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**DATED**

**AGREEMENT FOR THE PROVISION OF SERVICES**

Between

**THE ROYAL BOROUGH OF KINGSTON UPON THAMES** And

Relating To Provision of Medical Advisory Services (Housing Applications)

Ref: DN555665

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**THIS AGREEMENT** is dated

**PARTIES**

(1) **THE ROYAL BOROUGH OF KINGSTON UPON THAMES** whose office is at Guildhall, High Street, Kingston Upon Thames, KT1 1EU (**Council**).

(2)

**BACKGROUND**

(A) The Provider submitted a bid on in response to the Council's Request For Quotations (RFQ) issued on

(B) The Council has (based on the Provider’s response to the RFQ), appointed the Provider to supply the Medical Advisory Services (Housing Applications) and the Provider has agreed to do so on the terms and conditions of this Agreement.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following definitions and rules of interpretation apply in this Agreement: **Agreement:** the terms and conditions of contract and the Schedules.

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

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Council Data:** all Documents, information and materials provided by the Council relating to the Services.

**Council's Manager:** the Council's manager appointed in accordance with clause 4.1 and whose details are set out in Schedule 3.

**Commencement Date:**

**Provider's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Provider or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Council.

**Provider's Manager:** the Provider's manager for the Services appointed under clause 3.3 and whose details are set out in Schedule 3.

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

**Provider's Proposal:** the Provider's document submitted in response to the Council’s invitation to tender and which is attached as Schedule 5 to this Agreement.

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**Coronavirus:** the disease known as coronavirus disease (COVID-19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

**Coronavirus Event**: an event or delay caused by, or arising from or in relation to, a Coronavirus epidemic or pandemic that prevents or delays the performance of the Services or the performance of any obligations under this agreement, including (but not limited to):

(a) absences or unavailability of the Provider’s Personnel, and any loss

of, or disruption to, any of their facilities;

(b) any illness, quarantining, shielding or self-isolation (including, but not

limited to, precautionary self-isolation) of the Provider’s Personnel;

(c) any recommended or mandatory measures introduced by the

Government intended to prevent or delay the spread of Coronavirus.

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

**Data Processor**: shall have the same meaning set out in the Data Protection Legislation.

**Data Protection Legislation**: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

**Data Subject**: shall have the same meaning set out in the Data Protection Legislation.

**Deliverables:** all Documents, products and materials developed by the Provider or its agents, subcontractors, Providers and employees in relation to the Services in any form.

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

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

**Expiry Date:**

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

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

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

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

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

as may be amended from time to time.

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

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

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

**Prohibited Act:** the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for

or engaged by the Council a financial or other advantage to:

(i) induce that person to perform improperly a relevant function

or activity; or

(ii) reward that person for improper performance of a relevant

function or activity;

(b) to directly or indirectly request, agree to receive or accept any

financial or other advantage as an inducement or a reward for

improper performance of a relevant function or activity in connection

with this Agreement;

(c) to commit any offence:

(i) under the Bribery Act;

(ii) under legislation or common law concerning fraudulent acts;

(iii) relating to defrauding, attempting to defraud or conspiring to

defraud the Council.

(d) any activity, practice or conduct which would constitute one of the

offences listed under clause (c) above, if such activity, practice or

conduct had been carried out in the UK.

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

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

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

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.9 A reference to **writing** or **written** includes fax and e-mail.

1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.11 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.12 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.13 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail. Where there is any conflict between any of the other schedules and the Provider’s Proposal the provisions of the relevant schedule(s) will prevail over the Provider’s Proposal.

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**2. ENGAGEMENT**

2.1 The Provider shall provide the Services to the Council from the Commencement Date until the Expiry Date and this Agreement shall terminate automatically on the Expiry Date unless extended in accordance with clause 2.2 below.

2.2 The Council may extend this Agreement beyond the Expiry Date by a further period or periods of up to twenty-four (24) months. If the Council wishes to extend this Agreement, it shall give the Provider at least one (1) month's written notice of such intention before the Expiry Date. If the Council gives such notice, then the term shall be extended by the period set out in the notice.

**3. PROVIDER'S OBLIGATIONS**

3.1 The Provider shall use reasonable endeavours to provide the Services and to deliver the Deliverables to the Council, in accordance with the Specification (Schedule 1) and the Provider’s Proposal (Schedule 5) in all material respects.

3.2 The Provider shall meet any performance dates or milestones specified in Schedule 1 or agreed by the parties from time to time. Unless otherwise agreed by the parties, time shall be of the essence in delivering the Services.

3.3 The Provider shall appoint the Provider's Manager who shall have authority contractually to bind the Provider on all matters relating to the Services. The Provider shall ensure that the same person acts as the Provider's Manager throughout the term of this Agreement but may replace him from time to time where reasonably necessary in the interests of the Provider's business.

3.4 The Provider’s Manager or a duly authorised and competent representative of the Provider shall be available to meet the Council’s Manager at the intervals set out in Schedule 3 and at all reasonable times as may be required by the Council and the Provider shall provide such written reports as set out in Schedule 3 or as the Council’s Manager may reasonably require prior to any meeting or generally.

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

3.6 In providing the Services, the Provider shall:

(a) co-operate with the Council in all matters relating to the Services,

and comply with all instructions of the Council;

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(b) perform the Services with the best care, skill and diligence in

accordance with best practice in the Provider's industry, profession or

trade;

(c) use personnel who are suitably skilled and experienced to perform

tasks assigned to them and in sufficient number to ensure that the

Provider's obligations are fulfilled in accordance with this Agreement;

(d) ensure that the Services and Deliverables will conform with all

descriptions and specifications set out in Schedule 1 and that the

Deliverables shall be fit for any purpose expressly or impliedly made

known to the Provider by the Council;

(e) provide all equipment, tools and such other items as are required to

provide the Services;

(f) obtain and at all times maintain all necessary licences and consents

and comply with all applicable Laws and regulations;

(g) hold all Council Data in safe custody at its own risk, maintain the

Council Data in good condition until returned to the Council, and not

dispose of or use the Council Data other than in accordance with the

Council's written instructions or authorisation;

(h) not do or omit to do anything which may cause the Council to lose

any licence, authority, consent or permission upon which it relies for

the purposes of conducting its business and the Provider

acknowledges that the Council may rely or act on the Services;

(i) if delivering Services at the Council’s premises, observe all of the

Council’s policies and procedures in force at such premises as

notified to the Provider from time to time;

(j) at all times comply with the provisions of the Modern Slavery Act

2015, the Human Rights Act 1998, the Government Prevent Strategy

and all equality Laws in force from time to time. The Provider shall

also undertake, or refrain from undertaking, such acts as the Council

requests so as to enable the Council to comply with its obligations

under the Human Rights Act 1998 and all equality Laws in force from

time to time;

(k) comply with all environmental and other Laws applicable to the

performance of its obligations under this Agreement;

(l) comply with The Health Protection (Coronavirus, Restrictions)

(England) Regulations 2020 as amended and applicable together

with the Council’s policies or procedures for working during the

Corona Virus pandemic;

(m) the Provider’s personnel involved in the performance of the service

must be on the United Kingdom (UK) General Practitioners (GP)

register as administered by the UK General Medical Council (GMC)

and have a working knowledge of the Housing Act 1996.

3.7 The Council acknowledges that the Corona Virus pandemic has created uncertainty amongst service providers, suppliers, contractors and local authorities alike. The Council is also conversant with the government guidance in such circumstances and in particular the need to be flexible in Agreement for the Provision of Services: Medical Advisory Services (Housing Applications)

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both requiring the provision of Services and the manner in which the service providers, suppliers and contractors should be paid.

3.8 The Provider warrants and undertakes that as part of its proposal it considered the ongoing implications of the Corona Virus pandemic on service delivery and the performance of its obligations under this Agreement and has (and shall continue to have) contingencies in place to address those in line with current Government Guidance.

3.9 If the Provider considers that a Corona Virus Event or the development of the Corona Virus pandemic is likely to have an effect upon its ability to provide the Services which were not reasonably foreseeable at the time that this Agreement was entered into and accordingly not included within its initial proposals or delivery plan, then the Provider shall notify the Council promptly, setting out why it considers that to be the case, the effect it would have on the provision of the Services and a proposal to mitigate the situation to secure continuity of service.

3.10 The Council may within 10 Business Days of receiving the notice under clause 3.9, also put forward for consideration by the Provider any proposals it considers are practicable and appropriate in the circumstances and meet with the Provider within 15 Business Days to consider the proposals by the Provider and the Council’s proposal (if any) with a view to agreeing a plan of action to mitigate the situation in line with the applicable Government Guidance at the time.

3.11 Any plan or actions agreed by the parties will be evidenced in writing signed by the parties and will form a part of this Agreement for as long as the Corona Virus pandemic or the Corona Virus Event subsists.

**4. COUNCIL'S OBLIGATIONS**

4.1 The Council shall:

(a) co-operate with the Provider in all matters relating to the Services

and shall appoint the Council's Manager in relation to the Services

who shall have the authority contractually to bind the Council on

matters relating to the Services;

(b) if relevant, provide, for the Provider, its agents, subcontractors,

Providers and employees, in a timely manner and at no charge,

access to the Council's premises, office accommodation, data and

other facilities as reasonably required by the Provider for the

performance of its obligations under this Agreement;

(c) provide, in a timely manner, such Council Data and other information

as the Provider may reasonably require, and ensure that it is

accurate in all material respects;

(d) if relevant, be responsible (at its own cost) for preparing and

maintaining the relevant premises for the supply of the Services,

including identifying, monitoring, removing and disposing of any

hazardous materials from any of its premises in accordance with all

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applicable Laws, before and during the supply of the Services at

those premises, and informing the Provider of all of the Council's

obligations and actions under this clause 4.1(d);

(e) inform the Provider of all health and safety rules and regulations and

any other reasonable security requirements that apply at any of the

Council's premises where the Services will be delivered or to which

any of the Provider’s Personnel is admitted; and

(f) obtain and maintain all necessary licences and consents and comply

with all relevant legislation in relation to the Services, the installation

of the Provider's Equipment, the use of Council Data and the use of

the Council's Equipment in relation to the Provider's Equipment

insofar as such licences, consents and legislation relate to the

Council's business, premises, staff and equipment.

**5. CHANGE CONTROL**

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

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

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

(b) any necessary variations to the Provider's charges arising from the

change;

(c) the likely effect of the change on the Services; and

(d) any other impact of the change on this Agreement.

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

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

5.5 This clause 5 does not apply to any change required which arises from the effects of the Corona Virus pandemic or a Corona Virus Event.

**6. CHARGES, PAYMENT AND AUDIT**

6.1 The charges for the Services shall be as set out in Schedule 2 (Pricing), and shall be the full and exclusive remuneration of the Provider in respect of the

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performance of the Services. Unless otherwise agreed in writing by the Council, the charges shall include every cost and expense of the Provider directly or indirectly incurred in connection with the performance of the Services.

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

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

6.4 If a party fails to make any payment due to the other party under this Agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above The Bank of England’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

6.5 The Provider shall maintain complete and accurate records of the resources applied to and cost of providing the Services and the Provider shall allow the Council to inspect such records at all reasonable times on request.

6.6 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Provider to the Council against any liability of the Council to the Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.

6.7 Where the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing this Agreement, it shall cause a term to be included in such a sub-contract that requires payment to be made of undisputed sums by the Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.

6.8 During the term and for a period of seven (7) years after termination or expiry of this Agreement, the Council (acting by itself or through its representatives) may conduct an audit of the Provider, including for the following purposes:

(a) to verify the accuracy of charges (and proposed or actual variations

to them in accordance with this Agreement) and/or the costs of all

suppliers;

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(b) to review the integrity, confidentiality and security of any data relating

to the Council or any service users;

(c) to review the Provider's compliance with the Data Protection

Legislation, the FOIA, in accordance with clause 8 (Confidentiality,

Freedom of Information and Transparency) and clause 9 (Data

Protection) and any other legislation applicable to the Services;

(d) to review any records created during the provision of the Services;

(e) to review any books of account kept by the Provider in connection

with the provision of the Services;

(f) to carry out an examination pursuant to section 6(1) of the National

Audit Act 1983 of the economy, efficiency and effectiveness with

which the Authority has used its resources;

6.9 Subject to the Council’s obligations of confidentiality, the Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit.

6.10 The Council shall endeavour to (but is not obliged to) provide at least fifteen (15) Business Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.

6.11 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations relating to any audits, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Provider in which case the Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

**7. INTELLECTUAL PROPERTY RIGHTS**

7.1 The Provider assigns to the Council, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

7.2 At its own expense, the Provider shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement, including securing for the Council all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Council in accordance with clause 7.1.

7.3 The Provider shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of Law in any jurisdiction.

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**8. CONFIDENTIALITY, FREEDOM OF INFORMATION AND TRANSPARENCY**

8.1 A party (‘R**eceiving Party’**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**‘Disclosing Party’**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents and subcontractors comply with the confidentiality obligations set out in this clause 8.1 as though they were a party to this Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by Law, any governmental or regulatory authority or by a court of competent jurisdiction.

8.2 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs and the Provider shall assist and co-operate with the Council (at the Provider’s expense) to enable the Council to comply with these information disclosure requirements.

8.3 The Provider shall and shall procure that its staff including its subcontractors:

(a) transfer any Request For Information received by the Provider and/or any of the Provider’s Personnel to the Council as soon as practicable

after receipt and in any event within two (2) Business Days of

receiving a Request For Information;

(b) provide the Council with a copy of all information in the Provider’s possession or power in the form that the Council requires within five

(5) Business Days (or such other period as the Council may specify)

of the Council requesting that information; and

(c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request For

Information within the time for compliance set out in section 10 of the

FOIA or regulation 5 of the EIRs.

8.4 The Council shall be responsible for determining at its absolute discretion whether the information:

(a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs;

(b) is to be disclosed in response to a Request For Information, and in no event shall the Provider respond directly to a Request For

Information unless expressly authorised to do so by the Council.

8.5 In no event shall the Provider respond directly to a Request For Information unless expressly authorised to do so by the Council.

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8.6 The Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose information:

(a) without consulting with the Provider; or

(b) following consultation with the Provider and having taken its views

into account,

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

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

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

8.9 Clause 8.1 shall survive termination of this Agreement.

**9. DATA PROTECTION**

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

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

(a) process the Personal Data only in accordance with the documented

instructions from the Council which may be specific instructions or

instructions of a general nature as set out in Schedule 5 to this

Agreement or as otherwise notified by the Council to the Provider (in

writing) from time to time and for no other purpose;

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(b) process the Personal Data only to the extent, and in such manner, as

is necessary for the provision of the Services or as is required by the

Data Protection Legislation;

(c) obtain prior written consent from the Council in order to transfer the

Personal Data to any subcontractors, agents or other third parties for

the provision of the Services and oblige by way of contract or other

binding legal arrangement any such parties to comply with the same

data protection obligations as those set out in this clause 9;

(d) not transfer Personal Data outside of the EU unless the prior written

consent of the Council has been obtained and the following

conditions are fulfilled:

(i) the Council or the Provider has provided appropriate

safeguards in relation to the transfer in accordance with Data

Protection Legislation as determined by the Council;

(ii) the Data Subject has enforceable rights and effective legal

remedies;

(iii) the Provider complies with its obligations under the Data

Protection Legislation by providing an adequate level of

protection to any Personal Data that is transferred or, if it is

not so bound, uses its best endeavours to assist the Council

in meeting its obligations); and

(iv) the Provider complies with any reasonable instructions

notified to it in advance by the Council with respect to the

processing of the Personal Data;

(e) take reasonable steps to ensure the reliability of any of the Provider's

Personnel who have access to the Personal Data;

(f) ensure that the Provider's Personnel without appropriate authority do

not have access to the Personal Data;

(g) ensure that all the Provider's Personnel required to access the

Personal Data are informed of the confidential nature of the Personal

Data and comply with the obligations set out in this clause 9;

(h) ensure that all the Provider's Personnel receive an adequate level of

training in data protection;

(i) ensure that the Provider's Personnel do not publish, disclose or

divulge any of the Personal Data to any third party unless directed in

writing to do so by the Council;

(j) notify the Council within twenty-four hours if it becomes aware of a

breach or alleged breach of the Data Protection Legislation;

(k) provide the Council with full co-operation and assistance in relation

to investigating breaches to include inspection of premises and

security arrangements if requested.

(l) notify the Council (within two (2) Business Days), if it receives a Data

Subject Access Request under the Data Protection Legislation or a

complaint relating to the Council’s obligations and promptly notify the

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Council of any breach of the security measures required to be put in

place pursuant to this clause 9;

(m) provide the Council with full co-operation and assistance in relation

to any complaint or request made under the Data Protection

Legislation including by:

(i) providing the Council with full details of the complaint or

request;

(ii) providing the Council with any information requested by

the Council within the timescales required by the Council.

9.3 The Provider shall, upon reasonable notice, allow officers of the Council to have reasonable rights of access at all times to the Provider’s premises, Provider’s Personnel and records for the purposes of monitoring the Provider’s compliance with the Data Protection Legislation including its security requirements.

9.4 The Provider shall at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of this Agreement unless the Provider is required by Law to retain the Personal Data.

9.5 The provisions of this clause 9 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

**10. INDEMNITY**

10.1 The Provider shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered/ incurred by the Council as a result of or in connection with:

(a) any claim made against the Council for actual or alleged infringement

of a third party's intellectual property rights arising out of, or in

connection with, the Services, to the extent that the claim is

attributable to the acts or omissions of the Provider, its employees,

agents or subcontractors;

(b) any claim made against the Council by a third party for death,

personal injury or damage to property arising out of, or in connection

with, the Services are attributable to the acts or omissions of the

Provider, its employees, agents or subcontractors; and

(c) any claim made against the Council by a third party arising out of or

in connection with the supply of the Services, to the extent that such

claim arises out of the breach, negligent performance or failure or

delay in performance of this Agreement by the Provider, its

employees, agents or subcontractors.

10.2 This clause 10 shall survive termination of this Agreement.

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**11. INSURANCE**

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

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

occurrences; and

11.1.2 Public Liability Insurance of not less than £10 million for each and every claim, act or occurrence or series of claims, acts or

occurrences.

11.1.3 Professional Indemnity Insurance of not less than £1million for each and every claim, act or occurrence or series of claims, acts or

occurrences.

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

**12. LIMITATION OF LIABILITY**

12.1 Nothing in this Agreement limits or excludes either party’s liability for: (a) death or personal injury caused by its negligence; or

(b) fraud or fraudulent misrepresentation; or

(c) destruction of the Council’s property; or

(d) breach of clause 7 (Intellectual Property Rights), clause 8

(Confidentiality and Freedom of Information), clause 9 (Data

Protection) and clause 21 (Prevention of Bribery); or

(e) breach of the terms implied by section 2 of the Supply of Goods and

Services Act 1982 (title and quiet possession) or any other liability

which cannot be limited or excluded by applicable Law.

12.2 Subject to clause 12.1, neither party shall be liable to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

(a) loss of profits;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) any indirect or consequential loss.

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12.3 Subject to clause 12.1 and clause 12.2, each party’s total liability to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to 150% of the total price payable under this Agreement per claim except data protection related breaches. The Provider’s total liability for data protection related breaches is limited to £10,000,000.

**13. TERMINATION**

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

(a) the Provider commits a material breach of any term of this

Agreement which breach is irremediable or (if such breach is

remediable) fails to remedy that breach within a period of 10 (ten)

business days after being notified in writing to do so;

(b) the Provider repeatedly breaches any of the terms of this Agreement

in such a manner as to reasonably justify the opinion that its conduct

is inconsistent with it having the intention or ability to give effect to

the terms of this Agreement;

(c) the Provider suspends, or threatens to suspend, payment of its debts

or is unable to pay its debts as they fall due or admits inability to pay

its debts or [(being a company or limited liability partnership) is

deemed unable to pay its debts within the meaning of section 123 of

the Insolvency Act 1986 **OR** (being an individual) is deemed either

unable to pay its debts or as having no reasonable prospect of so

doing, in either case, within the meaning of section 268 of the

Insolvency Act 1986 **OR** (being a partnership) has any partner to

whom any of the foregoing apply];

(d) the Provider commences negotiations with all or any class of its

creditors with a view to rescheduling any of its debts, or makes a

proposal for or enters into any compromise or arrangement with its

creditors [other than (being a company) for the sole purpose of a

scheme for a solvent amalgamation of the Provider with one or more

other companies or the solvent reconstruction of the Provider];

(e) [a petition is filed, a notice is given, a resolution is passed, or an

order is made, for or in connection with the winding up of the

Provider (being a company) other than for the sole purpose of a

scheme for a solvent amalgamation of the Provider with one or more

other companies or the solvent reconstruction of the Provider];

(f) [an application is made to court, or an order is made, for the

appointment of an administrator, or if a notice of intention to appoint

an administrator is given or if an administrator is appointed, over the

Provider (being a company)];

(g) [the holder of a qualifying floating charge over the assets of the

Provider (being a company) has become entitled to appoint or has

appointed an administrative receiver];

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(h) a person becomes entitled to appoint a receiver over the assets of

the Provider or a receiver is appointed over the assets of the

Provider;

(i) a creditor or encumbrancer of the Provider attaches or takes

possession of, or a distress, execution, sequestration or other such

process is levied or enforced on or sued against, the whole or any

part of the Provider's assets and such attachment or process is not

discharged within fourteen (14) days;

(j) any event occurs, or proceeding is taken, with respect to the Provider

in any jurisdiction to which it is subject that has an effect equivalent

or similar to any of the events mentioned in clause 13.1(c) to clause

13.1(i) (inclusive);

(k) the Provider suspends or ceases, or threatens to suspend or cease,

carrying on all or a substantial part of its business; [or]

(l) [there is a change of control of the Provider [ (within the meaning of

section 1124 of the Corporation Tax Act 2010)].]

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

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

(a) a substantial portion of this Agreement; or

(b) any of the obligations set out in clauses [7 (Intellectual Property

Rights), clause 8 (Confidentiality, Freedom of Information and

Transparency), clause 9 (Data Protection) and clause 21 (Prevention

of Bribery)].

**14. CONSEQUENCES OF TERMINATION**

14.1 On termination or expiry of this Agreement:

(a) the Council shall pay to the Provider all of the Provider's outstanding

undisputed invoices and interest and, in respect of Services supplied

but for which no invoice has been submitted, the Provider may

submit an invoice, which shall be payable immediately on receipt;

(b) each party shall, within a reasonable time, return all of the other

party’s property in its possession or under its control. Until they have

been returned, the party with custody or control of such property shall

be solely responsible for their safe keeping;

(c) the following clauses shall continue in force: clause 7 (Intellectual

Property Rights), clause 8 (Confidentiality and Freedom of

Information), clause 9 (Data Protection), clause 12 (Limitation of

Liability), clause 25 (Notices), clause 26 (Dispute Resolution), clause

27 (Governing Law) and Clause 28 (Jurisdiction).

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

**15. FORCE MAJEURE**

15.1 Provided it has complied with clause 15.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

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

15.3 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force

Majeure Event but no later than 3 (three) days from its start, notify

the other party in writing of the Force Majeure Event, the date on

which it started, its likely or potential duration, and the effect of the

Force Majeure Event on its ability to perform any of its obligations

under this Agreement; and

(b) use all reasonable endeavours to mitigate the effect of the Force

Majeure Event on the performance of its obligations.

15.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 1 (one) month, the party not affected by the Force Majeure Event may terminate this Agreement by giving 10 (ten) days written notice to the Affected Party.

15.5 If the Force Majeure Event prevails for a continuous period of more than 1 (one) month, either party may terminate this Agreement by giving 10 (ten) days' written notice to the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

**16. VARIATION**

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

**17. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or

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remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**18. RIGHTS AND REMEDIES**

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

**19. SEVERANCE**

19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, subject to clause 19.2, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

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

**20. ENTIRE AGREEMENT**

20.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

20.3 Nothing in this clause shall limit or exclude any liability for fraud.

**21. PREVENTION OF BRIBERY**

21.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or sub-contractors, have at any time prior to the Commencement Date:

(a) committed a Prohibited Act or been formally notified that they are

subject to an investigation or prosecution which relates to an alleged

Prohibited Act; and/or

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(b) been listed by any government department or agency as being

debarred, suspended, proposed for suspension or debarment, or

otherwise ineligible for participation in government procurement

programmes or contracts on the grounds of a Prohibited Act.

21.2 The Provider shall not during the term of this Agreement:

(a) commit a Prohibited Act; and/or

(b) do or suffer anything to be done which would cause the Council or

any of the Council's employees, Providers, contractors,

sub-contractors or agents to contravene any of the provisions of the

Bribery Act or otherwise incur any liability in relation to the Bribery

Act.

21.3 The Provider shall during the term of this Agreement:

(a) establish, maintain and enforce, and require that its sub-contractors

establish, maintain and enforce, policies and procedures which are

adequate to ensure compliance with the Bribery Act and prevent the

occurrence of a Prohibited Act; and

(b) keep appropriate records of its compliance with its obligations under

clause 21.3(a) and make such records available to the Council on

request.

21.4 The Provider shall immediately notify the Council in writing if it becomes aware of any breach of clause 21.1 and/or clause 21.2, or has reason to believe that it has or any of the Provider's Personnel (including its advisors, agents and sub-contractors) have:

(a) been subject to an investigation or prosecution which relates to an

alleged Prohibited Act;

(b) been listed by any government department or agency as being

debarred, suspended, proposed for suspension or debarment, or

otherwise ineligible for participation in government procurement

programmes or contracts on the grounds of a Prohibited Act; and/or

(c) received a request or demand for any undue financial or other

advantage of any kind in connection with the performance of this

Agreement or otherwise suspects that any person or Party directly or

indirectly connected with this Agreement has committed or attempted

to commit a Prohibited Act.

21.5 If the Provider makes a notification to the Council pursuant to clause 21.4, the Provider shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with this Agreement.

21.6 If the Provider is in default under clause 21.1 and/or clause 21.2, the Council may by notice:

(a) require the Provider to remove from performance of this Agreement

any Provider's Personnel whose acts or omissions have caused the

default; or

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(b) immediately terminate this Agreement.

21.7 Any notice served by the Council under clause 21.6 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).

**22. ASSIGNMENT AND OTHER DEALINGS**

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

22.2 The Council may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

**23. NO PARTNERSHIP OR AGENCY**

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

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

**24. THIRD PARTY RIGHTS**

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

**25. NOTICES**

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

**For the Council**

Name: Lorna Brooke, Corporate Head of Community Housing

Address: Community Housing, Directorate of Place, Royal Borough of Agreement for the Provision of Services: Medical Advisory Services (Housing Applications)

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Kingston, Guildhall , Kingston, KT1 1EU.

Email: lorna.brooke@kingston.gov.uk

**For the Provider**

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

(a) if delivered personally, when left at the address referred to in clause 25.1; or

(b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed or;

(d) if sent by email upon receipt of a letter sent by first class or recorded pricedelivery post or other next Business Day delivery service confirming

the content of the email.

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

**26. DISPUTE RESOLUTION PROCEDURE**

26.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together

with relevant supporting documents. On service of the Dispute

Notice, the contract manager of the Council and the contract

manager of the Provider shall attempt in good faith to resolve the

Dispute;

(b) if the contract manager of the Council and the contract manager of the Provider are for any reason unable to resolve the Dispute within

30 (thirty) days of service of the Dispute Notice, the Dispute shall be

referred to the Head of the Service of the Council and the Head of

the Service of the Provider who shall attempt in good faith to resolve

it; and

(c) if the Head of the Service of the Council and the Head of the Service of the Provider are for any reason unable to resolve the Dispute

within 20 (twenty) days of it being referred to them, the parties will

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attempt to settle it by mediation in accordance with the CEDR Model

Mediation Procedure. Unless otherwise agreed between the parties,

the mediator shall be nominated by CEDR Solve. To initiate the

mediation, a party must serve notice in writing (**ADR notice**) to the

other party to the Dispute, requesting a mediation. A copy of the

ADR notice should be sent to CEDR Solve. The mediation will start

not later than 20 (twenty) days after the date of the ADR notice.

26.2 If the Dispute is not resolved within 20 (twenty) days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 20 (twenty) days, or the mediation terminates before the expiration of the said period of 20 (twenty) days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 27 (Governing Law) and clause 28 (Jurisdiction).

26.3 The parties agree that notwithstanding any Dispute, the Provider will continue to deliver the Services and the Council will continue to pay for such Services in accordance with this Agreement.

**27. GOVERNING LAW**

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

**28. JURISDICTION**

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

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

EXECUTED

by **THE ROYAL BOROUGH OF**

**KINGSTON UPON THAMES** acting by

and under the signature of:

…………………………………………

Authorised Signatory

Name: Lorna Brooke

Position: Corporate Head

of Community Housing

**EXECUTED**

by

acting by and under the signature of:

.................................

Name:

Signature

Position:

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**Schedule 1 Specification**

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