

South Gloucestershire Council

Contract for Provision of a Social Care Service in Prisons: HMP Ashfield HMP Eastwood Park HMP Leyhill

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| Provider | |
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| Contract | Provision of a Social Care Service in Prisons: HMP Ashfield, HMP Eastwood Park, HMP Leyhill |
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| Contract No | KE101 |
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SOUTH GLOUCESTERSHIRE COUNCIL
AGREEMENT FOR PROVISION OF SERVICES

| | | |
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| Date of Agreement | 1 st February 2020 – 31 st January 2023 | |
| Title of Services | Provision of Social Care Service in Prisons | |
| Parties | | |
| “the Council” Acting by <i>[insert name and job title]</i> authorised to sign this agreement for the Council | Name | South Gloucestershire Council |
| | Address | P.O. Box 1955 Department For Children, Adults and Health, Partnerships & Commissioning Team Bristol BS37 0DE |
| “the Provider” Acting by <i>[insert name and job title]</i> authorised to sign this agreement for the Provider | Name | [tbc] |
| | Address | [tbc] |
| Particulars | | |
| “Commencement Date” | 1 st February 2020 | |
| “Contract Term” | 3 Years | |
| “Council Representative” | Kirsty Eastham Commissioning Manager | |
| “Contract Documents” | i. This Agreement ii. The General Terms and Conditions - attached iii. The Specification - attached iv. The Providers tender v. The Invitation to Tender vi. Relevant Correspondence | |
| “Provider Representative” for provision of the Services and also acting as Point of Contact for GDPR | [Tbc] | |

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| “Provider Representative acting as Point of Contact for GDPR” (if different from above) | [Insert name if different from above] |
| “Services” | The Services detailed in the Specification(s) annexed to the General Terms and Conditions |
| Agreement | |
| <p>The Provider, in consideration of the Commissioned Sum, agrees:</p> <ul style="list-style-type: none"> ➤ to provide the Services in accordance with this Agreement ➤ to use the Commissioned Sum solely for the purpose of providing the Services ➤ to comply with the general conditions set out in the contract ➤ to deliver the Services in accordance with the Service Specification in Schedule 2 ➤ to achieve the targets and comply with the terms of monitoring set out in Schedule 2 • to comply with the GDPR requirements as set out in the general conditions and within the processes as described in Appendix 2 | |
| Signed for the Council | Signed for the Provider |
| Print Name: | Print Name: |
| Job Title: | Job Title: |
| Date of Signature20xx | Date of Signature20xx |

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CONDITIONS OF CONTRACT

DEFINITIONS

In these Conditions and all other Contract Documents, except where the context otherwise requires, the following expressions shall have the following meanings

| Expression | Meaning |
|-------------------------------|---|
| Commencement date | The commencement date is 01/02/2020 |
| Contract Documents | Means the Articles of Agreement, these Conditions, the Schedules, the Service Specification and the method statements. |
| Contract Term | The term of the Contract from its commencement date until 31/01/2023 (three years later) and the option to extend until 31/01/2025 (a further two years later). |
| Contract Manager | The person nominated by the Provider and listed as Council Representative in this document |
| Contract | This Contract and any Schedules and Appendices listed in the contents. |
| Council | South Gloucestershire Council or any successor authority and any other organisation with responsibility for purchasing the Service. |
| Council Representative | The person nominated by the Council. |
| Default | Any failure on the part of either the Council or the Provider to carry out their material obligations under the Contract. |
| Default Notice | A notice which either Party issues to the other which sets out the nature of the Default and the time scale in which it must be put right. Any such time scale must be reasonable in all the circumstances. |
| Financial Year | Means a period of 12 months from 1st April in one year to 31st March in the next. |
| Good Industry Practise | The exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to the Contract and which are in accordance with any codes of practice published by relevant trade associations. |

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| Parties | The individuals or organisations who are party to this Contract as shown in the Form of Agreement. |
| Performance Indicators | Compliance with regulatory requirements. Any national or local performance indicators that may reasonably be developed to assess the performance of the Contract and more generally Supported Living Services. |
| Persistent Default | Where either Party has committed three or more Defaults during any period of six consecutive months, whether these are the same Defaults or different Defaults, provided that the other Party has served a Default Notice in respect of each such Default. |
| Price | The Price set out for the Service in Schedule 1 to the Contract. |
| Prisons | HMP Leyhill, HMP Ashfield and HMP Eastwood Park |
| Provider | The individual or organisation responsible for providing the Service, as set out in the Form of Agreement. |
| Regulatory Bodies | Organisations (if any) that have a statutory responsibility for regulating the services provided by a Provider. |
| Safeguarding Adults Board | Consists of representatives of the main agencies and professionals responsible for helping to protect vulnerable adults from abuse and neglect. |
| Serious Default | A Default, which materially puts at risk the health, safety or welfare of a Service User or Service Users. |
| Service Action Plan | A plan agreed between the Council and the Provider following a Service Review which sets out details of any agreed remodelling or improvements, and any other matters that might be agreed between the Parties. |
| Service Review | A review of the Service carried out in accordance with the South Gloucestershire Council policy and procedures. |
| Service Specification | The document so entitled setting out the Service Values and Quality Standards required in the provision of the Service and forming Schedule 2 to this Contract. |
| Service User | The person to whom the Service is to be provided under this contract. |
| Service(s) | Everything to be provided by the Provider under this Contract and as described in the Service Specification. |

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| Stakeholders | Individuals, organisations and groups who are external to the Provider, who have a direct interest in the Service being provided. This excludes Service Users, staff (whether paid or unpaid) or board members or trustees of the Provider. |
| TUPE | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (including all the amendments made to these Regulations since 2006 which are still in force) and the Acquired Rights Directive. |
| Variation | A document, which sets out a variation to the Contract, agreed and signed by both Parties. |
| VAT | Value Added Tax. |
| Working Days | Between 9.00am and 5.00pm Monday to Friday inclusive, and between 9:00am and 4.30pm on Friday but does not include any days that are Bank Holidays or public holidays. |

GENERAL TERMS AND CONDITIONS OF CONTRACT

1 Interpretation

- 1.1 The words and phrases set out in the Agreement apply to these Terms and Conditions.
- 1.2 References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted (whether before or after the Commencement Date) from time to time.
- 1.3 The headings of the clauses in this Agreement are for reference purposes only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant clauses to which they relate.
- 1.4 References to a body or person shall not be restricted to natural persons and shall include a company, corporation or organisation and any reference to a service user, patient, resident, customer or client shall mean any individual who is eligible to receive or is a recipient of any of the Services provided by the Provider under this Agreement.
- 1.5 Words importing the one gender shall include other genders and words importing the singular number shall include the plural.

2. Appointment

- 2.1 The Council appoints the Provider to provide the Services:
 - promptly (and in any event within any time targets as may be set out in the Specification) and in a professional and courteous manner so as to reflect and promote the image of the Council;
 - in accordance with all other provisions of this Contract
 - with reasonable skill and care and in accordance with any quality assurance standards as set out in the Service Specification and Tender Response Document;
 - in accordance with all applicable UK and European laws and regulations and Good Industry Practice;
 - in accordance with the Policies; and in a professional and courteous manner.
- 2.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and the Tender Response Document. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Council. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 2.3 The Supplier shall notify the Council forthwith in writing:
 - 2.3.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and

- 2.3.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
- 2.4 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Council with a copy of any report or other communication published or unpublished provided by the relevant regulatory body in relation to the provision of the Services.
- 2.5 The Supplier shall commence delivery of the Services on the Services Commencement Date.
- 2.6 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.
- 2.7 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.
- 2.8 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Council forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.

3 Premises, locations and access

- 3.1 The Services shall be provided at locations set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 3.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Council shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 3.3 The Council may increase, reduce or otherwise vary the Premises and Locations. Any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 11. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

4 Co-operation with third parties

- 4.1 The Supplier shall, as reasonably required by the Council, cooperate with any other service providers to the Council and/or any other third parties as may be relevant in the provision of the Services.

5 Contract Term

- 5.1 The Provider shall provide the Services from the Commencement Date and shall continue to provide the Services for the period of the Contract Term, or until the termination of the Agreement in accordance with clause 18.
- 5.1 The Council intends to commission the Service for **3 years** from 1 February 2020
- 5.2 The Contract Term shall be a total of 5 years made up of 3 years initial contract term plus up to 24 months extension which the Council shall have the option to extend the Contract Term by notice in writing giving at least 3 months prior to the expiry of the Initial Contract Term.

6 Contract Manager

- 6.1 The Contract Managers at the commencement of this Contract are:
- 6.1.1 for the Council:
- Kirsty Eastham – Commissioning Manager
- 6.1.2 for the Supplier:
- [TBC]**

7 Names and addresses for notices

- 7.1 Notices served under this Contract are to be delivered to:
- 7.1.1 for the Council:
- [TBC]**
- 7.1.2 for the Supplier:
- [TBC].**

8 Contract Price

- 8.1 The Price for the services is set out in Schedule 1 to these conditions of contract taking into account any price review carried out under clause 9.
- 8.2 Subject to clause 9 unless otherwise stated in the Commercial Schedule the Contract Price:
- 8.2.1 shall be payable from the Actual Services Commencement Date;
- 8.2.2 shall remain fixed during the Term; and
- 8.2.3 is the entire price payable by the Council to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses, the

cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.

- 8.3 The Price does not include VAT. If VAT is payable then the Council shall pay this in addition to the Price, provided that the Provider supplies the Council with an appropriate VAT invoice and that (unless otherwise agreed with HM Customs and Excise) such an invoice is supplied no later than three years after the tax point for the supply of the Service.
- 8.4 The Council's financial commitment under this agreement will be limited to the fees specified as the Commissioned Sum in this agreement. For the avoidance of doubt, in the event that in delivering the Services the provider incurs costs in excess of the Funding such costs will be borne by the Provider.
- 8.5 Payment by the Council shall be without prejudice to any claims or rights which the Council may have against the Provider and shall not constitute any admission by the Council as to the performance by the Provider of its obligations under the Agreement. Prior to making any payment the Council shall be entitled to make deductions or defer payment in respect of any disputes or claims whatsoever with or against the Provider.
- 8.6 The Council shall not be liable for any costs where the Agreement is terminated or cancelled through no fault of the Council. For the avoidance of doubt the Council shall not be liable for any costs or expenses (including redundancy costs) which may arise following the termination of this Agreement other than those costs reasonably and properly due as a direct consequence of a breach by the Council of its obligations under this Agreement. The Council shall not be liable for any economic or consequential losses.
- 8.7 The Provider will be responsible for any tax and/or National Insurance liability that will arise as a result of this Agreement.
- 8.8 Any sum under-spent will be returned to the Council at the completion of the Agreement. If the organisation is dissolved or, in the opinion of the Council the organisation ceases to function, part or all of the Funding will have to be repaid immediately. Repayment of the Funding will not be sought from individuals unless there is evidence of fraud or unlawful action.
- 8.9 The Council reserves the right to set-off:
- 8.9.1 any monies due to the Supplier from the Council as against any monies due to the Council from the Supplier under this Contract;
- and
- 8.9.2 any monies due to the Council from the Supplier as against any monies due to the Supplier from the Council under this Contract
- 8.10 Whenever under this contract any sum of money shall be recoverable from or payable by the Provider the same may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this contract or under any other contract with the Council.

- 8.11 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

9 Price Review

- 9.1 If the contract is varied as described in clause 11 the parties shall consider whether this is to be treated as a contract variation under clause 11.
- 9.2 Unless otherwise agreed the price for the Service shall be increased or decreased annually from the review date according to:
- 9.2.1 30% of the price by the same percentage as the Retail Price (RPI) increased or decreased over the twelve months preceding the October before the review date; and
- 9.2.2 70% of the price by the same percentage increase or decrease as the annual NJC wage settlement applicable to the generality of local Council single status employees applied during the 12 months period above ignoring for this period any deviations from that settlement applied to any particular category or categories of staff
- 9.3 The Council shall, no later than the October preceding each review date begin discussions with Providers including representatives of the South Gloucestershire Providers' on the review of prices.
- 9.4 The Council shall have regard to the change (if any) over the previous 12 months in national Insurance, the retail price index and any other relevant material changes.
- 9.5 If the Provider claims that because of extenuating circumstances the prices determined by applying the formula in 9.2 above will be unreasonable they may seek to negotiate with the Council for a price revision.
- 9.6 All increases will be dependent on the availability of Central and Local Government Funding.

10 Payment

- 10.1 In consideration of the provision of the Services the Council shall make the payments to the Provider in accordance with Schedule 1.
- 10.2 In consideration of the provision of the Services the Council shall make the payments by BACS (Bank Account Clearing System) to the Provider in accordance with Contract Price (as detailed in Schedule 1).
- 10.3 The Council shall pay the Provider monthly in arrears. The Provider must keep full records indicating how the funding is used, including audited accounts and an annual report. These must be submitted to the Council on request.

- 10.4 No payments shall be made "on account" or otherwise in respect of Services yet to be performed unless other service specific payment arrangements have been agreed by the Council as described in Schedule 1.
- 10.5 Any invoices or related contract monitoring submissions used for calculating payments due shall show the period and the amount of the Services for which payment is claimed together with the agreed charging rates and any other details the Council may reasonably require.
- 10.6 The Council shall pay the contract price (as detailed in Schedule 1) to the Provider, by BACS (Bank Account Clearing System), either within 30 days of the receipt of a valid VAT invoice or in accordance with any other service specific payment arrangements described in Appendix 1.
- 10.7 Whenever under this contract any sum of money shall be recoverable from or payable by the Provider the same may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this contract or under any other contract with the Council.

11 Variation of Conditions

- 11.1 Any variation to the Agreement may only be made in writing and must be agreed by the Council and the Provider.
- 11.2 The Services shall be supplied solely in accordance with these conditions. All other contractual terms which in any way add to, vary or contradict these conditions upon which the Provider may seek to rely or otherwise impose on the Council shall be excluded and not form part of the Agreement (whether or not such other contractual terms post-date these conditions) unless the Council has specifically agreed in writing to be bound by them.
- 11.3 The Council reserves the right on giving reasonable written notice at any time to require changes to the Services (including by way of the removal of elements of the Services, the addition of new services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever provided however that such variation does not amount to a fundamental change. Such a change is hereinafter called "a Variation".
- 11.4 Such a change is hereinafter called "a Variation". Following such notice, the Council and the Provider shall enter into good faith negotiations (for a period of not more than 30 working days from the date thereof or where, in the reasonable opinion of the Council, the Variation is necessary as a matter of urgency due to circumstances outside the Parties' control, such shorter period as the Council shall direct) to agree the terms of the Variation (including any necessary consequential variation in the terms and conditions and/or the Commissioned Sum) such that, in all the circumstances, the Variation properly and fairly reflects the nature and extent of the proposed Variation. If the parties are unable to agree such matters within such period the Council shall by written notice to the Provider:
- a) agree that the parties shall continue to perform the Agreement without the Variation; or

- b) terminate the Agreement from the date specified in the notice (being not less than 3 months from the date of the notice).

11.5 If the parties agree the Variation (including any variation in the Commissioned Sum) the Variation shall be committed to writing and the Provider shall carry out the Services as varied.

12 Duties of the Provider

12.1 The Provider shall at all times during the operation of this Agreement:

12.1.1 provide the Services and comply with the terms of this Agreement and any specifications or requirements included or referred to in the Agreement;

12.1.2 exercise and continue to exercise the degree of care, skill and diligence reasonably to be expected of a skilled and qualified professional person providing such services in relation to a project of a similar size, scope and nature as detailed in this Agreement;

12.1.3 obey all reasonable directions of the Council Representative;

12.1.4 use its best endeavours to secure and achieve continuous improvement in the delivery of the Services during the period of this Agreement and/or identify cost saving initiatives in connection with the Services.

12.1.5 must to the extent reasonably practicable co-operate with and assist the Council in fulfilling its Best Value Duty.

12.2 The Provider shall keep appropriate records in relation to the provision of the Services (including any detailed in the Specification) and at the Council's request shall make them available for inspection by the Council and/or provide copies of the records to the Council.

12.3 The Provider shall compile and maintain such information to enable the Council to evaluate any information or data required by them for the purpose of evaluating Key Performance, Service Performance Indicators and outcomes as described in the Service Specification.

12.4 The Provider must notify the Council if:

12.4.1 there is a change in the control of the majority of the shares in, or the voting rights amongst, its shareholders or members of its organisation;

12.4.2 it merges with another organisation;

12.4.3 it transfers any of its business to another organisation;

12.4.5 a regulatory body directs an inquiry into or makes an order of any kind in relation to its affairs; or

12.4.6 any registration which it must maintain in order to provide the Services is withdrawn or cancelled or is threatened to be withdrawn or cancelled. This will include advising the Council if any of the Provider's staff(s) have their Home Office Clearance withdrawn.

12.4.7 the financial position of the Provider changes to the extent that it may impact on the Provider's delivery of the Services.

13 Duties of the Council

- 13.1 Subject to the Provider providing the Services in accordance with this Contract, the Council will pay the Supplier for the Services in accordance with Clause 10.
- 13.2 The Council shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
- 13.3 The Council shall provide the Provider with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Council of any such cooperation necessary in circumstances where such cooperation will require the Council to plan for and/or allocate specific resources in order to provide such cooperation.

14. Transfer of Undertakings (Protection of Employment) Regulations 2006

Application of TUPE at the commencement of the provision of Services

- 14.1 The Parties agree that the commencement of the provision of the Services under this Contract shall give rise to a relevant transfer as defined in TUPE.

General

- 14.2 The Council expects that the contracts of employment of those staff who are currently operating and/or who are currently assigned to providing the Services ("Transferring Staff") will transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") to the Provider.
- 14.3 The Provider agrees to and acknowledges that it will comply with its obligations under TUPE. The Provider will employ/engage all Transferring Staff and be responsible for all employment costs and liabilities arising from the application and effect of TUPE.
 - 14.3.1 The Provider will be required to co-operate with the exiting Provider as current employer and the Council to ensure a smooth and efficient transfer of staff.

14.4 The Provider's Obligations and Indemnities

- 14.4.1 The Provider shall be responsible for all emoluments and other benefits in respect of its staff (including any employees who transfer under the TUPE Regulations) and shall procure that, if applicable, any sub-contractor shall be responsible for the same in respect of its staff including, in relation to such emoluments and other benefits, without limitation, all wages, holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and otherwise which are attributable to the period from and including the Commencement Date.

14.4.2 In the event that the exiting Provider becomes liable for any claims brought by the Transferring Employees arising out of the acts or omissions of the Provider prior to the Commencement Date, the Provider shall indemnify and keep the exiting Provider indemnified in full against any liabilities, expenses, compensation and other liabilities arising from such claim or claims.

14.4.3 The Provider shall indemnify and keep indemnified the exiting provider against any liabilities, expenses, compensation and other liabilities arising from any claim or claims by a Transferring Employee made against the exiting provider arising out of any proposal by the Provider prior to or following the Commencement Date to make a significant change to the working conditions of any Transferring Employee to their detriment or as a result of the Provider's identity as the Transferring Employee's new employer amounting to a significant change and to their detriment in contravention of Regulation 4 (9) of the TUPE Regulations.

14.4.4 The Provider shall comply with its obligations under Regulations 11 and 13 of the TUPE Regulations at all times during the Contract Term.

14.4.5 The Provider shall indemnify and keep indemnified the exiting provider and former employer and any new contractor appointed subsequent to the Provider's appointment against any liabilities, expenses, compensation and other liabilities arising out of or in connection with:

- (i) the employment or termination of employment of any person (including any employees transferring) engaged in connection with the provision of the Services during the period from and including the Commencement Date;
- and
- (ii) the Provider failing to provide accurate and up-to-date information; and
- (iii) any person employed or engaged by the Provider or any of its sub-contractors (other than any employee who is confirmed as an Assigned Employee whose employment or claims or liabilities arising out of their employment or its termination transfers to a new contractor following the Completion Date pursuant to the TUPE Regulations or who claim that their employment or such liabilities so transfer.

14.5 At any time during the Contract Term the Provider shall:-

14.5.1 within 10 days of the request of the Council, fully and accurately disclose to the Council the information that is requested in respect of the Provider's' employees (or its sub-contractors' employees) which the Council, a prospective tenderer and/or any new contractor may reasonably require, such information to include the information provided to the Provider in respect of transferring employees who have transferred to the Provider. The Provider shall permit the Council to use the information supplied (subject to their complying with their obligations under the Data Protection Act and General Data Protection Regulation appropriate obligations of confidentiality) to inform any prospective tenderer and/or new contractor about the Provider's (or its sub-contractors') employees. If during the period between supplying the information and the Completion Date there is any material change in the information supplied or new information discovered, the Provider shall within 10 days accurately disclose to the Council the updated

information and also provide such updated information at intervals reasonably requested by the Council up to and including the Completion Date. The information must be in the format requested by the Council and will include but not be limited to:-

- (i) The number of employees providing the Services and each of their job titles;
- (ii) A list of Assigned Employees, together with any information on any Assigned Employee who have either given or been given notice of termination of employment prior to the Completion Date and/or objected to transfer pursuant to Regulation 4 (7) of the TUPE Regulations
- (iii) Job descriptions for each job title listed;
- (iv) The percentage of each employee's time spent providing the Services;
- (v) Each of the employees' ages
- (vi) Each employee's existing terms and conditions of employment including salary, hourly rates of pay and rates of overtime pay, pension contributions and benefits and any other benefits to which that employee is entitled;
- (vii) Any other information contained in the 'statement of particulars' for those employees (the information required by Section 1 of the Employment Rights Act 1996;
- (viii) Information relating to any applicable collective agreements
- (ix) Instances of disciplinary action within the preceding two years taken by the Provider in respect of those employees in circumstances including where the statutory dispute resolution procedures apply (oral and written warnings and suspension on full pay are excluded);
- (x) Instances of any grievances raised by those employees within the preceding two years in circumstances including where the statutory dispute resolutions procedures apply; and
- (xi) Instances of any legal action taken by those employees against the Provider in the previous two years, and instances of potential legal action that may be brought by those employees where the Provider has reasonable grounds to believe such actions might occur.

14.5.2 use all reasonable endeavours to co-operate with any other reasonable request made by the Council concerning the information requested; and

14.5.3 shall not, without the prior written agreement of the Council (such agreement not to be unreasonably withheld or delayed), materially alter or change any of the terms and conditions of employment of an Assigned Employee or replace any Assigned Employee or deploy any employee other than an Assigned Employee to perform the Services or remove from the provision of the Services any Assigned Employee or materially increase the number of persons performing the Services.

14.6 Any new contractor or sub-contractor of the Services shall be entitled to enforce the provisions of clause 14.2 and clause 14.3 pursuant to Section 1 of the Contracts (Rights of Third Parties Act 1999.

14.7 In this clause the expression 'Assigned Employees' shall mean employees who are assigned by their employer to the provision of the Services and the expression 'Completion Date' shall mean the last day of the Contract Term.

15 Default by Provider

15.1 Without prejudice to any other right or remedy, if the Provider does not provide the Services in accordance with this Agreement the Council may:

15.1.1 terminate the Agreement;

15.1.2 subject to clause 15.2 itself provide or otherwise procure the provision of the Services until it is satisfied that the Provider is able to carry out the Services in accordance with these conditions.

15.2 If the Provider fails to perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.

15.3 If the cost to the Council of executing or procuring such Services exceeds the amount that would have been payable to the Provider for executing or procuring such services, such excess shall be paid by the Provider to the Council in addition to any other sums payable by the Provider to the Council in respect of the breach of contract.

15.4 In the event that:

(a) the Provider fails to comply with clause 15.2 above and the failure is materially adverse to the commercial interests of the Council or prevent the Council from discharging a statutory duty; or

(b) the Provider persistently fails to comply with clause 15.2 above,

the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

16 Compliance with the Law

16.1 The Provider shall comply with all relevant legal provisions, whether in the form of Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice, Bylaws, Directives or the like, to be observed and performed in connection with the Services provided under the Agreement. The Provider recognises and accepts that in carrying out the Services on behalf of the Council it may be treated for the purposes of certain of these provisions as if it were a local authority and shall indemnify the Council accordingly against any cost or expense or loss or damage caused to the Council by the Provider's breach or non-compliance with any such legal provision.

- 16.2 The parties shall accept the non-exclusive jurisdiction of the English courts and agree that the Provider is to be governed and construed according to English law.

17 Confidentiality

- 17.1 The Provider and its staff must respect the privacy of service users. Nothing concerning the Service User must be discussed with anyone other than the Service User's health and social care professionals, or their line managers and where appropriate with others in the staff team, the Council's Link officer, or the police or other government agency in the course of a lawful and pertinent enquiry. Nothing concerning the Service User must be discussed with anyone other than the persons mentioned above without the express permission of the Service User or their advocate if the Service User is unable to express an opinion. Notwithstanding the provisions of this clauses 17.1 the provider, its agents and all parties hereto shall at all times have regard to the provisions of the General Data Protection Regulation.

18 Termination

- 18.1 This Agreement shall terminate:

18.1.1 upon the expiry of the Contract Term;

18.1.2 if either party fails to comply with any terms and conditions of this Agreement and such failure if capable of remedy is not remedied within **28** days of receipt of written notice of such failure from the other party.

18.1.3 upon either party giving 6 months' written notice to that effect.

- 18.2 The Provider shall:

18.2.1 provide the services from the Commencement Date and shall continue to provide the Services for the period of the Agreement Term, or until the Agreement is terminated in accordance with clause 18.

18.2.2 comply with all requirements of Clause 18 of the contract.

19 Insolvency

- 19.1 The Council may at any time by notice in writing summarily terminate this Agreement without compensation to the Provider in any of the following events:

19.1.1 if the Provider being an individual (or where the Provider is a firm, any partner in that firm) shall at any time become bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors

19.1.2 if the Provider being a company shall pass a resolution, or the courts shall make an order, that the company shall be wound up (except for the purposes of amalgamation or reconstruction), or if an administrative receiver on behalf of a creditor shall be appointed, or if the courts shall make an administration order, or if circumstances shall arise that entitle the courts or a creditor to appoint an administrative receiver, or which entitle the courts to make a winding-up order or administration order provided always that such termination shall not prejudice or affect any right of action or remedy that shall have accrued or shall accrue thereafter to the Council.

20 Consequences of Termination

20.1 On the termination of this Agreement:

20.1.1 the Provider shall deliver to the Council all Confidential Information in its possession or under its control;

20.1.2 no Services shall thereafter be performed;

20.1.3 the Provider shall account to the Council for all sums due and shall provide the Council with any reports required under this Agreement.

20.2 The expiry or termination of this Agreement shall be without prejudice to any rights which have already accrued to either party under this Agreement.

21 Assignment and Sub-contracting

21.1 The Provider shall not assign, delegate or sub-contract any part of its obligations under this Agreement without the consent of the Council, such consent not to be unreasonably withheld.

22 Copyright

22.1 The copyright in all Confidential Information (whether or not computer generated) or any other work or information prepared by or on behalf of the Provider solely in relation to the Services (and all amendments and additions to the same whether now or hereafter at any time in existence) shall vest in the Council.

22.2 The Provider shall not have the right to use any data, reports, drawings, specifications, designs, inventions, plans, programs or other material where copyright is vested in the Council for its own commercial purposes except with the prior written consent of the Council and then only upon such terms as may be imposed.

23 Insurance

23.1 The Provider shall effect and maintain at its own cost a policy or policies of insurance with reputable insurers in the UK insurance market for a period expiring no earlier than 12 years after completion of the Services, or until such earlier date as that liability may reasonably be considered to have ceased to exist, to cover the liability of the Provider in respect of any act or default for which it may become liable to indemnify the Council under clause 23 provided that such insurance is available in the market at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Provider's own claims record or other acts or omissions particular to the Provider shall be deemed to be within commercially reasonable rates. Minimum cover required:

- a) Public Liability £ 5m
- b) Employer's Liability £10m

The amount of any indemnity cover shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover is insufficient to cover the settlement of any claim.

23.2 The Provider shall inform the Council immediately if such insurance cover ceases to be available at commercially reasonable rates.

23.3 Upon request, the Provider shall provide the Council with a copy of the policy of insurance effected in accordance with clause 23.1.

24 Notices

24.1 Any notice, request, demand, consent or approval given under or in connection with this Agreement must be given in writing.

24.2 Any such notice, request, demand, consent or approval shall be sent to the registered office or principal business address of either party and, if sent by post, shall be deemed to have been received on the second working day following the date of posting.

to the Provider at the address in the Agreement

to the Council at the address in the Agreement

(or such other addresses as may be notified to the Providers from time to time)

24.3 The notice shall be sufficiently served if served personally, or if sent by prepaid Recorded (Signed For) Delivery or if no longer called that, the nearest equivalent, to the last known address of the Party to be served with it. If so sent it shall, unless proved to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting. Electronic mail or facsimile transmission may only be used if this has been agreed beforehand and provided that if the contents are intended to have formal or legal consequences a paper copy is also sent in accordance with this Clause.

25 Environmental considerations

- 25.1 The Provider shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the products/services the subject of this Agreement. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Provider shall comply with such agreements or codes of practice as if they were incorporated into English law.

26 Health and Safety

- 26.1 The Provider and all persons employed by it shall throughout the Agreement Term comply fully with the requirements of the Safety Legislation.
- 26.2 The Provider shall provide to the Council's Representative any information relating to the Provider's compliance with this clause 26 that the Council may reasonably request at any time from the Commencement Date.
- 26.3 For the purpose of condition 26.1 **"Safety Legislation"** means the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including, but not limited to, the General Product Safety Regulations 2005, the Control of Substances Hazardous to Health Regulations 2002 and all other legislation, codes of practice and guidance from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect on member states) imposing legal requirements with respect to health and safety at work and/or the safety of any goods and equipment used in the performance of the services and the health and safety of the users of such goods and equipment.
- 26.4 The Council expects that Providers will follow appropriate procedures for ensuring the safety of Service Users and of staff or volunteers involved in the delivery of the Service. This should include good arrangements for assessing and managing any significant risks and control measures that are effective and proportional to the level of risk.

27 Equalities

- 27.1 The Council is required to meet the public sector equality duty under Section 149 of the Equality Act 2010 and in certain circumstances the Provider may also be subject to that duty where it is carrying out functions of a public nature. The Provider shall at all times act in accordance with the Equality Act 2010 in relation to its obligations under the Agreement, and the Provider shall:-
- 27.1.1 not unlawfully discriminate either directly or indirectly or victimise or harass any person on such grounds as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof),
- 27.1.2 take all reasonable steps to secure the observance of this clause by its employees,

- 27.1.3 co-operate with the Council in monitoring the Provider's compliance with this clause 27 including providing such information as the Council may reasonably request,
- 27.1.4 not knowingly do anything in the performance of this Agreement which might place the Council in breach of the Council's duties and obligations under the Equality Act 2010 and
- 27.1.5 indemnify the Council against any costs, claims and expenses the Council may incur as a consequence of the Provider's (or its employees) breach of this clause 27.

27.2 The Provider shall:

- 27.2.1 have an equal opportunities, or equality and diversity, policy in respect of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity race, religion or belief, sex and sexual orientation
- 27.2.2 demonstrate effective implementation of its policies in relation to recruitment practices including evidence of open recruitment methods such as use of the Job Centre or press advertisements;
- 27.2.3 regularly review the full range of equality policies and procedures and take specific action to make any necessary changes;
- 27.2.4 regularly monitor from different 'protected characteristic' groups in relation to access to services, satisfaction with services and complaints including how the monitoring process impacts upon the development of policy and practice
- 27.2.5 regularly monitor the composition of its workforce, (including training and development opportunities, promotions and disciplinary action), and monitor job applicants from 'protected characteristic' groups.
- 27.2.6 Collect, collate and provide any equalities monitoring information requested by the Council.

27.3 The Council has entered into a Compact with other public agencies and the voluntary and community sector which includes A Code of Good Practice in relation to Equalities. Both parties to this agreement will follow the provisions described in that code to address the objectives of:

- Tackling and eliminating discrimination;
- Promoting equality of opportunity and
- Promoting good relations.

Copies of the Compact and the Code can be obtained from the Commissioner's Contracts Section Link Officer or The Care Forum on request.

28 No Partnership or Agency

- 28.1 Nothing in the Agreement shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Council and the Provider.
- 28.2 The Provider shall not be, or be deemed to be, an agent of the Council and shall not hold itself out as having authority or power to bind the Council in any way.

29 Supply of Information

- 29.1 The Provider shall take such steps as may be reasonable and practicable to afford the Council access to information which is reasonably required by the Council in connection with any of its statutory duties and responsibilities and for any purposes connected with its rights and obligations under this Agreement (including monitoring the Provider's compliance with its obligations under the Agreement) or to enable the Council to prepare the necessary documentation to appoint another person to provide the Services.
- 29.2 The Provider must notify the Council if:
- 29.2.1 there is a change in the control of the majority of the shares in, or the voting rights amongst, its shareholders or members of its organisation;
 - 29.2.2 it merges with another organisation;
 - 29.2.3 it transfers any of its business to another organisation;
 - 29.2.4 a regulatory body directs an inquiry into or makes an order of any kind in relation to its affairs; or
 - 29.2.5 any registration which it must maintain in order to provide the Services is withdrawn or cancelled or is threatened to be withdrawn or cancelled.
- 29.2 The Provider shall make available records that are relevant to the Service and any other such information reasonably required by the Council in regard to the Service that is not constrained by a duty of confidentiality or Data Protection legislation, including:
- Statement of purpose, business plan and latest copy of any relevant inspection reports;
 - Accounts (audited where required by the Companies Act) and other relevant financial information (where this is reasonable);
 - Evidence of adequate insurance cover;
 - Health and safety, equal opportunities, and risk assessment policy;
 - Policy & procedure for staff recruitment, induction, training and development;
 - Complaint procedure and copy of records relating to complaints made in relation to the Service and the Provider's response.

- 29.3 In accordance with clause 30 officers of the Council have the right to visit the provider's premises unannounced to monitor performance of the service or the Provider against the provisions of the Contract Documents including the Service Specification.
- 29.4 Where the Council feels that the Provider fails to meet the Contract Standards or Clause 13 it shall raise the matter immediately with the Provider.
- 29.5 In accordance with clause 29.2 in the event of the Council receiving information which raises a legitimate concern regarding the conduct of the Provider the Council may enter the offices of the Provider at any time (with or without other agencies) with a view to investigating the matter. The following shall apply:
- 29.5.1 during such investigation the Provider and its staff shall co-operate fully with the Council and other relevant agencies including providing access to all relevant documents and records (including those in electronic form) making staff available for interview.
- 29.5.2 the Council shall advise the Provider of the outcome of such investigation as soon as practicable, and shall afford the Provider a reasonable time to consider and respond. This is without prejudice to any other action the Council or any other agency may take in respect of the findings of the investigation.
- 29.5.3 the provision of Conditions 17 and 48 (Confidentiality and Data Protection) shall apply to any information obtained during such investigation.
- 29.5.4 the Council will use reasonable endeavours to liaise with and co-ordinate its investigations with other relevant agencies.

30 Monitoring Performance

- 30.1 The Council shall monitor the quality of the Services in the manner set out in the Service Specification and essentially at three stages in their performance:
- (i) the input stage; this being the level and quality of resources used to perform the Services. Monitoring will ensure that any resources which the Provider has promised to allocate to the Services are actually utilised in its performance.
 - (ii) the processes stage; this being the management and other practices which the Provider has agreed to use in performing the Services
 - (iii) the output stage; this being the standard of the completed Services as measured against the performance measures and other standards detailed in the Specification
- 30.2 The Provider shall keep and maintain until six years after the Agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records as may be required by the Council.

31 Freedom of Information

- 31.1 The Provider shall in all respects co-operate with the Council's reasonable requests so as to assist in enabling the Council to comply with all legislation relating to access of information, including the Freedom of Information Act 2000 ("the 2000 Act") and the Environmental Information Regulations 2004 ("the 2004 Regulations") and any legislation or guidance issued under or in relation to the 2000 Act or 2004 Regulations and the Provider shall not disclose to any person any information relating to the Services which is exempt from disclosure without the prior written agreement of the Council.

32 Severance

- 32.1 Each provision of the Agreement is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Agreement but (except to the extent in the case of that provision) it and all other provisions of the Agreement shall continue in full force and effect and their validity, legality and enforceability shall not thereby be effected or impaired, provided that the operation of the Agreement would not negate the commercial intent and purpose of the parties under the Agreement.

33 Accrued Rights and Remedies

- 33.1 The termination of the Agreement shall not prejudice or affect any claim, right, action or remedy that shall have accrued or shall thereafter accrue to either party.

34 Corrupt Gifts and Fraud

- 34.1 As soon as either party becomes aware of or suspects the commission of any Prohibited Act in respect of the provision of the Services it shall notify the other party.
- 34.2 The Council Representative shall have the right to require that the Provider suspend from any further work in connection with the Agreement any person reasonably suspected of fraudulent action or malpractice.
- 34.3 For the purpose of clause 34.1 "**Prohibited Act**" means:
- a) offering, giving or agreeing to give any servant of the Council any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Agreement or any other agreement with the Council; or
 - (ii) for showing favour or disfavour to any person in relation to the Agreement or any other agreement with the Council;
 - b) committing any offence:

- (i) under the Bribery Act 2010;
- (ii) under legislation creating offences in respect of fraudulent acts;
- (iii) at common law in respect of fraudulent acts in relation to the Agreement or any other agreement with the Council; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the Council.

34.4 The Provider will have in place adequate procedures to prevent bribery and corruption.

34.5 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Council:

34.5.1 the Council shall be entitled:

34.5.1.1 to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;

34.5.1.2 to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and

34.5.1.3 to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

34.5.2 any termination under Clause 34.5.1 of this **Error! Reference source not found.** shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council; and

34.5.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:

34.5.3.1 the interpretation of Clause 34 of the contract; or

34.5.3.2 the amount or value of any gift, consideration or commission,

shall be determined by the Council, acting reasonably, and the decision shall be final and conclusive.

35 Dispute Process

35.1 If a dispute arises between the Council and the Provider in connection with or arising out of the Agreement, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt, bona fide discussion at a managerial level appropriate to the dispute in question.

35.2 The Dispute Process in the event such a dispute is not resolved within 7 days of it having been referred to a managerial level for discussion then either party may refer it to the senior officer of each party for resolution and the same shall meet for discussion within 14 days thereafter or such longer period as the parties may agree.

35.3 In the event that such a dispute is not resolved pursuant to clauses 35.1 and 35.2, the dispute shall be referred at the request of either party to the decision of a single arbitrator

appointed by agreement between the parties within 14 days of one party requesting arbitration, failing which appointed on the application of either party by the then President of the Law Society of England and Wales.

35.4 The costs of any such arbitration shall be paid as determined by the arbitrator.

35.5 Neither party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this clause 35, such provisions not applying in respect of any circumstances where such remedies are sought.

Management levels for escalation and dispute resolution

35.6 The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

| Level | Council representative | Supplier representative |
|-------|------------------------|-------------------------|
| 1 | Kirsty Eastham | [Contract Manager] |

Order of precedence

35.7 Subject always to Clause 35, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

35.7.1 the provisions on the front page of this Contract for the Provision of Services (Contract Version);

35.7.2 Terms & Conditions;

35.7.3 Specification and Tender Response Document (but only in respect of the Council's requirements);

35.7.4 Information Governance Provisions;

35.7.5 TUPE

35.7.6 Definitions and Interpretations;

35.7.7 the order in which all subsequent schedules, if any, appear; and

35.7.8 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

35.8 For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Council's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of the tender documentation. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1)

the Council's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

36 Provider's Staff

- 36.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 36.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 36.3 The Provider shall ensure that in respect of all potential Staff or persons performing any of the Services before they begin to attend any premises to perform any of the Services:
- the provider will obtain a clear Home Office Check for every staff member required to provided support to service users and
 - and
 - The results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Scheme (DBS) in accordance with Part V of the Police Act 1997 in respect of each person. The check for each person shall include:
 - a) search of the lists held under the Disclosure and Barring Scheme or any scheme that may replace this.
- 36.4 The Provider shall ensure that no person who discloses any convictions, or who is found to have any convictions following the results of a DBS check is employed without an assessment of the relevance and risk posed by the conviction.
- 36.5 Other staff (including agency) engaged to carry out the support service in an emergency situation shall be subject to the same requirements for DBS checks but may be required to provide support without a Home Office Check subject to appropriate permissions and arrangements by the Prison concerned.
- 36.6 The Council may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Council will act reasonably in making such a request. Prior to making any such request the Council shall raise with the Supplier the Council's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Council shall be under no obligation to have such prior discussion should the Council have concerns regarding staff or member of the public safety.
- 36.7 The Provider will ensure that there is no delay in recruiting staff to any vacant posts
- 36.8 The Council may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Council will act

reasonably in making such a request. Prior to making any such request the Council shall raise with the Supplier the Council's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Council shall be under no obligation to have such prior discussion should the Council have concerns regarding staff or member of the public safety.

36.9 The Provider will comply with all provisions regarding staff as listed in the contract.

37 The Contracts (Rights of Third Parties) Act 1999

37.1 Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

38 Survival of Terms

38.1 The terms of this Agreement shall (except in respect of any obligations fully performed prior to or at the completion of the Services) continue in force and effect after the completion of the Services by the Provider.

39 Publicity

39.1 The Provider shall not advertise or publicly announce that it is supplying services or carrying out work for the Council without the prior written consent of the Council, such consent not to be unreasonably withheld.

40 Disclosure of information - Publicity

40.1 The Council may publicise (including on its web site, or contracts register) information relating to this Agreement provided always that in so doing it will not disclose material which is genuinely confidential or commercially sensitive. Such information may include but shall not be restricted to the following: the terms of this Agreement, the Provider's contact details, the contract value and duration, the invitation to tender documents and payments made to the Provider under the contract.

41 Whistleblowing

41.1 The Provider shall notify the Council immediately of any act or omission of any of the Council's employees, members or agents which it is aware is fraudulent, dishonest, ultra vires, an abuse of process, maladministration, or negligence or otherwise contrary to the general principles of good governance.

41.2 The Provider shall comply with the Public Interest Disclosure Act 1998 and shall establish and where necessary update from time to time, a whistleblowing procedure for its Personnel encouraging Personnel to report incidents of malpractice within the Provider or the Council to the Provider. Such procedure shall be similar in all material respects to the whistleblowing procedure operated by the Council from time to time.

41.3 The Provider shall notify the Council in writing forthwith if any Personnel invoke the whistleblowing procedure and shall provide details of the alleged malpractice. Without prejudice to any other rights which the Council may have under this contract, the Provider

shall comply with the Council's reasonable requirements in dealing with the alleged malpractice, where such malpractice affects the Council.

- 41.4 In this clause "malpractice" shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration.

42 Safeguarding Children and Adults from Abuse

42.1 Safeguarding Children and Adults from Abuse

42.1.1 It is expected that Providers will have their own policies and procedures in place for dealing with and reporting allegations of child abuse. Providers must ensure that their own procedures meet the requirements and include the actions described in the South West Child Protection Procedure. A copy of the procedure can be accessed at <https://www.proceduresonline.com/swcpp/> or via the Safeguarding Board website or through the Council's Representative. It is also expected that Providers will have in place adequate and appropriate training that will ensure frontline practitioners are adequately trained, and understand the principles of safeguarding and their responsibilities where Domestic Abuse is identified.

42.1.2 Any individual having information concerning a child who has or may have been abused, or may be at risk of abuse, is required to report this immediately to the Council's Children's Safeguarding Team on 01454 866000 - Monday to Friday, 01454 615165 - Out of hours/Weekends and in an emergency should also telephone the Police using 999. Information about children who are believed to be in contact with someone known to have abused children (or is reasonably suspected of having abused children) should be passed on in the same way.

42.1.3 Any potential staff, employees or volunteers, working within a scheme which caters wholly, or partially, for young persons under the age of 18, must be prepared to undergo checks made through the Disclosure & Barring Service (DBS), prior to employment. The Council reserves the right to advise against the employment of individuals who may appear unsuitable. Failure to heed this advice may lead to the suspension of the services or the termination of the Agreement.

42.1.4 The Provider will therefore be expected to collaborate appropriately with the Council and other relevant agencies in order to improve the well-being and safeguarding of children.

42.2 Safeguarding Adults from Abuse

42.2.1 It is expected that Providers will have their own policies and procedures in place for dealing with and reporting allegations of adult abuse. Providers must ensure that their own procedures meet the requirements and include the actions described in the South Gloucestershire Safeguarding Adults Board Multi-Agency Procedures. A copy of the procedure can be accessed at the Safeguarding Board website at <http://sites.southglos.gov.uk/safeguarding/adults/> or through the Council's Representative.

42.2.2 Any individual having information concerning an adult who has or may have been abused, or may be at risk of abuse, is required to report this immediately to the Council's Adults Service Desk on 01454 868007 - Monday to Friday, 01454 615165 - Out of hours/Weekends and in an emergency should also telephone the Police using 999.

42.2.3 Any potential staff, employees or volunteers, working with service users must be prepared to undergo checks made through the Disclosure & Barring Service (DBS) prior to employment. The Council reserves the right to advise against the employment of individuals who may appear unsuitable. Failure to heed this advice may lead to the suspension of the services or the termination of the Agreement.

42.2.4 The Provider will be expected to collaborate appropriately with the Council and other relevant agencies in order to improve the well-being and safeguarding of adults.

43 Protection of Service Users

43.1 If the Provider suspects that a crime has been committed against a child or vulnerable adult, or there is an immediate risk to a child or vulnerable adult, they must call the police. If an immediate response, is required (e.g. there is an incident taking place, or an immediate threat of a crime about to be committed) call 999. Otherwise call 101.

44 Co-operation including Local Healthwatch

44.1 With due regard to location restrictions, the Parties must at all times act in good faith towards each other and in the performance of their respective obligations under this Agreement.

44.2 The Parties must co-operate and share information with each other and with other commissioners and providers of health or social care in respect of Service Users, in accordance with the Law and Good Practice, to facilitate the delivery of co-ordinated and integrated services for the benefit of Service Users.

44.3 Providers will comply with the requirements of The Health and Social Care Act 2012 and the regulations for Healthwatch England and Local Healthwatch.

45 Complaints and Compliments

45.1 The Provider will have in place clear procedures for dealing with all service user feedback and complaints and must provide information about how service users or their representatives can make a complaint or a compliment. Provider procedures must include a written record of all complaints and any action taken. This record will be available for inspection by the Council Link Officer. Good practice guidelines on how to deal with feedback and complaints can be obtained from the Council Link Officer.

46 Business Continuity

- 46.1 The Provider shall devise, put in place, regularly review, update and test Business Continuity and Disaster Recovery Plans to comply at a minimum with current good industry practice which shall be appropriate to the size of its organisation and the Services under this Agreement and in doing so must at all times ensure that delivery of the Services continue to be provided in the event of circumstances that could adversely affect the Services, including ensuring that any suppliers or contractors of the organisation also have appropriate Business Continuity and Disaster Recovery plans in place.
- 46.2 The Provider will maintain and test its Business Continuity in according with Clause 12 of the contract.
- 46.3 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 46.3.1 the criticality of this Contract to the Council; and
- 46.3.2 the size and scope of the Supplier's business operations,
- regarding continuity of the provision of the Services during and following a Business Continuity Event.
- 46.4 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Council and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Council, at the Council's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 46.
- 46.5 The Council may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Council to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Council in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Council into such Business Continuity Plan it will explain the reasons for not doing so to the Council.
- 46.6 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Council on such implementation.
- 46.7 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

47 Modern Slavery and Terrorism

- 47.1 The Provider represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Contractor nor any of its officers, employees or other persons associated with it:-
- 47.1.1 has been convicted of any offence involving slavery and human trafficking
 - 47.1.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking
- 47.2 The Provider shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 47.2.1 The Provider shall use all reasonable endeavours to adhere to the principles of the 'Prevent' strategy under the Counter-terrorism and Security act 2015
 - 47.2.2 The Provider will ensure that its employees, agents and subcontractors are familiar with and have a good understanding of the 'Prevent' strategy, are trained to recognise vulnerability to be drawn into terrorism and are aware of the available programmes to deal with this issue.
 - 47.2.3 The Provider will:
 - 47.2.3.1 comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains;
 - and
 - 47.2.3.1 notify the Council immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 47.3 The Provider shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Council and shall provide to the Council any reports or other information that the Council may request as evidence of the Supplier's compliance with this Clause 47.3 and/or as may be requested or otherwise required by the Council in accordance with its anti-slavery Policy;

48 Data Protection

- 48.1 The Provider will be registered with the Information Commissioner's Office for Data Protection purposes.
- 48.2 The Provider shall comply with its obligations under the General Data Protection Regulation (GDPR) and the Computer Misuse Act 1990 insofar as performance of the Agreement gives rise to obligations under those enactments.

- 48.3 The General Data Protection Regulation (EU) 2016/679 (“GDPR”) and the Data Protection Act 2018 came into force on 25 May 2018 replacing the Data Protection Act 1998 and impose more extensive requirements for controllers and processors of personal data than under the Data Protection Act 1998; and in particular the GDPR stipulates that a number of specified matters must be contained in contracts between data controllers and data processors.
- 48.4 The definitions set out in Appendix 2 shall apply for the interpretation of this Agreement.
- 48.5 The Provider shall ensure that it does nothing knowingly or negligently which places the Council in breach of the Council’s obligations under the GDPR and the Privacy and Data Protection Requirements.
- 48.6 The Provider must protect personal data in accordance with the provisions and principles of the GDPR and must ensure the reliability of its staff who have access to the data.
- 48.7 The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, Privacy Notices, and to disseminate nationally-produced patient or other suitable service user information materials. Any failure by the Provider to inform Service Users as required by Data Protection Legislation or Data Guidance about the uses of Personal Data that may take place under this Agreement cannot be relied on by the Provider as evidence that such use is unlawful and therefore not contractually required.
- 48.8 The Provider must have in place a procedure for dealing with the investigation of data breaches. They must report any breaches of personal data to the Council as soon as possible; a Data Loss Security Incident Form will be supplied to aid them investigate the matter. The Provider must work with the Council to assess the seriousness of an individual breach in considering whether it needs to be reported to the Information Commissioner’s Office.
- 48.9 The Provider will ensure that it complies with Appendix 2, GDPR.

49 Regulatory Requirements

49.1 Applicable National Standards

49.1.2 The Provider will adhere to and provide services compatible with relevant legislation, statutory instruments, health circulars, all NHS standards, guidance, protocols and mandates, following national guidance set out in evidence based and best practice guidance.

49.1.3 The Provider is expected to demonstrate clear quality standards for the services provided as determined by relevant nationally agreed guidelines.

49.1.4 The organisation’s operational policies shall include health and safety, confidentiality, risk management, clinical governance, data protection, safeguarding, child protection and equalities.

49.1.5 The Provider shall ensure that:

- All staff employed or engaged by the Provider are informed and aware of the standards of performance they are required to provide and are able to meet that standard.
- The adherence of the Provider's staff to such standards of performance is routinely monitored and that remedial action is promptly taken where such standards are not attained.

49.2 Clinical Governance and Guidance

49.2.1 The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Council in writing and:

- Comply, where applicable, with the regulatory compliance of any relevant Regulatory Body;
- Respond, where applicable, to all requirements and enforcement actions issued from time to time by any relevant Regulatory Body;
- Consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
- Comply with the recommendations issued from time to time by a Competent Body;
- Comply with the recommendations from time to time contained in relevant guidance and appraisals issued by NICE;
- Respond to any reports and recommendations made by Local Healthwatch;
- Comply with any relevant Quality Outcomes Indicators.

49.2.2 The Provider must have in place:

- Systems for seeking and recording specialist professional advice.
- Lines of managerial and clinical accountability which are clearly outlined.
- A lead for the service with responsibility for overseeing the clinical governance.

49.2.3 The Provider must ensure that every member of Staff involved in the provision of the Services receives:

- proper and sufficient continuous professional and personal development, training and instruction; and
- full and detailed appraisal (in terms of performance and on-going education and training), each in accordance with Good Clinical Practice and the standards of any applicable relevant professional body.

and ensure that the information contained in the training and scheme agreements for this service are sufficient.

49.2.4 The Provider must ensure that it has the necessary processes in place to ensure that any serious or adverse clinical incidents requiring reporting that occur in relation to the Services are notified where appropriate and within the timescales required to the Regulatory Body applicable. If the Provider gives a notification to the CQC or any other Regulatory Body which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council for the attention of the Programme Lead for the service within the Council within one Business Day by email to CSOdesk@southglos.gov.uk (telephone number 01454 868007 during office hours), notwithstanding any separate or additional reporting requirements under Safeguarding in Clause 42.

49.2.5 The Provider must ensure that the organisation provides information to patients about how to give feedback in a range of different ways including patients being made aware of HealthWatch as a route for giving feedback.

49.2.6 For the purpose of clause 49 the following definitions and interpretations shall apply:

- “Competent Body” means the relevant competent body or bodies for the Services, at the time the Services are provided, as applicable.
- “Good Clinical Practice” means using standards, practices, methods and procedures conforming to the Law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services Provider, or a person providing services the same as or similar to the Services, at the time the Services are provided, as applicable
- “Guidance” means any applicable local Council, health or social care guidance, direction or determination which the Council and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006
- “Law” means:
 - a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
 - b) any applicable European Union directive, regulation, decision or law;
 - c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
 - d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
 - e) requirements set by any Regulatory Body; and
 - f) any applicable code of practice,

in each case as applicable in England and Wales;

49.2.7 "Regulatory Body" means any statutory or other body having Council to issue guidance, standards or recommendations with which the relevant Party must comply or to which it must or should have regard.

50 Monitoring Performance

50.1 The Council shall monitor the quality of the Services in the manner set out in the Service Specification and essentially at three stages in their performance:

- (i) the input stage; this being the level and quality of resources used to perform the Services. Monitoring will ensure that any resources which the Provider has promised to allocate to the Services are actually utilised in its performance.
- (ii) the processes stage; this being the management and other practices which the Provider has agreed to use in performing the Services
- (iii) the output stage; this being the standard of the completed Services as measured against the performance measures and other standards detailed in the Specification

50.2 The Provider shall keep and maintain until six years after the Agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records as may be required by the Council.

51 Best Value

51.1 In order that the Council may comply with its statutory duty, in particular with regard to Best Value under Part 1 of the Local Government Act 1999, the Provider shall make available such facilities and assistance as may be reasonably requested, provided that the Council has given reasonable notice and this does not present an unreasonable cost to the Provider.

52 Entire Agreement

52.1 This Contract contains the whole agreement between the parties and neither party has relied upon any oral or written representations made to it by the other or the others staff, representatives or agents and this Contract supersedes any prior Contract between the parties.

53 Force Majeure

53.1 Neither party shall be entitled to bring a claim for a breach of obligations under the Contract by the other or incur any liability to the other for any loss or damages incurred by that party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event.

- 53.2 In the occurrence of a Force Majeure Event, the party affected shall notify the other as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected party and any action proposed to mitigate its effect.
- 53.3 As soon as practicable, following such 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 facilitate the continued performance of the Contract.
- 53.4 For the purpose of this clause 53, "Force Majeure Event" means any event or occurrence which is outside the reasonable control of the party concerned, and which is not attributable to any act or failure to take preventative action by the party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Provider's Staff or any staff of any sub-contractor

Appendix 1

Description of the Services

In consideration of the contract price the Provider has agreed to undertake the following services as described below and in accordance with the Service Specification(s) annexed hereto at Schedule 2:

Title of Contract: Provision of Social Care in Prisons

Price & Payment Arrangements

The Council will make payments to the Provider in accordance with the following and the provisions of the Service Specification(s) annexed hereto.

Contract Price:

The sum of **£XX per hour**

The Council will pay a minimum contracted hours of **50** per week **or** the actual number of hours delivered to meet the service requirements, whichever shall be greater.

Payment Arrangements:

The Council shall pay the contract price to the Provider following receipt of invoices and contract monitoring submissions used for calculating payments due, which shall show the period and the amount of the Services for which payment is claimed together with the agreed charging rates as set out in the Service Specification(s) annexed hereto, together with any other details referred to in the Specification or that the Council may reasonably require.

Appendix 2 – GDPR

Data Processing

1: Controller/Processor Obligations in Relation to the Processing of Council Data under the Agreement

| | |
|---------------------------------------|---|
| Description | Social Care in Prisons |
| Names of Parties | 1. South Gloucestershire Council ('the Council') and 2. [Insert Name] (the Provider') |
| Type of Data Processing Relationship | 'Controller/Processor' where the Council is the Data Controller and the Provider is the data Processor for the purposes of this Agreement Where each have agreed to share, process and otherwise manage data under this Agreement as described below and in accordance with the provisions of the General Data Protection Regulation |
| Purpose | To provide Social Care in Prisons |
| Subject matter of the processing | Details of offenders residing in one of the 3 prisons in South Gloucestershire, Staff and Volunteers working for the social care service. |
| Duration of the processing | <i>[Clearly set out the duration of the processing including dates]</i> |
| Nature and purposes of the processing | The nature of the processing will be to data collect, record, store, consult with statutory and non-statutory agencies, e.g. CQC, use, disclose by transmission, disseminate or otherwise make available, alignment or combination, restrict, erase or destroy data, use and management of databases (whether or not by automated means) information relating to these individuals and the contract |
| Type of personal data | Name, address, adult social care ID, NHS number, date of birth, NI number, telephone number, health and social care information, images, and biometric data, gender, contact details, GP name and address, details of family/ next of kin, ethnic origin, preferred language, need for an interpreter, religion and beliefs, lone visit risks and hazards. |

| | |
|---|--|
| | |
| Categories of Data Subject | Staff, including volunteers, agents and temporary workers, customers/clients, suppliers, members of the public, |
| Plan for return and destruction of the data once the processing is complete unless a requirement under EU or member state law to preserve that type of data | <p>All data processed on behalf of the Council will be destroyed:</p> <ul style="list-style-type: none"> - Upon the death of the individual - The individual moves to another provider - The package of care is terminated - The service user is released or transferred to another prison |

2. DEFINITIONS AND INTERPRETATION

The following data protection definitions shall apply:

“Council Data” any Personal Data provided to the Provider by the Council for processing in accordance with the terms of the Agreement.

"Controller" means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by EU or Member State laws, the Controller (or the criteria for nominating the controller) may be designated by those laws.

“Joint Controllers” means that where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under GDPR, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14 of GDPR, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects. This arrangement shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects.

The essence of the arrangement shall be made available to the data subject. Irrespective of the terms of any Joint Controller arrangement if applicable, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers.

“Data Subject” means an identifiable natural person about whom a Controller holds Personal Data. For the purposes of this Agreement, this may include an individual whose details are provided to the Provider by the Council as part of the Council Data.

“GDPR” means General Data Protection Regulation (EU) 2016/679 as in force from time to time as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing GDPR such as the Data Protection Act 2018.

“Personal Data” shall have the meaning set out in the GDPR specifically this means any information relating to a Data Subject; who can be identified directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“Privacy and Data Protection Requirements” means all applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction, including, if relevant, the GDPR, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and the Privacy and Electronic Communication Regulations 2003, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in the United Kingdom, and any orders, guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in England and Wales or a European Union judicial authority.

“Processor” means a natural or legal person, public authority, agency or any other body which processes Personal Data on behalf of the Controller.

“Sub-processor” means a natural or legal person, public authority, agency or any other body contracted by the Processor to process Personal Data for the purpose of carrying out a specific processing activity on behalf of the Controller.

“Supervisory Authority” means the Information Commissioner’s Office (ICO) as defined by section 115 of the Data Protection Act 2018 pursuant to Article 51 of GDPR.

Appendix 3

Retendering, Handover & related Staffing Issues

1. Within 21 days of being so requested by the Council, the Provider shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Council to issue invitations to offer for the future provision of the Services, including but not limited to all employee liability information identified in Regulation 11 of TUPE.
2. Where, in the opinion of the Council, TUPE is likely to apply on the termination or expiration of the Contract, the information to be provided by the Provider under paragraph 1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under those Regulations, including in particular (but not limited to):
 - 2.1. the number of employees who would be transferred, including their names;
 - 2.2. in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment;
 - 2.3. the general terms and conditions applicable to those employees, including Whitley Council provisions, probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements, additional employment benefits and any other particulars of employment that an employer is obliged to give to an employee pursuant to Section 1 of the Employment Rights Act 1996;
 - 2.4. information of any disciplinary or grievance procedure taken against or by an employee within the previous two years.
 - 2.5. information of any court or tribunal case, claim or action brought by an employee against the Provider within the previous two years and any information that the Provider has reasonable grounds to believe that an employee may bring any court or tribunal case, claim or action against the Council or Replacement Provider arising out of the employee's employment with the Provider.
3. The Council shall take all necessary precautions to ensure that the information referred to in paragraph 1 is given only to Replacement Providers who have qualified to offer for the future provision of services. The Council shall require that such Replacement Providers shall treat that information in confidence, that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to offer issued by the Council and that they shall not use it for any other purpose.
4. Subject to Condition 32 (Indemnity and Liability) the Provider shall indemnify the Council against any claim made against the Council at any time by any person in respect of any liability incurred by the Council arising from any deficiency or inaccuracy in information, which the Provider is required to provide under paragraph 2.
5. The Provider shall allow access to the Sites, in the presence of a representative of the Council, to any person representing any Replacement Provider whom the Council has selected to offer for the future provision of services. For the purpose of such access, where the site is on the Provider's premises, the Council shall give the Provider seven days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises.

6. All persons who attend the Provider's premises for the purposes of Clause 5 shall comply with the Provider's security procedures, subject to such compliance not being in conflict with the objective of the visit.
7. The Provider shall co-operate fully with the Council during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting up operations period of the Replacement Provider, shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.
8. Within 10 working days of being so requested by the Council, the Provider shall transfer to the Council, or any person designated by the Council, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the services. The transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Council.

9 TUPE

- 9.1 **"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfer of undertakings, businesses or parts of undertakings of businesses;
- 9.2 **"Year"** means during the Contract Period, any 12 month period commencing on the Commencement Date or an anniversary thereof.
- 9.3 In these terms and conditions, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Moreover, where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 9.4 Any headings to Clauses, together with the front cover and the Index are for convenience only and shall not affect the meaning of these terms and conditions. Unless the contrary is stated references to Clauses shall mean the Clauses of these terms and conditions.
- 9.5 Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning. The Parties have had equal opportunity to take legal advice and the contra proferentem rule shall not apply to the interpretation of these terms and conditions.
- 9.6 Where a term of these terms and conditions provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. The ejusdem generis principle is not to be applied when interpreting these terms and conditions. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 9.7 In these terms and conditions, words importing any particular gender include all other genders.
- 9.8 In these terms and conditions, words importing the singular only shall include the plural and vice versa.
- 9.9 In these terms and conditions "staff" and "employees" shall have the same meaning.

- 9.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Parties shall be in writing.
- 9.11 All monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 9.12 Except where an express provision of these terms and conditions states the contrary, each and every obligation of a Party under the terms and conditions is to be performed at that Party's cost.
- 9.13 Any reference to a Party "procuring" another person to act or omit to act in a certain manner shall mean that the Party so procuring shall be liable for any default on the part of the person acting or omitting to act in that manner.
- 9.14 All references to the Contract include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.
- 9.15 The Parties hereby acknowledge that, subject to the right of employees under Regulation 4(7) of TUPE, TUPE will operate to transfer each of the Employees to the Provider on the Commencement Date which shall be the "time of transfer" under TUPE.
- 9.16 If in relation to any or all of the Employees the transfer of their employment occurs on any date before the Commencement Date, the provisions of Clause 29.1 and this Clause generally will apply to those Employees as if references to the Commencement Date were references to that date.
- 9.17 If it is determined by a Tribunal or other court of competent jurisdiction or as a result of a change of law that TUPE does not apply at or immediately before the Commencement Date the Provider shall ensure that it is able to and does use all or any of those who would have been Employees had TUPE applied to the provision of the Services by the Provider from the Commencement Date on the terms set out in this Clause.
- 9.18 Where paragraph 9.24 applies the relevant Parties shall co-operate generally with a view to securing in a timely and economical manner that, where possible, the employees shall come to be employed by the Provider.
- 9.19 Subject to paragraph 9.14, the Provider shall indemnify and keep indemnified the Council against any Loss incurred by the Council connected with or arising from any claim or proceedings by any trade union, elected employee representative, staff association, or Employee made against the Council in respect of any or all of the Employees or any other employee of the Provider and which arises from or is connected with any failure by the Provider to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 11, 13 and/or 14 of TUPE.
- 9.20 Subject to paragraph 9.14, the Provider shall indemnify and keep indemnified the Council against any Loss incurred by the Council connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any Employee or of any other person at any time employed by (or engaged as a consultant by) the Provider made against the Council at any time for breach of such contract, policy or any such collective agreement, including but not limited to any claims relating to pay, unfair dismissal, statutory or contractual redundancy pay, discrimination on grounds of sex, race, disability, religion or belief, sexual orientation, or age, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Council and which results from any act, fault or omission of the Provider while such Employees were or such other person was employed by the Provider.

- 9.21 Subject to paragraph 9.14, the Provider shall indemnify and keep indemnified the Council against any Loss incurred from any change or proposed change to the terms and conditions of employment of any Employees where such change is or is proposed to be effected following the transfer of any such person pursuant to the Contract and in respect of any Loss incurred by the Council arising from the employment or proposed employment of any such Employee otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.
- 9.22 Upon the day which is six months before the Termination Date or as soon as the Provider is aware of the proposed termination of the Contract or the provision by it of the Services the Provider shall upon the request of the Council and to the extent permitted by law, supply to the Council all information required by the Council as to the terms and conditions of employment and employment history of any employees (including all employee liability information identified in Regulation 11 of TUPE) then assigned by the Provider to the provision of the Services and shall warrant the accuracy of such information.
- 9.23 Except with the prior written consent of the Council, the Provider shall not vary any terms and conditions of employment of any employee or any policy or collective agreement applicable to any employee then assigned by the Provider to the provisions of the Services (provided always that this provision shall not affect the right of the Provider to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Provider shall replace such person with another person of similar skills, qualifications and experience) after the Council has served notice of the termination of the Contract or after the Provider shall have otherwise become aware of the proposed termination of the Contract or the provision by it of the Services.
- 9.24 On the termination of the Contract, where there is no transfer pursuant to TUPE such that employees assigned by the Provider to the provision of the Services do not transfer to a Replacement Provider, the Provider shall use reasonable endeavours to procure that the Relevant NHS body or Replacement Provider as the case may be may use any such employees in the provision of services equivalent to the Services from the date of expiry or termination for a period of up to 12 months thereafter.
- 9.25 The Provider shall (save where it would be a criminal offence or otherwise unlawful so to do) in conducting the recruitment for any post which may come to be filled by a new appointee:
- 9.25.1 question any such person concerning their previous convictions and/or cautions, pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order) ("Convictions"); and
 - 9.25.2 require all applicants for employment in such a post to complete an application form in which they are required to disclose all such Convictions and to consent to such details being made available to the Council; and
 - 9.25.3 in the case of any such applicant who may reasonably be expected in the course of their employment to have substantial access to children are required to complete a police check form; and
 - 9.25.4 in the event that such applicant who discloses any Convictions or who is found to have any Convictions following completion of a police check or who declines or refuses to complete the application form referred to in Clause 9.25.2, the Provider shall not employ such applicant.

- 9.26 The Provider shall at all times keep the Council informed of any employee of the Provider performing any of the Services who subsequent to his or her commencement of employment with the Provider receives a Conviction or in respect of whom any previous Convictions become known to the Provider and if the Council, acting reasonably, considers that the Conviction has a material bearing upon the suitability of the individual concerned to be engaged in the provision of the Services, such person shall only continue to have access to the persons receiving health services and/or have substantial access to children with the Council's prior written consent. The Provider shall indemnify and keep indemnified the Council against any Loss arising out of any claim by any person in respect of whom the Council denies consent to continue to provide Services as a result of such person disclosing or receiving a Conviction.
- 9.27 The Provider shall procure that all persons appointed by the Provider to provide any of the Services shall undergo pre-employment health screening to establish in each case whether such person is medically fit for his or her proposed tasks in the provision of any of the Services, such medical screening to be undertaken at the Provider's cost.
- 9.28 Records of all pre-employment health screenings shall be held by the Provider. Providing written consent has been obtained by the employee to disclose the pre-employment screening information, then such information will be produced by the Provider to the Council, if required. If written consent is not obtained, this information will not be released.
- 9.29 The Provider shall ensure that all persons appointed to provide any of the Services are medically fit for his or her proposed tasks in the provision of the Services and the Provider shall indemnify and keep indemnified the Council against any Loss arising out of a claim or proceedings by any such person.

Schedule 1 (Pricing Schedule from Tender document Schedule 4)

Schedule 2

The Services Specification(s)