



DATED

201[]¹

SERVICES AGREEMENT

between

THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF
KINGSTON UPON THAMES

and

[NAME OF SUCCESSFUL TENDERER]

Relating To The provision Of Mental Health Housing Related Support Services

Drafting notes have been inserted as foot notes throughout the document and in some cases in red text within the clauses themselves. Please ensure that you read these carefully whilst drafting the contract for signature. Delete all drafting notes once the contract has been prepared and is ready for signing.

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

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

¹ *Insert the date in hand only after the last party has signed the agreement.*

CONTENTS

CLAUSE

1.	Definitions and Interpretation	1
2.	Term.....	8
3.	Extending The Initial Term	8
4.	Due Diligence And Service Provider's Warranty	8
5.	Supply of Services	10
6.	Service Standards	11
7.	Compliance	11
8.	Quality Assurance And Complaints	11
9.	Change Control And Continuous Improvement	12
10.	Business Continuity	13
11.	Equality And Diversity	14
12.	Health And Safety.....	15
13.	Environmental Policy.....	16
14.	Premises And Assets	16
15.	Payment	18
16.	Key Personnel	19
17.	Other Personnel Used To Provide The Services	20
18.	Safeguarding Children And Vulnerable Adults.....	21
19.	TUPE	22
20.	Whistleblowing And Prevent	22
21.	Reporting And Meetings	23
22.	Monitoring	23
23.	Warning Notices And Increased Monitoring	24
24.	Remediation Plan Process	24
25.	Dispute Resolution	26
26.	Sub-Contracting And Assignment	26
27.	Indemnities	27
28.	Limitation Of Liability	27
29.	Insurance	28
30.	Freedom Of Information.....	29
31.	Data Protection	30
32.	Data Security	30
33.	Confidentiality.....	31
34.	Audit.....	32
35.	Intellectual Property.....	34
36.	Termination For Breach	34
37.	Termination On Notice	35
38.	Force Majeure	35
39.	Prevention Of Bribery	37
40.	Consequences Of Termination	38
41.	Waiver	39
42.	Rights And Remedies	39

43.	Severability	39
44.	Partnership Or Agency.....	39
45.	Third Party Rights	39
46.	Publicity	40
47.	Notices.....	40
48.	Entire Agreement.....	40
49.	Governing Law	41
50.	Jurisdiction.....	41

SCHEDULE

SCHEDULE 1	SPECIFICATION.....	43
SCHEDULE 2	KEY PERFORMANCE INDICATORS	44
SCHEDULE 3	CHARGES AND PAYMENT	45
1.	Calculation Of The Charges	45
2.	Payment Plan	45
SCHEDULE 4	CONTRACT MANAGEMENT	46
1.	Authorised Representatives	46
2.	Key Personnel	46
3.	Meetings.....	46
4.	Reports.....	46
SCHEDULE 5	TUPE AND RETENDERING	47
SCHEDULE 6	CHANGE CONTROL PROCEDURE.....	50
1.	General Principles	50
2.	Procedure	50
SCHEDULE 7	POLICIES AND PROCEDURES	53
SCHEDULE 8	PREMISES.....	54
SCHEDULE 9	SERVICE PROVIDER'S TENDER.....	55

PARTIES

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

BACKGROUND

- (A) The Service Provider submitted a tender on [*insert date.*] (reference: [*insert reference if applicable*]) in response to the Authority's invitation to tender issued on [*insert date.*] (reference: DN174188).
- (B) The Authority has (based on the Service Provider's tender referred to above), appointed the Service Provider to supply the Services and the Service Provider has agreed to do so on the terms and conditions of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION⁴

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

Achieved KPIs: in respect of any part of the Services in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that part of the Services in the measurement period in question (calculated and expressed in the same way as the KPI for that part of the Services is calculated and expressed in Schedule 1).

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

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

³ Complete by inserting relevant details. The information to be included would normally be as provided in the Service Provider's Proposal. Amend as appropriate if the Service Provider is an individual or a partnership or an entity other than a limited liability company..

⁴ Delete any definition that is not used in the document (a word search on a definition will reveal whether it is used or not). Equally, consider whether additional definitions need to be added. In the interests of space, where a defined term is only used in a particular clause, and is defined in that clause, it has not been set out in clause 1.1. If you wish to list all defined terms in clause 1.1 these must be added. Check each definition carefully to make sure it means what you intend it to mean and amend where necessary to reflect the intention of the parties.

Authority's Premises: the premises identified in Schedule 8 and which are to be made available for use by the Service Provider for the provision of the Services on the terms of the Lease.

Authorised Representatives: the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in Schedule 4.

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

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

CQC: Care Quality Commission (or any successor or replacement body carrying out the same or similar function).

CQC Improvement Plan: a plan issued to the Service Provider by the CQC requiring the Service Provider to improve the quality of the service it is providing.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 6.

Charges: the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 3.

Commencement Date: insert date.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (**DPA**), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default: any failure by either party to comply with its obligations under this agreement.

Dispute Resolution Procedure: the procedure set out in clause 25.

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

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

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

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

Initial Term: the period commencing on the Commencement Date and ending on the third (3rd) anniversary of the Commencement Date.

Insolvency Event: where⁵:

- (a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply];
- (b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of that other party];
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

⁵ Amend to reflect the correct status of the Service Provider by deleting any description that is inapplicable.
Terms and Conditions of Contract: Mental Health Housing Related Support Services

- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (g) [the Service Provider (being an individual) is the subject of a bankruptcy petition or order;]
- (h) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [fourteen (14)] days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- (j) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; [or]
- (k) [the Service Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

KPIs: the key performance indicators set out in Schedule 1.

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation,

order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Service Provider is bound to comply;

Lease: the lease to be concluded between the parties in respect of the Authority's Premises.

Management Reports: the reports to be prepared and presented by the Service Provider in accordance with clause 21 and Schedule 4 to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

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

Payment Plan: the plan for payment of the Charges as set out in Schedule 3.

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Premises: the accommodation to be sourced by the Service Provider for use as dwellings for nominated service users.

Prevent Guidance and Toolkit: the Prevent Duty Guidance for England and Wales, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417943/Prevent_Duty_Guidance_England_Wales.pdf

as may be amended from time to time

Prevent Lead: the officer of the Service Provider responsible for implementation and dissemination of the Government Prevent Strategy, identified as such to the Authority.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;

- (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

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.

Remediation Notice: a notice served by the Authority in accordance with clause 24.1.

Remediation Plan: the plan agreed in accordance with clause 24 (Remediation Plan Process) for the resolution of either any outstanding issues or the Service Provider's Default.

Remediation Plan Process: the process for resolving certain of the Service Provider's Defaults as set out in clause 24 (Remediation Plan Process).

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

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

Service Provider's Tender: the tender submitted by the Service Provider and other associated documentation set out in Schedule 9.

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

Sub-Contract: any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or Service Providers that enter into a Sub-Contract with the Service Provider.

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

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

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or

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

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

Termination Notice: any notice to terminate this agreement which is given by the Authority to the Service Provider.

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

Warning Notice: a warning notice issued by the Authority to the Provider in the circumstances described in clause 23.1 (Warning Notices and Increased Monitoring).

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 (Specification) to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 9;
 - (d) Schedule 9 (Service Provider's Tender) to this agreement.

COMMENCEMENT AND DURATION

2. TERM

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

3. EXTENDING THE INITIAL TERM

- 3.1 The Authority may extend this agreement beyond the Initial Term by a further period or two periods of up to **12** months (Extension Period). If the Authority wishes to extend this agreement, it shall give the Service Provider at least three months' written notice of such intention before the expiry of the Initial Term or Extension Period as the case may be.
- 3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 40 (Consequences of Termination) shall apply.

4. DUE DILIGENCE AND SERVICE PROVIDER'S WARRANTY

- 4.1 The Service Provider acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (b) it has received all information requested by it from the Authority pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.1(b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this agreement in reliance on its own due diligence.

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

4.3 The Service Provider:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services.

4.4 The Service Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Service Provider in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such

information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Authority.

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

THE SERVICES

5. SUPPLY OF SERVICES

- 5.1 The Service Provider shall provide the Services with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 The Service Provider shall comply with all relevant legal provisions, whether in the form of Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice, Bylaws, Directives or the like, to be observed and performed in connection with the Services provided under this agreement.
- 5.3 The Service Provider shall ensure that the Services are accessible to all service users, including those who may need additional communication support, for example where information is required to be delivered in a different format, to people with a sensory impairment, a learning disability or where English is not that person's first language. In all such instances, the Service Provider will liaise with the Authority or referring agency to ensure that these needs are addressed, as per the Accessible Information Standard available at: (<https://www.england.nhs.uk/ourwork/patients/accessibleinfo-2/>).
- 5.4 Where any part of the Services is stated in Schedule 1 to be subject to a specific KPI, the Service Provider shall provide that part of the Services in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 5.5 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 1.
- 5.6 The Service Provider shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 21.

6. SERVICE STANDARDS

The Service Provider shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with Best Industry Practice;
- (b) in all respects in accordance with the underpinning values and best practice and other requirements set out in Schedule 1 (if any) and the Service Provider's Policies set out in Schedule 7 and all of the other provisions of this agreement including the schedules; and
- (c) in accordance with all applicable Laws.
- (d) in accordance with the minimum national standards set out by the Care Quality Commission and the Care Standards Act 2000.

7. COMPLIANCE

- 7.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 7.2 Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 7.3 The Service Provider shall give such reasonable co-operation and information in relation to the Services to such of the Authority's other contractors or agents or regulators or partners as the Authority may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that the Authority may reasonably require.

8. QUALITY ASSURANCE AND COMPLAINTS

- 8.1 The Service Provider shall operate a self-regulatory system of quality assurance and quality measures relevant to this agreement which ensure that the Services are provided in accordance with the requirements of this agreement.
- 8.2 The Service Provider shall maintain a system for receiving and investigating complaints and keeping details of how many complaints are received and how they are dealt with. The Service Provider shall:

- (a) publicise the complaints procedure to service users and their representatives;
 - (b) ensure that complaints are speedily dealt with and that complainants receive a written statement of the Service Provider's response;
 - (c) ensure that complainants who are not satisfied with the Service Provider's response are informed of their right to refer their complaints to the Authority's Authorised Representative;
 - (d) ensure that complainants are made aware that they may make a complaint to any other relevant authority.
- 8.3 The Service Provider undertakes to co-operate with any investigation which the Authority or any regulatory authority may carry out into a complaint referred to it.
- 8.4 Upon request, the Service Provider shall supply the Authority's Authorised Representative with a copy of its records relating to complaints made in relation to the Services and the Service Provider's response.

9. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 9.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 9.2 The Service Provider shall maintain a training plan and a record of training for all persons engaged in the delivery of its obligations under this agreement. The Service Provider shall make the training plan and training records available to the Authority upon request.
- 9.3 Where either party to this agreement identifies at any time that the Service Provider's Personnel require further training for the proper delivery of the Services, the parties shall work together to agree and implement a training programme to meet such training needs with the Service Provider bearing the costs of the agreed programme.
- 9.4 The Service Provider shall have an on-going obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Authority's Authorised Representative:

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

9.5 Any potential changes highlighted as a result of the Service Provider's reporting in accordance with clause 9.3 shall be addressed by the parties using the Change Control Procedure.

10. BUSINESS CONTINUITY

10.1 The Civil Contingencies Act 2004 requires the Authority to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. The Service Provider shall have in place prior to the Commencement Date, a robust business continuity plan that allows for the continued delivery of the Services following an emergency or disruptive occurrence. The business continuity plan shall set out the procedures and actions to be taken if a disruptive event occurs affecting the Services.

10.2 The Service Provider shall make copies of its business continuity plan available to the Authority upon request.

10.3 The Service Provider shall notify the Authority if an incident occurs which activates the business continuity plan, and details of how it managed any such incident and any subsequent amendments made to processes or systems.

10.4 The Service Provider shall as a matter of course test its business continuity plan on a regular basis or when there has been any change to the mode or method in which the Services are provided or when there has been a change to any business processes or on the occurrence of any event which may increase the likelihood of the need to implement the business continuity arrangements. The Authority reserves the right to appoint a representative to attend any business continuity plan test undertaken by the Service Provider.

- 10.5 The Service Provider, on request by the Authority, shall provide evidence by way of a written report summarising the results of any business continuity plan test and shall promptly implement any actions or remedial measures which the Authority may consider to be appropriate as a result of such tests.
- 10.6 The Service Provider shall undertake and be able to demonstrate to the Authority as required, a regular review process for its business continuity arrangements in relation to the provision of the Services.

11. EQUALITY AND DIVERSITY

- 11.1 The Service Provider shall at all times comply with the relevant requirements of equality legislation including the Equality Act 2010, and all relevant supporting codes of practice and any other relevant legal provisions pertaining to the equal opportunities of the Service Provider's Personnel, the service users, members of the public and others who may be affected by its performance of the Services. The Authority has legal obligations under legislation and these apply to and will be observed by the Service Provider by virtue of it carrying out functions of a public nature.
- 11.2 The Service Provider shall not unlawfully discriminate against, and will advance equality of opportunity and foster good relations between, people with protected characteristics on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation in recruitment and employment of employees or in carrying out works, procuring goods or delivering services or any function of a public nature.
- 11.3 The Service Provider shall have regard to the Authority's Equality and Diversity Statement (as amended from time to time) and notified to the Service Provider by the Authority.
- 11.4 The Service Provider shall nominate a person responsible for equality and diversity matters to liaise as required with the Authority. The Service Provider shall ensure that all the Service Provider's Personnel have an understanding of and comply with the requirements of the Authority's Equality and Diversity Statement and relevant equality legislation in performance of this agreement.
- 11.5 The Authority's Authorised Representative shall notify the Service Provider in the event of non-compliance with equality and diversity matters which come to the Authority's attention and where appropriate shall allow the Service Provider a reasonable period to rectify such failure. In the event of continued non-compliance with equality and diversity requirements the Authority's

Authorised Representative shall be empowered to suspend the provision of the Services. The Service Provider shall not resume provision of the Services until the Authority's Authorised Representative is satisfied that the non-compliance has been rectified.

- 11.6 If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Service Provider or any of the Service Provider's Personnel, then the Service Provider shall take all necessary steps to prevent recurrence of such unlawful discrimination. In such a case, the Authority will require the Service Provider to provide full details and evidence of the steps taken to prevent such reoccurrence.
- 11.7 The Service Provider's equality policy shall be set out in any instructions circulated to those members of the Service Provider's Personnel concerned with recruitment, training, and promotion; other employment issues and conduct in service delivery in relevant documentation available to its staff and others; and in its recruitment advertisements and other relevant literature. The Service Provider may be required to provide to the Authority copies of such instructions, documents, advertisements and other literature.
- 11.8 The Service Provider shall pay its staff at least the minimum wage in line with relevant law and comply with all relevant employment legislation including ensuring access to employee representation.

12. HEALTH AND SAFETY

- 12.1 The Service Provider shall at all times comply with the relevant requirements of the Health and Safety at Work etc. Act 1974, the Management of Health & Safety at Work Regulations 1999, and any other relevant legal provisions pertaining to the health and safety of its own staff, service users, members of the public and others who may be affected by or be engaged in its performance of the Services.
- 12.2 The Authority's Authorised Representative shall notify the Service Provider of any failure by the Service Provider to comply with health and safety matters, which comes to the Authority's attention and where appropriate shall allow the Service Provider a reasonable period to rectify such failure. In the event of further non-compliance by the Service Provider the Authority's Authorised Representative shall be empowered to suspend provision of the Services. The Service Provider shall not resume provision of the Services until the Authority's Authorised Representative is satisfied that the non-compliance has been rectified.

- 12.3 Without prejudice to the generality of the foregoing the Service Provider shall ensure that the Service Provider's Personnel are properly trained and instructed with regard to fire risks and fire precautions and to identify risk in service delivery.

13. ENVIRONMENTAL POLICY

- 13.1 The Service Provider shall at all times at its own cost comply with the relevant requirements of the Environmental Protection Act 1990 and or any statutory amendment or re-enactment, Regulations, Statutory Instruments or Orders pertaining to the protection of the environment, water protection and disposal of waste.
- 13.2 The Service Provider shall at all times at its own cost comply with the relevant requirements of the Climate Change Act 2008, and where appropriate have regard to the Energy Act 2008 and 2010 and or any statutory amendment or re-enactment, Regulations, Statutory Instruments or Orders pertaining to tackling climate change and addressing the national energy issues.
- 13.3 The Service Provider shall as far as it is practicable and relevant to the delivery of the Services, put in place measures to minimise its impact on and ability to adapt to climate change and energy issues.
- 13.4 The Authority's Authorised Representative shall notify the Service Provider in the event of non-compliance with environmental protection and climate change matters which come to the attention of the Authority, and where appropriate shall allow the Service Provider a reasonable period to rectify such non-compliance. In the event of continued non-compliance the Authority's Authorised Representative shall be empowered to suspend the provision of the Services. The Service Provider shall not resume provision of the Services until the Authority's Authorised Representative is satisfied that the non-compliance has been rectified.

14. PREMISES AND ASSETS

AUTHORITY'S PREMISES

- 14.1 The Authority shall, subject to clause 7 (Compliance) and clause 17 (Other Personnel Used To Provide The Services) and the provisions of the Lease, provide the Service Provider (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Service Provider reasonably requires for the purposes only of properly providing the Services.

- 14.2 The Authority shall provide the Service Provider with such accommodation and facilities in the Authority's Premises as is specified in the Lease or which is otherwise agreed by the parties from time to time.
- 14.3 The Service Provider shall notify the Authority immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.
- 14.4 Subject to the requirements of clause 40 (Consequences of Termination), in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Service Provider with such access as the Service Provider reasonably requires to the Authority's Premises to remove any of the Service Provider's property. All such property shall be promptly removed by the Service Provider.
- 14.5 The Service Provider shall ensure that:
- (a) where using the Authority's Premises they are kept properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;
 - (b) only those of the Service Provider's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so.
- 14.6 The Service Provider shall notify the Authority immediately on becoming aware of any damage caused by the Service Provider, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any recipient of the Services in the course of providing the Services.

THIRD PARTY'S PREMISES

- 14.7 Where applicable, the Service Provider shall enter into a licence to occupy or a lease agreement or management agreement or other agreement as appropriate, with the owner or proprietor of premises (which is not within the definition of the Authority's Premises or a service user's private residence or family residence) at which the Services will be provided no later than thirty (30) days from the Commencement Date. Failure to enter into a licence to occupy or lease agreement or management agreement or other agreement as appropriate will be regarded as a Default by the Authority. In the event of any dispute arising between the Service Provider and the owner or proprietor

of the relevant property, or if the owner or proprietor considers that the Service Provider is in breach of the terms of the licence to occupy or lease agreement or management agreement or other agreement (entered into between them), any such dispute shall be resolved between the Service Provider and the owner with no liability to the Authority. Upon termination of this Agreement for any reason the licence to occupy or lease or management agreement or other agreement shall immediately determine.

- 14.8 For the avoidance of doubt, the Service Provider shall indemnify the Authority for any losses, claims or actions brought by the owner or proprietor of the premises against the Authority for the actions, omissions or negligence of the Service Provider in its occupation, use or management of the relevant premises.

CHARGES AND PAYMENT

15. PAYMENT

- 15.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Service Provider.
- 15.2 The Service Provider shall invoice the Authority for payment of the Charges at the end of each quarter. All invoices shall be directed to the Authority's Authorised Representative.
- 15.3 The Authority shall pay the Charges which have become payable within thirty (30) days of receipt of an undisputed invoice from the Service Provider.
- 15.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 25 (Dispute Resolution). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of twenty (20) days after resolution of the dispute between the parties.
- 15.5 Subject to clause 15.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement at **2%** above the base rate of the Bank of England from time to time in force. No interest shall be payable on any amount that is the subject matter of a bona fide dispute between the parties. The Service Provider shall not suspend the supply of the Services if any payment is overdue.

- 15.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.
- 15.7 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for six (6) years from the end of the Term.
- 15.8 Where the Service Provider enters into a Sub-Contract with a Service Provider or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 15.9 The Authority may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Authority.

STAFF

16. KEY PERSONNEL

- 16.1 Each party shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or 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 the matters for which they are expressed to be responsible.
- 16.2 The Service Provider shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;

- (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
- (d) the person resigns from their employment with the Service Provider; or
- (e) the Service Provider obtains the prior written consent of the Authority.

16.3 The Service Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within [insert number] Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

16.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than [insert number] 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 Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Authority becoming aware of the role becoming vacant.

16.5 The Authority may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

16.6 If the Service Provider replaces the Key Personnel as a consequence of this clause 16, the cost of effecting such replacement shall be borne by the Service Provider.

17. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

17.1 At all times, the Service Provider shall ensure that:

- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;

- (c) only those people who are authorised by the Service Provider [(under the authorisation procedure to be agreed between the parties)] are involved in providing the Services; and
- (d) all of the Service Provider's Personnel comply with all of the Authority's policies set out in Schedule 1 (if any) or as notified to the Service Provider from time to time.

17.2 The Service Provider shall replace any of the Service Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

17.3 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

17.4 The Service 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 at the prevailing industry norm for similar services, locations and environments.

18. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

18.1 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

18.2 The Service Provider shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS);
- (b) monitor the level and validity of the checks under this clause 18.2 for each member of staff;
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

- 18.3 The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 18.4 The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 18 have been met.
- 18.5 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users or children or vulnerable adults.

19. TUPE

The parties agree that the provisions of Schedule 5 shall apply to any Relevant Transfer of staff under this agreement.

20. WHISTLEBLOWING AND PREVENT

Whistleblowing

- 20.1 The Service Provider will adopt and promote the Authority's Whistleblowing Policy notified to the Service Provider from time to time.
- 20.2 The Service Provider will inform the Service Provider's Personnel that anyone of them who may have a concern about wrongdoing at work (i.e. activities that harm or may harm the Service Provider's Personnel, service users, clients of the Authority, colleagues working for the Authority or the Authority itself), should report such concerns to the named persons within the Authority's Whistleblowing Policy. (Wrongdoing covers issues such as criminal offence, a failure to comply with a legal obligation, a miscarriage of justice endangering the health or safety of an individual, damages to the environment or the deliberate concealment of information tending to show one of these matters).
- 20.3 The Service Provider will comply with the Public Interest Disclosure Act 1988 and shall have a policy in place to encourage workers to raise concerns about wrongdoing within the Service Provider's organisation and to protect them from victimisation or discrimination.

Prevent

- 20.4 The Service Provider shall include in its policies and procedures and comply with the principles contained in:
- (a) the Government Prevent Strategy; and
 - (b) the Prevent Guidance and Toolkit.
- 20.5 The Service Provider shall include in its policies and procedures a requirement for staff to complete appropriate training programmes in order to comply with the Government Prevent Strategy.
- 20.6 The Service Provider shall appoint and must maintain a Prevent Lead. The Service Provider must ensure that at all times the Prevent Lead is appropriately authorised and resourced to procure the full and effective performance of the Service Provider's obligations under clause 20.4 and clause 20.5.
- 20.7 The Service Provider shall notify the Authority's Authorised Representative in writing of any change to the identity of the Prevent Lead as soon as practicable, and in any event no later than ten (10) Working Days after the change.

CONTRACT MANAGEMENT

21. REPORTING AND MEETINGS

- 21.1 The Service Provider shall provide the Management Reports in the form and at the intervals set out in Schedule 4.
- 21.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 4 and the Supplier shall, at each meeting, present its previously circulated Management Reports [and Financial Reports] in the format set out in that Schedule or agreed by the parties.

22. MONITORING

- 22.1 The Authority may monitor the performance of the Services by the Service Provider.
- 22.2 The Service Provider shall co-operate, and shall procure that the Service Provider's Personnel co-operate, with the Authority in carrying out the monitoring referred to in clause 22.1 at no additional charge to the Authority.

23. WARNING NOTICES AND INCREASED MONITORING

- 23.1 Without prejudice to the Authority's other rights or remedies, including without limitation to its right to implement the Remediation Plan Process pursuant to clause 24 (Remediation Plan Process), if at any time the Service Provider has committed a Default then the Authority may serve a Warning Notice on the Service Provider, setting out the matters giving rise to such notice and containing a reminder to the Service Provider of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice.
- 23.2 Without prejudice to the other rights or remedies of the Authority, if the Service Provider receives a Warning Notice, the Authority may reasonably increase its monitoring of the Service Provider until such time as the Service Provider has demonstrated, to the reasonable satisfaction of the Authority, that it will perform (and is capable of performing) its obligations under this agreement.
- 23.3 The Service Provider may not increase the Charges to take account of any additional monitoring and shall promptly reimburse the Authority for any additional direct costs reasonably and necessarily incurred by the Authority in respect of any such additional monitoring.

24. REMEDIATION PLAN PROCESS

- 24.1 If the Service Provider commits a Default of any material obligation/term as defined in clause 36.5 and the Default is capable of remedy, the Authority may not terminate this agreement without first operating the Remediation Plan Process set out in this clause 24. If the Service Provider commits such a Default, the Authority shall give a Remediation Notice to the Service Provider which shall specify the Default in outline and the actions the Service Provider needs to take with respect to remedying the Default.
- 24.2 For the avoidance of doubt, the Authority shall be under no obligation to initiate the Remediation Plan Process if it issues a Termination Notice pursuant to clause 36.2.
- 24.3 Within ten (10) Working Days of receipt of a Remediation Notice, the Service Provider shall either:
- (a) submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
 - (b) inform the Authority that it does not intend to submit a Remediation Plan, in which event the Authority shall be entitled to serve a Termination Notice.

- 24.4 The Authority shall either approve the draft Remediation Plan within ten (10) Working Days of its receipt pursuant to clause 24.3, or it shall inform the Service Provider why it cannot accept the draft Remediation Plan. In such circumstances, the Service Provider shall address all such concerns in a revised Remediation Plan, which it shall submit to the Authority within ten (10) Working Days of its receipt of the Authority's comments. If no such notice is given, the Service Provider's draft Remediation Plan shall be deemed to be agreed.
- 24.5 Once agreed, the Service Provider shall immediately start work on the actions set out in the Remediation Plan.
- 24.6 If, despite the measures taken under clause 24.4, a Remediation Plan cannot be agreed by the parties, then the Authority may elect to end the Remediation Plan Process and serve a Termination Notice.
- 24.7 If a Remediation Plan is agreed between the parties, but the Service Provider fails to implement or successfully complete the Remediation Plan by the required remedial plan completion date, the Authority may:
- (a) terminate this Agreement by serving a Termination Notice; or
 - (b) give the Service Provider a further opportunity to resume full implementation of the Remediation Plan; or
 - (c) escalate any issues arising out of the failure to implement the Remediation Plan under the Dispute Resolution Procedure set out at clause 25.
- 24.8 If, despite the measures taken under clause 24.7(b), the Service Provider fails to implement the Remediation Plan in accordance with its terms, the Authority may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 24.9 The Authority shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same Default as had previously been addressed in a Remediation Plan within a period of two (2) months following the conclusion of such previous Remediation Plan. In such event, the Authority may serve a Termination Notice.

25. DISPUTE RESOLUTION

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

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within ten (10) Working Days of service of the Dispute Notice, the Dispute shall be referred to the Authority's [insert senior officer title] and the Service Provider's [insert senior officer title] who shall attempt in good faith to resolve it; and
- (c) if the Authority's [insert senior officer title] and the Service Provider's [insert senior officer title] are for any reason unable to resolve the Dispute within ten (10) Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than ten (10) days after the date of the ADR notice.

25.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 49 (Governing Law) which clause shall apply at all times.

26. SUB-CONTRACTING AND ASSIGNMENT

26.1 Subject to clause 26.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

26.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

26.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

LIABILITY

27. INDEMNITIES

The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or Sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable Law by the Authority or its representatives (excluding any Service Provider's Personnel).

28. LIMITATION OF LIABILITY

28.1 Subject to clause 28.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

28.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

28.3 Subject to clause 28.4, the Service Provider's total aggregate liability:

- (a) is unlimited in respect of:

- (i) any breach of clause 31 (Data Protection), clause 33 (Confidentiality), Clause 35 (Intellectual Property) and clause 39 (Prevention of Bribery);and
 - (ii) the Service Provider's wilful default.
- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed 100% of the aggregate Charges paid under or pursuant to this agreement.

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

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable Law.

29. INSURANCE

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

- (a) public liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10m;
- (c) professional indemnity insurance with a limit of indemnity of not less than £5m in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover; and
- (d) buildings and contents Insurance at the appropriate level for every property being used to accommodate pathway service users;

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

loss arising from any advice given or omitted to be given by the Service Provider.

- 29.2 The Service Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 29.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 29.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.
- 29.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of this agreement.

INFORMATION

30. FREEDOM OF INFORMATION

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

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

31. DATA PROTECTION

- 31.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel shall) comply with any notification requirements under the DPA and both parties shall duly observe all their obligations under the DPA, which arise in connection with this agreement.
- 31.2 Notwithstanding the general obligation in clause 31.1, where the Service Provider is processing Personal Data as a Data Processor for the Authority, the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
 - (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 31.2; and
 - (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.
- 31.3 The provisions of this clause shall apply during the continuance of this agreement and indefinitely after its expiry or termination.

32. DATA SECURITY

- 32.1 The Service Provider shall comply with the Authority's security regulations notified to the Service Provider from time to time, including any made for the purpose of the Data Protection Act 1998. In particular, but without prejudice to

the generality of the foregoing, the Service Provider shall instruct the Service Provider's Personnel and all its visitors not to read any documents however produced or the information displayed on any screen, or listen to the contents of any tape or electronically produced recording unless necessary in connection with the provision of the Services.

- 32.2 The Service Provider will be required to abide by the current Data Security policies of the Authority (regarding control of access, update and back up data,) supplied to the Service Provider from time to time.
- 32.3 Copies of Authority systems and data will be kept at a secure offsite storage location by the Service Provider at his own expense. These storage media will be accessible only to authorised staff of the Service Provider and the Authority.
- 32.4 The Service Provider will not provide the Authority's data or information to another party or destroy or delete data unless otherwise instructed by the Authority's Authorised Representative in writing.
- 32.5 The Service Provider shall maintain an audit log and a clear procedure for access control for all employees accessing information which relates to Personal Information of the Authority's employees, rate-payers or service users. The log shall include the purpose, dates and time of accessing information and shall be made available to the Authority for inspection upon request.
- 32.6 Where any of the Service Provider's Personnel have been removed from having access to Personal Data, when their need to access the information no longer exists, the Service Provider shall record this in a log which it shall make available to the Authority upon request.

33. CONFIDENTIALITY

- 33.1 Subject to clause 33.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 33.2 Clause 33.1 shall not apply to any disclosure of information:
 - (a) required by any applicable law, provided that clause 30.2 shall apply to any disclosures required under the FOIA or the EIRs;
 - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 33.1;
- (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 25 (Dispute Resolution);
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government; and
- (h) by the Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

33.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's employees, rate-payers or service users, are delivered up to the Authority in a secure, agreed format or securely destroyed upon request by the Authority. The Service Provider shall provide the Council with disposal logs (or certificates) within five (5) working days of the Council instructing the Service Provider to destroy the data.

34. AUDIT

34.1 During the Term and for a period of six (6) years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Service Providers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 31 (Data Protection) and clause 30 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;

- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 34.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 34 more than once in any calendar year.
- 34.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 34.4 Subject to the Authority's obligations of confidentiality, the Service Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Service Provider's Personnel.
- 34.5 The Authority shall endeavour to (but is not obliged to) provide at least ten (10) days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 34.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 34.7 If an audit identifies that:
 - (a) the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Service Provider's costs, then the

remedial plan shall include a requirement for the provision of all such information;

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

35. INTELLECTUAL PROPERTY

35.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

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

TERMINATION

36. TERMINATION FOR BREACH

36.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Service Provider if there is an Insolvency Event.

36.2 The Authority may terminate this agreement in whole or in part with immediate effect or (at its discretion) on the expiry of any period set out in the relevant Termination Notice served on the Service Provider if the Service Provider is in breach of any material obligation under this agreement provided that if such Default is capable of remedy, the Authority may only terminate this agreement under this clause 36.2 if:

- (a) the Service Provider has failed to submit a Remediation Plan pursuant to clause 24.3(a); or
- (b) the parties have failed to agree a Remediation Plan in accordance with the Remediation Plan Process; or
- (c) the Service Provider has failed to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process; or
- (d) clause 24.9 applies;
- (e) the Service Provider has received more than three (3) Warning Notices in any six (6) month period;
- (f) the Service Provider, having been issued with a CQC Improvement Plan, fails to improve the quality of the services it provides such that when it is next inspected by the CQC the quality of its services is determined by the CQC to remain the same or to have not improved from the date of issue of the CQC Improvement Plan.

36.3 The Authority may terminate this agreement in accordance with the provisions of clause 38 (Force Majeure) and clause 39 (Prevention of Bribery).

36.4 If this agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

36.5 The parties acknowledge and agree that any breach of clauses 7 (*Compliance*) 11 (*Equality and Diversity*), 12 (*Health and Safety*) 18 (*Safeguarding Children and Vulnerable Adults*), 29 (*Insurance*), 30 (*Freedom of Information*), 31 (*Data Protection*) clause 32 (*Data Security*) and 33 (*Confidentiality*) shall constitute a breach of a material obligation/term.

37. TERMINATION ON NOTICE

Without affecting any other right or remedy available to it, the Authority may terminate this agreement for convenience at any time by giving at least three (3) months' written notice to the Service Provider.

38. FORCE MAJEURE

38.1 Subject to the remaining provisions of this clause 38, neither party to this agreement shall be liable to the other for any delay or non-performance of its

obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

- 38.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 38.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 38.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable Service Provider should have foreseen and provided for the cause in question.
- 38.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 38.6 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 agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 38.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than ten (10) Working Days.

39. PREVENTION OF BRIBERY

39.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider's Personnel, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

39.2 The Service Provider shall not during the Term:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

39.3 The Service Provider shall during the term of this agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 39.3(a) and make such records available to the Authority on request.

39.4 The Service Provider shall immediately notify the Authority in writing if it becomes aware of any breach of clause 39.1 and/or clause 39.2, or has reason to believe that it has or any of the Service Provider's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or party directly or

indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

- 39.5 If the Service Provider makes a notification to the Authority pursuant to clause 39.4, the Service Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with clause 34 (Audit).
- 39.6 If the Service Provider is in Default under clause 39.1 and/or clause 39.2, the Authority may by notice:
- (a) require the Service Provider to remove from performance of this agreement any Service Provider's Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this agreement.
- 39.7 Any notice served by the Authority under clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

40. CONSEQUENCES OF TERMINATION

- 40.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the Service Provider shall co-operate fully with the Authority to ensure an orderly migration (if relevant) of the Services to the Authority or, at the Authority's request, a third party provider.
- 40.2 On termination of this agreement the Service Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority in the format agreed with the Authority at the start of the contract and the Service Provider's Authorised Representative shall certify full compliance with this clause.
- 40.3 The provisions of clause 27 (Indemnities), clause 29 (Insurance), clause 30 (Freedom of Information), clause 31 (Data Protection), clause 34 (Audit), and this clause 40 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

41. WAIVER

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

42. RIGHTS AND REMEDIES

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

43. SEVERABILITY

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

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

44. PARTNERSHIP OR AGENCY

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

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

45. THIRD PARTY RIGHTS

Except as provided in Schedule 5, no one other than a party to this agreement, their successors and permitted assignees shall have any right to enforce any of its terms.

46. PUBLICITY

The Service Provider shall not:

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

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

47. NOTICES

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

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number, email or other electronic means.

47.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt ;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- (c) if sent by fax, email or other electronic means at 9.00 am on the next Working Day after transmission provided that in the case of email or other electronic means, a failure message or out of office message is not received.

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

48. ENTIRE AGREEMENT

48.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances,

warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

49. GOVERNING LAW

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

50. JURISDICTION

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

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

EXECUTED as a deed
by affixing the common seal of
**The Mayor and Burgesses of
The Royal Borough of
Kingston Upon Thames**
In the presence of

.....
Mayor

.....
Corporate Solicitor

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

Name:

Position:

Name:

Position:

Schedule 1 Specification⁶

DRAFT

⁶ with relevant information

Schedule 2 Key Performance Indicators⁷

DRAFT

⁷ To be inserted when drafting the contract after award.

Schedule 3 Charges and Payment⁸

1. CALCULATION OF THE CHARGES

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

2. PAYMENT PLAN

[INSERT DETAILS OF WHEN INVOICES WILL BE SUBMITTED BY THE Service Provider AND WHEN THEY WILL BE DUE FOR PAYMENT]

⁸ To be completed after award of contract.

Schedule 4 Contract Management⁹

1. AUTHORISED REPRESENTATIVES

1.1 The Authority's initial Authorised Representative: [INSERT DETAILS]

1.2 The Service Provider's initial Authorised Representative: [INSERT DETAILS]

2. KEY PERSONNEL

[INSERT DETAILS]

NAME	POSITION	ROLE

3. MEETINGS

3.1 Type

3.2 Quorum

3.3 Frequency

3.4 Agenda

4. REPORTS

4.1 Type

4.2 Contents

4.3 Frequency

4.4 Circulation list

⁹ To be completed after award of contract.

Schedule 5 TUPE And Retendering

1. This agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, in part or otherwise) resulting in a transfer of the Services in whole or in part ("**Subsequent Transfer**"). If a Subsequent Transfer is a relevant transfer under TUPE then the Authority or replacement service provider will inherit liabilities in respect of the relevant employees with effect from the relevant service transfer date.
2. The Service Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this agreement or otherwise, on request from the Authority and at such times as required by the TUPE Regulations, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's provisional staff list and the staffing information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Service Provider shall notify the Authority of any material changes to this information as and when they occur.
3. At least fourteen (14) days prior to the service transfer date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the replacement service provider, the Service Provider's final staff list, which shall be complete and accurate in all material respects. The Service Provider's final staff list shall identify which of the Service Provider's and Sub-Contractor's personnel named are relevant employees for purposes of TUPE.
4. The Authority shall be permitted to use and disclose the Service Provider's provisional staff list, the Service Provider's final staff list and the employee information for informing any tenderer or other prospective replacement service provider for any services that are substantially the same type of services as (or any part of) the Services.
5. The Service Provider warrants that the Service Provider's provisional staff list, the Service Provider's final staff list and the employee information (the "**TUPE Information**") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's final staff list.

6. The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under the Data Protection Legislation.
7. The Authority regards compliance with this Schedule 5 as fundamental to this agreement. In particular, failure to comply with paragraphs 2 and 3 in respect of the provision of accurate information about the relevant employees shall entitle the Authority to suspend payment of the Service Provider until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 7 shall not exceed an amount equivalent to the thirteen (13) weekly payments that would be payable in the three month period following the Service Provider's failure to comply with paragraphs 2 or 3, as the case may be.
8. Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) months prior to termination of this agreement shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such charges are required by law. The Service Provider shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.
9. In the six (6) months prior to termination of this Agreement, the Service Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Service Provider's provisional staff list, their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.
10. The Service Provider shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every replacement service provider against all employment liabilities relating to:
 - (a) any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or
 - (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Service Provider and/or any Sub-Contractor);

arising from or connected with any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of

TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the service transfer date.

11. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and/or employee representatives in relation to any relevant transfer as a consequence of a subsequent transfer will be fulfilled.
12. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 3 to 11, to the extent necessary to ensure that any replacement service provider shall have the right to enforce the obligations owed to, and indemnities given to, the replacement service provider by the Service Provider or the Authority, in its own right under s.1(1) of the Contracts (Rights of Third Parties) Act 1999.
13. Despite paragraph 12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Schedule 6 Change Control Procedure

1. GENERAL PRINCIPLES

- 1.1 Where the Authority or the Supplier sees a need to change this agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

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

Authority shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

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

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

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

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

DRAFT

Schedule 7 Policies and Procedures

The Service Provider must ensure that in addition to the policies mentioned elsewhere in this agreement, it has a signed and dated copy of each of the following policies:

1. Data Protection Policy.
2. Disciplinary and Grievance Procedures.
3. Dealing with Violence and Aggression Policy.
4. Confidentiality Policy.
5. Quality Assurance Policy.
6. Equal opportunities Policy.
7. Health & Safety Policy.
8. Child Protection Policy.
9. Lone Working Policy.
10. Recruitment & Selection and other HR Policies.
11. Dealing with accidents / incidents and Emergencies.
12. Safeguarding Policy.
13. Respecting service user's choice, privacy, dignity and independence.
14. Whistle Blowing.
15. Receipt of Gifts.
16. Management and identification of risks Policy.

Schedule 8 Premises¹⁰

DRAFT

¹⁰ To be completed after award of contract.

Schedule 9 Service Provider's Tender¹¹

DRAFT

¹¹ To be inserted when drafting the contract following award.