# Application for Inclusion on an

# Open Select List

For

**Buildings Based Day Care Services**

**Document 5 of 6**

**November 2018**

**Expressions of Interest:** 06/11/18 to 14/12/18

**Submission Return Date: 14/12/18 at 5pm**

**This document is one of six parts as listed below, which together form the Invitation to Tender documentation. Please ensure that no part is missing or duplicated.**

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| **Document No** | **Title** |
| Document 1 | Section 1: Information for Providers  Section 2: Instructions to Applicants  Section 3: Service Specification  Section 4: Contract Management Schedule  Section 5: Payment Schedule |
| Document 2 | Section 6: Provider Responses – Open Select List Application |
| Document 3 | Section 7: Payment Details  Section 8: Declaration of Professional Standing  Section 9: Form of Tender  Section 10: Collusive Tendering Certificate  Section 11: Freedom of Information Disclosure Form |
| Document 4 | Section 12: Provider Checklist |
| Document 5 | Section 13: Terms and Conditions of Contract |
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**SECTION 13 – TERMS AND CONDITIONS OF CONTRACT**

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**THIS AGREEMENT** is made the day of  **2018**

**BETWEEN**

(1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YL (the “Council”)

and

(2) **[INSERT NAME OF PROVIDER]** [**Registered Company Number:** ] [whose registered office is situated at [ ] (the “Provider”)

**WHEREAS**

1. The Council requires the provision of community supported living service to support the health and social care needs of adults aged 18 and over, who have eligible social care needs and are residents in Lincolnshire as set out in the Specification.
2. The Provider has been accepted as an Approved Provider on the Council's Open Select List for these Services and is willing to provide the Services in accordance with this Contract.
3. Upon requirement for such Services as provided for within this Contract and following a successful brokerage or mini-tender exercise, where applicable, from the Open Select List the Council shall "call off" the Provider by issuing an Individual Form of Agreement.
4. In consideration for the Provider undertaking his obligations under any Individual Form of Agreement in accordance with the Specification and the terms of this Contract, the Council shall make payments to the provider as provided for within the subsequent Individual Form of Agreement.

**IT IS HEREBY AGREED** as follows:

GENERAL PROVISIONS

**A1 DEFINITIONS AND INTERPRETATION**

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

**1:1 Rate** means the hourly rate which the Provider shall charge to the Council for the provision of one to one Services to Service Users who fall under the Core Rate 1 and Core Rate 2 categories, which is to be used to calculate the Service Charges

**Advocate** means a person who is independent of statutory services and supports someone to express their views and opinions

**Affected Party** means the Party seeking to claim relief in respect of a Force Majeure Event

**Application** means the application completed by the Provider when applying to become an Approved Provider, including details of the Services they can provide and which shall be used during the process of issuing an Individual Form of Agreement in accordance with this Contract.

**Approval** means the prior written consent of the Council.

**Approved Provider** means a provider which has been accepted onto the Open Select List and has the opportunity to be awarded Individual Form of Agreements under the provisions of the Open Select List and in accordance with this Contract.

**Authorised Person** means the Council and any body or person concerned with the provision of the Services or care of a Service User.

**Autism (Autistic Spectrum Disorder)/Asperger's Syndrome** means a lifelong development disability affecting social and communication skills. Autism is a wide ranging condition that affects how people make sense of the world around them. People with autism may experience either under or over sensitivity to certain stimuli, such as sound, touch, taste, smell, light, colours and crowds.

**Best Value** means arrangements to secure continuous improvement in the way the Council’s functions are exercised having regard to a combination of economy, efficiency and effectiveness.

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

**Building Based** means the Services taking place on the same Premises

**Caldicott Guardian** means the senior health professional responsible for safeguarding the confidentiality of patient information.

**Care Quality Commission or CQC** means the care quality commission established under the Health and Social Care Act 2008.

**Carer** means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage.

**Change** means any variation to this Contract including to any of the Services and Service Levels.

**Change Control Procedure** means the procedure for changing this Contract as set out in Clause F3.

**Commencement Date** means the [INSERT DATE].

**Commercially Sensitive Information** means any Party's Information that:

(a) if disclosed, could prejudice the other Party's commercial interests and/or

(b) constitutes a trade secret.

**Competent Body** means any body that has authority to issue standards or recommendations with which either Party must comply.

**Confidential Information** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA.

**Consents means:**

(i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or

(ii) any necessary consent or agreement from any third party needed either for the performance of the Provider’s obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract.

**Contract** means this written agreement between the Council and the Provider consisting of these clauses and the attached Schedules.

**Contracting Authority** means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

**Contract Period** means the period from the Commencement Date to:

(a) the date of expiry of the Initial Contract Period, or

(b) following an extension pursuant to Clause A2.2, the date of expiry of the extended period,

or such earlier date of termination of the Contract in accordance with the Law or the provisions of this Contract.

**Contract Year** means a period of twelve (12) Months commencing on the Commencement Date and/or each anniversary of the Commencement Date.

**Controller** takes the meaning given in the GDPR.

**Conviction** means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1 (1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988.

**Core Rate 1** means the daily rate which the Provider shall charge to the Council for the provision of the Services to Service Users who fall under the following categories: Learning Disability, Physical Disabilities, Older People with higher needs which is to be used to calculate the Service Charges

**Core Rate 2** means the daily rate which the Provider shall charge to the Council for the provision of the Services to Service Users who fall under the following categories: Older People which is to be used to calculate the Service Charges

**CQC** means the Care Quality Commission.

**CQC Regulations** means the Care Quality Commission (Registration) Regulation 2009.

**Crown** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

**Council’s Change Control Notice** means a notice served by the Council on the Provider requesting a Change in accordance with Clause F3.

**Council’s Contract Manager** means the person identified as such in Part 1 of Schedule 5 or any replacement person appointed by the Council pursuant to Clause B4, being the person responsible for managing the delivery of the Services on behalf of the Council.

**Council's Personal Data** means the Personal Data supplied by the Council to the Provider for the purposes of or in connection with the Contract.

**Council’s Representative** means the person identified as such in Part 1 of Schedule 5 or any replacement person appointed by the Council pursuant to Clause B4, being the person responsible for managing the overall relationship with the Provider.

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

**Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Officer** take the meaning given in the GDPR.

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

**Data Subject** takes the meaning given in the GDPR.

**Data Subject Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation.

**DBS** means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

**Default** means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract.

**Dementia** means a progressive set of symptoms that may include memory loss and difficulties in thinking, problem solving and language. A person with Dementia may also display changes in their mood and behaviour. The condition is caused by changes in the brain as a result of Alzheimer's disease or a series of strokes.

**Direct Payments** means money that is paid to a person that uses services (or someone acting on their behalf) on a regular basis by The Council so they can arrange their own support. This only applies to people that have been assessed as being eligible for Council funded support.

**Disaster** means an unplanned interruption of, or inaccessibility to, the Services provided by the Provider.

**Disaster Recovery and Business Continuity Plan** means the business continuity and disaster recovery plan prepared pursuant to Schedule 6 as amended from time to time.

**DPA** means the Data Protection Act 2018.

**Eligibility** means the eligibility threshold for adults with care and support needs is set out in the Care and Support (Eligibility Criteria) Regulations 2014. The threshold is based on identifying how a person's needs affect their ability to achieve relevant outcomes and how this impacts on their wellbeing.

**Employment Checks** means the pre-appointment checks that are required by Law and applicable guidance, including without limitation, v[erification of identity checks](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/VerificationOfIdentityChecks.aspx), r[ight to work checks,](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/RightToWorkChecks.aspx) [registration and qualification checks,](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/Registrationandqualificationchecks.aspx) e[mployment history and reference checks, c](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/Employmenthistoryandreferencechecks.aspx)[riminal record checks](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/CriminalRecordChecks.aspx)and [occupational health checks](http://www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/Employment-Check-Standards/Pages/OccupationalHealthChecks.aspx) and the Provider shall ensure that these meet the Council's Disclosure and Barring Service Policy which is available at <http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-(incorporating-safer-recruitment)/87476.article>

**Enhanced DBS & Barred List Check** means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate) and the Provider shall ensure that these meet the Council's Disclosure and Barring Service Policy.

**Enhanced DBS Position** means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted as set out in the Council's Disclosure and Barring Service Policy.

**Environmental Information Regulations** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Equality Legislation** means the Equality Act 2010 and such other acts and legislation to ensure, among others equality of access to goods and services, promotion of good relations between groups in society, the provision of reasonable adjustments for people with disabilities and non-discrimination and equality in employment.

**Equipment** means the Provider’s equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under this Contract.

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

**Force Majeure Event** means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier’s or a Sub-Contractor’s supply chain

**Force Majeure Notice** means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event

**Formal Warning Notice** means a notice served in accordance with Clause H2.2.

**Fraud** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Council.

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

**Good Industry Practice** means standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking under this Contract under the same or similar circumstances.

**Guidance** means any applicable local authority, health or social care guidance, direction or determination which the Council and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006.

**ICT** means information and communications technology.

**ICT Environment** means the Council's system and the Provider's system.

**Incumbent Provider** means any Provider providing any service that constitutes or that shall constitute part of the Services immediately before the Transfer Date and Commencement Date of this Contract.

**Individual Risk Assessment** means a risk assessment completed by the Provider on any Service User referred through this Contract, identifying any risks in providing the Services to an individual Service User to be undertaken in accordance with this Contract.

**Individual Support Plan** means a plan completed in relation to a Service User referred through this Contract, by the Provider in conjunction with the Service User, their Practitioner, Legal Guardian or Carer as applicable setting out individual requirements for the provisions of the Services, which focusses on positive outcomes to help the Service User to achieve greater independence and encourage progress in accordance with Schedule 1.

**IFA Commencement Date** means the commencement date of the services for each individual call-off as noted on the Individual Form of Agreement.

**Individual Form of Agreement** means the form of agreement as provided for in Schedule 9 which shall act as a call-off from the Open Select List and shall include details of the Service User which is to be provided with the Services as provided for.

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

**Information Commissioner's Office** means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in Section 6 of the DPA.

**Initial Contract Period** means the period from the Effective Date to the date of expiry set out in Clause A2 (Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

**Intellectual Property Rights** means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**Joint Controllers** means where two or more Controllers jointly determine the purpose and means of processing.

**Key Personnel** means those persons identified in Schedule 5 for the roles attributed to such personnel.

**Law** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Provider is bound to comply.

**Learning disability** means A reduced intellectual ability and, possibly, difficulty performing everyday activities, such as household tasks and personal care. A learning disability affects the person for the whole of their life. People with a learning disability tend to take longer to learn and may need support to develop new skills, understand complex information and interact with others. The level of support a person needs depends upon the severity of their learning disability.

**LED** means the Law Enforcement Directive *(Directive (EU) 2016/680)*.

**Legal Guardian** means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs.

**Lessons Learned** means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider’s provision of the Services.

**Local HealthWatch** means the local independent consumer champion for health and social care in England.

**Losses** means all demands, losses, charges, damages, costs and expenses and other liabilities (including, but not limited to, any professional and/or legal costs and disbursements).

**LPFT** means Lincolnshire Partnership NHS Foundation Trust, who may refer Service Users through the Open Select List, using the procedures set out in this Contract.

**Malicious Software** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without the knowledge of its existence.

**Maximum Daily Cost Threshold** means the maximum daily Service Charge which the Provider can charge to the Council for the provision of the Services for an individual Service User, being £107.45 per day

**Mental capacity** means the ability of a person to make decisions, including those that affect day to day life, as well as those that are more serious and have legal consequences.

**Mental health problem** means mental health problems which range from the worries we all experience as part of everyday life to serious long term health conditions; they constitute problems that can be diagnosed by a doctor and not personal weaknesses. Most mental health symptoms have been, traditionally, been separated into groups and labelled either 'neurotic' or 'psychotic'. The term 'neurotic covers those that are regarded as severe forms of normal emotional experiences, such as depression, anxiety and panic. Conditions formerly referred to as 'neurosis' are now more frequently referred to as 'common mental health problems'. Less common are 'psychotic symptoms', which interfere with a person's perception of reality and may include hallucinations. Although certain symptoms are common in specific mental health problems, no two people behave in exactly the same way when they are unwell.

**Month** means calendar month.

**National Standards** means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time.

**NHS Act 2006** means the National Health Service Act 2006.

**Open Select List** means the Open Select List for Buildings Based Day Care

**Original Public Sector Employee** means a former employee of the Council who as a result of the application of the TUPE Regulations, in relation to what was done for the purposes of carrying out a contract for the provision of services which were equivalent of or similar to the Services, becomes or became an employee of someone other than the Council.

**Outcome** means an aim or objective that a Service User would like to achieve or needs to happen; examples would be the ability to make a cup of tea or take a bus ride independently, but each person's objective(s) will be personal to them. Service Users should be able to say which outcomes they feel are the most important and then receive the support to achieve them.

**Partner Agencies** means an organisation that has been assessed by the Provider as being a suitable source of support for a person that has been assessed as being eligible for Council funded support. An example of this is a Day Centre that identifies a local support group that may be able to contribute to meeting the customer's needs.

**Party** means a party to this Contract and the term Parties shall be construed accordingly.

**Patient Safety Incident** means any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to, harm to that Service User.

**Pensions Direction** means the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

**Performance Management Framework** means the performance monitoring system set out at Schedule 4.

**Persistent Breach** means a Default which has occurred on three or more separate occasions within a continuous period of three (3) Months.

**Personal Data** takes the meaning given in the GDPR.

**Personal Data Breach** takes the meaning given in the GDPR.

**Physical disability** means condition that limits a person's physical functioning, mobility, dexterity or stamina. A person may be physically disabled from birth or as a result of an accident or illness.

Practitioner means a health professional who has regular contact with a Service User and has the ability to refer a Service User for provision of the Services by completing a PSR.

Premises means the location where the Services are to be supplied, including the Provider's Premises and the Third Party Premises.

Processing takes the meaning given in the GDPR.

Processor takes the meaning given in the GDPR.

Prohibited Act each of the following constitutes a Prohibited Act:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:-

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

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

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

(c) committing any offence:-

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Council.

**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 including those outlined in Part B of Schedule 7.

**Provider** means the person, firm or company with whom the Council enters into this Contract including the Provider's Staff, agents and contractors and each Sub-Contractor.

**Provider Change Control Notice** means a notice served by the Provider on the Council requesting a Change in accordance with Clause F3.

**Provider’s Contract Manager** means the person identified as such in Part 2 of Schedule 5 or any replacement person appointed by the Provider pursuant to Clause B4, being the person responsible for managing the delivery of the Services on behalf of the Provider.

**Provider's** **Premises** means the location where the Services are to be supplied which are controlled or owned by the Provider.

**Provider’s Representative** means the person identified as such in part 2 of Schedule 5 or any replacement person appointed by the Provider pursuant to Clause B4, as the person responsible for managing the Provider’s overall relationship with the Council.

**PSR** means a Purchase Service Request being a form completed by a Practitioner who, in liaison with a Service User, requests that the Service User received the Services. The details within the PSR are completed into the Individual Form of Agreement;

**Public Contracts Regulations** means the regulations on public procurement which implements the European Union Directive 2014/24/EU into English law with effect from 26 February 2015.

**Quality Standards** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

**Quarter** means a period of three (3) consecutive Months in a calendar year.

**Receipt** means the physical or electronic arrival of the invoice at the address of the Council detailed at Clause A5.3 or at any other address given by the Council to the Provider for the submission of invoices.

**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.

**Regulatory Bodies** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

**Relevant Employees** means the employees of the Provider (including Transferring Employees) who are wholly or mainly assigned to work in the provision of the Services and who are/shall be subject to a Relevant Transfer by virtue of the application of the TUPE Regulations.

**Relevant Transfer** means a transfer of employment to which the TUPE Regulations apply.

**Remediation Notice** means a written notice given by the Council to the Provider pursuant to Clause H7.1 to initiate the Remediation Plan Process.

**Remediation Plan** means the plan agreed in accordance with Clause H7 for the resolution of a Default of the Provider.

**Remediation Plan Process** means the process for resolving certain of the Defaults of the Provider as set out in Clause H7.

**Replacement Contractor** means any third party service provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of this Contract.

**Request for Information** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**Schedule** means a schedule attached to, and forming part of, this Contract.

**Self-advocacy** means a Service User's ability to speak up for him/herself about what he/she feels is important. Self-advocacy means that the Service User is able to ask for what he/she needs and to tell someone about their thoughts, feelings and preferences.

**Sensory impairment** means when a Service User has difficulty with one of the senses. For the purpose of this document, the term refers to people that have sight and/or hearing loss.

**Serious Incident** means an incident or accident or near-miss where a patient (whether or not a Service User), member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Provider’s Premises or where the actions of the Provider or the Council are likely to be of significant public concern.

**Services** means the services to be supplied by the Provider as specified and detailed in the Specification and the Service Delivery Plan.

**Service Charges** means the charges levied by the Provider for the Services in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in this Contract including Schedule 3.

**Service Delivery Plan** means the details for delivery of the Services provided by the Provider as set out at Schedule 2.

**Service Failure** means a failure by the Provider to deliver any part of the Services in accordance with the Service Levels.

**Service Levels** means the levels to which the Services are to be performed as set out in Schedule 4.

**Service User** means a person directly receiving the Services provided by the Provider as identified in an Individual Form of Agreement, as specified in the Individual Form of Agreement, Individual Support Plan and the Specification and includes their Carer and Legal Guardian where appropriate

**Service User Trial Period** means a half day or full day session which a Practitioner shall arrange directly with the Provider for a Service User to experience the Services provided by that Provider to see whether the Service User enjoys the experience and to enable a decision to be made as to whether a full referral for the Services is made to that Provider or a different Provider is to undertake a further Service User Trial Period

**Simple Aids to Daily Living** means Equipment that makes care tasks easier and safer, or promotes greater independence by enabling Service Users to perform tasks that they formerly had difficulty in accomplishing.

**Specification** means the description of the Services to be supplied under this Contract as set out in Schedule 1.

**Staff** means all persons used by the Provider to perform its obligations under this Contract together with the Provider’s servants, agents, Providers, volunteers and Sub-Contractors used in the performance of its obligations under this Contract.

**Staff Vetting Procedure** means the Council’s procedures for the vetting of Staff and as advised to the Provider by the Council available at <http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-(incorporating-safer-recruitment)/87476.article>

**Stakeholder** means a person or group of persons with an interest in the Services being provided to an individual Service User

Sub-Contract means any contract or agreement, or proposed contract or agreement between the Provider and any third party whereby 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, or necessary for the management, direction or control of the Services or any part of the Services.

Sub-Contractor means 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 Supplier related to this Contract.

**Tender** means the document(s) submitted by the Provider to the Council in response to the Council’s invitation to Providers for formal offers to supply it with the Services.

**Third Party Premises** means the location where the Services are to be supplied which are controlled or owned by a third party but which the Provider has agreed to be able to use for the provision of the Services.

**Transfer Date** means the date the Transferring Employee is transferred to the employment of the Provider from the Incumbent Provider.

**Transferring Employees** means employees of the Incumbent Provider who are subject of a Relevant Transfer to the Provider by virtue of the application of the TUPE Regulations, as amended.

**Transferring Original Employee** means a former employee of the Council whose contract of employment, by virtue of the application of the TUPE Regulations, becomes a contract of employment with the Provider and who meets the definition of a Transferring Original Employee under the Pensions Direction.

**Transport Mileage Rate** means the rate set out per mile, which the Provider shall charge to the Council for the provision of the transport Services to Service Users which shall be multiplied by the amount of miles that such transport Services are provided for in accordance with this Contract to calculate the Service Charges

**TUPE Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**VAT** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**Working Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) reference to Clauses and Schedules are to the clauses and Schedules of this Contract; references to paragraphs are to paragraphs of the relevant Schedule;

(d) the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to the Contract includes the Schedules;

(e) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(f) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

(h) headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

(i) Where there is any conflict or inconsistency between the provisions of this Contract such conflict or inconsistency shall be resolved according to the following order of priority:-

(i) the information provided for in any Individual Form of Agreement

(ii) the clauses of this Contract;

(iii) Schedules 1 & 2;

(iii) the remaining Schedules to this Contract

**A2 CONTRACT PERIOD AND EXTENSION**

A2.1 This Contract shall take effect on the Commencement Date and shall expire automatically on the fifth anniversary of the Commence Date, unless it is otherwise terminated in accordance with the provisions of this Contract.

**A3 PROVIDER’S STATUS**

A3.1 At all times during the Contract Period the Provider shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

## A4 COUNCIL’S OBLIGATIONS

A4.1 Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Provider.

**A5 NOTICES**

A5.1Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail (confirmed by letter), or by letter (delivered by hand, first class post, recorded delivery or special delivery). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given on the same Working Day if delivered by hand, two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail provided such notice is served no later than 1pm on any Working Day, otherwise such notice shall be deemed served the following Working Day, or sooner where the other Party acknowledges receipt of such letters or item of electronic mail. Such letters and electronic mail shall be addressed to the other Party in the manner referred to in Clause A5.3.

A5.3 For the purposes of Clause A5.2, the address of each Party shall be:-

(a) For the Council:

[ ]

[Address: ]

[ ]

For the attention of:

Tel:

Email:

(b) For the Provider:

[ ]

[Address: ]

[ ]

For the attention of:

Tel:

Email:

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**A6 MISTAKES IN INFORMATION**

A6.1 The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Council.

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#### A7 CONFLICTS OF INTEREST

A7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any of the Provider’s Staff are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Provider and the duties owed to the Council under the provisions of this Contract. The Provider shall disclose to the Council full particulars of any such conflict of interest which may arise.

A7.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Provider and the duties owed to the Council under the provisions of this Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

**A8 VOLUMES**

A8.1 The Provider acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Council in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Council.

SUPPLY OF SERVICES

B1 SELECTION OF THE PROVIDER FROM THE OPEN SELECT LIST

B1.1 The Provider is an Approved Provider and is eligible to receive Individual Form of Agreements, subject to the provisions of this Contract, for any Service User which the Council, the Practitioner, the Service Users, his Carer, Legal Guardian and family, as applicable, considers the Provider is best to provide the Services taking into account the Service User's needs in accordance with this Clause B1.

B1.2 The Service User's Practitioner, who shall have a list of Approved Provider's and details as provided by the Approved Providers within their Applications and other information provided during the duration of the Open Select List as provided for in Schedule 4A, in liaison with the Service User shall identify an Approved Provider who can provide Services and shall arrange a Service User Trial Period with that Approved Provider. The Practitioner and Service User shall take into account all elements of the Service and details of the Approved Provider from the information provided to them and shall choose an Approved Provider on a number of criteria, including but not limited to:

1. The Service User's needs in relation to the Services
2. The geographical area that an Approved Provider provides Services
3. The type of Service Users an Approved Provider already provides the Services to and whether the Service User would fit into the environment
4. The type of features and Services the Approved Provider provides
5. The times and duration of the Services which an Approved Provider provides
6. The capacity of an Approved Provider

B1.3 In the event of a Service User Trial Period being requested by a Practitioner, the Provider shall use its best endeavours to arrange the same in good time and taking the Service User's and their Carer or Legal Guardian's requirements into consideration.

B1.4 Once arranged, the Provider shall undertake the Services during the Service User Trial Period as if the Services had been referred using an Individual Form of Agreement and in accordance with this Contract.

B1.5 At the conclusion of the Service User Trial Period, the Service User, in conjunction with his family, Carer or Legal Guardian shall decide whether they are happy to continue with the Provider or whether they would like to undertake a Service User Trial Period with another Approved Provider.

B1.6 If the Service User decides to have another Service User Trial Period with another Approved Provider, the Provider shall take all reasonable steps as necessary to assist in a seamless transition to the other Approved Provider. If the further Service User Trial Period is successful with another Approved Provider, the Provider shall invoice the Council for the Service Charges arising of the Service User Trial Period in accordance with Clause C2 and Schedule 3. A Service User may undertake unlimited Service User Trial Periods until they find an Approved Provider who is suitable for their needs.

B1.7 The Service User has the ultimate discretion to make the decision as to which Approved Provider provides the Services to him. The Provider shall not and shall ensure that its Staff shall not undertake to do anything to influence the decision of the Service User, their family, Carer or Legal Guardian other than providing the Services as provided for in this Contract.

B1.8 Any referral for a Service User Trial Period is not a guarantee that the Provider shall receive an Individual Form of Agreement in relation to that Service User and the Council does not accept any liability for any claim arising out of reliance of the Provider on any anticipated Individual Form of Agreement.

B1.9 Notwithstanding Clauses B1.1 – B1.10, in the event that a group of Service Users require a group referral to one Approved Provider or exceptional circumstances surrounding one or a number of Service Users cannot be dealt with by one Approved Provider, the Council may, at its absolute discretion and taking the needs of the group of Service Users which are to be referred into account, request a mini-competition as set out in the Open Select List in order to select an Approved Provider who shall provide the Services in the most advantageous manner to the Service User(s). In the event that a mini-competition is undertaken by the Council, any bid thereunder shall be evaluated in accordance with the criteria for the Open Select List with weightings in relation to such evaluation set in accordance with the needs of the Service User(s) being provided for within the mini-competition in question and shall be procured in accordance with the Council's Procedure Rules and the Public Contract Regulations 2015.

B1.10 Notwithstanding this Clause B1, any Service User or group of Service Users as the case may be, have the ultimate discretion as to the choice of Approved Provider and if any Service User does not want to receive Services from an Approved Provider selected as per this Clause B1, the Service User may choose his preferred Approved Provider and the Provider shall have no claim whatsoever in such circumstances.

B1.11 Following a successful Service User Trial Period, the Practitioner shall undertake a care management review of the Service User's needs, in conjunction with the Service User, their Carer or Legal Guardian to determine the Service User's needs and forward this to the Provider. Following receipt of the care management review, the Provider shall undertake and complete an Individual Support Plan and Individual Risk Assessment in relation to that Service User and shall agree the same with the Council and the Service User and/or their Legal Guardian or Carer, as the case may be.

B1.12 Following issue of the care management review as provided for in Clause B2.1, the Practitioner shall complete a PSR and issue this to the Council.

B1.13 Upon receipt of the PSR, the Council shall transfer the necessary information into an Individual Form of Agreement and issue the Individual Form of Agreement to the Provider as a basis of a call-off from the Open Select List.

B1.14 Upon receipt of an Individual Form of Agreement, the Provider shall acknowledge receipt of the same within five (5) Working Days and supply the Services to the Service User in question from the IFA Commencement Date and for the period provided for on the Individual Form of Agreement in accordance with the specific details noted on the Individual Form of Agreement, the Specification, the provisions of this Contract, any Individual Support Plan, Individual Risk Assessment and the Service Delivery Plan in consideration of the payment of the Service Charges.

B1A SELECTION OF PROVIDER BY LPFT

B1A.1 LPFT shall have sight of the Approved List and may issue requests for Service User Trial Periods or Individual Form of Agreements as set out in Clause B1 above by undertaking the role of the Council as provided above. The Provider shall accept any such Individual Form of Agreement and provide the Services required therein to the same standard as if the referral had been received from the Council.

B1A.2 The Provider shall ensure that any Service Charges arising out of referrals for Service User Trial Periods or Individual Form of Agreements from LPFT shall be included within the relevant invoice as provided for in Clause C2 and Schedule 3. The Council shall be responsible for the payment of any Service Charges arising out of any referrals from LPFT.

B1B THE SERVICES

B1B.1 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of any Individual Form of Agreement or this Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of any such Individual Form of Agreement and this Contract within such reasonable time as may be specified by the Council.

B1B.2 Timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

**B1C WITHHOLDING AND/OR DISCONTINUATION OF SERVICES**

B1C.1 Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:-

* + - 1. who in the reasonable professional opinion of the Provider is unsuitable to receive the Services, for as long as such unsuitability remains;
      2. who displays abusive, violent or threatening behaviour unacceptable to the Provider acting reasonably and taking into account the mental health of that Service User);
      3. in that Service User’s domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the Services that the Provider reasonably considers to be unacceptable; or
      4. where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.

B1C.2 If the Provider proposes not to provide or to stop providing the Services to any Service User under clause B1C.1:-

(a) the Provider shall report such intention to stop providing the Services to the Practitioner and the Council, including reasons as to why it intends to stop providing the Services as provided for in Clause B1C.1.

(b) where reasonably possible, the Provider shall explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Working Days);

(c) the Provider shall inform the Service User of the right to challenge the Provider’s decision through the Provider’s complaints procedure and how to do so;

(d) the Provider shall inform the Council in writing without delay and wherever possible in advance of taking such action;

provided that nothing in this clause B1C.2 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

**B1D SERVICE QUALITY**

B1D.1 The Provider shall unless otherwise agreed (subject to the Law) with the Council in writing:-

1. comply, where applicable, with the registration and regulatory compliance requirements and guidance of CQC and any other Regulatory Body;
2. respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
3. consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
4. comply with the recommendations issued from time to time by a Competent Body;
5. respond to any reports and recommendations made by Local HealthWatch; and
6. comply with the Service Levels set out in Schedule 4.

B1D.2 The Provider shall undertake systematic processes to review the quality of its own provision in accordance with Regulation 10 of the Health & Social Care Act and take timely action is taken to address and remedy any concerns which have been identified. This may be determined by the following methods:

seeking the views of Service Users, family, Carers and other Stakeholders where relevant

ensuring that the Service delivered is effective and efficient and delivers positive outcomes for Service Users, empowering them to live their life as they wish.

checking that all records are properly maintained and updated;

regular monitoring and evaluation of complaints/concerns, in addition to the requirements of the Provider’s complaints procedure;

an annual service review of performance and service user, family, carers, other relevant stakeholder satisfaction with the Service provided.

**B1E SERVICE USER INVOLVEMENT**

B1E.1 The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Practice and their human rights.

B1E.2 As soon as reasonably practicable following any reasonable request from the Council, the Provider shall provide evidence to the Council of the involvement of Service Users, Carers and Staff in the development of Services.

B1E.3 The Provider shall carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Council in relation to the Services. The form (if any), frequency and method of reporting such surveys shall comply with the requirements as agreed between the Parties in writing from time to time.

B1E.4 The Provider shall review and provide a written report to the Council on the results of each survey carried out under clause B1E.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider shall implement such actions as soon as practicable. If required by the Council, the Provider shall publish the outcomes and actions taken in relation to such surveys.

**B2 PROVISION AND REMOVAL OF EQUIPMENT**

B2.1 The Provider shall provide and maintain all the Equipment necessary for the supply of the Services.

B2.2 All Equipment used as part of the Services shall be at the Provider’s own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council’s Default.

B2.3 The Provider shall maintain all items of Equipment in a safe, serviceable and clean condition.

B2.4 The Provider shall, at the Council’s written request, at its own expense and as soon as reasonably practicable:-

(a) remove and no longer use any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with this Contract; and

(b) replace such item with a suitable substitute item of Equipment.

# B3 MANNER OF CARRYING OUT THE SERVICES

B3.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Provider shall agree the relevant standard of the Services with the Council prior to the supply of the Services and in any event, the Provider shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.

B3.2 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B3.3 The Council shall conduct a review of performance of this Contract at least annually during the Contract Period. During this review, a performance report shall be agreed.

# B3A THE PREMISES

B3A.1 The Provider shall ensure that any Premises used for the provision of any Services provided for under this Contract:

* shall be in accordance with the Specification and any requirements noted in any Individual Form of Agreement
* has been subjected to risk assessments and has adequate health and safety certification in relation to fixtures and fittings
* shall have sufficient space for the provision of the Services
* complies with and meets any standards prescribed by Law including, but not exclusive to, Health & Safety, Fire Precautions, Environmental Health and accessibility, i.e. for Service Users that have a disability.
* is fit for the purpose of providing the Services, including any requirements under any Individual Form of Agreement for a Service User attending the Premises
* is in a clean and good state of repair and is maintained in good order
* shall have suitable facilities/equipment to meet the assessed needs of Service Users.
* shall have accessible points of access and egress from the building for use by all Service Users, which may include wheelchair users or Service Users with sensory impairment.
* Shall, where Services are provided for Service Users that have complex personal care needs, have suitable toileting and changing facilities, including suitable access for those that have a disability.

B3A.2 If, in the provision of any Services, the Provider uses any Third Party Premises, the Provider shall ensure that it has procured a suitable licence to be able to use and provide the Services at the Third Party Premises and shall indemnify and hold the Council harmless against any claims or proceedings arising out of any use of Third Party Premises by the Provider in connection with this Contract.

B3A.3 the Provider shall provide the Council with information about any Premises that they intend to use for the provision of the Services, before any such use. Such information shall include:

* details of the location and the history of the Premises
* the Tenure of the Premises and details of any lease or licence which the Provider is party to
* copies of all relevant risk assessments and documents relating to health and safety, including but not limited to, up to date electrical and gas test certificates
* any other information which the Council may reasonably require to ensure that the Premises used are in accordance with this Contract and any needs of Service Users identified in any Individual Form of Agreement.

B3A.4 The Provider shall provide the Council with reasonable access to any Premises used for the provision of the Services so as to enable the Council to undertake audits to ensure that the Premises comply with this Clause B3B.

# B3B TRANSPORT

B3B.1 In the event that any Individual Form of Agreement provides for the Provider to provide transport to the Service User to and from any Premises or otherwise, the Provider shall ensure that any such requirements provided for in Schedule 1 are considered and that any such vehicle used is:

* Fit for the purpose of transporting the Service User, taking into account any specific needs and wishes of the Service User
* easily accessible by the Service User
* In compliance with all applicable requirements of the Law, including but not limited to having a valid MOT and insurance allocated, is otherwise road worthy, licensing, insurance, testing, operation, construction, use, fitness, equipment, safety and maintenance.
* regularly serviced, and kept in a fully operational state of repair;
* be of a suitable type, size and design for the provision of the Services;
* in a suitable and fully operational mechanical condition, safe and roadworthy and comply with any applicable Law;
* clean and comfortable
* driven by a competent member of Staff, who is fully licensed to drive such vehicle by Law

B3B.2 In the event that a Service User is a wheelchair user, the Provider shall ensure that the supplier must be able to demonstrate that they have ensured the driver uses appropriate equipment, to ensure that the Service User is safe and comfortable whilst on board such transport and that the driver has been adequately trained in their use.

B3B.2 In the event that such transport is provided by a volunteer driver or a third party, the Provider shall ensure that such third party provider has suitable policies and procedures in place and can evidence that any such transport provided for complies with the requirements of this Clause B3B and the Specification.

# B3C PROVISION OF FOOD TO SERVICE USERS

B3C.1 in the event that any Individual Form of Agreement provides for the Provider to provide a Service User with food during the provision of the Services or the Provider makes such food and refreshments available, the Provider shall ensure that such food and/or drink is:

* provided in accordance with any wishes and dietary requirements of the Service User;
* culturally specific and of sufficient serving size for the Service User to maintain a healthy and consistent weight;
* provided and prepared in accordance with relevant documents and guidance provided by dieticians
* if a hot meal, prepared and heated in a safe and correct manner
* prepared in a clean and suitable environment
* provided taken into consideration any requirements in the Specification;

# B3D ASSISTANCE WITH MEDICATION

B3D.1 If a Service User requires assistance or reminders in taking any medications whilst under the care of the Provider, the Provider shall ensure that any Staff assisting the Service User is suitable trained in the administration of medication and have been informed as to the details of the medication and any suitable instructions from the Service User's Carer, Legal Guardian or otherwise, including but not limited to:

a) what the medication is for

b) when it shall be taken

c) the dosage that shall be given

d) how it shall be stored

e) how to record that the medication has been given and taken

B3D.2 The Provider shall ensure that any Staff provision any assistance with medication shall comply with the relevant Law and the Specification when providing any such assistance.

**B3E EXPIRY OR TERMINATION OF INDIVIDUAL FORM OF AGREEMENTS**

B3E.1 The Provider shall provide the Services to each Service User from the IFA Commencement Date for the period of time stipulated in the Individual Form of Agreement, upon which the relevant Individual Form of Agreement would expire and the Services to the Service User in question would cease.

B3E.2 The Council may terminate any Individual Form of Agreement where:

* the Provider is in Default in relation to the Services provided to the Service User in question and such default cannot be remedied;
* the Service User decides that it does not wish to receive the Services from the Provider in accordance with B1.6
* a Service User moves away from the geographical area which the Provider provides Services in
* a Service User passes away
* following investigation, it transpires that the Provider and/or its Staff have misappropriated the Service user's belongings or monies which was being held on trust for the Service User

following which, the Council shall notify the Provider of such termination of the Individual Form of Agreement and the Parties shall enter into a Succession Plan in relation to the Service User in question

**B3F HANDLING SERVICE USER'S MONEY AND VALUABLES**

B3F.1 In the event that a Service User required the Provider to undertake any financial transaction or to hold any monies or other items belonging to the Service User in their possession, the Provider shall ensure that any such provision of these Services is undertaken in accordance with the Specification, the Law and that Staff are fair and honest.

B3F.2 The Provider shall ensure that any such transactions or details of items retained by the Provider for a Service User is recorded upon suitable media and in accordance with the Specification.

B3F.2 In the event that any Service User complains about any such item going missing or the Provider being in default of this Clause B3F, the Council shall investigate the complaint in accordance with Clause B13 and as such, in the event that following such investigations, the Provider or its Staff are in default of this Clause B3F, may terminate the relevant Individual Form of Agreement or this Contract in its entirety.

**B4 KEY PERSONNEL**

B4.1 Each Party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those individuals who are identified by each Party as being key to the success of the delivery and operation of the Services and who shall be retained on the delivery and operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on matters for which they are expressed to be responsible.

B4.2 The Provider acknowledges that the Provider’s Key Personnel are essential to the proper provision of the Services to the Council.

B4.3 The Provider’s Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B4.4 The Provider shall ensure that the role of each of its Key Personnel is not vacant for more than ten (10) Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Provider's Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Provider becoming aware of the role becoming vacant.

B4.5 The Council shall not unreasonably withhold its agreement under Clauses B4.3 or B4.4. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on this Contract which could be caused by a change in the Provider’s Key Personnel.

B4.6 The Council may require the Provider to remove or procure the removal of any of the Provider’s Key Personnel whom the Council considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on delivery or management of the delivery of Services.

B4.7 If the Provider replaces the Key Personnel as a consequence of this Clause B4, the cost of effecting such replacement shall be borne by the Provider.

**B5 PROVIDER’S STAFF**

B5.1 At all times, the Provider shall ensure that:-

1. each of the Staff is suitably qualified, adequately trained (including any specialist based training that is required for the proper delivery of the Services) and capable of providing the Services in respect of which they are engaged;
2. there is an adequate number of Staff to provide the Services properly;
3. where applicable, Staff are registered with the appropriate professional regulatory body;
4. all of the Staff comply with all of the Council's policies as notified to it from time to time; and
5. all of the Staff comply with the Law, fully understand the nature of their duties and carry out their responsibilities in accordance with a general duty of care and safe methods of working; and
6. Staff are aware of and respect equality and human rights of colleagues and Service Users.

B5.2 The Provider shall notify its entire Staff about the Provider’s obligations under the terms of this Contract and about any applicable Law.

B5.3 Upon receipt of a complaint against a member of Staff, the Council may, to the extent reasonably necessary to protect the standards and reputation of the Council, in consultation with the Provider, request that the Provider investigates the complaint and provides the Council with all requested information in relation to this investigation, in accordance with the Provider’s own internal policy and procedures and Good Industry Practice.

B5.4 In the event of industrial disputes or action by any of the Staff, it remains the Provider’s responsibility to meet the requirements of this Contract. The Provider shall inform the Council immediately of impending or actual industrial disputes or action, which may affect the Provider’s ability to deliver the Services and of the Provider’s contingency plans for dealing with such disputes or action.

B5.5 The Provider shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:-

1. proper and sufficient continuous professional and personal development, training and instruction; and
2. full and detailed appraisal (in terms of performance and on-going education and training),

each in accordance with Good Industry Practice and the standards of any applicable relevant professional body.

B5.6. Where applicable under section 1(F)(1) of the NHS Act 2006, the Provider shall co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.

B5.7. The Provider shall carry out Staff surveys in relation to the Services at intervals and in the form as agreed in writing from time to time.

B5.8 The Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

B5.9 Subject to Clause B5.13, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider shall without limitation, complete:-

1. the Employment Checks; and
2. if appropriate such other checks as required by the Council's Recruitment and Selection Policy and all other policies and documentation referred to therein including the Council's Disclosure and Barring Service Policy referred to in this Contract.

B5.10 Subject to Clause B5.14, the Provider may engage a person in an Enhanced DBS Position (as applicable) pending the receipt of the Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Council.

B5.11 Where Clause B5.13 applies, the Provider shall ensure that until the Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards shall be put in place:-

(a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and

(b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and

1. the new member of Staff is accompanied at all times by either the appointed supervisor or a member of Staff who has already been subjected to the Staff Vetting Procedure whilst providing the Services under this Contract; and

(d) any other reasonable requirement of the Council.

B5.12 The Provider shall (unless and to the extent agreed otherwise by the Council in writing) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.

B5.13 Without prejudice to the provisions of this Clause B5, the Provider shall not engage or continue to utilise in the provision of the Services involving or which are likely to involve access to children, vulnerable persons or other members of the public to whom the Council owes a special duty of care, any member of Staff whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.

B5.14 If the Provider fails to comply with Clause B5 and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of the Council, then the Council may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

B5.15 The Provider shall replace any of the Staff who the Council reasonably determines 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 at no additional cost to the Council.

B5.16 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 DPA.

B5.17 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its Staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

B5.18 Where the Provider intends to employ volunteers for the provision of the Services, the Provider shall ensure that there are policies and procedures in place to support and safeguard volunteers.

B5.19 Volunteers shall be recruited under the same policies and processes that are in place for the recruitment of Staff

B5.20 The Provider shall ensure that there is a system in place for the supervision of any volunteers undertaking the Services by competent and trained Staff.

**B5A MENTAL CAPACITY**

B5A.1 In the event that any Service User does not have the mental capacity to make specific and informed choices about their care as in it related to the Services and does not have a Carer or Advocate who has the power to make such choices, the Provider shall assist the Service User and act in their best interest in accordance with the principles of the Mental Capacity Act 2005.

**B6 NOT USED**

###### B7 NOT USED

**B8 NOT USED**

## B9 OFFERS OF EMPLOYMENT

B9.1 For the duration of this Contract and for a period of twelve (12) Months thereafter neither the Council nor the Provider shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior written consent.

## B10 TUPE AND PENSIONS

B10.1 The Council and the Provider agree that where the identity of a contractor (including the Incumbent Provider) of any service which constitutes or will constitute part of the Services is changed as a result of entering into or pursuant to this Contract (including upon termination of this Contract) then the change shall constitute a Relevant Transfer.

B10.2 The Provider acknowledges and accepts that under the TUPE Regulations the contracts of employment of the Transferring Employees shall have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Provider.

B10.3 In the event that the Provider enters into any Sub-Contracts in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Clause B10 and shall ensure that each Sub-Contractor complies with such terms. The Provider shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability or Losses awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of a Sub-Contractor to comply with such terms.

B10.4 The Provider shall be responsible for all emoluments and outgoings in respect of all Relevant Employees employed by the Provider or any Sub-Contractor, including without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions, pension contributions and otherwise, which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Commencement Date but which are attributable in whole or in part to the period after the Commencement Date). The Provider shall indemnify and keep the Council indemnified and harmless from and against all Losses and other liabilities which the Council may incur in respect of the same.

B10.5 NOT USED

B10.6 The Provider shall fully and accurately disclose to the Council (and shall ensure that any relevant Sub-Contractor accurately discloses) any and all information in relation to all personnel engaged in the provision of the Services and all information that the Council may reasonably request in relation to the Staff within ten (10) Working Days of the Council's request including the following:-

1. a list of employees employed by the Provider, or any Sub-Contractor; and
2. a list of agency workers, agents and independent contractors engaged by the Provider; and
3. the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel; and

(d) the age, gender, salary or other remuneration, date of continuous employment commenced and, if different, the commencement date, accrued holiday entitlement, pension details, location, retirement, enhancement rates, and any other factors affecting their redundancy and pension entitlements and any outstanding claims arising from employment of the Staff referred to in Clause B10.6(a); and

(e) the terms and conditions of the employment/engagement of the Staff referred to in Clause B10.6(a), their job titles and qualifications; and

(f) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

(g) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

B10.7 Where the Provider provides information in accordance with Clause B10.6 and the Provider or Sub-Contractor makes or becomes aware of any changes or discovers new information the Provider shall notify the Council within five (5) Working Days of any such change or discovery.

B10.8 At the time of providing the disclosed information pursuant to Clauses B10.6 and B10.7, the Provider shall warrant the completeness and accuracy of all such information. The Provider authorises the Council to use any and all information provided under Clause B10 to the Council as it considers necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

B10.9 The Council may use the information it receives from the Provider pursuant to Clauses B10.6 and B10.7 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Provider shall provide the Replacement Contractor with such assistance as it shall reasonably request.

B10.10 The Provider shall indemnify and keep indemnified and hold the Council and the Crown (both for themselves and any Replacement Contractor) harmless from and against all Losses which the Council or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:-

(a) the provision of information pursuant to Clause B10; and

(b) any claim or demand by any Relevant Employee as defined under TUPE (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Provider in respect of any Relevant Employee on or before the end of the Contract Period; and

(c) any failure by the Provider to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Council or a Replacement Contractor to comply with its duties under Regulation 13 of the Regulations; and

(d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Relevant Employees as defined under TUPE arising from or connected with any failure by the Provider to comply with any legal obligation to such trade union, body or person; and

(e) any claim by any person who is transferred by the Provider to the Council and/or a Replacement Contractor whose name is not included in the list of Relevant Employees as defined under TUPE.

B10.11 The Provider shall comply with the Pension Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

B10.12 The Provider shall ensure that, in accordance with The Best Value Authorities Staff Transfers (Pensions) Direction 2007, a Transferring Original Employee shall be granted:

1. Pension rights that are broadly comparable to or better than those he/she has as an employee of the Incumbent Provider; or
2. continued access to the Local Government Pension Scheme for those employees who at the Transfer Date are members of that pension scheme; and
3. terms and conditions of employment which allow the Transferring Original Employee to enforce the protection afforded under The Best Value Authorities Staff Transfers (Pensions) Direction 2007.

B10.13 This Clause B10 applies during the Contract Period and indefinitely thereafter.

B10.14 The Provider undertakes to the Council that, during the twelve (12) Months prior to the end of the Contract Period the Provider shall not (and shall procure that any Sub-Contractor shall not) without the prior consent of the Council (such consent not to be unreasonably withheld or delayed):-

(a) amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including for the avoidance of doubt pay of any Staff (other than where such amendment or variation has previously been agreed between the Provider and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);

(b) terminate or give notice to terminate the employment or engagement of any of the Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capacity);

(c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual’s career development; (ii) takes place in the normal course of business; and (iii) shall not have any adverse impact upon the delivery of the Services by the Provider, PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services; and

1. recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

B10.15 The Provider confirms that it shall comply fully with its obligations under the TUPE Regulations in respect of providing information to any subsequent Provider (including any Replacement Contractor). The Provider warrants that any information provided in accordance with Regulation 11 of the TUPE Regulations shall be accurate and complete.

B10.16 The Provider shall indemnify and keep the Council and any Replacement Contractor indemnified in full from and against direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Council or any Replacement Contractor as a result of or in connection with:-

1. the employment or termination of employment of any Relevant Employee or employee of any Sub-Contractor during any period prior to and including the date of expiry or termination of this Contract; and
2. any claim brought against the Council or any Replacement Contractor as a result of the Provider's failure to comply with any of its obligations under the TUPE Regulations and this Contract.

B10.17 Notwithstanding any provisions of this Contract, for the purposes of Clause B10 and in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Contractor shall be entitled to enforce the benefits conferred to it under this Contract. If the Parties rescind this Contract or vary it in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Contractor shall not be required for such rescission, variation or termination.

B11 BEST VALUE

B11.1 The Provider shall provide to the Council all such assistance, information and documentation as the Council shall reasonably require for the purpose of compliance with its obligations of Best Value under the Local Government Act 1999.

B12 SERVICE IMPROVEMENT

B12.1 The Provider shall throughout the duration of this Contract identify and discuss any improvements and enhancements which would improve the Services and delivery of the Services with the Council. Without prejudice to the foregoing, the Provider shall, at its own cost submit a report to the Council within thirty (30) Working Days of the end of each Contract Year, which shall identify the emergence of new and evolving relevant technologies, processes and any other change which could improve the Services and the delivery thereof. Such report shall be provided in sufficient detail to enable the Council to evaluate properly the benefits of the change.

B12.2 If the Council wishes to incorporate any improvement identified by the Provider pursuant to Clause B12.1, the Council shall send the Provider a Council Change Control Notice and the Parties shall discuss the implementation of the associated Change in accordance with the Change Control Procedure provided always that if the Provider’s costs in providing the Services to the Council are reduced as a result of any business change implemented by the Provider, a saving as agreed between the Parties shall be passed on to the Council by way of a consequential and immediate reduction in the Service Charges.

**B13 COMPLAINTS**

B13.1 The Provider's assurance processes shall include a complaints, compliments and comments policy, reflective of the Council's policy which can be found at <https://www.lincolnshire.gov.uk/searchResults.aspx?qsearch=1&keywords=Complaints+and+compliments&x=35&y=23>. The policy shall clearly document how people can complain, compliment and comment to the Provider and to the Council, the timescales for response and resolution, and how the Provider manages and learns from complaints, compliments and comments.

B13.2 The Provider shall ensure that they:

1. Inform, enable, support and empower Service Users, their families, Carers, Advocates and others, to make a complaint, compliment or comment verbally and in writing;
2. Allow people to make a complaint, compliment or comment to any Staff and that Staff know how to progress a complaint;
3. Support people who may find it difficult to make a complaint, compliment or comment due to disability, impairment or sensory loss, in compliance with the NHS England Accessible Information Standard;
4. Record and acknowledge all complaints, compliment or comment;
5. Investigate all complaints;
6. Take proportionate action without delay in response to any failure identified;
7. Respond to all complaints within the timescale described in their policy;
8. Record and inform the complainant of the outcome of all complaints;
9. Inform complainants of how to escalate their complaint if they are not satisfied with the response or action taken, referring complainants to internal routes of escalation and appropriate external agencies – i.e. The Council or the Ombudsman;
10. Collate and monitor complaints over time, looking for trends and areas of risk;
11. Act in a non-discriminatory way: people's care and treatment must not be affected if they make a complaint, or if somebody complains on their behalf. The Provider shall ensure Service Users, their families, carers; advocates understand that making a complaint will not prejudice the support they receive.

B13.3 The Provider shall maintain an up to date, comprehensive and detailed written record of all complaints it receives regarding the Services which shall be available to the Council upon request from time to time and as soon as practicable or in any event within five (5) Working Days of such request by the Council. Such records shall contain all relevant details of the complaint including the following details:-

1. the member of Staff or other person to whom the complaint was made and the name and job title of that person;
2. the name and address (if known) of the person making the complaint and in what capacity the complaint was made;

(c) the nature and extent of the default of which complaint was made;

(d) the details of the Premises the complaint refers to, if applicable;

(e) the date and time of complaint; and

(f) any action taken to remedy the complaint, and if no action is to be taken, the reasons why no action is to be taken.

B13.4 Where a complaint is received regarding:-

1. the standard of Services;
2. the manner in which any Services have been supplied;
3. the manner in which work has been performed;
4. the materials or procedures used by the Provider; or
5. any other matter connected with the performance of the Provider’s obligations under this Contract,

then the Council shall notify the Provider, and where considered appropriate by the Council, investigate the complaint.

B13.5 The Council shall have the right to investigate all complaints which fall within this Clause B13 and to take such steps, or require the taking of such steps by the Provider, as it deems necessary (acting reasonably) in order to deal with the complaint. The Provider shall promptly provide such documentation, information and assistance (including access to Staff) as the Council may reasonably require in order to enable the Council to investigate and deal with a complaint**.**

B13.6 Without prejudice to its other rights and remedies under the Contract, the Council may, in its sole discretion, uphold the complaint and take further action in accordance with Clause F5.1, Clause H2 (Termination on Default) or H7 (Remediation Plan Process) of this Contract.

**B13A INCIDENTS REQUIRING REPORTING**

B13A.1 Dependent upon the individual needs of Service Users referred through this Contract, the Provider may have to provide some elements of Services which are CQC registered. In the event of such Services being required or any of the Services which are not currently CQC registered becoming so registered, the Council shall notify the Provider within a reasonable time frame to ensure that the Provider may comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.

B13A.2. If the Provider gives a notification to the CQC or any other Regulatory Body under clause B13.A1 which directly or indirectly concerns any Service User, the Provider shall send a copy of it to the Council within five (5) Working Days.

B13A.3. The Parties shall comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Council.

B13A.4. Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this clause B.13.

**B14. CONSENT**

## B14.1. The Provider shall publish, maintain and operate a Service User consent policy which complies with Good Practice and the Law.

**B15 NOT USED**

**B16 BUSINESS CONTINUITY**

B16.1 The Provider shall ensure that it is able to implement the provisions of the Disaster Recovery and Business Continuity Plan at any time in accordance with its terms to ensure that the Services shall be maintained in the event of disruption (including disruption to information technology systems) to the Provider's operations and those of its Sub-Contractors however caused. Such contingency plans shall be available for the Council to inspect and to practically test at any reasonable time and shall be subject to regular updating and review throughout the Contract Period in accordance with Schedule 6.

B16.2 The Provider shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every twelve (12) Month period). The Council shall be entitled to participate in such tests as it may reasonably require.

B16.3 Following each test, the Provider shall send to the Council a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Council considers to be necessary as a result of those tests.

B16.4 The Provider shall implement the Disaster Recovery and Business Continuity Plan in the event that the Services are not available for more than forty eight (48) hours.

**B17 CO-OPERATION**

B17.1 The Parties shall at all times act in good faith towards each other.

B17.2. The Provider shall co-operate fully and liaise appropriately with:-

1. the Council;
2. any third party provider who the Service User may be transferred to or from the Provider in accordance with their wishes as provided for in this Contract;
3. any third party provider which may be providing care to the Service User at the same time as the Provider’s provision of the relevant Services to the Service User; and
4. primary, secondary and social care services,

in order to:

e) ensure that a consistently high standard of care for the Service User is at all times maintained;

f) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;

g) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Council or members of the public.

**C PAYMENT AND SERVICE CHARGES**

**C1 SERVICE CHARGES**

C1.1In consideration of the Provider’s proper performance of its obligations under any Individual Forms of Agreement, the Council shall pay the Service Charges in accordance with Clause C2 (Payment and VAT) and Schedule 3 (Payment Mechanism).

C1.2 The Council shall, subject to Clause C1.1, in addition to the Service Charges and following Receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Contract.

**C2 PAYMENT AND VAT**

C2.1 Where the Provider submits an invoice to the Council in accordance with Schedule 3, the Council shall consider and verify that invoice in a timely manner.

C2.3 Where the Council fails to comply with Clause C2.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Schedule 3 after a reasonable time has passed.

C2.4 Where the Provider enters into a Sub-Contract with a Provider or contractor for the purpose of performing its obligations under this Contract, it shall ensure that a provision is included in such a Sub-Contract which requires:-

1. payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days from the Receipt of a valid invoice; and
2. the counterparty to that Sub-Contract to include in any sub-contract which it awards provisions having the same effect as the provisions of clause C2.4(a).

C2.5 All payments to be made by the Council under this Contract are stated to be exclusive of VAT which shall be additionally paid by the Council where relevant at the prevailing rate and from time to time in the manner prescribed by Law.

##### C2.6 The Provider shall indemnify the Council on a continuing basis 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 Contract. Any amounts due under this Clause C2.6 shall be paid by the Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.

C2.7 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate this Contract under Clause H2.6 (Termination on Default) for failure to pay undisputed sums of money.

C2.8 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under this Contract such interest to be calculated at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

C2.9 Where payment by the Council of all or any part of any invoice submitted or other claim for payment by the Provider is disputed, this dispute shall be resolved as follows:-

1. Notwithstanding Clause C3, payment by the Council of all or any part of any Service Charges rendered or other claim for payment by the Provider shall not signify approval. The Council reserves the right to verify the Service Charges after the date of payment and subsequently to recover any sums which have been overpaid.
2. If any part of a claim rendered by the Provider is disputed or subject to question by the Council either before or after payment then the Council may call for the Provider to provide such further documentary or oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Provider shall promptly provide such evidence in a form satisfactory to the Council.
3. If any part of a claim rendered by the Provider is disputed or subject to question by the Council, the Council shall not withhold payment of the remainder.
4. If any Service Charge rendered for payment by the Provider is paid but any part of it is disputed or subject to question by the Council and such part is subsequently agreed or determined not to have been properly payable then the Provider shall forthwith repay such part to the Council.

C2.10 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract and shall declare and make available for inspection to the Council all Service Charges components including profit, central office overheads and all and any relevant books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents. Such records shall be retained for inspection by the Council twelve (12) years from the end of the Contract Year to which the records relate.

C2.11 Without prejudice to Clause C2.6, for the avoidance of doubt, it shall be the sole responsibility of the Provider to:-

1. assess the VAT rate and tax liability arising out of or in connection with the Contract; and
2. account for or pay any VAT (and any other tax liability) relating to payments made to the Provider under the Contract to HM Revenue and Customs ("HMRC").

C2.12 The Council shall not be liable to the Provider in any way whatsoever for any error or failure by the Provider (or the Council) in relation to VAT, including without limit:-

1. where the Provider is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
2. where the Provider has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such relevant authority) to be incorrect or invalid; and/or
3. where the Provider's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid;
4. where the Provider has specified a rate of VAT, or a VAT classification, to the Council (including but not limited to Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Provider subsequently regards such a rate , or such a classification, as being a mistake on its part. Further, in this scenario C2.12 (d), the Provider shall be obliged to repay any overpayment by the Council on demand.

C2.13 Where the Provider does not submit a VAT invoice together with any claim for payment of the Services Charges, the Council shall not be liable to pay any VAT for that claim of the Service Charges either when it falls due or at any later date.

**C3 RECOVERY OF SUMS DUE**

C3.1 Wherever under this Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract), 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 this Contract or under any other agreement or contract with the Council.

C3.2 Any overpayment by either Party, whether of the Service Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Provider shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 NOT USED

#### C5 PERFORMANCE MANAGEMENT

C5.1 The Provider shall ensure that the Services meet or exceed the Service Levels at all times from the Commencement Date.

C5.2 The Provider shall provide the Council with the monitoring information as provided for within Schedule 4A and within the timeframes stipulated therein on a Quarterly or Annual basis, as the case may be.

C5.3 The Parties shall attend an initial meeting within the initial Contract Year and meet on each anniversary of the Commencement Date during the Contract Period to review and discuss any and all data provided within the Quarterly reports as provided for in Clause C5.2 and Schedule 4A or obtained by the Council from elsewhere in relation to the provision of the Services and monitor performance of the Contract and consider any other matters reasonably required by either Party at Contract Management Meetings which should be held in the form and intervals set out in this Clause C5.

C5.4 The contract management meetings as provided for in Clause C5.3 shall be properly recorded and areas for improvement and action points with reasonable timescales shall be entered onto an action plan which will be shared with the Provider. Compliance with the action plan will be monitored by the Council.

C5.5 Information made available by the Provider shall be scrutinised, analysed and challenged by Council.

C5.6 The Council shall be informed of issues with regard to the performance and/or conduct of a Provider to ensure compliance with the Contract and Service Specification

C5.7. Notwithstanding Clause C5.3, if either the Council or the Provider:

a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or

b) considers that a Quarterly Report requires consideration sooner than the next scheduled annual meeting as provided for in Clause C5.2,

then that Party may by notice require that a Contract Management Meeting be held as soon as practicable and in any event within five (5) Working Days following that notice.

C5.3 Without prejudice to Clause C5.3, the Parties shall meet at the conclusion of the initial Contract Year and review the information provided by the Provider in the accordance with this Clause C5. The Parties shall use this information and any other information in relation to the Services, to agree a baseline for each Service Level.

C5.4 Following agreement of the baseline for each Service Level, such baselines shall apply from the date of such agreement until the expiry or earlier termination of this Contract. Nothing in this Clause C5 shall preclude the Provider from providing the Services in accordance with this Contract from the Commencement Date.

C5.5 If the Provider fails to provide the Services in accordance with the Service Levels measured quarterly, the Council shall advise the Provider and the procedures set out in Clause H7 shall apply

C5.6 The Contract Managers of both Parties shall have regular annual meetings to monitor and review the performance of this Contract, the achievement of the Service Levels and the provision of the Services. Such meetings shall be minuted by the Council and copies of the minutes shall be circulated to and approved by both Parties.

C5.7 Prior to each annual meeting, the Council shall notify the Provider’s Contract Manager, and vice versa, of any problems relating to the provision of the Services for discussion at the annual meeting. At the meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree a plan, the procedures set out in Clause H7 shall apply. Progress at implementing the plan shall be included in the agenda for the next annual meeting.

C5.8 The Council and the Provider shall review the Service Levels annually throughout the Contract Period and make any changes in accordance with the Change Control procedure to reflect the changes in the Service Levels.

C5.9 The Provider shall attend all such other meetings and provide such reports as may reasonably be required by the Council including those reports and meetings as set out in Schedule 1 and Schedule 4.

**C6 CONTRACT MANAGEMENT**

C6.1 The Provider shall work with the Council to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered to at least the minimum required standard as specified.

C6.2 The Provider shall work with the Council to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Provider's management and delivery of it.

C6.3 The Provider shall supply information requested relevant to the delivery of the Services to the Council, using formats and to the timescales specified by the Council.

C6.4 The Council intends, wherever it can, to capture and collate information through its IT system(s). However, the Council does reserve the right to make reasonable requests for information (at no additional charge) from the Provider including ad-hoc requests for information from time to time.

C6.5 Any additional requests for information shall be considered in consultation with the Provider as shall the process of defining the methods of collection.

C6.6 Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within the Contract.

C6.7 Review meetings as referred to in Clause C5 between the Council and the Provider shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.

C6.8 The Council may undertake spot checks at any time to ensure that the Provider is complying with its obligations under this Contract and the Provider shall co-operate fully, at its own cost, with the Council.

C6.9 The Provider shall be responsible for managing and reporting on any Sub-Contractual arrangements. Arrangements shall include mechanisms for the provision of management information, change control procedures and the prompt resolution of any problems. The Council shall agree with the Provider day-to-day relationship management, contact points, communication flows and escalation procedures.

C6.10 The Provider shall be expected to continuously improve the quality of the provision of the Services including that delivered by Sub-Contractors.

STATUTORY OBLIGATIONS AND REGULATIONS

# D1 PREVENTION OF BRIBERY

## 

### D1.1 The Provider:

### (a) shall not and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act;

### (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

### D1.2 The Provider shall:

### (a) if requested, provide the Council with any reasonable assistance, at the Council’s reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

### (b) within five (5) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this Clause D1 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

## D1.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

## D1.4 The Provider shall immediately notify the Council in writing if it becomes aware of or suspects any Default of Clause D1.1 or has reason to believe that it has or any Staff has:-

## (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act or Default of Clause D1.1(b);

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act or breach of Clause D1.1(b).

## D1.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of Clause D1*,* the Provider must respond promptly and in any event within ten (10) Working Days to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 12 (twelve) calendar years following the expiry or termination of this Contract.

### D1.6 The Council may:-

### terminate this Contract by written notice with immediate effect and recover from the Provider the amount of any Loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period if the Provider breaches Clause D1; and

1. recover in full from the Provider any other Losses sustained by the Council in consequence of any Default of Clause D1.

### D1.7 Any notice of termination under Clause D1.6 must specify:-

### the nature of the Prohibited Act;

### the identity of the party whom the Council believes has committed the Prohibited Act; and

### (c) the date on which this Contract shall terminate.

## D1.10 Despite Clause I2 (Disputes), any dispute relating to:-

### the interpretation of Clause D1; or

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

### shall be determined by the Council acting reasonably having given due consideration to all relevant factors and its decision shall be final and conclusive.

## D1.11 Any termination under Clause D1.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

D1.12 In exercising its rights or remedies under Clause D1.6, the Council shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by Clause D1.1 and the identity of the person performing that Prohibited Act/prohibited conduct.

**D2 ANTI-DISCRIMINATION**

D2.1 The Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or other any Law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

D2.2 The Parties shall not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.

D2.3 The Provider shall provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).

D2.4 In performing this Contract the Provider shall comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:-

* + - 1. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
      2. advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
      3. foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it

and for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.

D2.5 The Provider shall take all reasonable steps to secure the observance of Clause D2.1 by all Staff employed in performance of this Contract.

D2.6 The Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Provider under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination.

D2.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Provider’s performance of this Contract being in contravention of Equality Legislation or other any Law, enactment, order or regulation relating to discrimination, the Provider shall, free of charge:-

1. provide any information requested in the timescale allotted;
2. attend any meetings as required and permit the Staff to attend;
3. promptly allow access to and investigation of any documents or data deemed to be relevant;
4. allow the Provider and any of the Staff to appear as witness in any ensuing proceedings, and
5. cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

D2.8 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Provider, its agents, Sub-Contractors or Staff, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Council with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.

D2.9 The Provider must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.

D2.10 The Provider acknowledges that the Council may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Provider shall provide all necessary assistance and information to the Council as may be required in relation to the performance of an impact analysis by the Council. The Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Council.

**D3 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

D3.1 Save for as provided for in Clause B1A, a person who is not a Party to this Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

#### D4 ENVIRONMENTAL REQUIREMENTS

D4.1 The Provider shall, when working at any Premises in the delivery of the Services, perform its obligations under this Contract in accordance with the Council’s environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**D5 HEALTH AND SAFETY**

D5.1 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Law relating to health and safety, which may apply to the Staff and other persons working at/on the Premises in the performance of its obligations under this Contract.

D5.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

D5.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under this Contract at the Premises where that incident causes any personal injury and/or damage to property which could give rise to personal injury claim and/or other claim in relation to such damage to property.

D5.4 The Provider shall promptly (within twenty four (24) hours) notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract or any Individual Form of Agreement.

D5.6 The Provider shall co-operate with officers of the Council, or its representatives, investigating any health and safety matter.

D5.7 The provider shall follow national best practice and guidance relating to all aspects of the Services regarding Health & Safety, operational service standards and safe practices. These may include but are not exclusive to:

- Prevention and Control of Infections

- Risk Assessments

- HIV and Hepatitis

- Moving and Handling

D5.8The Provider shall have particular regard for the following Health & Safety Executive publications:

* HSG268 – The Health & Safety Toolkit
* HSG65 – Managing for Health & Safety

D5.9 The provider shall ensure that any Staff required to physically support Service Users with any moving and handling needs shall undertake the appropriate training, including refresher course, before carrying out these duties. The Provider must comply with the Council's Moving and Handling Policy, which can found at <http://www.lincolnshire.gov.uk/jobs/manuals/health-and-safety-manual/hazards/moving-and-handling-people?tab=downloads>

D5.10 The Provider shall have particular regard to Provision and Use of Work Equipment Regulations (PUWER) and Lifting Operations Lifting Equipment Regulations (LOLER) and shall ensure that all Equipment including hoists are maintained in accordance with manufacturers’ instructions by trained and competent personnel.

D5.11 The Provider shall ensure that theCode of Practice regarding the prevention and control of infections, under the Health and Social Care Act 2008 (revised July 2015), is adhered to when providing the Services.

**D6 SAFEGUARDING**

**SAFEGUARDING CHILDREN/VULNERABLE ADULTS**

D6.1 The Provider shall make the necessary arrangements to ensure compliance with all Laws relevant to the duty to safeguard and promote the welfare of children and vulnerable adults in the delivery of all aspects of the Service including but not limited to Section 11 of the Children Act 2004, the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.

D6.2 The Provider, if it has responsibility for the management and control of Regulated Activity (as defined under the legislation identified below), shall make the necessary arrangements to ensure compliance with Section 11 of the Children Act 2004 (the duty to safeguard and promote the welfare of children in the delivery of all aspects of the Service) and the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).

D6.3 The Provider shall make the necessary arrangements to ensure compliance with registration requirements with the Disclosure and Barring Service.

D6.4 To fulfil the commitment to safeguard and promote the welfare of children and vulnerable adults, as appropriate, the Provider shall have:-

1. Clear priorities for safeguarding and promoting the welfare of children/vulnerable adults explicitly stated in strategic policy documents;
2. A clear commitment by senior management to the importance of safeguarding and promoting children/vulnerable adults’ welfare;
3. A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children/vulnerable adults;
4. Recruitment and human resources procedures in compliance with Clause B5 in order to safeguard and promote the welfare of children/vulnerable adults;
5. Procedures for dealing with allegations of abuse against members of Staff and volunteers;
6. Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively;
7. Policies for safeguarding and promoting the welfare of children/vulnerable adults and procedures that are in accordance with guidance and locally agreed inter-agency procedures;
8. Arrangements to work effectively with other organisations to safeguard and promote the welfare of children/vulnerable adults including sharing of information;
9. A culture of listening to and engaging in dialogue with children/vulnerable adults; and
10. Appropriate whistle-blowing procedures.

D6.5 The Provider shall immediately notify the Council of any information it reasonably requests to enable it to be satisfied that the obligations of Clauses B5 and D6 have been met.

PROTECTION OF INFORMATION

E1 DATA PROTECTION

E1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council and the Provider are Joint Controllers.

E1.2 The Provider shall notify the Council immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

E1.3 Where Personal Data relating to a Data Subject are collected from the Data Subject, or, someone other than the Data Subject, by either of the Joint Controllers, the Controller obtaining the Personal Data shall, at the time when Personal Data is obtained, be it from the other Data Controller, Data Subject or any other party provide the Data Subject with all of the following information:-

* 1. the identity and the contact details of the Data Controller and, where applicable, of the Controller’s representative;
  2. the contact details of the Data Protection Officer, where applicable;
  3. the purposes of the processing for which the Personal Data are intended as well as the legal basis for the processing;
  4. the legitimate interests pursued by the Controller or by a third party;
  5. the recipients or categories of recipients of the Personal Data, if any;
  6. the categories of Personal Data concerned (this relates to Personal Data obtained from someone other than the Data Subject only);
  7. where applicable, the fact that the Controller intends to transfer Personal Data to a third country or international organisation and the existence or absence of an adequacy decision by the Information Commission, or where a transfer requires safeguards under [Article 46](https://gdpr-info.eu/art-46-gdpr/) or [47](https://gdpr-info.eu/art-47-gdpr/), or the second subparagraph of [Article 49(](https://gdpr-info.eu/art-49-gdpr/)1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available; and
  8. the existence of automated decision-making, including profiling, and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the Data Subject (this only relates when the Personal Data has not been obtained from the Data Subject).

E1.4 In addition to the information referred to in paragraph E1.3 the Controller who has obtained the Personal Data from the Data Subject shall, at the time when Personal Data is obtained, provide the Data Subject with the following further information necessary to ensure fair and transparent processing:-

* + - * 1. the period for which the Personal Data shall be stored, or if that is not possible, the criteria used to determine that period;
        2. the existence of the right to request from the Controller access to and rectification or erasure of Personal Data or restriction of processing concerning the Data Subject or to object to processing as well as the right to Data portability;
        3. where the processing is based on the Data Subject having given consent, the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
        4. the right to lodge a complaint with the Information Commissioner's office or any other relevant supervisory authority;
        5. whether the provision of Personal Data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the Data Subject is obliged to provide the Personal Data and of the possible consequences of failure to provide such Data; and
        6. the existence of automated decision-making, including profiling, and, at least in these cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the Data Subject.

E1.5 Where the Controller intends to further process the Personal Data obtained from the Data Subject for a purpose other than that for which the Personal Data was collected, the Controller shall provide the Data Subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in Clauses E1.3, E1.4 and E1.5 shall not apply where and insofar as the Data Subject already has the information.

E1.6 The Controller who has obtained the Personal Data from someone other than the Data Subject shall provide the information referred to in Clause E1.3 (a) to (g):-

1. within a reasonable period after obtaining the Personal Data, but at the latest within one (1) Month, having regard to the specific circumstances in which the Personal Data are processed;
2. if the Personal Data is to be used for communication with the Data Subject, at the latest at the time of the first communication to that Data Subject; or
3. if a disclosure to another recipient is envisaged, at the latest when the Personal Data are first disclosed.

E1.7 Where the Controller who has obtained the Personal Data from someone other than the Data Subject intends to further process the Personal Data for a purpose other than that for which the Personal Data was obtained, the Controller shall provide the Data Subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in Clause E1.3 (a) to (h).

E1.8 Clause E1.3 (insofar as it relates to Data obtained from someone other than the Data Subject) and Clauses E1.5 to E1.7 shall not apply where and insofar as:-

* 1. the Data Subject already has the information;
  2. the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or in so far as the obligation referred to in Clause E1.3 of this Contract is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the Controller shall take appropriate measures to protect the Data Subject’s rights and freedoms and legitimate interests, including making the information publicly available;
  3. obtaining or disclosure is expressly laid down by Union or Member State law to which the Controller is subject and which provides appropriate measures to protect the Data Subject’s legitimate interests; or

1. where the Personal Data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.

E1.9 Without prejudice to the provisions set out in Clause G1.7, the Provider shall indemnify the Council and shall keep the Council indemnified against all liabilities, losses, damages, costs or consequential losses or loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable costs and expenses suffered or incurred by the Customer arising out of or in connection with any claim made against it in relation to any breach by the Supplier of the DPA or GDPR or the Provider's obligations under this Contract.

E1.10 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:-

1. a systemic description of the envisaged processing operations and the purpose of the processing;
2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
3. an assessment of the risks to the rights and freedoms of Data Subjects; and
4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E1.11 Subject to Clause E1.12, either Party shall notify the other Party and the point of contact identified in Part A of Schedule 7 immediately if it :-

1. receives a Data Subject Request (or purported Data Subject Request) including a request to rectify, block or erase any Personal Data any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation with the details of any such request;
2. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
3. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
4. becomes aware of a Data Loss Event.

E1.12 The Provider's obligation to notify under Clause E1.11 shall include the provision of further information to the Council in phases, as details become available.

E1.13 The Party receiving a request as identified in Clause E1.11, shall be responsible for responding to the Data Subject provided that the receiving party shall at all times consult with the other Party with regards the response unless otherwise agreed between the Parties.

E1.13A The Party who becomes aware of a Data Loss Event shall inform the other Party of the breach and the Parties shall identify which Party would be most appropriate to report the Data Loss Event to the Information Commissioner's Office and to inform the Data Subject(s).

E1.14 Both Parties shall comply with their obligations under Article 30 of the GDPR and shall maintain complete and accurate records and information to demonstrate its compliance with this clause E1.

E1.15 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

E1.16 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

E1.17 The Council may, at any time on not less than thirty (30) Working Days' notice, revise this Clause E1 by replacing it with any applicable controller to controller standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

E1.18 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

E1.19 The Provider acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data, the Council may be irreparably harmed (including harm to its reputation). In such circumstances, the Council may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

E1.20 In the event that through failure by the Provider to comply with its obligations under the Contract, the Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Provider .

E1.21 In the event that the Provider is placed into liquidation as outlined in Clause H1.1 (b) and H1.1(c) or the Contract is terminated by the Council pursuant to the provisions of the Contract relating to termination on insolvency in accordance with Clause H1.1, the Provider (or a liquidator or provisional liquidator acting on behalf of the Provider) shall at its own cost and at no cost to the Council:-

1. conduct a full and thorough search for any electronic and paper records held by the Provider which contain Council Personal Data in accordance with the Council's instructions;
2. return all relevant records to the Council in accordance with the Council's instructions;
3. permanently destroy all copies of any relevant electronic records; and
4. provide written confirmation to the Council that the actions outlined above in this Clause E1.21 have been completed.

E1.22 In the event of a Sub-Contractor of the Provider being in liquidation then it is the responsibility of the Provider to recover records and Council Personal Data held by the Sub-Contractor and/or Sub-processor and provide assurance to the Council that they have been recovered.

E1.23 In the event that the Supplier is put into administration as outlined in Clause H1.1 (a) the Customer shall work closely with the administrator to ensure that the Supplier is able to maintain the Customer Personal Data and other records they have created in accordance with Clause E1 of this Contract and maintain the standards of safekeeping as set out in this Contract including Schedule 7.

E1.24 The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.]

E2 CONFIDENTIAL INFORMATION

E2.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:-

1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E2.2 Clause E2.1 shall not apply to the extent that:-

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause E3 (Freedom of Information);

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

(e) it is independently developed without access to the other Party's Confidential Information.

E2.3 The Provider may only disclose the Council's Confidential Information to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations of confidentiality.

E2.4 The Provider shall not use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

E2.5 At the written request of the Council, the Provider shall procure that the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

E2.6 Nothing in this Contract shall prevent the Council from disclosing the Provider's Confidential Information:-

(a) to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;

(b) to any consultant, professional adviser, contractor, Provider or other person engaged by the Council or any person conducting a government office gateway review;

(c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(d) for the purpose of the examination and certification of the Council's accounts;

1. on a confidential basis for the purpose of the exercise of its rights under this Contract including for auditing purposes, to a body to novate, assign or dispose of its rights under the Contract (Clause F1.8), to a Replacement Contractor (Clause H6.2) and for the purpose of the examination and certification of the Council's accounts; or

(f) for any 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.

E2.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause E2.6 is made aware of the Council's obligations of confidentiality.

E2.8 Nothing in this Clause E2 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

E2.9 Any breach by the Provider of Clauses E2.1 – E2.4 shall be a breach incapable of remedy for the purposes of Clause H2 and shall entitle the Council (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause H2.

E2.10 The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E2.11 Notwithstanding any other term of this Contract, the Provider hereby gives consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

E3 TRANSPARENCY AND FREEDOM OF INFORMATION

E3.1 The Parties acknowledge that the content of this Contract, including any changes to this Contract agreed from time to time, except for:

* + - * 1. any Information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Council; and
        2. Commercially Sensitive Information

(together the "Transparency Information") is not Confidential Information.

E3.2 Notwithstanding any other provision of this Contract, the Provider hereby gives its consent for the Council to publish to the general public the Transparency Information in its entirety (but with any Information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). 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 decision in its absolute discretion.

E3.3 The Provider shall assist and co-operate with the Council to enable the Council to publish the Transparency Information.

E3.4 The Council acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication it will provide a clear explanation to the Provider. If the Council believes that publication of any element of the Transparency Information would be contrary to the public interest, the Council shall be entitled to exclude such Information from publication. The Council acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety.

E3.5 The Council shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Provider.

E3.6 The Provider agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Council on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Council may disclose such Information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause E2.6(c)) and E11) publish such Information. The Provider shall provide to the Council within five (5) Working Days (or such other period as the Council may reasonably specify) any such Information requested by the Council.

E3.7 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

E3.8 The Provider shall and shall procure that any Sub-Contractors shall:-

1. transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

(b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and

(c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E3.9 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

E3.10 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

E3.11 The Provider acknowledges that (notwithstanding the provisions of Clause E3.7) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:-

1. without consulting the Provider; or
2. following consultation with the Provider and having taken their views into account;

provided always that where E3.11(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.

E3.12 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

E3.13 The Provider acknowledges that the Council may be obliged to disclose Commercially Sensitive Information in accordance with this Clause E3.

E4 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

E4.1 The Provider shall not:-

1. make any press announcements or publicise this Contract or its contents in any way; or
2. use the Council's name or brand/logo in any promotion or marketing or announcements of orders

without the Approval of the Council which shall not be unreasonably withheld or delayed.

E4.2 Both Parties shall take reasonable steps to ensure that their employees, agents, sub-contractors, Providers, professional advisors and consultants comply with Clause E4.1.

E4.3 If so requested by the Council, the notepaper and other written material of the Provider and Sub-Contractors relating to the delivery of the Services shall carry only logos and markings Approved by the Council.

E4.4 All publicity and marketing material produced by the Provider and/or its Sub-Contractors in relation to this Contract shall be submitted to the Council for Approval and no such items shall be printed (other than for purposes of Approval) until such Approval is received.

E5 SECURITY

E5.1 The Provider shall agree to comply with the minimum information security standards detailed at Schedule 7 to this Contract at all time when processing the Council's Personal Data for the purposes or in connection with the delivery of the Services. Failure by the Provider to comply with this obligation shall constitute a Default and be dealt with in accordance with Clause H3.

E6 INTELLECTUAL PROPERTY RIGHTS

E6.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):-

(a) furnished to or made available to the Provider by or on behalf of the Council shall remain the property of the Council; and

(b) prepared by or for the Provider on behalf of the Council for use, or intended use, in relation to the performance by the Provider of its obligations under the Contract shall belong to the Council;

and the Provider shall not (except when necessary for the performance of this Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E6.2 The Provider hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause E6.1(b). This assignment shall take effect on the date of this Contract or as a present assignment of future rights that shall take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation necessary to execute this assignment.

E6.3 The Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.

E6.4 The Council shall grant to the Provider a non-exclusive, revocable, free licence for the Contract period to use the IP Materials where it is necessary for the Provider to supply the Services. The Provider shall have the right to sub-licence the Provider's use of the IP Materials. At the end of the Contract Period or early termination thereof the Provider shall cease to use and shall ensure that any Sub-Contractor ceases to use the IP Materials.

E6.5 The Provider shall grant the Council a non-exclusive, irrevocable, free licence for the Contract Period to use the Provider's Intellectual Property Rights where it is necessary for the Council in the provision of the Services. At the end of the Contract Period, the Council shall cease to use the Provider's Intellectual Property Rights.

E6.6 The Provider shall obtain Approval from the Council before using any material in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable. That licence or sub-licence shall also include the right for the Council to sub-licence, transfer, novate or assign to other Contracting Bodies, the Replacement Contractor or to any other third party supplying services to the Council.

E6.7 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council harmless from and against all Losses which the Council may suffer or incur as a result of or in connection with any breach of this Clause E6, except where any such claim arises from:-

(a) items or materials based upon designs supplied by the Council; or

(b) the use of data supplied by the Council which is not required to be verified by the Provider under any provision of this Contract.

E6.8 The Council shall notify the Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Rights in materials supplied or licensed by the Provider.

E6.9 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Provider, provided always that the Provider:-

(a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Council; and

(c) shall not settle or compromise any claim without the Council’s Approval (not to be unreasonably withheld or delayed).

E6.10 The Council shall at the request of the Provider provide the Provider with all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Provider by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Provider’s obligations under this Contract. The Provider shall indemnify the Council for all Losses incurred in doing so.

E6.11 The Council and the Provider shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by the Council or the Provider in connection with the performance of this Contract.

E6.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with this Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Council and, at its own expense and subject to the Approval of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:-

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or

(b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,

and in the event that the Provider is unable to comply with Clauses E6.12(a) or (b) within twenty (20) Working Days of receipt of the Provider’s notification the Council may terminate this Contract with immediate effect by notice in writing.

**E7 AUDIT**

E7.1 The Provider shall keep and maintain until twelve (12) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council’s Representatives such access to those records as may be requested by the Council in connection with this Contract.

E7.2 The Council may at any time during the Contract Period and for a period of twelve (12) Months after the Contract Period, conduct an audit for the following purposes:-

1. to verify the accuracy of the Service Charges that become due and payable by the Council to the Provider in respect of the Services (and proposed or actual Changes to them in accordance with the Contract) or the costs of all Providers (including Sub-Contractors) of the Services;
2. to review the integrity, confidentiality and security of the Council Personal Data;
3. to review the Provider's compliance with the DPA, FOIA and other Law applicable to the Services;
4. to review the Provider's compliance with its obligations under the Contract;
5. to review any records created during the provision of the Services;
6. to review any books of account kept by the Provider in connection with the provisions of the Services;
7. to carry out the audit and certification of the Council's accounts;
8. to carry out an examination of the economy efficiency and effectiveness with which the Council has used its resources; and
9. to verify the accuracy and completeness of any management information delivered or required by this Contract.

E7.3 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.

E7.4 Subject to the Council's obligation of confidentiality, the Provider shall on demand provide the Council and any other Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:-

1. all Information requested within the permitted scope of the audit;
2. reasonable access to any premises or sites controlled by the Provider and to any Equipment and Assets used (whether exclusively or non-exclusively) in the performance of the Services;
3. access to the Staff;
4. access to software owned or licenced to the Provider including software which is or will be used by the Provider for the purposes of providing the Services; and
5. accommodation (including desks) at the Provider's premises as reasonably required to conduct the audit.

E7.5 The Council shall endeavour to (but shall not be obliged to) provide at least fourteen (14) calendar days' notice of its intention to conduct an audit.

E7.6 If an audit identifies that:-

1. the Provider has committed a material Default which is capable of remedy, the Provider shall correct such Default as soon as reasonably practicable and implement a Remediation Plan in accordance with the Remediation Plan Process;
2. the Council has overpaid any charges that became due and payable by the Council to the Provider in respect of the Services properly rendered, the Provider shall pay to the Council the amount overpaid within twenty (20) Working Days. The Council may deduct the relevant amount from any further payment when due if the Provider fails to make the payment; and
3. the Council has underpaid any charges that become due and payable by the Council to the Provider in respect of the Services properly rendered, the Council shall pay to the Provider the amount of the under-payment less the cost incurred by the Council of the audit if this was due to a Default by the Provider within twenty (20) Working Days.

**E8 EXCEPTIONAL AUDITS**

E8.1 The Provider shall permit the Council and/or its appointed representatives access to conduct an audit (an "Exceptional Audit") of the Provider in any of the following circumstances:-

1. actual or suspected impropriety or Fraud;
2. there are reasonable grounds suspect that:-

(i) the Provider is in Default under the Contract;

(ii) the Provider is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Provider financial distress and result in a risk of the Provider becoming insolvent or bankrupt; or

(iii) a breach of the provisions set out in Schedule 7

(each an "Exceptional Circumstance").

E8.2 If the Council notifies the Provider of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Provider shall provide access in accordance with Clause E7.4 as soon as reasonably practicable after such request and in any event within forty eight (48) hours of the request having been made.

**E9 AUDIT COSTS**

E9.1 The Parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses E7.2 to E8.2 unless an audit identifies a material Default by the Provider in which case the Provider shall reimburse:-

(a) the Council for all the Council's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and

(b) where the Council, a Regulatory Body and Auditor General appoint another body to conduct an audit, the Council shall be able to recover on demand from the Provider the identifiable, reasonable and properly incurred costs and expenses of the relevant body.

**E10 MALICIOUS SOFTWARE**

E10.1 The Provider shall ensure anti-virus software is updated as frequently as is necessary in order to provide protection against the latest threats and delete Malicious Software from the ICT Environment.

E10.2 Notwithstanding Clause E10.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Personal Data or any other data provided by the Council, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

E10.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause E10.2 shall be borne by the Parties as follows:-

1. by the Provider where the Malicious Software originates from the Provider Software, third party software licenced to the Provider or the Council Personal Data or other data provided by the Council whilst all such Council Personal Data and other data was under the control of the Provider; and
2. by the Council if the Malicious Software originates from the Council Software, third party software licenced to the Council or the Council Personal Data whilst all such Council Personal Data and other data was under the control of the Council.

**E11 RECORDS AND OPEN BOOK ACCOUNTING**

E11.1The Provider shall (and shall procure that each Sub-Contractor shall):

(a) at all times maintain a full record of particulars of the costs of performing the Services;

(b) upon request by the Council, provide a written summary of any of the costs referred to in Clause E11.1(a), in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Provider of its obligations under the Contract;

(c) provide such facilities as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause E11.1; and

(d) provide to the Council copies of its annual report and accounts within twenty (20) Working Days of publication.

E11.2 Compliance with Clause E11.1 shall require the Provider to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to the Contract, showing in detail:

(a) administrative overheads;

(b) payments made to the Sub-Contractors and from the Sub-Contractors to their sub-contractors;

(c) capital and revenue expenditure; and

(d) such other items as the Council may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of the Contract,

and the Provider shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in sub-clauses E11.2(a) to E11.2(d) inclusive, available for inspection by the Council (and its advisers) upon reasonable notice pursuant to Clause E7, and shall provide a copy of these to the Council as and when requested from time to time.

E11.3The Provider shall maintain that detailed records relating to the performance of the Services, in each case in accordance with Good Industry Practice and any applicable Legislation.

E11.4 Without prejudice to Clause E11.3, the Provider shall ensure that the following are maintained:

(a) a full record of all incidents relating to health, safety and security which occur during the Contract Period;

(b) full records of all staff matters including turnover, pay and disciplinary matters, and

(c) a full record of any other matters provided for within Schedule 1

and the Provider shall have the items referred to in clauses E11.4(a) to E11.4(c) available for inspection by the Council (and its advisers) upon reasonable notice, and shall provide copies of these to the Council as and when requested from time to time.

E11.5 Upon termination or expiry of the Contract, and in the event that the Council wishes to enter into an agreement with any Replacement Contractor, the Provider shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Council to provide information relating to the Provider's costs of providing the Services (if applicable for the Services).

E11.6 All information referred to in this Clause E11 is subject to the obligations set out in Clauses E2 and E3.

CONTROL OF THE CONTRACT

F1 TRANSFER AND SUB-CONTRACTING

F1.1 Except where F1.4 and F1.5 applies, the Provider shall not assign, sub-contract or in any other way dispose of this Contract or any part of it without prior Approval.

F1.2 The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

F1.3 Where the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable but at least within ten (10) Working Days of the request.

F1.4 Notwithstanding Clause F1.1, the Provider may assign to a third party (“the Assignee”) the right to receive payment of the Service Charges or any part thereof due to the Provider under this Contract (including any interest which the Provider may incur under Clause C2.6). Any assignment under this Clause F1.4 shall be subject to:-

(a) reduction of any sums in respect of which the Council exercises its right of recovery under Clause C3 (Recovery of Sums Due);

(b) all related rights of the Council under the Contract in relation to the recovery of sums due but unpaid; and

(c) the Council receiving notification under both Clauses F1.5 and F1.6.

F1.5 In the event that the Provider assigns the right to receive the Service Charges under Clause F1.4, the Provider shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Provider shall ensure that the Assignee notifies the Council of the Assignee’s contact information and bank account details to which the Council shall make payment at least five (5) Working Days prior to submission of the relevant invoice.

F1.7 The provisions of Clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.

F1.8 Subject to Clause F1.10, the Council may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:-

(a) any Contracting Authority; or

(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

(c) any private sector body which substantially performs the functions of the Council,

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider’s obligations under this Contract.

F1.9 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause F1.8, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.

F1.10 The Council may disclose to any of its assignees Confidential Information of the Provider which relates to the performance of the Provider’s obligations under this Contract. In such circumstances the Council shall authorise the assignee to use such Confidential Information only for purposes relating to the performance of the Provider’s obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the assignee gives a confidentiality undertaking in relation to such Confidential Information.

F1.11 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Contract.

F2 WAIVER

F2.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A5 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

**F3** **CHANGE CONTROL PROCEDURE**

## Without prejudice to any other provision contained in the Contract:

###### 

###### COUNCIL CHANGE

### F3.1 The Council has the right to propose a Change in the Services in accordance with this Clause F3.1. If the Council requires a Change, it must serve a Council Change Control Notice on the Provider. The Council shall not propose a Change that:-

#### (a) requires the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;

#### (b) would cause any consent to be revoked (or unobtainable);

#### (c) would, if implemented, result in a material change in the nature of the Services; and/or

#### (d) would materially and adversely affect the Provider's ability to perform the Services or cause or be likely to cause loss of revenue or incur expenditure in a way that is not adequately compensated for.

### F3.2 The Council Change Control Notice shall:-

#### set out the Change required in sufficient detail to enable the Provider to calculate and provide an estimate of the variation in costs and or loss in revenue (the “Provider’s Change Control Response”); and

#### (b) require the Provider to provide the Council within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) of receipt of the Council Change Control Notice with the Provider’s Change Control Response.

### F3.3 As soon as practicable and in any event within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) after having received the Council Change Control Notice, the Provider shall deliver to the Council the Provider’s Change Control Response. The Provider’s Change Control Response shall include the opinion of the Provider on:-

#### (a) whether relief from compliance with obligations is required, including the obligations of the Provider to meet the Service Levels contained in the Contract during the implementation of the Change;

#### (b) any impact on the provision of the Services;

#### (c) any amendment required to this Contract as a result of the Change; and

#### (d) any loss of revenue or prospective revenue to the Provider or Sub-Contractor that results from the Change.

### F3.4 As soon as practicable after the Council receives the Provider’s Change Control Response, the Parties shall discuss and agree the issues set out in the Provider’s Change Control Response, including:-

#### (a) providing evidence that the Provider has used all reasonable endeavours (including the use of competitive quotes) to oblige its Sub–Contractors (if any) to minimise any increase in costs and maximise any reduction in costs;

#### (b) demonstrating that the relevant Changes shall be implemented in the most cost effective manner; and

#### (c) in such discussions the Council may modify the Council Change Control Notice, in which case the Provider shall, as soon as practicable, and in any event not more than seven (7) Working Days (or such other reasonable period of time as the Parties shall agree) after receipt of such modification, notify the Council of any consequential changes to the Provider’s Change Control Response.

### F3.5 If the Parties cannot agree on the contents of the Provider’s Change Control Response then the dispute shall be determined in accordance with Clause I2 (Dispute).

### F3.6 As soon as practicable after the contents of the Provider’s Change Control Response has been agreed or otherwise determined pursuant to Clause I2 (Dispute), the Council shall:-

#### (a) confirm in writing the Provider’s Change Control Response (as modified); or

#### (b) withdraw the Council Change Control Notice.

### F3.7 If the Council does not confirm in writing the Provider’s Change Control Response (as modified) within fifteen (15) Working Days (or such other reasonable period of time as the Parties shall agree) of the contents of the Provider’s Change Control Response having been agreed in accordance with Clause F3.4 above or determined pursuant to Clause F3.6 above, then the Council Change Control Notice shall be deemed to have been withdrawn.

### F3.8 In the event that the Provider’s Change Control Response has been confirmed by the Council, the relevant Change shall be implemented within seven (7) Working Days of the Council’s acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.

###### PROVIDER CHANGE

### F3.9 If the Provider wishes to introduce a Change, it must serve a Provider Change Control Notice on the Council.

### F3.10 The Provider Change Control Notice must:-

#### (a) set out the proposed Change in sufficient detail which detail shall include but not be limited to impact on Service delivery and financial implications so as to enable the Council to evaluate it in full;

#### (b) specify the Provider’s reasons for proposing the Change;

#### (c) request the Council to consult with the Provider with a view to deciding whether to agree to the Change and, if so, what consequential changes the Council requires as a result;

#### (d) indicate any implications of the Change(s); and

#### (e) indicate if there are any dates by which a decision by the Council is critical.

### F3.11 The Council shall evaluate the Provider’s proposed Change in good faith, taking into account all relevant issues, including whether:-

#### (a) the Change affects the quality of the Services or the likelihood of successful delivery of the Services;

#### (b) the Change shall interfere with the relationship of the Council with third parties;

#### (c) the financial strength of the Provider is sufficient to perform the Change; and

#### (d) the Change materially affects the risks or costs to which the Council is exposed.

### F3.12 As soon as practicable after receiving the Provider Change Control Notice, the Parties shall meet and discuss the matter referred to in it. During their discussions the Council may propose modifications or accept or reject the Provider Change Control Notice.

### F3.13 If the Council accepts the Provider Change Control Notice (with or without modification), the relevant Change shall be implemented within seven (7) Working Days of the Council’s acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.

### F3.14 If the Council rejects the Provider Change Control Notice, it shall give its reasons for such a rejection.

### F3.15 The Council cannot reject a Change that is required in order to conform to change in Law relating to the Services which was not reasonably foreseeable at the Commencement Date provided that such a Change does not materially affect the quality or performance of the Services as required under the Contract.

F4 SEVERABILITY

F4.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

F5.1 In the event that the Council is of the reasonable opinion that there has been a Default of this Contract by the Provider, then the Council may, without prejudice to its rights under Clause H2 (Termination on Default) or H7 (Remediation Plan Process), do any of the following:-

(a) without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider shall once more be able to supply all or such part of the Services in accordance with this Contract; and/or

(b) without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in the Service Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services.

F5.2 Without prejudice to its rights under Clause C3 (Recovery of Sums Due), the Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

**F6 REMEDIES CUMULATIVE**

F6.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**F7 FINANCIAL ASSURANCE**

F7.1 The Provider shall immediately disclose to the Council any material changes to the organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

F7.2 The Provider shall notify the Council immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Provider's financial viability.

F7.3 Only where requested by the Council, shall the Provider be obliged to provide any financial information which could include but is not limited to a copy of the Provider's annual accounts and annual returns.

**F8 ENTIRE AGREEMENT**

F8.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F8.2 Each of the Parties acknowledges and agrees that in entering into this Contract, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

**F9 COUNTERPARTS**

F9.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

LIABILITIES

G1 LIABILITY, INDEMNITY AND INSURANCE

G1.1 Neither Party excludes or limits liability to the other Party for:-

(a) death or personal injury caused by its negligence; or

(b) Fraud; or

(c) fraudulent misrepresentation; or

(d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to Clause G1.1, the Provider’s total aggregate liability in respect of contract, tort, negligence, breach of statutory duty or otherwise shall not exceed five million pounds (£5,000,000.00).

G1.3 Subject to Clauses G1.4 and G1.5, the Provider shall indemnify the Council and keep the Council indemnified fully against all Losses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under this Contract or the presence of the Provider on the Premises, including loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

G1.4 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under this Contract.

G1.5 Without prejudice to the Council’s rights under this Contract, the Provider shall in respect of the performance of its obligations under this Contract effect and maintain the following insurances at the following indemnity levels with a reputable insurance company:-

(a) public liability insurance to a minimum of five million pounds (£5,000,000);

(b) employer’s liability insurance to a minimum of ten million pounds (£10,000,000);

(c) any other insurances as may be required by Law.

G1.6 The minimum amounts set out in Clause G1.5 shall, in each case, apply in respect of any single act or occurrence or a series of acts or occurrences arising from a single event but with no aggregate limit during any one period of cover. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of twelve (12) years following the expiration or earlier termination of this Contract.

G1.7 Subject always to Clause G1.1, in no event shall either Party be liable to the other for any:-

(a) loss of profits, business, revenue or goodwill; and/or

(b) loss of savings (whether anticipated or otherwise); and/or

(c) indirect or consequential loss or damage.

G1.8 The Provider shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Provider.

G1.9 The Provider shall give the Council, on request, copies of all insurance policies referred to in this Clause G1 or a broker’s verification of insurance to demonstrate that the appropriate cover is in place together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of this Contract, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

G1.11 The Provider shall notify the Council immediately of any alteration, cancellation or change of cover in respect of the insurances required by this Clause G1.

G1.12 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.

## G2 WARRANTIES AND REPRESENTATIONS

G2.1 The Provider warrants and represents that:-

(a) it has full capacity, authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Provider;

(b) in entering into this Contract it has not committed any Fraud;

(c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of this Contract;

(d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which shall or might have a material adverse effect on its ability to perform its obligations under this Contract;

(e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;

(f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider’s assets or revenue;

(g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;

(h) in the three (3) years prior to the date of this Contract:

(i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

**DEFAULT, DISRUPTION AND TERMINATION**

H1 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

H1.1 The Council may terminate this Contract with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:-

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

(b) a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

(c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator; or

(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(g) being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1(a)-(g) occurs under the Law of any other jurisdiction.

H1.2 The Council may terminate this Contract with immediate effect by notice in writing where the Provider is an individual and:-

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider’s creditors; or

(b) a petition is presented and not dismissed within fourteen (14) days or order made for the Provider’s bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of the Provider’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

(d) the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

(e) a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider’s assets and such attachment or process is not discharged within fourteen (14) days; or

(f) the Provider dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (“Change of Control”). The Council may terminate this Contract by notice in writing with immediate effect within six (6) Months of:-

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Council becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

H2 TERMINATION ON DEFAULT

H2.1 The Council may terminate this Contract by written notice to the Provider with immediate effect if the Provider commits a Default and if:-

(a) the Provider has not remedied the Default to the satisfaction of the Council in accordance with a Remediation Plan; or

(b) the Default is not, in the opinion of the Council, capable of remedy; or

(c) the Default is a material breach of this Contract.

H2.2 Without prejudice to any other rights or remedies that the Council has under the Contract (including without limitation Clause C5 and Clauses H1 or H2.1) where the Council considers that the Provider has committed a Persistent Breach in relation to the Contract or any part thereof (including any part of the Services), the Council shall be entitled to serve a written notice ( a "Formal Warning Notice") on the Provider:-

1. specifying that it is a Formal Warning Notice;
2. giving details of the Persistent Breach;
3. stating that if the Persistent Breach recurs two or more times within a three (3) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by the Persistent Breach.

H2.3 If:-

1. twenty (20) Working Days after service of a Formal Warning Notice the Provider has failed to demonstrate to the Council's satisfaction that:-

(i) the Persistent Breach specified has not continued; and

(ii) the Provider has put in place measures to ensure that such Persistent Breach does not occur; or

(b) within a three (3) Month period after the date of service of the Formal Warning Notice the Provider has failed to demonstrate to the satisfaction of the Council that:

(i) the Persistent Breach specified has not recurred two or more times within such three (3) Month period; and

(ii) the Provider has put in place measures to ensure that such Persistent Breach does not occur

then the Council may deem such failure to be a Default which is a material breach of the Contract for the purposes of Clause H2.1 (c).

H2.4 The Council may terminate this Contract with immediate effect by written notice to the Provider if it becomes apparent that the Provider should have been excluded from the procurement process and should not have been accepted onto the Open Select List, leading to the award of this Contract in accordance with the Public Contracts Regulations.

#### H2.5 In the event that through any Default of the Provider, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

#### H2.6 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate this Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clauses C3 (Recovery of Sums Due).

H3 BREAK

H3.1 The Council shall have the right to terminate this Contract at any time by giving three (3) Months’ written notice to the Provider. The Council may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Provider during the period of extension.

H3.2 Without prejudice to Clause H3.1, the Council may by no less than three (3) Months' written notice to the Provider terminate this Contract where it becomes apparent that:-

1. this Contract has been subject to substantial modification which would have required a new procurement procedure pursuant to the Public Contracts Regulations; or
2. this Contract should not have been awarded for the reasons specified in the Public Contract Regulations.

H3.3 Notwithstanding the provisions of Clauses H3.1 and H3.2, either Party may terminate this Contract in whole or in part by giving the other at least twelve (12) Months' notice in writing, or such other period as may be agreed between the Parties, without the need to give any reason for the termination. Save in relation to any previous Default, in the event of termination pursuant to this Clause H3.3, neither Party shall have any right or rights against the other arising out of or as a consequence of such termination other than as provided for by Clause H4.3.

H4 CONSEQUENCES OF EXPIRY OR TERMINATION

H4.A Where the Council terminates this Contract under Clause H2, the Provider shall immediately be removed from the Open Select List and as such, shall not be eligible to receive any further Individual Forms of Agreements from the date of such termination.

H4.1 Where the Council terminates this Contract under Clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.

H4.2 Where this Contract is terminated under Clauses H2 (Termination on Default), no further payments shall be payable by the Council to the Provider (for Services supplied by the Provider prior to termination and in accordance with this Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.

H4.3 Subject to Clause H4.4, where the Council terminates this Contract under Clause H3 (Break), the Council shall pay to the Provider the unavoidable direct Losses incurred by the Provider by reason of such termination provided that the Provider takes all reasonable steps to mitigate all such Losses. Where the Provider holds insurance, the Council shall only have to reimburse the Provider in respect of those unavoidable direct costs that are not covered by the insurance available. The Provider shall submit a fully itemised and costed list of unavoidable direct Losses which it is seeking to recover from the Council, with supporting evidence, of such alleged Losses reasonably and actually incurred by the Provider as a result of termination under Clause H3 (Break). Any payment paid by the Council in accordance with this Clause H4.3 shall be in full and final settlement of any claim, demand and/or proceedings of the Provider in relation to any termination by the Council pursuant to Clause H3. The Provider shall have no other rights or remedies available to it in respect of any such termination.

H4.4 The Council shall not be liable under Clause H4.3 to pay any sum which:-

(a) was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

(b) when added to any sums paid or due to the Provider under this Contract, exceeds the total sum that would have been payable to the Provider if this Contract had not been terminated prior to the expiry of the Contract Period; or

(c) is a claim by the Provider for loss of profit, due to early termination of this Contract.

H4.5 On expiry or termination of the Contract or any part thereof:-

(a) the Provider shall repay at once to the Council any moneys paid up to and including such date of termination other than moneys in respect of Services or part thereof properly performed in accordance with the Contract; and

(b) the Provider shall cease to use all of the Council's Intellectual Property Rights and IP Materials and shall return or destroy as the Council requires all documents, materials (including those in electronic format) incorporating or referring to the same.

H4.6 Save as otherwise expressly provided in this Contract:-

(a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

1. termination of this Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery), D2 (Anti Discrimination), E1 (Data Protection Act), E2 (Confidential Information), E3 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H4.7 The Parties shall comply with the provisions set out in Schedule 8.

H5 RECOVERY UPON TERMINATION

H5.1 On the expiry, early termination or termination of this Contract for any reason, the Provider shall:-

(a) immediately return to the Council all Confidential Information, Personal Data, IP Materials, records and any other documentation and information in its possession or in the possession or under the control of any permitted Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;

(b) immediately deliver to the Council all Assets (including materials, documents, information and access keys) provided to the Provider under Clause B8. Such Assets shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

(c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and

(d) promptly provide all information concerning the provision of the Services including records as referred to in Clause E11 which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which Services have been provided or for the purpose of enabling the Council or the Replacement Contractor to provide a continued delivery of the Services.

H5.2 If the Provider fails to comply with Clause H5.1 (a) and (b), the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or Sub-Contractors premises where any such items may be held.

H5.3 Where the end of the Contract Period arises due to the Provider’s Default, the Provider shall provide all assistance under Clause H5.1 free of charge. Where the Contract ends for other reasons the Council shall pay the Provider's directly incurred reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

H6 DISRUPTION

H6.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council.

H6.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action is by the Provider or others for whom the Provider is responsible, which affects or might affect its ability at any time to perform its obligations under this Contract.

H6.3 In the event of industrial action by the Staff, the Provider shall seek Approval as to its proposals to continue to perform its obligations under this Contract.

H6.4 If the Provider’s proposals referred to in Clause H6.3 are considered insufficient or unacceptable by the Council acting reasonably, then this Contract may be terminated with immediate effect by the Council by notice in writing.

H6.5 If the Provider is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Council, the Provider may request a reasonable allowance of time.

H7 REMEDIATION PLAN PROCESS

H7.1 If the Provider commits a Default and the Default is in the reasonable opinion of the Council capable of remedy, the Council may elect to operate the Remediation Plan Process. If the Council elects to operate the Remediation Plan Process, the Council shall serve a Remediation Notice on the Provider which shall specify the Default in outline and the actions the Provider needs to take with respect to remedying the Default.

H7.2 Within seven (7) Working Days of receipt of the Remediation Notice, the Provider shall either:-

1. submit a draft Remediation Plan to the Council even if the Provider disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
2. inform the Council that it does not intend to submit a Remediation Plan in which event the Council shall be entitled to terminate the Contract by written notice.

H7.3 The Council shall either approve the draft Remediation Plan within seven (7) Working Days of its receipt pursuant to Clause H7.2 or it shall inform the Provider within the same time period why it cannot accept the draft Remediation Plan. In such circumstances, the Provider shall address all such concerns in a revised Remediation Plan which it shall submit to the Council within three (3) Working Days of its receipt of the Council’s comments. Once agreed the Provider shall immediately start work on the actions set out in the Remediation Plan.

H7.4 If, despite the measures taken under Clause H7.3 a Remediation Plan cannot be agreed within twenty (20) Working Days, then the Council may elect to end the Remediation Plan Process and serve a notice to terminate the Contract.

H7.5 If a Remediation Plan is agreed between the Parties but the Provider fails to implement or successfully complete the Remediation Plan by the required Remediation Plan completion date, the Council may:-

1. terminate this Contract by serving a notice of termination; or
2. give the Provider a further opportunity to resume full implementation of the Remediation Plan; or
3. escalate any issue arising out of the failure to implement the Remediation Plan to the Provider’s Representative under the dispute resolution procedure set out in Clause I2.

H7.6 If, despite the measures taken under Clause H7.5 the Provider fails to implement the Remediation Plan in accordance with its terms, the Council may elect to end the Remediation Plan Process and refer the matter to dispute resolution in accordance with Clause I2 or serve a notice of termination of the Contract.

H7.7 The Council shall be under no obligation to initiate the Remediation Plan Process if it issues a notice of termination as provided for under this Contract.

**H8 SUSPENSION AND CONSEQUENCES OF SUSPENSION**

H8.1 A suspension event shall have occurred if:-

(a) the Council reasonably considers that a breach by the Provider of any obligation under this Contract:-

(i) may create an immediate and serious threat to the health or safety of any Service User; or

(ii) may result in a material interruption in the provision of any one or more of the Services; or

(b) Clause H8.1 does not apply, but the Council, acting reasonably, considers that the circumstances constitute an emergency affecting provision of the Services; or

(c) the Provider is prevented, or will be prevented, from providing the Services due to the termination, suspension, restriction or variation of any Consent

(each a "Suspension Event").

H8.2 Where a Suspension Event occurs the Council:

(a) may by written notice to the Provider and with immediate effect suspend any affected Services, or the provision of any affected Services, until the Provider demonstrates to the reasonable satisfaction of the Council that it is able to and shall perform the suspended Services, to the required standard; and

(b) shall where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

H8.3 During the suspension of any Services under Clause H8.2, the Provider shall comply with any steps the Council reasonably specifies in order to remedy the Suspension Event, including where the Council’s decision to suspend pursuant to Clause H8.2 has been referred to dispute resolution under Clause I (Dispute Resolution).

H8.4 During the suspension of any Services under Clause H8.2, the Provider shall not be entitled to claim or receive any payment for the suspended Services except in respect of:

(a) all or part of the suspended Services the delivery of which took place before the date on which the relevant suspension took effect in accordance with Clause H8.2; and/or

(b) all or part of the Services which the Provider continues to deliver during the period of suspension in accordance with Clause H8.3.

H8.5 The Parties shall use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Services.

H8.6 The Provider shall indemnify the Council in respect of any Losses directly and reasonably incurred by the Council in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Services).

H8.7 Following suspension of any Services the Provider shall at the reasonable request of the Council and for a reasonable period:

(a) co-operate fully with the Council and any Replacement Contractor of the suspended Services in order to ensure continuity and a smooth transfer of the suspended Services and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Council or members of the public; and

(b) at the cost of the Provider:

(i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Services by an alternative Replacement Contractor; and

(ii) deliver to the Council all materials, papers, documents and operating manuals owned by the Council and used by the Provider in the provision of the suspended Services.

H8.8 As part of its compliance with Clause H8.7 the Provider may be required by the Council to agree a transition plan with the Council and/or any alternative Replacement Contractor.

H8.9 If it is determined, pursuant to Clause I (Dispute Resolution), that the Council acted unreasonably in suspending any of the Services, the Council shall pay to the Provider any Losses directly and reasonably incurred by the Provider in respect of that suspension provided always that the Provider shall at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to bring a claim against the Council pursuant to this Contract.

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H8.10 During any suspension of any Services the Provider, where applicable, shall implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability of the other parts of the Services.

**H9** **FORCE MAJEURE**

H9.1 Subject to the remaining provisions of this Clause H9 (and, in relation to the Provider, subject to its compliance with its obligations in Clause B16, a Party may claim relief under this Clause H9 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Provider in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or Provider shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or Provider is itself impeded by a Force Majeure Event from complying with an obligation to the Provider.

H9.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

H9.3 If the Provider is the Affected Party, it shall not be entitled to claim relief under this Clause H9 to the extent that consequences of the relevant Force Majeure Event:

(a) are capable of being mitigated but the Provider has failed to do so; and/or

(b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

H9.4 Subject to Clause H9.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

H9.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

H9.6 Where, as a result of a Force Majeure Event:

(a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

(i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clauses H1 and H3; and

(ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Provider fails to perform its obligations in accordance with this Contract:

(i) the Council shall not be entitled to apply Performance Default Points or withhold and retain any of the Service Charges as compensation to the extent that a Service Failure has been caused by the Force Majeure Event; and

(ii) the Provider shall be entitled to receive payment of the Service Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

H9.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

H9.8 Relief from liability for the Affected Party under this Clause H9 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause H9.7.

H9.9 In the event that any Force Majeure Event continues to affect the ability of either Party to fulfil their obligations under the Contract for a period of [three (3) Months] or more, either Party may serve notice of termination with immediate effect on the other Party.

DISPUTES AND LAW

I1 GOVERNING LAW AND JURISDICTION

I1.1 Subject to the provisions of Clause I2, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that this Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

I2 DISPUTE RESOLUTION

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within twenty (20) Working Days of either Party notifying the other of the dispute. Any dispute shall in the first instance be referred to the Contract Managers of each Party for resolution. If the dispute cannot be resolved by the Contract Managers of the Parties within ten (10) Working Days after the dispute has been referred to the Contract Managers, either Party may give notice to the other Party in writing (Dispute Notice) that a dispute has arisen and within five (5) Working Days of the date of the Dispute Notice each Party shall refer the dispute to the Council’s Representative and the Provider’s Representative for resolution.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties' Representatives pursuant to Clause I2.1 within ten (10) Working Days of the Dispute Notice the Parties shall refer it to mediation pursuant to the procedure set out in Clause I2.5.

I2.4 The obligations of the Parties under this Contract shall not cease, or be suspended or delayed by reference of a dispute to mediation and the Provider shall comply fully with the requirements of this Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

(a) A neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.

(b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation providerto provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

(d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.

(f) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**IN WITNESS WHEREOF** the Parties hereto have executed this Contract as a Deed with effect from the date first above written.

|  |  |  |  |
| --- | --- | --- | --- |
| **EXECUTED** (but not delivered until dated)  as a deed by affixing the Common Seal  of **LINCOLNSHIRE COUNTY COUNCIL**  **in the presence of:-** | | )  )  )  )  )  ) |  |
|  |  | **…………………………………………**  **Authorised Officer Signature**  **Print name:** | |

|  |  |  |  |
| --- | --- | --- | --- |
| **EXECUTED** (but not delivered until dated)  as a deed by [INSERT PROVIDER]  acting by:- | | )  )  ) |  |
|  | **In the presence of:-** | **………………………………………**  **Director's Signature**  **Print name:**  **Witness Signature**  **Print name:**  **Occupation:**  **Address** | |

**SCHEDULE 1**

**SPECIFICATION**

[*Insert Specification per Tender Documentation*]

**SCHEDULE 2**

**PROVIDER SERVICE DELIVERY PLAN**

*[Insert Provider’s proposals as per Tender Documentation]*

**SCHEDULE 3**

**PAYMENT MECHANISM**

[*Insert payment schedule as per Tender Documentation*]

**SCHEDULE 4**

**PERFORMANCE MANAGEMENT FRAMEWORK**

1. This Performance Management Framework shall apply in full from the Commencement Date and details the elements of the Services that shall be measured to monitor and to incentivise performance. The Services shall be monitored against the Service Levels detailed in Table 1 which reflect the requirements of the Service to be provided as detailed within the Contract. If a failure as detailed in Table 1 occurs then, subject to the terms of this Performance Management Framework, the Council shall be entitled to refer the failure to the Remediation Plan process as provided for in Clause H7.

1. All Service Levels are to be baselined in the first Contract Year and agreed in accordance with Clause C5.8.
2. Notwithstanding paragraph 1 of this Schedule 4, the Provider shall provide the Services in accordance with this Contract from the Commencement Date, however, the Provider shall not be liable to the provisions of this Schedule 4 in relation to Service Failure at any time prior to the agreement of Service Levels in accordance with Clause C5.8
3. The process for measuring the performance of the Services consists of a system in which the Services are measures against the Service Levels. Where a Service Failure is recorded, such a failure shall constitute a Default which is capable of remedy for the purposes of Clause H7 and the Remediation Plan Process shall be triggered in relation to the Service Failure.
4. The Provider shall be responsible for the monitoring and accurate recording at all times of its own performance of the Services and of compliance with, or failure under, the requirements of the Performance Management Framework. This is without prejudice to the rights of the Council to monitor performance independently.
5. The Provider shall notify the Council, in reasonable detail, of any Service Failures against any of the Service Levels set out in Table 1 at the time of failure or as soon as the failure has been identified by the Provider. At the end of each quarter, the Provider shall be required to report to the Council, as part of the quarterly report under clause C5, the instances of Service Failures in that quarter. This shall encapsulate and include the information required under Schedule 4A and at the frequency therein.
6. The Council may in its sole and absolute discretion grant relief from the application of the Remediation Plan Process if it is satisfied that the reason for the Service Failure was outside the reasonable control of the Provider. To claim such relief evidence must be provided by the Provider to the Council for each event for which relief is sought. Such evidence must show that the Provider was unable to mitigate the effects of the reason for the Service Failure. The Council shall review the application for relief and determine if the event causing a Service Failure was or was not outside the reasonable control of the Provider. The conclusion of the Council shall be final. The Provider must apply reasonable measures to mitigate problems/events which affect the delivery of the Service to prevent the occurrence or minimise the amount of Service Failures.
7. Where the Council through its own monitoring of the Contract and the performance of the Services finds a failure by the Provider to meet a Service Level it shall notify the Provider and the Provider shall record the failure against the Service Level as per the Provider's monitoring system.
8. The Performance Management Framework shall be reviewed on an annual basis by the Council and the Provider with Service Levels being reviewed every six (6) Months. No changes shall be made to the Performance Management Framework except by agreement of both Parties.

**Table 1: Performance Management Framework**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Key Performance Indicator's (KPI's)** | | | | |
| **No** | **KPI** | **Description** | **Measured** | **Target** |
| 1 | % of Service Users currently receiving Services who receive a review of their Individual Support Plan over a rolling four (4) week time period | Measurement:  Number of weeks since previous Individual Support Plan review | Quarterly | To be determined by the Council, in conjunction with the provider, within the first twelve (12) months of the Contract |
| 2 | % of Service Users who felt that they were involved with their support planning | Measurement:  No of Service Users that said they felt involved in setting the objectives of their support plan. | Annually | To be determined by the Council, in conjunction with the provider, within the first twelve (12) months of the Contract |
| 3 | % of Carers (where applicable) who felt that they were involved with the Service Users support planning | Measurement:  No of Carers that said they felt involved in setting the objectives of the support plan. | Annually | To be determined by the Council, in conjunction with the provider, within the first twelve (12) months of the Contract |
| 4 | % of Service Users who felt that they were in a safe, effective service and have had positive experiences | Measurement:  No of Service Users that said they felt they were in a safe, effective service and have had positive experiences | Annually | To be determined by the Council, in conjunction with the provider, within the first twelve (12) months of the Contract |
| 5 | % of Carers who felt that the Service Users were in a safe, effective service and have had positive experiences | Measurement:  No of Carers that said they felt their Service User was in a safe, effective Services and have had positive experiences | Annually | To be determined by the Council, in conjunction with the provider, within the first twelve (12) months of the Contract |
| 6 | % of Service Users who have accessed facilities outside of the day services building | Measurement:  No of Service Users against the number of outings outside of the day services building | Quarterly | To be determined by the Council, in conjunction with the provider, within the first twelve (12) months of the Contract |
| 7 | % of Service Users that left the service with reablement outcomes met | Measurement:  No of Service Users that no longer require a day care service due to meeting outcomes. | Quarterly | To be determined by the Council, in conjunction with the provider, within the first twelve (12) months of the Contract |
| 8 | % of Service Users who are satisfied with the service | Measurement:  No of existing Service Users that have assessed the service as being 'satisfactory' or above | Annually | To be determined by the Council, in conjunction with the provider, within the first twelve (12) months of the Contract |
| 9 | % of Carers who are satisfied with the Services | Measurement:  No of existing Carers that have assessed the Services as being 'satisfactory' or above | Annually | To be determined by the Council, in conjunction with the provider, within the first twelve (12) months of the Contract |

**SCHEDULE 4A**

**PERFORMANCE MONITORING REQUIREMENTS**

Subject to Clause C5, the Provider shall provide the Council with the following information at the frequency set out below:

|  |  |  |
| --- | --- | --- |
| **No** | **Monitoring Information** | **Measured** |
| 1 | Business Continuity Plan | Annually |
| 2 | Recruitment policy | Annually |
| 3 | Annual business plan/Action Plan | Annually |
| 4 | Training matrix | Annually |
| 5 | Confirmation of maintenance of Public Liability insurance | Annually |
| 6 | Confirmation of maintenance of Employers Liability insurance | Annually |
| 7 | Confirmation of maintenance of Professional Indemnity (where required), £ | Annually |
| 8 | Annual stakeholder survey completed and feedback reported | Annually |
| 9 | Planned programme of service review and evaluation | Annually |
| 10 | Evidence of a systematic and continuing process of consultation with stakeholders | Annually |
| 11 | Areas for improvement that have been identified and acted upon | Annually |
| 12 | Evidence that objectives, actions and tasks within the plan have led to actual service improvements | Annually |
| 13 | A customer and family/carer engagement plan for the forthcoming year | Annually |
| **Service User Information** | | |
| 14 | Number of Service Users | Quarterly |
| 15 | Number of Service Users who have a Carer | Quarterly |
| 16 | Number of referrals | Quarterly |
| 17 | Number of new Service Users over the period | Quarterly |
| 18 | Number of Service Users leaving the Service over the period | Quarterly |
| 19 | Number of Service User sessions | Quarterly |
| 20 | Number of Service Users reviews | Quarterly |
| 21 | Number of Service User sessions vacant over the period | Quarterly |
| 22 | Source of referral | Quarterly |
| **Equality Monitoring – Service Users** | | |
| 23 | Age | Quarterly |
| 24 | Ethnicity | Quarterly |
| 25 | Religion or belief | Quarterly |
| 26 | Disability | Quarterly |
| 27 | Gender | Quarterly |
| **Staffing** | | |
| 28 | New starters | Quarterly |
| 29 | Leavers | Quarterly |
| 30 | Number of hours covered by agency or temporary staff during the period | Quarterly |
| 31 | Average number of staffing hours per week | Quarterly |
| 32 | Number of vacant staffing hours | Quarterly |
| **Training 1** | | |
| 33 | Number of staff attending training & type | Quarterly |
| **Formal Compliments** | | |
| 34 | Number received | Quarterly |
| **Formal Complaints** | | |
| 35 | Number received | Quarterly |
| 36 | Resolved within 28 days | Quarterly |
| 37 | Upheld | Quarterly |
| 38 | Awaiting outcome (at period end) | Quarterly |
| **Incidents** | | |
| 39 | Notifiable incidents, within the specified period | Quarterly |
| 40 | Any other incidents notifiable to the CQC (if applicable) | Quarterly |

The Provider shall provide the quarterly contract monitoring information as provided for in the table above in accordance with the following timescales;

**Quarterly Reports:**

* Quarter 1 – 1st April- 30th June – Information to be received by the Council by 15 July.
* Quarter 2 – 1st July- 30th September – Information to be received by the Council by 15 October
* Quarter 3 – 1st October- 31st December – Information to be received by the Council by 15 January
* Quarter 4 – 1st January- 30th March – Information to be received by the Council by 15 April
* Annual – Information to be received by no later than fifteen (15) Working Days before the end of the Contract Year.

**SCHEDULE 5**

**KEY PERSONNEL**

**PART 1**

**Council’s Key Personnel**

|  |  |  |
| --- | --- | --- |
| **Name** | **Job Title** | **Responsibilities** |
|  | Council’s Representative |  |
|  | Council’s Contract Manager |  |
|  | *[OTHERS]* |  |
|  |  |  |

**PART 2**

**Provider’s Key Personnel**

|  |  |  |
| --- | --- | --- |
| **Name** | **Job Title** | **Responsibilities** |
|  | Provider’s Representative |  |
|  | Provider’s Contract Manager |  |
|  | *[OTHERS]* |  |
|  |  |  |

**SCHEDULE 6**

**DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN**

1. **CONTENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN**

1.1 The Provider shall ensure that the Disaster Recovery and Business Continuity Plan includes:

1. details of how the Provider shall implement the Disaster Recovery and Business Continuity Plan;
2. details of how the Disaster Recovery and Business Continuity Plan inter-operates with any other disaster recovery and business continuity plan of the Council (as notified by the Council from time to time);
3. details as to how the invocation of any element of the Disaster Recovery and Business Continuity Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the Services;
4. identification of all reasonably possible failures of or disruptions to the Services;
5. In respect of any software used in the Services, the back-up methodology, data verification procedures, hardware configuration details, network planning and invocation rules and procedures, data centre site audits, possible areas where system critical elements can be ''dual sourced'' so as to eliminate or minimise single points of failure and business continuity maintenance;
6. identification of all potential disaster recovery scenarios;
7. provision of appropriate levels of spares, maintenance equipment and test equipment;
8. responsibilities of the Sub-Contractors in the event of a Disaster;
9. Service Levels that the Provider shall have to comply with in the event of a Disaster; and
10. Council obligations and dependencies.

1.2 The Provider shall ensure that the Disaster Recovery and Business Continuity Plan identifies and details the processes and activities which it shall implement upon the occurrence of business-critical emergency situations. In particular, the Disaster Recovery and Business Continuity Plan shall include:

1. identification of Service priorities in the event of a Disaster;
2. risk analysis of key business risks (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis). Key business risks could include the loss of Staff, Key Personnel, Premises, key resources and key Sub-Contractors and/or Providers;

(b) details of business processes, procedures (including procedures for activation, escalation and recovery) and responsibilities;

1. a communications strategy for Staff, the media and key internal and external stakeholders;
2. identification of key internal and external interdependencies;
3. identification of essential resources and Equipment needed during a Disaster;
4. a contact list that contains details of all Staff, Sub-Contractors and anyone to be relied upon by the Provider to provide the Services; and

(d) procedures for reverting to normal Service delivery.

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1. **REVIEW AND AMENDMENT OF THE DISASTER RECOVERY AND BUSINESS**

**CONTINUITY PLAN**

The Disaster Recovery and Business Continuity Plan shall be reviewed by the Council and the Provider annually, or at such other times as may be requested by the Council or the Provider.

**SCHEDULE 7**

1. The Council and the Provider have jointly determined the purpose and means of processing as set out in this Schedule:

1. The point of contact for Data Subjects at the Council is:

Amy Jaines, Data Protection Officer, Email: [dpo@lincolnshire.gov.uk](mailto:dpo@lincolnshire.gov.uk)

1. The point of contact for Data Subjects at the Provider is:

[ ]

1. **PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of the Council and the Provider | The Parties acknowledge that for the purposes of the Data Protection Legislation they are Joint Controllers and responsibilities are shared as set out within this Schedule. |
| Subject matter of the processing | The processing of data is required to ensure that Providers accepted on to the Open Select List can effectively deliver the contract for the provision of Day Care, for individuals identified via Practitioner assessment. |
| Duration of the processing | The processing of data will commence from the Commencement Date and last for 5 years (or until the contract expires*)* |
| Nature and purposes of the processing | The data gathered on Service Users will be done so in order to make Day Care Referral Placements.  It is the Council's statutory obligation to directly commission and provide Buildings Based Day Care Opportunities for Service Users who have had the requirement assessed.  It is the Council's responsibility to correctly identify those individuals who qualify for provision, by undertaking an Adult Needs Assessment. During the Assessment, necessary personal data will be collected in order to make a referral that meets Service Users needs. All data collected will be done so in a timely and polite manner, ensuring that accuracy and consistency is maintained throughout the process. It is the Council's intention to seek outcomes/ feedback data from providers throughout the life of the contract, in order to quality assure the service provided.  It will be the Provider's prerogative and responsibility to determine the manner in which the personal data is processed. Once the information from the Adult Needs Assessment referral for Day Care has been received.  At this stage it is anticipated that the Provider will need to collect additional information/ data direct from the individual Service User in order for effective provision to be provided.  It is expected that the Provider will have adequate technical and organisational measures in place to maintain the security of the data both received from the Council and attained directly from Service Users.  There will be an expectation that providers will report back with outcomes and data both safely and promptly when required to.  It is anticipated that Providers will deliver Day Care provision and collect data from individuals not referred by the Council (i.e. through direct payments and through private paying customers. |
| Type of Personal Data | Personal Data such as Names, Addresses, D.O.B's, N.I.N's and contact details will be attained.  Special Category Data such as Physical and Mental Health Data, relating to existing conditions and medication will also be attained. Additionally, it is anticipated that data will be attained that identifies the Service User's Race and Ethnicity. |
| Categories of Data Subject | Service Users (Adults)  Other family members/individuals/professionals involved in the service user's care |
| 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. | The Council and the Provider will have their own policies and procedures in place relating to the retention and destruction of data attained from customers throughout the referral process. |

1. **MINIMUM INFORMATION SECURITY CONTROLS**

The minimum security controls detailed within this Schedule are to be in place at all times when processing Information for the purpose of or in connection with the delivery of the Services. Such Information includes Personal Data and other Confidential Information or data.

1. **GENERAL**

1.1 The Provider shall have a security policy in place which sets out management commitment to information security, defines information security responsibilities, and ensures appropriate governance.

1.2 All Staff shall complete data protection and information security training commensurate with their role.

**2**. **ICT INFRASTRUCTURE**

**Boundary Firewall and Internet Gateways**

2.1 Information, applications and devices shall be protected against unauthorised access and disclosure from the internet, using boundary firewalls, internet gateways or equivalent network devices.

**Secure Configuration**

2.2 ICT systems and devices shall be configured to reduce the level of inherent vulnerabilities and provide only the services required to fulfil their role.

**User Access Control**

2.3 User accounts shall be assigned to authorised individuals only, managed effectively, and they shall provide the minimum level of access to applications, devices, networks, and Personal Data.

2.4 Access control (username & password) shall be in place. A password policy shall be in place which includes provisions to ensure:-

* 1. avoidance of the use of weak or predictable passwords;
  2. all default passwords are changed;
  3. robust measures are in place to protect administrator passwords; and
  4. account lock out or throttling is in place to defend against automated guessing attacks.

2.5 End user activity shall be auditable and include the identity of end-users who have accessed systems.

**Malware Protection**

2.6 Mechanisms to identify detect and respond to malware on ICT systems and devices shall be in place and shall be fully licensed, supported, and have all available updates applied.

**Patch Management and Vulnerability Assessment**

2.7 Updates and software patches shall be applied in a controlled and timely manner and shall be supported by patch management policies.

2.8 The Provider shall adopt a method for gaining assurance in its organisation's vulnerability assessment and management processes, for example by undertaking regular penetration tests.

2.9 Software which is no longer supported shall be removed from ICT systems and devices.

**Cloud Services**

2.10 The Provider shall ensure that the controls applied to the use of cloud services satisfactorily supports the relevant security principles set out in the National Cyber Security Centre Cloud Security Principles:

https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles

**3. PROTECTING INFORMATION**

**Electronic Information**

3.1 Electronic copies of Information shall be encrypted at rest to protect against unauthorised access.

3.2 When transmitting Information over the internet, over a wireless communication network e.g. Wi-Fi, or over an untrusted network the Supplier shall use an encrypted communication protocol.

3.3 The Provider shall only use ICT which is under its governance and subject to the controls set out in this Schedule.

**Hard Copy Confidential Information**

3.4 Hard copy Confidential Information shall be stored securely when not in use and access to it shall be controlled.

3.5 Hard copy Confidential Information shall be transported in a secure manner commensurate with the impact a compromise or loss of information would have and which reduces the risk of loss or theft.

**Secure Destruction of Information**

3.6 Electronic copies of Information shall be securely destroyed when no longer required, including Information stored on servers, desktops, laptops or other hardware and media.

3.7 Hard copy Information shall be securely destroyed when no longer required.

3.8 Secure destruction means destroying Information so it cannot be recovered or reconstituted.

3.9 A destruction certificate may be required by the Council to provide the necessary assurance that secure destruction has occurred.

**4. SECURITY INCIDENTS/PERSONAL DATA BREACH**

4.1 The Provider shall notify the Council immediately of any fact or event which results in, or has the potential to result in, the compromise, misuse, or loss of Council Information, ICT services or assets.

4.2 The Provider shall notify the Council immediately of any Personal Data Breach which relates to personal data processed under this agreement.

4.3 The Provider shall fully co-operate with any investigation that the Council requires as a result of such a security incident or Personal Data breach.

**5. COMPLIANCE**

5.1 The Provider shall inform the Council of any non-compliance with the controls set out in this Schedule. Any deficiencies in controls shall be subject to a documented risk management process and where appropriate a Remediation Plan shall to be implemented with the aim of reducing, where possible, those deficiencies.

5.2 Independent validation which has been used as evidence of appropriate security controls by the Provider shall be maintained by the Provider for the duration of the Contract.

5.3 The Provider shall inform the Council of any expired or revoked evidence used as independent validation.

**SCHEDULE 8**

**EXIT STRATEGY REQUIREMENTS**

1. Without prejudice to the provisions set out in the Contract (including clause B7 and Section H) upon notification of this Contract terminating, howsoever caused, or twelve (12) Months prior to the expiry of this Contract, the Parties shall meet to discuss a timetable for drawing up and shall draw up a handover plan covering the performance of the obligations of both Parties during the handover period. In any event, the Provider shall, at no cost to the Council, provide such cooperation, information and assistance to the Council as may be reasonably required by the Council to transfer and to enable a smooth migration of the Services being supplied by the Provider including enabling the Council and/or a future Provider to perform services the same as or substantially the same as the Services in a similar manner as required under this Contract ("Future Provider").
2. The Provider and the Council shall use all reasonable endeavours to ensure all appropriate arrangements are put in place to give effect to the transition of the Services to the Council or a Future Provider.
3. The Provider agrees that if it is requested by the Council it shall use all reasonable endeavours to assign or novate any then existing contracts which the Provider has entered into with third parties in connection with the provision of the Services including the leasing of any equipment used in the delivery of the Services to the Council or to any Future Provider.
4. The Provider shall not in the twelve (12) Month period prior to the expiry of this Contract (or such period remaining where a notice of termination has been issued) (the "Applicable Period") in relation to the Services except with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed:
   1. incur any expenditure or enter into any commitments other than in the ordinary course of trading;
   2. dispose of or agree to dispose of or grant any option in respect of any part of any land, buildings, equipment, spare parts, tools books, records, revenues, Intellectual Property Rights (excluding those assets which the Council is the full legal and beneficial owner of) other than stock in the ordinary course of trading;
   3. materially vary the terms of any contracts with any provider of goods and/or services already entered into;
   4. enter into any long-term (being twelve (12) Months or longer), unusual or abnormal contract or commitment;
   5. enter into any leasing, hire purchase, contract hire or other agreements or arrangements for payment on deferred terms;
   6. grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree to redeem any such securities or give or agree to give any guarantees or indemnities or, without prejudice to the foregoing generality, create or permit to subsist any other encumbrance over all or any of its present or future incomes or assets affecting this Contract and/or the provision of the Services;
   7. permit any of its insurances to lapse or do anything which would make any policy of insurance void or voidable;
   8. in any way depart from the ordinary course of its day to day business either as regards the nature or scope or the manner of conducting the same;
   9. pay any fees or commissions to any persons other than fees payable on arm's length terms to third parties who have rendered bona fide service or advice required in the ordinary course of business;
   10. release, waive or modify any warranty or guarantee given by any Provider of goods or services;
   11. cause or permit any item comprised in the records relating to the Services to be removed or destroyed or any programs or data held on the computer systems of the Provider and relating to the Services to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with the DPA or for the efficient running of the computer system in question after satisfactory back-up copies have been made and securely stored off-site;
   12. terminate the employment of any of the Relevant Employees for any reason whatsoever without first obtaining the consent of the Council to such termination save where, in the reasonable opinion of the Provider, termination is justified for cause due to the actions of any such of the Relevant Employees;
   13. alter or change in any way any of the terms and conditions of employment of any of the Relevant Employees whether with or without the consent of the Relevant Employees other than for wage or salary awards which are in line with those offered generally for similar individuals within the Provider's workforce or as is required by law (for the avoidance of doubt, the Provider shall provide upon request by the Council evidence that any such wage or salary award is in line with those offered generally for similar individuals);
   14. relocate or assign to new duties any of the Relevant Employees, or assign to the provision of the Services any employee not so assigned at the commencement of the Applicable Period, or increase to any significant degree the proportion of working time spent on the Services by any such employee, without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed; or
   15. make any other alterations to the structure or composition of the Relevant Employees which are intended to or which may preclude the application of the Regulations upon the resumption of service by the Council or another service provider.

**SCHEDULE 9**

**INDIVIDUAL FORM OF AGREEMENT TEMPLATE**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| [To:(Provider name) | |  | **Please return form to:**  **Serco Local & Regional Government Division**  **Adult Care Finance Team**  **2nd Floor Thomas Parker House**  **13-14 Silver Street**  **Lincoln LN2 1DY** | | | |
| Council Ref: [SU REFERENCE] |  |  |  |  |  |  |

This Individual Form of Agreement is made [TODAYS DATE]

Between (1) [ ] (‘the Provider’); of [ ]

and (2) LINCOLNSHIRE COUNTY COUNCIL of County Offices, Newland, Lincoln LN1 1YL (‘the Council)

**IT IS AGREED** as follows:

The Service User is: [SU NAME, ADDRESS and CONTACT DETAILS]

The Premises used for the Services are: [DETAILS OF PREMISES]

The Scope of the Services are: [DETAILS OF THE SERVICES]

The IFA Commencement Date is: [IFA COMMENCEMENT DATE]

The Purchase Order Reference is: [PO REFERENCE NUMBER]

Trial Period details: [the first eight weeks of which shall be regarded as a Trial Period and to continue on a permanent basis or to be reviewed following a request by the Service User or a change in the assessed needs of the Service User]

The IFA Expiry Date is: [IFA EXPIRY DATE]

The Service Charges for this Individual Form of Agreement are: [PRICE AND BREAKDOWN OF PRICES FOR SERVICES]

**This Individual Form of Agreement is entered into pursuant to the terms and conditions of the Open Select List for Buildings Based Day Care, dated \_\_\_\_\_\_\_\_ between the Parties relating to the provision of Building Based Adult Day Care. The Provider agrees to provide the Services to the Service User to meet their agreed outcomes and provide to the Service User the Support options specified in this Individual Form of Agreement on the terms and conditions of the Open Select List for Buildings Based Day Care** **which are hereby incorporated herein and be amended by this Individual Form of Agreement.**

|  |  |
| --- | --- |
| SIGNED by ……………………………………… | Name |
| For and on behalf of the Council | (Printed) |
| Designation ……………………………………… | Date |
| (Duly Authorised Signatory) |  |
| SIGNED by ……………………………………… | Name …………………………………………… |
| For and on behalf of the PROVIDER | (Printed) |
| Designation ………………………………………………. | Date ………………………………………………… |
| (Duly Authorised Signatory) |  |

Copy: to be retained by Provider

Copy: to be returned to the above address

PAYMENT IS DEPENDENT UPON FULLY COMPLETED AND PROMPT RETURN OF ONE COPY OF THIS FORM