

DATED _____ 2022

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL (BCP) (1)

- and -

..... (2)

CONTRACT
for Service Provision and Support Grant for Service Provision at St Stephen's House
Bournemouth

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SCHEDULE

This agreement is dated

[DATE]

Parties

- (1) **BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL** of BCP Council Offices, Town Hall, Bournemouth, BH2 6DY (**Council**)
- (2) (**Provider**)

BACKGROUND

- (A) The Council intends to establish a Homeless and Health Hub at St Stephens House, Bournemouth to provide the Services as given in the Service Specification in this Agreement.
- (B) The Council placed a contract notice.....on.....Find a Tender for the provision of Services as mentioned in Para A above.
- (C) The Council has, through a compliant competitive process, selected the Provider to provide these services and the Provider is willing and able to provide the services in accordance with the terms and conditions of this agreement.

Agreed terms

1. Definitions and Interpretation

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

Achieved KPIs: in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question.

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

Authorised Representatives: the persons respectively designated as such by the Council and the Provider, the first such persons being set out in Schedule 6.

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

Bribery Act: the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Continuity Event: an event defined as a business continuity event in the Business Continuity Plan.

Business Continuity Plan: a plan which sets out the procedures to be adopted by the Provider in the case of any events as provided in Schedule 1, or loss or damage to premises, loss of key staff, loss of IT/data, telecommunications, utilities, key partner or Provider, disruption due to severe weather, pandemic infection affecting Staff and/or death of a Service Users by reason of a Business Continuity Event (including the procedures to be taken by the Provider in planning and providing for any such event), the Business Continuity Plan at the date of this agreement being set out in Schedule 7.

Catastrophic Failure:

Catastrophic Failure will include:

- a) any action by the Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Council's Authorised Representative has or may cause significant harm to the reputation of the Council
- b) any serious safeguarding concern of the Council or a regulatory body of imminent risk to health and wellbeing of the Service Users;
- c) where the provider as a result of negligence fails to identify and manage the risk to the Service Users which results in actual harm to the wider community.

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

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

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 8.

Charges: the charges which shall become due and payable by the Council to the Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 5.

Commencement Date:

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

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, providers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) Personal Data;
- d) any Commercially Sensitive Information.

Contract Year: a period of 12 months, commencing on

Controller: as defined in the GDPR.

Council Assets: any equipment provided by the Council to the Provider for use in providing the Services as identified in Schedule 12.

St Stephen's House: the newly acquired Council Premises at St Stephen's Way Bournemouth BH2 6JZ identified in Schedule 12 and which are to be made available for use by the Provider for the provision of the Services on the terms set out in this agreement and subject to the Lease.

Data Loss Event: means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Protection Legislation: means (i) GDPR, the LED and any applicable national implementing Laws as amended from time to time, (ii) the DPA 2018 (iii) all applicable Laws relating to Personal Data and privacy.

Data Protection Officer: shall each take the meanings given in the GDPR.

Data Subject: shall have the same meaning as set out in the GDPR.

Data Subject Access Request: means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

Default: any breach of the obligations of the relevant party (including abandonment of this agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence of statement:

- a) in the case of the Council, of its employees, servants, agents;
- b) in the case of the Provider, of its Sub-contractors or any Staff,

in connection with or in relation to the subject matters of this agreement and in respect of which such party is liable to the other.

Default Notice: is defined in clause 5.3.

Dispute Resolution Procedure: the procedure set out in clause 21.

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

Exit Management Plan: the plan set out in 9.

Extension period: shall have the meaning given to it in clause 3.1.

FFE: means the fixtures, furniture and equipment including white goods acquired by the Provider to furnish the accommodation at St Stephen's House pursuant to Schedule 1 and set out in Appendix 2 to that Schedule.

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

Force Majeure: any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- f) collapse of buildings, fire, explosion or accident; and
- g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Provider's workforce or the workforce of any Subcontractor of the Provider).

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

Health and Safety Policy: the health and safety policy of the Council as provided to the Provider on or before the Commencement Date and as subsequently provided to the Provider from time to time except any provision of any such subsequently provided policy

that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

Implementation Plan: means the implementation plan prepared by the Provider for the provision of the Services set out in Schedule 4.

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

Initial Term: the period commencing on the Commencement Date and ending on the fifth anniversary of the Commencement Date.

Insolvency Event: where:

- a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- b) the 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 that other party;
- c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- e) 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;
- f) 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;
- g) 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 other party's assets and such attachment or process is not discharged within 14 days;

- h) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or
- i) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, 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.

KPIs: the key performance indicators set out in Schedule 2.

Key Personnel: those personnel identified Schedule 6 for the roles attributed to such personnel, as modified pursuant to clause 14.

Law: means any legal provision the Provider must comply with including 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, whether in the UK or elsewhere.

Lease: the lease to be entered into between the Council and Provider in the form set out in Schedule 12.

LED: Law Enforcement Directive (Directive (EU) 2016/680).

Management Reports: the reports to be prepared and presented by the Provider in accordance with clause 18 and Schedule 6 to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

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

Ombudsman: the Local Government & Social Care Ombudsman or (any successor organisation).

Payment Plan: the plan for payment of the Support Grant as set out in Schedule 5.

Personal Data: shall have the same meaning as set out in the GDPR.

Processor: shall have the same meaning as set out in the GDPR.

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

Protective Measures: means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.

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

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

Provider's Tender: the tender submitted by the Provider and other associated documentation set out in Schedule 2.

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

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

Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

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

Remediation Notice: a notice served by the Council in accordance with clause a-.

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

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

Representatives: means, in relation to a party, its employees, officers, representatives and advisors.

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

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

Service Credits: a sum which the Council is entitled to deduct or invoice for a Service Failure as specified in Part 2 of Schedule 2.

Service Failure: a shortfall or failure by the Provider to provide the Services in accordance with any Target KPI, as specified in Part 2 of Schedule 2.

Service Users: means homeless persons, vulnerable people and any other resident of the BCP Council area who uses the services provided at the Homeless and Health Hub at St Stephen's House.

Strategic Partners: means public bodies, charities, Police, Bournemouth Health and Care NHS Foundation Trust, companies limited by guarantee and other bodies (including consultants and contractors) who have been commissioned or coordinated to undertake works and/or services by the Council, its agents and employees at St Stephen's House.

Sub-Contract: any contract or agreement, or proposed contract or agreement, between the Provider and a third party pursuant to which that third party agrees to provide to the Provider the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services.

Sub-Contractor: the third parties that enter into a Sub-Contract with the Provider.

Sub-processor: means any third party appointed to process Personal Data on behalf of the Provider related to this agreement.

Support Grant: means annual payment of £101K which will be given to the Provider during each Contract Year of this agreement during the Initial Term.

Target KPI: the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Schedule 1.

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

- a) any Extension Period; or

- b) the earlier termination of this agreement in accordance with its terms.

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

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

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

Working Hours: as provided in the Service Specification Schedule 1.

- 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 and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.9 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, or re-enacted on or after exit day at the date of this agreement.
- 1.10 A reference to **writing** or **written** includes e-mail.
- 1.11 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 A reference in this agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

- 1.13 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.
- 1.14 Any words following the terms including, include, in particular 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.
- 1.15 If there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
- i- the clauses of the agreement;
 - ii- Schedule 1 to this agreement;
 - iii- the remaining schedules to this agreement other than Schedule 2;
 - iv- Schedule 2 to this agreement.

Commencement and duration

2. Term

- 2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. Extending the Initial Term

- 3.1 The Council, in its sole discretion, considering performance of the Provider extend this agreement beyond the Initial Term by a further period of five (5) years (the "**Extension Period**"). The Council will be entitled to extend the agreement for three (3) more Extension Periods of five (5) year each making a total aggregate Term of twenty-five (25) years. If the Council wishes to extend this agreement, it shall give the Provider at least six (6) months' written notice of such intention before the expiry of the Initial Term or any of the Extension Periods Extension Period.
- 3.2 If the Council gives extension notice as per clause 3.1 above, then the Term shall be extended by the period set out in the notice.
- 3.3 If the Council does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 35 shall apply.
- 3.4 For avoidance of doubt, the grant support money will be available to the Provider for the Initial Term. No grant support will not be provided to the Provider during any of the Extension Periods and the Provider is expected explore and tap other funding sources to sustain any costs for provision of the Services under this agreement.

4. Due diligence and Provider's warranty

4.1 The Provider acknowledges and confirms that:

- a- the Council has delivered or made available to the Provider all of the information and documents that the Provider considers necessary or relevant for the performance of its obligations under this agreement;
- b- it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause a-;
- c- it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of St Stephen's House); and
- d- it has entered into this agreement in reliance on its own due diligence.

4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.3 The Provider:

- a- warrants and represents that all information and statements made by the Provider as a part of the procurement process, including without limitation the Provider's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
- b- shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.

4.4 The Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Provider in accordance with clause b-, save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Council

or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

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

The services

5. Supply of services

- 5.1 The Provider shall provide the Services to the Council with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation Schedule 1.
- 5.2 The Provider shall comply with the Council's instructions and work with the Council's Strategic Partners when delivering Services at St Stephen's House and at any other premises as directed by the Council.
- 5.3 In the event that the Provider does not comply with the provisions of clause 5.1 in any way, the Council may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**).

6. KPIs

- 6.1 Where any Service is stated in Schedule 1 to be subject to a specific KPI, the Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 6.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined and included within Schedule 2.
- 6.3 The Provider shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 18.

7. Service standards

Without prejudice to clause 6, the Provider shall provide the Services, or procure that they are provided:

- a- with reasonable skill and care and in accordance with Best Industry Practice;
- b- in all respects in accordance with the Council's policies set out in Schedule 1; and
- c- in accordance with all applicable Law.

8. Compliance

- 8.1 The Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 8.2 Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Provider has notified the Council in writing.
- 8.3 The Provider shall (and shall procure that the Staff shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- a- all applicable Law regarding health and safety;
 - b- the Health and Safety Policy whilst at St Stephen's House;
 - c- all applicable safer recruitment practices;
 - d- all applicable accredited training programmes.
- 8.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at St Stephen's House of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Provider shall instruct the Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.5 Without limiting the general obligation set out in clause 7, the Provider shall (and shall procure that the Staff shall):
- a- perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - b- all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - c- the Council's equality and diversity policy as provided to the Provider from time to time;
 - d- any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law;
 - e- take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);

- f- at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998;
- g- when working at St Stephen's House where the Services are being provided, perform this agreement in accordance with the Council's environmental policy, which is committed to the prevention of pollution, reduction of our CO2 emissions, minimise the environmental impacts associated with all activities, products and services of the Council's business;
- h- follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that the Services are procured, and delivered in ways that are appropriate from an environmental protection perspective; and
- i- comply with all applicable environmental legislation and other requirements as appropriate to the Services, which may apply in the performance of this agreement

9. Council's Premises and Assets

- 9.1 The Council shall, subject to clause 8 and clause 15 and the provisions of the Lease, provide the Provider (and its Sub-Contractors) with access to such parts of the Council's Premises as the Provider reasonably requires for the purposes only of providing the Services. The Provider's right of access will terminate upon termination of this agreement, subject to clause 9.3.
- 9.2 The Council shall provide the Provider with such accommodation and facilities in the Council's Premises as is specified in Schedule 12 or which is otherwise agreed by the parties from time to time.
- 9.3 Subject to the requirements of clause 35 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Council shall on reasonable notice provide the Provider with such access as the Provider reasonably requires to the Council's Premises to remove any of the Provider's equipment. All such equipment shall be promptly removed by the Provider.
- 9.4 The Provider shall ensure that:
 - a- where using the Council's Premises and any Council Assets they are kept properly secure and it will comply and cooperate with the Council's security requirements from time to time regarding the security of the same;
 - b- only those of the Staff that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so; and

- c- any Council Assets are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.

9.5 The Provider shall:

- (a) maintain, restore and repair any Council Assets used during the Term;
- (b) ensure that Council Assets are not removed from St Stephen's House unless expressly permitted under this agreement or by the Council's Authorised Representative; and
- (c) replace the Council's Assets which may be or become beyond economic repair at any time during or at end of the Term such replacement to be of comparable quality and design

9.6 The Council shall maintain or repair or replace the Council Assets, where such maintenance, or repair or replacement arises directly from the act, omission, default or negligence of the Provider or its representatives the costs incurred by the Council in maintaining or repairing or replacing the same shall be recoverable from the Provider as a debt.

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

9.8 Subject to clause 24 the Provider shall indemnify the Council against all and any damage to St Stephen's House and the Council Assets caused by the same.

10. FFE

10.1 The Provider shall:

- a- fit out St Stephen's House with the FFE items;
- b- comply with the Council's instructions regarding the provision and installation of FFE items and working with Strategic Partners at St Stephen's House.

10.2 The Provider shall, in every third year of the Term, replace FFE items at the request of and with the written agreement of the Council.

10.3 The Provider shall be responsible for the disposal costs of any FFE item replaced in accordance with clause 10.2.

- 10.4 Upon the expiry or termination of this agreement the Provider shall assign to the Council or any third party nominated by the Council all FFE items in St Stephen's House or any replacement thereof at the nominal value of £1.
- 10.5 For the avoidance of any doubt FFE items acquired by the Council pursuant to clause 10.4 shall belong to the Council and become Council Assets on the expiry or termination of this agreement.

11. Business Continuity

- 11.1 The Provider shall comply at all times with the relevant provisions of the Business Continuity Plan.
- 11.2 Following the declaration of a Business Continuity Event in respect of any of the Services, the Provider shall:
- a- implement the Business Continuity Plan;
 - b- continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and
 - c- restore the affected Services to normal within the period laid out in the Business Continuity Plan.

To the extent that the Provider complies fully with the provisions of this clause 11 (and the reason for the declaration of a Business Continuity Event was not breach of any of the other terms of this agreement on the part of the Provider), the KPIs to which the affected Services are to be provided during the continuation of the Business Continuity Event shall not be the KPIs as referred to in clause 6 but shall be the KPIs set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

12. Payment

- 12.1 In consideration of the provision of the Services by the Provider in accordance with the terms and conditions of this agreement, the Council shall pay the Charges to the Provider in accordance with the Schedule 5.
- 12.2 For avoidance of doubt the payments made under the agreement are in the nature of Support Grant to help the Provider to be able to deliver the Services during the Initial Terms along with other funding streams which may be available to the Provider. Such Support Grant shall not be paid during any Extension Period and it is expected that the Provider by that time will be able to tap other funding sources to be able to provide the Services under this agreement as per the given Specifications.

- 12.3 The Charges are stated exclusive of VAT, which, if found applicable on such payment, shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this agreement.
- 12.4 The Council may at any time, 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. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 13. Service credits**
- 13.1 If the Provider commits a Service Failure, the Authority shall be entitled to either submit an invoice to the Provider or make deductions from the Charges corresponding to Service Credit set out in Part 2 of Schedule 2.

Staff

14. Key personnel

- 14.1 The Provider shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Term. Schedule 6 lists the Key Roles and names of the persons who the Provider shall appoint to fill those Key Roles as at the Commencement Date.
- 14.2 The Council may identify any further roles as being Key Roles and following agreement to the same by the Provider the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.3 The Provider shall not remove or replace any Key Personnel (including when carrying out and/or complying with its duties and obligations under Schedule 6 unless;
- (a) requested to do so by the Council;
 - (b) the person resigns, retires or dies or is on maternity or paternity leave or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Provider or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Provider obtains the Council's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.4 The Provider shall:

(a) notify the Council promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Provider shall ensure appropriate temporary cover for that Key Role;

(b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

(c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract this will mean at least thirty (30) Working Days' notice;

(d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Service; and

(e) ensure that any replacement for a Key Role:

(i) has a level of qualifications and experience appropriate to the relevant Key Role; and

(ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

14.5 If the Provider replaces any of the Key Personnel the cost of effecting such replacement shall in all circumstances be borne by the Provider.

15. Other personnel used to provide the services

15.1 At all times, the Provider shall ensure that:

a- each of the Staff is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

b- there is an adequate number of Staff to provide the Services properly in accordance with Schedule 1 and other provisions of this Agreement;

c- only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and

d- all of the Staff comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.

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

15.3 The Provider shall replace any of the Staff who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Staff for any reason, the Provider shall ensure such person is replaced promptly with

another person with the necessary training and skills to meet the requirements of the Services.

- 15.4 The Provider shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Staff. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 15.5 The Provider shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

16. Safeguarding children and vulnerable adults

- 16.1 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 16.2 The Provider shall:
- a- ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
 - b- monitor the level and validity of the checks under this clause 16.2 for each member of staff;
 - c- not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 16.3 The Provider shall ensure that at all times during the Term DBS live update system checks are undertaken for all Staff and that any new appointments of Staff will only be made to applicants with a satisfactory DBS live update system check taking into consideration the provisions and regulations under the Rehabilitation of Offenders Act 1974. The Provider acknowledges that existing DBS checks are not transferable.
- 16.4 The Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

- 16.5 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 16 have been met.
- 16.6 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users OR children OR young people OR vulnerable adults.

17. TUPE

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

Contract management

18. Reporting and meetings

- 18.1 The Provider shall provide the Management Reports in the form and at the intervals set out in Schedule 6.
- 18.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 6 and the Provider shall, at each meeting, present its previously circulated Management Reports [and Financial Reports] in the format set out in that Schedule.

19. Monitoring

- 19.1 The Council shall monitor the performance of the Services by the Provider.
- 19.2 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 19.1 at no additional charge to the Council.

20. Change control, benchmarking and continuous improvement

- 20.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 20.2 The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Provider shall identify and report to the Council's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
- a- the emergence of new and evolving relevant technologies which could improve the Services;

- b- new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
- c- new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
- d- changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.

20.3 Any potential Changes highlighted as a result of the Provider's reporting in accordance with clause 20.2 shall be addressed by the parties using the Change Control Procedure.

21. Dispute resolution

21.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- a- either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- b- if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Chief Executive and the Provider's Chief Executive who shall attempt in good faith to resolve it; and
- c- if the Council's Chief Executive and the Provider's Chief Executive are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. 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. The mediation will start not later than 30 days after the date of the ADR notice.

21.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 47 which clause shall apply at all times.

22. Sub-Contracting and assignment

- 22.1 Subject to clause 22.3, neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council, such consent not to be unreasonably withheld.
- 22.2 In the event that the Provider enters into any Sub-Contract in connection with this agreement it shall:
- a- remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - b- impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - c- provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
- 22.3 The Council shall be entitled to novate (and the Provider shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.
- 22.4 Provided that the Council has given prior written consent, the Provider shall be entitled to novate the agreement where:
- a- the specific change in contractor was provided for in the procurement process for the award of this agreement;
 - b- there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

Liability

23. Indemnities

- 23.1 Subject to clause 23.2, the Provider shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:
- a- the Provider's breach or negligent performance or non-performance of this agreement;

- b- any claim made against the Council arising out of or in connection with the provision 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 or Staff;
- c- the enforcement of this agreement.

23.2 The indemnity under clause 23.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this agreement by the Council or its Representatives.

24. Limitation of liability

24.1 Subject to clause 24.2, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

24.2 Notwithstanding the provisions of clause 24.1, the Provider assumes responsibility for and acknowledges that the Council may, amongst other things, recover:

- a- sums paid by the Council to the Provider pursuant to this agreement, in respect of any services not provided in accordance with the agreement;
- b- wasted expenditure;
- c- additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
- d- losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Staff, regulator or customer of the Council) against the Council caused by the act or omission of the Provider;

24.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.

24.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- i- fraud or fraudulent misrepresentation;

- ii - death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
- iii - breach of any obligation as to title implied by statute; or
- v- any other liability for which may not be limited under any applicable law.

25. Insurance

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

- i- public liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
- ii- employer's liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;

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

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

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

25.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the agreement.

25.5 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

Information

26. Freedom of information

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

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

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

26.3 Notwithstanding any other term of this agreement, the Provider consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

26.4 The Council shall, prior to publication, consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Provider shall assist and co-operate with the Council to enable the Council to publish this agreement.

27. Data processing

27.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Schedule 14 by the Council and may not be determined by the Provider

27.2 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

27.3 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

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

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

- a- process that Personal Data only in accordance with Schedule 14, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- b- ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - i- nature of the data to be protected;;
 - ii- harm that might result from a Data Loss Event;
 - iii- state of technological development; and
 - iv- cost of implementing any measures;

ensure that:

- the Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 14);
- it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - are aware of and comply with the Provider's duties under this Clause;
 - are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by

the Council or as otherwise permitted by this Agreement;
and

- have undergone adequate training in the use, care, protection and handling of Personal Data; and
- not transfer Personal Data outside of the European Economic Area (“**EEA**”) unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
- the Data Subject has enforceable rights and effective legal remedies;
- 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
- the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- at the written direction of the Council, delete or return all Personal Data (and any and all copies of it) to the Council on termination of this Agreement unless the Provider is required by Law to retain the Personal Data.

27.5 Subject to Clause 27.6, the Provider shall notify the Council immediately if it:

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

- f- becomes aware of a Data Loss Event.
- 27.6 The Provider's obligation to notify under Clause 27.5 shall include the provision of further information to the Council in phases, as details become available
- 27.7 Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 27.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
 - a- the Council with full details and copies of the complaint, communication or request;
 - b- such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - c- the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d- assistance as requested by the Council following any Data Loss Event;
 - e- assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 27.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with Article 30 of the GDPR and this Clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
 - a- the Council determines that the processing is not occasional;
 - b- the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - c- the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 27.9 The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 27.10 The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 27.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:
 - a- notify the Council in writing of the intended Sub-processor and processing;

- b- obtain the written consent of the Council;
- c- enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 27 such that they apply to the Sub-processor; and
- d- provide the Council with such information regarding the Sub processor as the Council may reasonably require.

27.12 The Provider shall remain fully liable for all acts or omissions of any Sub-processor

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

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

27.15 Where the Parties include two or more Joint Controllers as identified in Schedule 14 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 14 in replacement of Clauses 25.1 – 25.14 for the Personal Data under Joint Control.

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

28. Confidentiality

28.1 Subject to clause 28.2, each party shall keep the other party's Confidential Information confidential and shall not:

- a- use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
- b- disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 28.

28.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

- a- which the other party confirms in writing is not required to be treated as Confidential Information;
- b- which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

- c- which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
- d- which is in or enters the public domain other than through any disclosure prohibited by this agreement;
- e- which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
- f- which is disclosed by the Council on a confidential basis to any central government or regulatory body.

28.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

- a- it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- b- it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- c- and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 28.3.

28.4 The provisions of this clause 28 shall survive for a period of 6 years from the Termination Date.

29. Audit

29.1 During the Term and for a period of six (6) years after the Termination Date, 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 the accounts maintained in relation to provision of the Services.
- b- to review the integrity, confidentiality and security of any data relating to the Council or any Service User;
- c- to review the Provider's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 27 (Data Protection) and clause 26 (Freedom of Information) and any other legislation applicable to the Services;
- d- to review any records created during the provision of the Services;
- e- to review any books of account kept by the Provider in connection with the provision of the Services;

- f- to carry out the audit and certification of the Council's accounts;
 - g- to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - h- to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 29.2 Except where an audit is imposed on the Council by a regulatory body or where the Council has reasonable grounds for believing that the Provider has not complied with its obligations under this agreement, the Council may not conduct an audit under this clause 29 more than twice in any calendar year.
- 29.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 29.4 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, including:
 - a- all information requested by the above persons within the permitted scope of the audit;
 - b- reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - c- access to the Staff.
- 29.5 The Council shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 29.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this 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.
- 29.7 If an audit identifies that:
 - a- the Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;

- b- the Council has overpaid any Charges, the Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
- c- the Council has underpaid any Charges, the Council shall pay to the Provider the amount of the under-payment [less the cost of audit incurred by the Council if this was due to a default by the Provider in relation to invoicing within 20 days.

30. Intellectual property

30.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Provider or Staff:

- i- in the course of performing the Services; or
- iii- exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

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

Termination

31. Termination for breach

31.1 The Council may terminate this agreement in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:

- a- if the Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Council may only terminate this agreement under this clause 31.1 if the Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;
- b- if a Catastrophic Failure has occurred;
- c- if there is an Insolvency Event.
- d- if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010.]
- e- the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

31.2 The Council may terminate this agreement in accordance with the provisions of clause 33 and clause 34.

31.3 If this agreement is terminated by the Council pursuant to this clause 31, such termination, subject to clause 24.1, shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination.

32. Termination on notice

Without affecting any other right or remedy available to it, the Council may terminate this agreement at any time by giving twelve (12) months' written notice to the Provider.

33. Force majeure

33.1 Provided it has complied with the remaining provisions of this Clause 33, 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.

33.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

33.3 The Affected Party shall:

- a- as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- b- use all reasonable endeavours to mitigate the effect of the Force Majeure Event
- c- resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

33.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Provider cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Provider should have foreseen and provided for the cause in question.

33.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall

continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

- 33.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving two weeks' notice to the Affected Party.

34. Prevention of bribery

- 34.1 The Provider represents and warrants that neither it, nor any Staff:

- a- has committed a Prohibited Act;
- b- to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
- c- has 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.

- 34.2 The Provider shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 34.1 at the relevant time.

- 34.3 The Provider shall (and shall procure that its Staff shall):

- a- not commit a Prohibited Act; and/or
- b- not do or omit to do anything that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- c- comply with the Council's Anti-bribery and Anti-Corruption Policy as updated from time to time;
- d- promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with performance of this agreement.

- 34.4 The Provider shall maintain appropriate and up to date records showing all payments made by the Provider in connection with this agreement and the steps taken to comply with its obligations under clause 34.3.

- 34.5 The Provider shall allow the Council and its third party representatives to audit any of the Provider's records and any other relevant documentation in accordance with clause 29. If as a result of such Audit it is found that a Prohibited Act has been committed, the Council may:
- a- require the Provider to remove from performance of this agreement any Staff whose acts or omissions have caused the Default; or
 - b- immediately terminate this agreement.
- 34.6 Any notice served by the Council under clause 34.6 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).
- 35. Consequences of termination or expiry**
- 35.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason, the provisions of the Exit Management Plan shall come into effect and the Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Provider.
- 35.2 On termination or expiry of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Provider [Authorised Representative or Chief Executive Officer] shall certify full compliance with this clause.
- 35.3 Any provision of this agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, including clause 6.3 (provision of records), clause 23 (Indemnities), clause 24 (Limitation of Liability), clause 25 (Insurance), clause 26 (Freedom of Information), clause 27 (Data Protection), clause 28 (Confidentiality), clause 29 (Audit), clause 31 (Termination for Breach) and this clause 35 (Consequences of termination), shall remain in full force and effect.
- 35.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

General provisions

36. Waiver

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

37. Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

38. Severability

- 38.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 38.2 If any provision or part-provision of this agreement is deemed deleted under clause 38.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

39. Statutory Functions

Nothing in this agreement shall be read as preventing or inhibiting the Authority, from carrying out any such statutory or regulatory duty as they may be under or as derogating there from, or as inhibiting or fettering the exercise of any statutory or regulatory power which they may possess.

40. Complaints and Ombudsman Proceedings

- 40.1 Complaints arising in connection with these Services shall be addressed and recorded in accordance with the terms of this agreement.
- 40.2 The Provider shall as from the Commencement Date have in place a complaints procedure (a copy of which it shall produce to the Council immediately on request) which sets out a clear procedure for the recording and resolution of all complaints.
- 40.3 The Provider shall deal with all complaints promptly and efficiently in accordance with the provisions of its procedure under Clause 40.2.
- 40.4 The Provider shall maintain a full and up to date record of all complaints and their outcomes and shall make such record available to the Council for inspection upon request.

- 40.5 The Council shall promptly notify the Provider of any complaints it receives in connection with the Services provided under this Contract in order that the Provider may make timely investigations, unless the Council has reason to believe that the safety of the complainant or any other person would be compromised by such notification
- 40.6 On written request from the Council's Authorised Representative and subject to its obligations under Clauses 27 and 28, the Provider or any of the Staff shall provide to the Council all relevant information it is reasonably able to provide (including but not limited to documentation and statements from any employee, agent, officers or sub-contractor) and shall co-operate fully with and provide reasonable assistance and give evidence in connection with:
- a- any legal or quasi-legal inquiry, arbitration or court proceedings in which the Council may become involved; or
 - b- any internal disciplinary hearing; or
 - c- any investigation by the relevant Ombudsman
- arising out of or in connection with these Services.
- 40.7 The Provider and the Council shall take all reasonable steps to ensure that no detriment is suffered, either by the complainant, a Service User, the Provider, the Council or by any other person who is not the subject of a substantiated complaint as a consequence of any complaint made in connection with the provision of the Services.

41. Partnership or agency

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

42. Third party rights

- 42.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 42.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

43. Publicity

The Provider shall not:

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

except as required by law, any government or regulatory Council, any court or other Council of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

44. Notices

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

- a- delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- b- sent by email to the address specified in this agreement or duly provided by the parties to each other specifically for this purpose.

44.2 Any notice shall be deemed to have been received:

- a- if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- b- if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- c- if sent by email, at the time of transmission, or if this time falls outside working hours in the place of receipt, when working hours resume. In this clause c-, working hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

45. Entire agreement

45.1 This agreement and the documents referred to in it 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.

45.2 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.

46. Counterparts

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

47. 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.

48. Jurisdiction

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

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

Schedule 1 Specification

Bournemouth, Christchurch and Poole Council
Homeless and Health Hub

Specification of Services for St Stephen's House

Schedule 2 Performance regime

Part 1 KPIs

5. The KPIs

- 5.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Provider are contained in the below table

Year 1 to 3

Reference	KPI	Target Year 1	Target Year 2	Target Year 3
KPI-1	Minimum staffing levels	75-85%	85-95%	Sustain at 95% or exceed
KPI-2*	Required support hours	90 -100%%	90-100%	90-100%
KPI-3	Level of Service use	60-70%	70-75%	75-85%
KPI-4	Maintenance carried out in a timely manner as identified in the specification requirements	90%	90%	90%

Part 2 Service credits

5. Calculation of service credits

- 5.1 Service Credits shall accrue for any Service Failure and shall be calculated in accordance with this Schedule.
- 5.2 If the level of performance of the Provider during a measurement period achieves the Target KPI, no service points shall accrue to the Provider in respect of that KPI.
- 5.3 If there is a Service Failure in the relevant measurement period:
- (a) the number of service points that shall accrue to the Provider in respect of a Service Failure shall be the applicable number as set out in the table below depending on whether the Service Failure is a Minor Failure, a Serious Failure or a Severe Failure. Service credits shall be calculated in accordance with the following formula:

Schedule 3 Provider's Tender

The Provider's Tender is appended hereto.

Stage A	Selection Questionnaire
Stage A	Quality Questions
Stage A	Pricing St Stephen's
Stage A	People Engagement – Welcome pack
Stage A	Mobilisation Plan
Stage B	Quality Questions
Stage B	Pricing St Stephen's
Stage B	People Engagement – Welcome pack
Stage B	Mobilisation GANTT
Stage B	TH Mobilisation and Software Cost
Stage C	Pricing St Stephen's

Stage A Documents

Schedule 4 Implementation Plan

The Provider's Implementation Plan is appended hereto.

Schedule 5 Support Grant and payment

1. The Support Grant for the Initial Term shall be:

(a) Initial Term

£

Year 1

Year 2

Year 3

Year 4

Year 5

4. Any overspend in connection with the provision of the Services will be borne by the Provider and the Council shall be under no obligation whatsoever to pay to the Provider any sums in addition to the Charges unless such sums have been agreed as a variation in accordance with Clause 18.
5. Any amounts paid each Contract Year must be spent during that Contract Year. There is no provision for any underspend of the Charges to be carried forward to the next Contract Year. Any such underspend must be declared by the Provider and returned immediately to the Council whether demanded or not and shall be recoverable by the Council in accordance with Clause 11.
6. By deliberately or recklessly accepting payment in respect of Services not provided the Provider shall be in default. Any such action will be subject to fullest investigation. Overpayments made as a consequence of such default shall be required to be repaid to the Council forthwith and the Council reserves the right to deduct such sums from any sums owed by the Council to the Provider under this or any other agreement. Provided that the Council must at the same time as making a deduction notify the Provider of the deduction being made and the basis for the calculation and, insofar as there is a dispute between the parties as to the occurrence or not of the default or as to the amount deducted, Clause 18 shall apply.
7. The Council may at its discretion withhold or suspend payment of any instalment of the Support Grant and/or require repayment of all or part of the instalments of the Charges if:

- (a) the Provider uses the Charges for purposes other than for the provision of the Services;
- (b) the delivery of the Services does not start within six (6) months of the Commencement Date and the Provider has failed to provide the Council with a reasonable explanation for the delay;
- (c) the Council considers that the Provider has not made satisfactory progress with the delivery of the Services;
- (d) the Provider is, in the reasonable opinion of the Council, delivering the Services in a negligent manner;
- (d) the Provider provides the Council with any materially misleading or inaccurate information;
- (e) the Provider commits or committed a prohibited act within the meaning of the Bribery Act 2010;
- (f) any member of the governing body, Provider's Personnel or volunteer of the Provider has:
 - (i) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Services; or
 - (ii) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation into disrepute.

9 Wherever under the agreement any sum of money is recoverable from or payable by the Provider (including any sum that the Provider is liable to pay to the Council in respect of any breach of the agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other Contract or contract with the Council.

Schedule 6 Contract management

1. Authorised representatives

1.1 The Council Authorised Representative is

.....

1.2 The Provider's Authorised Representative:

.....

2. Key personnel

3. Meetings

3.1 Type

3.2 Quorum

3.3 Frequency

3.4 Agenda

4. Reports

4.1 Type

4.2 Contents

4.3 Frequency

4.4 Circulation list

All meetings and reporting arrangements to be in accordance with Schedule 1

Schedule 7 Business Continuity Plan

The Provider's Business Continuity Plan is appended hereto.

Schedule 8 Change control

1. General principles

- 1.1 Where the Council or the Provider sees a need to change this agreement, the Council may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 8.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Provider and the Provider Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 8, shall be undertaken entirely at the expense and liability of the Provider.

2. Procedure

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

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

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

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

- 2.6 A Change Control Note signed by the Council and by the Provider shall constitute an amendment to this agreement.

Schedule 9 Exit management plan

5. DEFINITIONS

5.1 In this Schedule, the following definitions shall apply:

Exit Assistance: the assistance to be provided by the Provider to the Council pursuant to paragraph 9 of Schedule 7.

Exit Plan: any plan produced and updated in accordance with paragraph 7 of this Schedule.

Exit Period: the period beginning on the earlier of

a- the date a Termination Notice is received by a party; or

b- six (6) months before the expiry of this agreement,

and ending three (3) months after the Termination Date.

6. PURPOSE OF SCHEDULE

6.1 The Provider is required to ensure the orderly transition of the Services to the Council or any replacement Provider (as applicable) in the event of any termination or expiry of this agreement. This Schedule describes the roles and responsibilities of the parties which are intended to achieve this, and the principles upon which the Exit Plan shall be based.

7. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

7.1 During the Term, the Provider shall:

(a) create and maintain registers of:

(i) all assets (excluding assets owned by the Council) required to perform the agreement, detailing their ownership status, whether they are used exclusively for this agreement, conditions and physical location;

(ii) subcontracts and other agreements (including software licences) required to perform the agreement;

(iii) risk register;

(b) compile and maintain a procedures manual, describing how the Services are delivered, including the processes used; and

(c) maintain copies of any subcontracts or other agreements referred to in the Registers.

- 7.2 Each party shall appoint a person for the purposes of managing the parties' respective obligations under this Schedule and provide written notification of such appointment to the other party within three months of the Commencement Date.

8. EXIT PLAN

- 8.1 The Provider shall, within three months of the Commencement Date, submit an Exit Plan to the Council which complies with the requirements of this Schedule.

- 8.2 The parties shall use their reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan within 21 Working Days of its submission, either party may refer the dispute to the Dispute Resolution Procedure.

- 8.3 The Exit Plan shall:

- (a) address each of the issues set out in this Schedule to facilitate the transition of the Services from the Provider to the replacement provider or Council (as applicable) and ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
- (b) detail how the Services will transfer to the replacement provider or Council (as applicable) including, to the extent applicable, details of the processes, documentation, data transfer, systems migration, security, and the segregation of the Council's technology components from any technology components run by the Provider or any of its sub-contractors;
- (c) provide a timetable for exit and compliance with the requirements of the agreement.

- 8.4 The Provider shall review and, if appropriate, update the Exit Plan on a basis consistent with the principles set out in this Schedule:

- (a) in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed; and
- (b) following any major change to the Services under the agreement.

- 8.5 During the Exit Period, the Provider shall comply with all of its obligations in the Exit Plan.

9. EXIT ASSISTANCE

- 9.1 During the Exit Period, the Provider shall:

- (a) provide the Council or replacement provider with the procedures manual compiled pursuant to paragraph 3.1(b);
- (b) provide access, during Working Hours, to the Council or replacement provider to:

- (i) any information relating to the goods or Services as remains in the possession or control of the Provider;
- (ii) such members of the Provider's Personnel involved in the provision of the performance of the agreement and who are still employed or engaged by the Provider.

10. TRANSFER OF ASSETS

- 10.1 At least 21 Working Days before the Termination Date, the Provider shall provide the Council with the Register referred to in paragraph 3.1(a)(i), indicating which assets are capable of legal transfer to the Council or replacement provider (as applicable).
- 10.2 The Council shall notify the Provider at least 14 Working Days after receipt of the list pursuant to paragraph 10.1 which, if any, assets need to be transferred to it or any replacement Provider. Risk in such transferring assets shall pass to the Council or replacement provider (as applicable) on the Termination Date and title shall pass to the Council or replacement provider (as applicable) on payment for the same.

11. TRANSFER OF CONTRACTS

- 11.1 At least 21 Working Days before the Termination Date, the Provider shall provide the Council with the up-to-date Register referred to in paragraph 2.1(a)(ii), identifying which contracts are used exclusively to deliver the Services.
- 11.2 The Council shall notify the Provider at least 14 Working Days after receipt of the list pursuant to paragraph 11.1 which exclusive third party contracts, if any, the Council requires to be transferred to it or any replacement provider.
- 11.3 The Provider shall, at the Council's request and with the co-operation of the Council, procure the novation to the Council or replacement provider (as applicable) of any transferring third party contracts notified to it under paragraph 11.2.

12. REPORTS

- 12.1 At least every month during the Exit Period, the Provider shall provide the Council with a report to confirm the progress of implementation of the Exit Plan.

Schedule 10 TUPE

1. Definitions

In this Schedule, the following definitions shall apply:

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;

Former Provider: a Provider supplying services to the Council before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Provider (or any sub-contractor of any such sub-contractor);

Provider Personnel: all directors, officers, employees, agents, consultants and contractors of the Provider and/or any Sub-contractor engaged in the performance of the Provider's obligations under this Agreement;

Provider's Final Personnel List: a list provided by the Provider of all Provider Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

Provider's Provisional Personnel List: a list prepared and updated by the Provider of all Provider Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Provider;

Relevant Transfer: a transfer of employment to which the Employment Regulations applies;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Replacement Services: any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Council internally and/or by any third party;

Replacement Provider: any third party service provider of Replacement Services appointed by the Council from time to time (or where the Council is providing replacement Services for its own account, the Council);

Replacement Sub-contractor: a sub-contractor of the Replacement Provider to whom Transferring Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Provider or any Sub-contractor to a Replacement Provider or a Replacement Sub-contractor;

Service Transfer Date: the date of a Service Transfer;

Staffing Information: in relation to all persons identified on the Provider's Provisional Personnel List or Provider's Final Personnel List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the DPA 1998), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

Transferring Provider Employees: those employees of the Provider and/or the Provider's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. Interpretation

Where a provision in this Schedule imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, the Provider shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Former Provider, Replacement Provider or Replacement Sub-contractor, as the case may be.

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

3. Procedure in the event of transfer

- 3.1 The Council and the Provider agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Council and/or any Former Provider.
- 3.2 If any employee of the Council and/or a Former Provider claims, or it is determined in relation to any employee of the Council and/or a Former Provider, that his/her contract of employment has been transferred from the Council and/or the Former Provider to the Provider and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - (a) the Provider shall, and shall procure that the relevant Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Council and, where required by the Council, give notice to the Former Provider; and
 - (b) the Council and/or the Former Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Provider or the Sub-contractor (as appropriate) or take such

other reasonable steps as the Council or Former Provider (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

3.3 If an offer referred to in paragraph 3.2(b) is accepted (or if the situation has otherwise been resolved by the Council and/or the Former Provider), the Provider shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

3.4 If by the end of the 15 Working Day period specified in paragraph 3.2(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Provider and/or the Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

4. Indemnities

4.1 Subject to the Provider and/or the relevant Sub-contractor acting in accordance with the provisions of paragraph 3.2 to paragraph 3.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 4.4, the Council shall:

- (a) indemnify the Provider and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Council referred to in paragraph 3.2 made pursuant to the provisions of paragraph 3.4 provided that the Provider takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) procure that the Former Provider indemnifies the Provider and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Provider made pursuant to the provisions of paragraph 3.4 provided that the Provider takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

4.2 If any such person as is described in paragraph 3.2 is neither re employed by the Council and/or the Former Provider as appropriate nor dismissed by the Provider and/or any Sub-contractor within the 15 Working Day period referred to in paragraph 3.4 such person shall be treated as having transferred to the Provider and/or the Sub-contractor (as appropriate)

and the Provider shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

4.3 Where any person remains employed by the Provider and/or any Sub-contractor pursuant to paragraph 4.2, all Employee Liabilities in relation to such employee shall remain with the Provider and/or the Sub-contractor and the Provider shall indemnify the Council and any Former Provider, and shall procure that the Sub-contractor shall indemnify the Council and any Former Provider, against any Employee Liabilities that either of them may incur in respect of any such employees of the Provider and/or employees of the Sub-contractor.

4.4 The indemnities in paragraph 4.1:

- (a) shall not apply to:
 - (i) in any case in relation to any alleged act or omission of the Provider and/or any Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (ii) any claim that the termination of employment was unfair because the Provider and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 3.2(a) is made by the Provider and/or any Sub-contractor to the Council and, if applicable, Former Provider within six months of the Effective Date.

5. Procurement obligations

Where in this schedule the Council accepts an obligation to procure that a Former Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Council's contract with the Former Provider contains a contractual right in that regard which the Council may enforce, or otherwise so that it requires only that the Council must use reasonable endeavours to procure that the Former Provider does or does not act accordingly.

EMPLOYMENT EXIT PROVISIONS

6. Pre-service transfer obligations

6.1 The Provider agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer;

- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Council at any time (provided that the Council shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the DPA 1998, the Provider's Provisional Personnel List, together with the Staffing Information in relation to the Provider's Provisional Personnel List and it shall provide an updated Provider's Provisional Personnel List at such intervals as are reasonably requested by the Council.

- 6.2 At least 28 Working Days prior to the Service Transfer Date, the Provider shall provide to the Council or at the direction of the Council to any Replacement Provider and/or any Replacement Sub-contractor:
- (a) the Provider's Final Personnel List, which shall identify which of the Provider Personnel are Transferring Provider Employees; and
 - (b) the Staffing Information in relation to the Provider's Final Personnel List (insofar as such information has not previously been provided).
- 6.3 The Council shall be permitted to use and disclose information provided by the Provider under paragraph 6.1 and paragraph 6.2 for the purpose of informing any prospective Replacement Provider and/or Replacement Sub-contractor.
- 6.4 The Provider warrants, for the benefit of the Council, any Replacement Provider, and any Replacement Sub-contractor that all information provided pursuant to paragraph 6.1 and paragraph 6.2 shall be true and accurate in all material respects at the time of providing the information.
- 6.5 From the date of the earliest event referred to in paragraph 6.1(a), paragraph 6.1(b) and paragraph 6.1(c), the Provider agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Provider's Provisional Personnel List and shall not without the approval of the Council (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Provider Personnel listed on the Provider Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Provider Personnel (including any payments connected with the termination of employment);

- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Council or, at the direction of the Council, any Replacement Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Provider or relevant Sub-contractor or received from any persons listed on the Provider's Provisional Personnel List regardless of when such notice takes effect.

6.6 During the Term, the Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

6.7 The Provider shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Council, any Replacement Provider and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Council or, at the direction of the Council, to any Replacement Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Provider's Final Personnel List who is a Transferring Provider Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;

- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

7. Employment regulations exit provisions

- 7.1 The Council and the Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Provider and/or a Replacement Sub-contractor. Such change in the identity of the Provider of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Council and the Provider further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Provider and the Transferring Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Provider and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Provider Employee.
- 7.2 The Provider shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Provider Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Provider and/or the Sub-contractor (as appropriate); and (ii) the Replacement Provider and/or Replacement Sub-contractor.
- 7.3 Subject to paragraph 7.4, the Provider shall indemnify the Council and/or the Replacement Provider and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission of the Provider or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Provider or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Provider Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Provider Employees which the Provider or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Provider to the Council and/or Replacement Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Provider or any Sub-contractor other than a Transferring Provider Employee for whom it is alleged the Council and/or the Replacement Provider and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations)

of any Transferring Provider Employee relating to any act or omission of the Provider or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Council and/or Replacement Provider to comply with regulation 13(4) of the Employment Regulations.

7.4 The indemnities in paragraph 7.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Provider and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

7.5 If any person who is not a Transferring Provider Employee claims, or it is determined in relation to any person who is not a Transferring Provider Employee, that his/her contract of employment has been transferred from the Provider or any Sub-contractor to the Replacement Provider and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Council shall procure that the Replacement Provider shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Provider; and
- (b) the Provider may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Provider and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

7.6 If such offer is accepted, or if the situation has otherwise been resolved by the Provider or a Sub-contractor, the Council shall procure that the Replacement Provider shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

7.7 If after the 15 Working Day period specified in paragraph 7.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or

- (c) the situation has not otherwise been resolved

the Council shall advise the Replacement Provider and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

- 7.8 Subject to the Replacement Provider and/or Replacement Sub-contractor acting in accordance with the provisions of paragraph 7.5 to paragraph 7.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Provider shall indemnify the Replacement Provider and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 7.7 provided that the Replacement Provider takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 7.9 The indemnity in paragraph 7.8:
 - (a) shall not apply to:
 - (i) in any case in relation to any alleged act or omission of the Replacement Provider and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (ii) any claim that the termination of employment was unfair because the Replacement Provider and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in paragraph 7.5(a) is made by the Replacement Provider and/or Replacement Sub-contractor to the Provider within six months of the Service Transfer Date.
- 7.10 If any such person as is described in paragraph 7.5 is neither re-employed by the Provider or any Sub-contractor nor dismissed by the Replacement Provider and/or Replacement Sub-contractor within the time scales set out in paragraph 7.5 to paragraph 7.7, such person shall be treated as a Transferring Provider Employee and the Replacement Provider and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 7.11 The Provider shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Provider Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all

wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Provider and/or any Sub-contractor; and
- (b) the Replacement Provider and/or the Replacement Sub-contractor.

7.12 The Provider shall, and shall procure that each Sub-contractor shall, promptly provide to the Council and any Replacement Provider and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Council, the Replacement Provider and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Council shall procure that the Replacement Provider and/or Replacement Sub-contractor, shall promptly provide to the Provider and each Sub-contractor in writing such information as is necessary to enable the Provider and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

7.13 Subject to paragraph 7.14, the Council shall procure that the Replacement Provider indemnifies the Provider on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Provider Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Provider and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Provider and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Provider Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Provider Employees which the Replacement Provider and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Replacement Provider and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Replacement Provider and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any

Transferring Provider Employees on or after their transfer to the Replacement Provider or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Replacement Provider or Replacement Sub-contractor to, or in respect of, any Transferring Provider Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Provider or Sub-contractor, to the Replacement Provider or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Replacement Provider or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

7.14 The indemnities in paragraph 7.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the

Provider and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Schedule 11 Commercially sensitive information

Financial modelling and any budget information

Schedule 12 Council Premises/ Assets and Lease

Council Assets

Any materials, plant or equipment owned or held by the Council and provided by the Council to the Provider for use in providing the Services.

Items in Schedule 1 and set out in Appendix 2 to that Schedule shall remain the property of the Council. FFE means the fixtures, furniture and equipment including white goods acquired by the Provider to furnish the accommodation at St Stephen's House.

The parties shall enter into a lease as set out in the lease below.

Schedule 13 Insurance

The Provider's Insurance Certificates are appended hereto.

Schedule 14 Data processing

1. The Provider shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule 14.
3. The contact details of the Council's Data Protection Officer are: dpo@bcp.gov.uk
4. The contact details of the Provider's Data Protection Officer are:

Description	Details
Identity of the Controller and Processor	The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor in accordance with Clause 25.1
Subject matter of the processing:	Using Personal Data to provide the right quality provision for the needs of Service Users, some of which could have complex needs, so the Service Users can receive the right level of support and accommodation that is required.
Duration of the processing:	For the duration of the Term, as defined in the contract, to include any extensions as provided for in the contract.

<p>Nature and purposes of the processing:</p>	<p>The nature of the processing includes: all operations such as collection, recording, reporting, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data. This includes hosting databases need for this processing.</p> <p>The purpose includes assess the needs of the Service Users and develop a tailored programme of support. This data will also be used to monitor the performance of the Provider and the improvement journey of the Service Users.</p>
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Type of Personal Data being Processed:	<p>This may include but is not limited to the following information:</p> <ul style="list-style-type: none"> • Name • DOB • Age • Gender • Address (current and historic) • Contact information • Email address • Communication needs • Photo profile images • NHS number • GP registration details • NI number • Education, training & employment details • Family and social history • Protected characteristics under equalities legislation: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex; sexual orientation • Sensitive data, including on health, justice and safeguarding • Personal Identification numbers for external systems • Service consent information • Information sharing agreements • Details of service provision • Personal and family background information • Home and living details (current and historic) • Health and medication details • Uploaded documents relating to assessments • Uploaded documents as proof / evidence <ul style="list-style-type: none"> • One page profile • ACEs Tool kit • Personal Emergency plans if needed (Action taken by whom, what ,where) • Clients/Service Users • Family, carers and relatives of services users • Representatives or advocates of services users • Staff including volunteers, agents, students, apprentices, trainees and temporary workers etc • Professionals including those from other agencies • Council and non-Council Employees • Providers
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Categories of Data Subject:	<ul style="list-style-type: none"> • Service Users • Family, carers and relatives of services users • Representatives or advocates of services users • Staff including volunteers, agents, students, apprentices, trainees and temporary workers etc • Professionals including those from other agencies • Council and non-Council Employees • Providers
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<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data:</p>	<p>The Council will retain ownership of the Personal Data at all times.</p> <p>At the termination or expiry of the Contract, the Provider will return all Personal Data to the Council in such a way that it can be readily migrated to a replacement hosting environment or to a replacement system for ongoing use, or to another storage method for retention.</p> <p>Until further notice, no current or historic data (electronic or other) relating to any work within this contract with children, Young People and their families is to be destroyed, but must be maintained in an accessible form to be available to any investigations into current or historic child protection cases. The information collected by the Provider during the Term will be held for the set number of years and retained, archived and destroyed in the time set out in the BCP Councils Records Retention and Disposal Schedule guidelines.</p> <p>All Personal Data is to be transferred to BCP Council at the expiry of the Term or transferred to the new provider where appropriate.</p> <p>The Council's standard retention period shall be applied to Case Management information relating to all Looked after Children at the Council Premises.</p> <p>Including: (Information based upon above guidance</p> <ul style="list-style-type: none"> • Individual child case files - children leaving care • Records relating to individuals who received 16+ services • Individual child case files (Children who have been on the Child Protection Register) • Admissions and Discharge registers of residential care homes • Individual case files and related records relating to Respite Care for Children and Young People • Foster Carer Case Files (including private fostering) including approved carers; cancelled registrations; refused applications;
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Schedule 15 – Tender Clarifications questions and answers

Procontract Clarifications for contract

THE COMMON SEAL OF

BOURNEMOUTH & CHRISTCHURCH AND POOLE COUNCIL

was hereunto affixed

In the presence of:

Head of Legal Services

Executed as a deed by

..... acting by a director, in the
presence of:

.....

Signature of Director

Name of

Director:.....

.....

.....

Title: Director

Signature of Witness

Name of

Witness:.....

Address:.....

.....

.....

.....

Occupation:.....