute shall be referred to the [insert senior officer title] of the Council and [insert senior officer title] of the Service Provider who shall attempt in good faith to resolve it; and
- (c) if the [insert senior officer title] of the Council and [insert senior officer title] of the Service Provider are for any reason unable to resolve the Dispute within [insert number] 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.

³² Insert relevant number of days/months and other relevant information in consultation with your service client.

The mediation will start not later than *[insert number]* days after the date of the ADR notice.

- 26.2 If the Dispute is not resolved within *[insert number]* days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of *[insert number]* days, or the mediation terminates before the expiration of the said period of *[insert number]* days, the Dispute shall be finally resolved by [the courts of England and Wales in accordance with clause 27 (Governing Law) and clause 28 (Jurisdiction)].
- 26.3 The parties agree that notwithstanding any Dispute, the Service Provider will continue to deliver the Services and the Council will continue to pay for such Services in accordance with this Agreement.

27. GOVERNING LAW

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

28. JURISDICTION

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

This document has been executed by the parties and takes effect on the date stated at the beginning of it.³³

EXECUTED
by **THE ROYAL BOROUGH OF
KINGSTON UPON THAMES** acting by
and under the signature of

.....

Authorised Signatory

EXECUTED
by **[NAME OF SERVICE PROVIDER]**
acting by and under the signatures of:

Name:
Signature

Position:

Name:
Signature

Position:

Schedule 1

³³ This attestation clause assumes that the contract will not be effected as a deed. If this is not correct, the attestation clause must be amended with Legal advice. Where the Supplier is a limited Liability company, the contract must be signed by a director and the company secretary or two directors. Where the Supplier is a partnership then by all partners. Where the Supplier is a sole trader then by that individual witnessed by another person.

Specification³⁴

Schedule 2

³⁴ To be inserted after award of contract. This will be the Specification included in the RFQ Or Invitation to Tender.

Pricing³⁵

Part 1. Price

[DETAILS OF PRICE, FOR EXAMPLE THE FIXED PRICE OR DAILY RATE.]

Part 2. Payment

[THE PAYMENT SCHEDULE, WHICH SHOULD INCLUDE THE DATES ON WHICH INSTALMENTS ARE TO BE INVOICED AND THE AMOUNT OF EACH INSTALMENT.]

Schedule 3

³⁵ *To be completed after award to include information supplied by the successful bidder*

Policies³⁶

1. Data Protection Policy.
2. HR Policies including Disciplinary and Grievance Procedures and Recruitment & Selection.
3. Dealing with Violence and Aggression Policy.
4. Confidentiality Policy.
5. Equal Opportunities Policy.
6. Health & Safety Policy.
7. Child/Adult Safeguarding Policy.
8. Lone Working Policy.
9. Prevent Policy.
10. Dealing with accidents / incidents /emergency Policy.
11. Respecting user's choice, privacy, dignity and independence.
12. Whistle Blowing.
13. Receipt of gifts Policy.
14. Management and identification of risks.

Schedule 4

³⁶ Amend as appropriate to include relevant policies. Not all policies will be required for each service.

Contract Management³⁷

1. AUTHORISED REPRESENTATIVES

- 1.1 The Council's Manager: [*Insert name, address, telephone number and email address*].
- 1.2 The Service Provider's Manager: [*Insert name, address, telephone number and email address*].

2. MEETINGS

- 2.1 Type
- 2.2 Quorum
- 2.3 Frequency
- 2.4 Agenda

3. REPORTS

- 3.1 Type
- 3.2 Contents
- 3.3 Frequency
- 3.4 Circulation list

Schedule 5

³⁷ To be completed after award of contract with amendments relevant to the contract. Mark as 'Not Used' if not relevant.

Data Processing Instructions³⁸

1. The Service Provider shall comply with any further written instructions with respect of processing received from the Council. Any such further instructions shall be incorporated into this Schedule.

2. Processing by the Service Provider

2.1 Scope

DN: This should be a high level, short description of what the processing is about i.e. its subject matter.

2.2 Nature

Recording, organising, structuring, storing, adapting or altering, retrieving, using, disclosing by transmission, disseminating or otherwise making available, restricting, erasing or destroying Personal Data.

2.3 Purpose of processing

Processing is necessary to deliver the services and may in some cases be based on the consent of the Data Subject.

2.4 Duration of processing

DN: Clearly set out the duration of the processing including dates.

2.5 Types of Personal Data

- Name.
- Previous Name (if any).
- Commonly used name (if any).
- Address.
- Previous Address (if any).
- Forwarding Address (if any).
- Date of Birth.

³⁸ This schedule must be completed in full and agreed before processing starts. Ideally, it must be completed and issued as part of the RFQ or ITT.

- Signature.
- Nationality (*).
- National Insurance Number.
- Telephone Number.
- Email Address.
- Employment status.
- Gender.
- Ethnic Origin.
- Marital status and dependents.
- Sex Orientation.
- Next of kin and emergency contact information.
- Faith/Religion/Belief.
- Medical Information.

2.6 Categories of Data Subject

- Adults with a Physical Disability.
- Adults with a Learning Disability.
- Adults with a Mental Health need.
- Vulnerable Older People.
- Other Vulnerable Adults.
- Carers of a service user/client.
- Children and Young Adults living in the household of a service user/client.

2.7 Data Retention

Data will be retained and returned or destroyed in accordance with the Council's Data Retention and Data Security Policies in force from time to time as notified to the Provider.

Schedule 6

Service Provider's Proposal³⁹

³⁹ Successful bidder's proposal to be included after award of contract