

LONDON BOROUGH OF CROYDON

CONTRACT FOR THE PROVISION OF SERVICES

THIS CONTRACT dated eleventh May two thousand and twenty two is made between

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** of Town Hall, Katharine Street, Croydon, Surrey, CR0 1NX (the **Council**).
- (2) **PRESCRIBING SERVICES LTD** incorporated and registered in England and Wales with company number **05913240** whose registered office is at The Norfolk Clinical Park Rowan House, Buxton, Norwich, Norfolk, England, NR10 5RH (the **Contractor**).

Introduction

- (A) The Council sought proposals for the provision of **NHS Health Check Invitations** by means of a public tender exercise.
- (B) The Council has, through a competitive process, selected the Contractor to provide these services and the Contractor is willing and able to provide the services in accordance with the terms and conditions of this Contract.


NOW IT IS AGREED between the Council and the Contractor that:

- A. Any words beginning with a capital letter shall bear the meaning given in the London Borough of Croydon Provision of Services Conditions of Contract (**Conditions**) unless the context requires otherwise.
- B. The Contract comprises the following;
 - (i) **RFQ**
 - (ii) **Form of Tender**
 - (iii) **Brief Specification and Pricing Schedule**
 - (iv) **Order**
 - (v) **Conditions of Contract**
 - (vi) **Tender Response Document**
 - (vii) **Supplemental documentation (for example, Whistle-blowing Procedure)**
 - (viii) **Performance Bond and/or Deed of Guarantee and Indemnity**
 - (ix) **Any other documents identified in the Conditions as being incorporated into the Contract**
- C. The Contractor shall provide the Services in accordance with the provisions of the Contract.
- D. Subject to compliance by the Contractor with the provisions of the Contract to the satisfaction of the Council the Council shall pay the Contract Price to the Contractor.

The parties entered into this Contract on the date stated at the beginning of it.

SIGNED FOR AND ON BEHALF OF THE) [*H Harrison*]
MAYOR AND BURGESSES OF THE LONDON)
BOROUGH OF CROYDON :BY A DULY) Helen Harrison, Consultant in Public Health
AUTHORISED PERSON)
)

EXECUTED by **PRESCRIBING SERVICES LTD**)
acting by [NAME OF DIRECTOR], a director,)
and [NAME OF DIRECTOR/SECRETARY], a)
director/its secretary.)
) Clinical Director
)
) **Director**
)
)

SIGNED: 

PRINT NAME: Dr Julian Brown

POSITION: Eclipse Partnership Lead
Julian Young



)

Director/Secretary

LONDON BOROUGH OF CROYDON
PROVISION OF SERVICES CONDITIONS OF CONTRACT

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1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Condition apply in the Contract Documents.

Anti-Slavery Policy: the Council's anti-slavery policy as notified to the Contractor from time to time.
Assets: any materials, plant or equipment owned or held by the Council and provided by the Council for use in providing the Services.

Authorised Representatives: the persons respectively designated as such by the Council and the Contractor, the first such persons being set out in Schedule 3.

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.

Brief: the Council's written instructions to the Contractor to supply services in accordance with the Specification and which is dated 20th April 2022.

Catastrophic Failure

- (a) any action by the Contractor, whether in relation to the Services and the Contract or otherwise, which in the reasonable opinion of the Council's Representative has or may cause significant harm to the reputation of the Council; and.

Change: any change to the Contract including to any of the Services.

Charges: the charges which shall become due and payable by the Council to the Contractor in respect of the Services in accordance with the provisions of the Contract, as such charges are set out in Schedule 2.

Commencement Date: 1st June 2022 or such other date as may be reasonably stipulated by the Council's Authorised Representative to be the commencement date for the supply of the Services provided always that date does not precede the Contract Date.

Commercially Sensitive Information: the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to the Contractor, its intellectual property rights or its business or which the Contractor has indicated to the Council that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss.

Conditions: these London Borough Provision of Services Conditions of Contract.

Contract Date: the date notified by the Council to the Contractor on which the Council's award of the Contract shall be deemed to have taken effect allowing for the expiry of any applicable "standstill period".

Contract Documents: those documents which evidence the terms of the Contract which include (without limitation) the ITT, the Form of Tender, the Brief or Order, the Tender Response Document, the Specification, and these Conditions together with all appendices and schedules to those documents and any supplemental agreement and modification to the Contract.

Contract: the agreement concluded between the Council and the Contractor, relating to the supply of Services by the Contractor and comprising all the Contract Documents as varied from time to time.

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

Contractor's Personnel: all employees, staff, other workers, servants, agents, suppliers and consultants of the Contractor and of any Sub-Contractors who are engaged in the performance of its obligations under this Contract from time to time.

Data Breach: means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

Data Controller: has the same meaning given to 'Data Controller', or 'Controller' as appropriate, in the Data Protection Laws.

Data Processor: has the meaning given to 'Data Processor', or 'Processor' as appropriate, in the Data Protection Laws.

Data Protection Laws: means any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of personal data and privacy applicable to the performance of this agreement, including where applicable the Data Protection Act 1998, the Data Protection Bill, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and the GDPR (Regulation (EU) 2016/679), as amended or superseded.

Default Notice: is defined in Condition 5.2.

Dispute Resolution Procedure: the procedure set out in Condition 19.

EIR: 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.

Form of Tender: the form of tender to include both the unconditional and, where appropriate, conditional offers submitted by the Contractor to the Council to which these Conditions are attached.

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

GDPR: means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC as updated, superseded or repealed from the time to time.

Health and Safety Policies: the health and safety policy of the Council [and/or other relevant Central Government Body] as provided to the Contractor on or before the Commencement Date and as subsequently provided to the Contractor from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable law regarding health and safety.

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

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

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.

ITT: the Council's invitation to tender to prospective contractors to supply the Services.

Key Personnel: those personnel identified Schedule 3 for the roles attributed to such personnel, as modified pursuant to Condition 11.

London Living Wage Rate: the basic hourly rate before tax and other deductions determined and published by the Greater London Authority from time to time.

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

Order: the Council's written instructions to the Contractor, which the Council may issue from time to time, requiring the Contractor to supply the Services.

Personal Data: has the meaning given in the Data Protection Laws.

Premises: any premises which the Council makes available for use by the Contractor for the provision of the Services on the terms set out in the Contract.

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

Remediation Notice: a notice served by the Council in accordance with Condition 28.1(a)).

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

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

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

Safeguarding Suspension/Termination Procedure: the Council's procedure (as amended from time to time) for terminating or suspending the Contractor's provision of Services in the circumstances set out in Condition 28.3 and which, for the time being, is set out in the document entitled "London Borough of Croydon Multi-Agency Process for the Suspension or Termination of Commissioning Placements in the event of Commissioning Concerns", a copy of which is at Part 2, Schedule 7.

Services: the services to be delivered by or on behalf of the Contractor under the Contract, as more particularly described in the Specification.

Specification: the specification (including any appendices to it) attached to the Invitation to Tender describing the Services, as may be varied from time to time in accordance with Condition 18.

Sub-Contract: any contract between the Contractor and a third party pursuant to which the Contractor 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 Contractor.

Tender Response Document: the tender submitted by the Contractor to provide the Services pursuant to the Form of Tender and in accordance with the Contract Documents.

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

- (a) any extensions to the Contract which are agreed pursuant to Condition 3; or
- (b) the earlier termination of the Contract in accordance with its terms.

Termination Date: the date of expiry or termination of the Contract.

Termination Payment Default: the Council's failure to pay any undisputed Charges due to the Contractor within 60 days of the relevant invoice becoming due and payable.

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

Unforeseen Event: any cause affecting the performance by a party of its obligations under the Contract 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 Contractor, the Contractor's Personnel or any other failure in the Contractor's supply chain.

VAT: value added tax or any other similar "sales" tax.

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

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules to these Conditions form part of the Conditions and shall have effect as if set out in full in the body of these Conditions and any reference to these Conditions 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 but not e-mail.
- 1.10 Any obligation in the Contract 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 the Contract) at any time.
- 1.12 References to Conditions and schedules are to the conditions and schedules of these Conditions; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) these Conditions;
 - (b) the Brief Specification;
 - (c) the Order;
 - (d) the ITT;
 - (e) the Tender Response Document; and
 - (f) the Form of Tender.

COMMENCEMENT AND DURATION

2. TERM

The Contract shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

- 3.1 The Council may extend the Contract beyond the Initial Term by a further period or periods of up to one year (**Extension Period**). If the Council wishes to extend the Contract, it shall give the Contractor at least one months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Council does not wish to extend the Contract beyond the Initial Term the Contract shall expire on the expiry of the Initial Term and the provisions of Condition 33 shall apply.

4. CONSENTS, CONTRACTOR'S WARRANTY AND DUE DILIGENCE

- 4.1 The Contractor shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Contractor has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 4.3 The Contractor acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services;
 - (b) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - (c) it has entered into the Contract in reliance on its own due diligence.
- 4.4 Save as provided in the Contract, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Contractor by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.5 The Contractor:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Tender Response Document remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract; and
 - (b) shall promptly notify the Council in writing if it becomes aware during the performance of the Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services.
- 4.6 The Contractor shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Contractor in accordance with Condition 4.5(b).
- 4.7 Nothing in this Condition 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

- 5.1 The Contractor shall provide the Services to the Council with effect from the Commencement Date and for the duration of the Contract in accordance with the provisions of the Contract.

- 5.2 If the Contractor does not comply with the provisions of Condition 5.1 in any way, the Council may serve the Contractor with a notice in writing setting out the details of the Contractor's default (a **Default Notice**).

6. SERVICE STANDARDS

- 6.1 The Contractor shall provide the Services, or procure that they are provided:
- (a) with reasonable skill and care and in accordance with the best practice prevailing in the fulfilment of NHS Health Checks industry from time to time;
 - (b) in all respects in accordance with the Council's policies set out in Schedule 1; and
 - (c) in accordance with all the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services.
- 6.2 Without limiting the general obligation set out in Condition 6.1, the Contractor shall (and shall procure that the Contractor's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract. The Contractor shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998; and
 - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

7. HEALTH AND SAFETY

- 7.1 The Contractor shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Contract. The Council shall promptly notify the Contractor of any health and safety hazards that may exist or arise at the Premises and that may affect the Contractor in the performance of the Contract.
- 7.2 While on the Premises, the Contractor shall comply with any Health and Safety Policies implemented by the Council in respect of staff and other persons working on the Premises.
- 7.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the Contract on the Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 7.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Premises in the performance of the Contract.

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

8. PREMISES AND ASSETS

- 8.1 The Council shall, subject to Condition 7 and Condition 12, provide: (a) the Contractor (and its Sub-Contractors) with access to such parts of the Premises as the Contractor reasonably requires for the purposes only of properly providing the Services; and (b) the Contractor with such accommodation and facilities in the Premises as is agreed by the parties from time to time.
- 8.2 Subject to the requirements of Condition 33, in the event of the expiry or termination of the Contract, the Council shall on reasonable notice provide the Contractor with such access as the Contractor reasonably requires to the Premises to remove any of the Contractor's equipment.
- 8.3 The Contractor shall ensure that:
- (a) where using the Premises and any Assets they are kept properly secure;
 - (b) only those of the Contractor's Personnel that are duly authorised to enter upon the Premises for the purposes of providing the Services, do so; and
 - (c) any Assets used by the Contractor are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted).
- 8.4 The Contractor shall notify the Council immediately on becoming aware of any damage caused by the Contractor, its agents, employees or Sub-Contractors to any property of the Council, to any of the Premises or to any property of any other recipient of the Services in the course of providing the Services.

CHARGES AND PAYMENT

9. PAYMENT

- 9.1 In consideration of the provision of the Services by the Contractor in accordance with the terms and conditions of the Contract, the Council shall pay the Charges to the Contractor.
- 9.2 The Contractor shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable in accordance with Schedule 2. All invoices shall be directed to the Council's Authorised Representative.
- 9.3 The Contractor shall:
- (a) not pay any Contractor's Personnel or staff an hourly wage (or equivalent) less than the London Living Wage Rate in respect of the time spent by that staff member in the delivery of the Services to the Council;
 - (b) provide the Council such information concerning the London Living Wage Rate as the Council or its nominees may reasonably require from time to time, the Council may request that such information includes evidence that the Contractor is complying with the provisions of this Condition 9.3;

- (c) co-operate with the Council and provide such assistance in monitoring the effect of the London Living Wage Rate as the Council may reasonably require.
- 9.4 Where the Contractor submits an invoice to the Council in accordance with Condition 9.2, the Council will consider and verify that invoice in a timely fashion. The Council shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.
- 9.5 Where there is an undue delay in the Council considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Condition 9.4 after a reasonable time has passed.
- 9.6 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 Condition 19.
- 9.7 Interest shall be payable on the late payment of any undisputed Charges properly invoiced under the Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Contractor shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate the Contract under Condition 28.6 for failure to pay undisputed charges.
- 9.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Contractor shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Contractor under the Contract.
- 9.9 The Contractor shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to the Contract and such records shall be available for inspection by the Council on its reasonable request.
- 9.10 Where the Contractor enters into a Sub-Contract the Contractor shall include in that Sub-Contract:
 - (a) provisions having the same effect as Conditions 9.4 and 9.5 of the Contract; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Conditions 9.4, 9.5 and 9.10 of this Contract.
- 9.11 The Council may retain or set off any sums owed to it by the Contractor which have fallen due and payable against any sums due to the Contractor under the Contract.
- 9.12 The Contractor shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or

otherwise, unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.

10. BEST VALUE

The Contractor shall at all times assist the Council in the achievement of its duty to obtain "Best Value" in accordance with the provisions of the Local Government Act 1999 and shall do all that is required by the Council in this regard.

STAFF

11. KEY PERSONNEL

- 11.1 Each party shall appoint the persons named as such in Schedule 3 as the individuals who shall be responsible for the matters allocated to such 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.
- 11.2 The Contractor shall not remove or replace any of the Key Personnel unless:
 - (a) requested to do so by the Council;
 - (b) the person is on long-term sick leave;
 - (c) the person resigns from their employment with the Contractor; or
 - (d) the Contractor obtains the prior written consent of the Council.
- 11.3 The Contractor shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.
- 11.4 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 five Working Days. Any replacement shall be 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 Contractor or the Council becoming aware of the role becoming vacant.
- 11.5 The Council may require the Contractor 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.
- 11.6 If the Contractor replaces the Key Personnel as a consequence of this Condition 11, the cost of effecting such replacement shall be borne by the Contractor.

12. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 12.1 At all times, the Contractor shall ensure that:
 - (a) each of the Contractor'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 Contractor's Personnel to provide the Services properly; and

- (c) all of the Contractor's Personnel comply with all of the Council's policies.
- 12.2 The Council may refuse to grant access to, and remove, any of the Contractor's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 12.3 The Contractor shall replace any of the Contractor's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 12.4 The Contractor shall maintain up-to-date personnel records on the Contractor's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Contractor's Personnel. The Contractor shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Laws.
- 13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**
- 13.1 If the Contractor is a Regulated Activity Contractor:
 - (a) the Contractor shall have ultimate responsibility for the management and control of the Regulated Activity provided under the Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006; and
 - (b) the Contractor shall comply with its obligations set out in Schedule 7.

14. TUPE

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

15. WHISTLE-BLOWING

- 15.1 The Council confirms that its Authorised Representative is authorised as a person to whom the Contractor's Personnel may make a qualifying disclosure under the Public Interest Disclosure Act 1998 (**PIDA**).
- 15.2 The Contractor agrees and acknowledges that any of the Contractor's Personnel making a protected disclosure (as defined by PIDA) shall not be subjected to any detriment.
- 15.3 The Contractor acknowledges that it has had sight of and understands the Council's whistle-blowing policy.

CONTRACT MANAGEMENT

16. REPORTING AND MEETINGS

- 16.1 The Contractor shall provide the management reports in the form and at the intervals as reasonably requested by the Council's Authorised Representative.

- 16.2 The Authorised Representatives shall meet at least quarterly and the Contractor shall, at each meeting, present its previously circulated management reports, as prepared under Condition 16.1.

17. MONITORING

- 17.1 The Council may monitor the performance of the Services by the Contractor.
- 17.2 The Contractor shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in Condition 17.1 at no additional charge to the Council.

18. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 18.1 The Council's Authorised Representative and the Contractor's Authorised Representative shall meet at least once every quarter to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 18.2 If either party requests a change to the scope or execution of the Services, the Contractor shall, within a reasonable time (and in any event not more than 14 Working Days after receipt of the Council's request), provide a written estimate to the Council of:
- (a) the likely time required to implement the change;
 - (b) any necessary variations to the Charges arising from the change; and
 - (c) any other impact of the change on the Contract.
- 18.3 Unless both parties consent to a proposed change, there shall be no change to the Contract.
- 18.4 If both parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Charges, the Services and any other relevant terms of the Contract to take account of the change that has been reached and this Contract has been varied in accordance with Condition 34.8.
- 18.5 If the Contractor requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Council shall not unreasonably withhold or delay consent to it. Unless the Contractor's request was attributable to the Council's non-compliance with the Council's obligations, neither the Charges or any other terms of the Contract shall vary as a result of such change.
- 18.6 The Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services.
- 18.7 Any potential Changes highlighted as a result of the Contractor's reporting in accordance with Condition 16 shall be addressed by the parties using the procedure set out in this Condition 18.

19. DISPUTE RESOLUTION

- 19.1 If any dispute arises in connection with the Contract, the parties' Authorised Representatives shall, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 19.2 If any dispute referred to a meeting is not resolved at that meeting, then either party, by notice in writing to the other, may refer the dispute to the appropriate Director and counterpart of the Contractor who shall co-operate in good faith to resolve the dispute as amicably as possible within [7/14 days] of such notice.
- 19.3 If the dispute is not resolved at the meeting referred to in Condition 19.2 (above), the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the request shall be sent to CEDR Solve. The mediation shall start not later than 28 days after the date of the ADR notice.
- 19.4 No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation, and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

20. OMBUDSMAN COMPLAINTS

- 20.1 The Contractor shall take such action as the Council's Authorised Representative may from time to time require to assist the Council to respond to any complaint relating to the Services which the Local Government Ombudsman (the **Ombudsman**) has referred to the Council.
- 20.2 The Contractor shall indemnify the Council in respect of any sums the Council is required to pay as a result of a finding of maladministration or where the Council reaches a local settlement in relation to any complaint referred to it by the Ombudsman under Condition 20.1.
- 20.3 The Contractor shall take such action as the Council's Authorised Representative may from time to time specify to remedy a finding of maladministration or to implement a local settlement which relates to the Services.

21. SUB-CONTRACTING AND ASSIGNMENT

- 21.1 Subject to Condition 21.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under the Contract without the prior written consent of the other party, neither may the Contractor sub-contract the whole or any part of its obligations under the Contract except with the express prior written consent of the Council.
- 21.2 If the Contractor enters into any Sub-Contract in connection with the Contract it shall:
- (a) remain responsible to the Council for the performance of its obligations under the Contract 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 the Contract and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.

21.3 The Council shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Council.

LIABILITY

22. INDEMNITIES AND INSURANCE

22.1 The Contractor shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:

- (a) any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property arising out of, or in connection with, the Services;
- (b) any claim made against the Council by a third party arising out of, or in connection with, the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Contractor, the Contractor's Personnel or a Contractor Party;
- (c) any claim or loss due to the breach of the Contract, negligence, wilful default or fraud of the Contractor or of its employees or any of its representatives or Sub-Contractors save to the extent the same is directly caused by or directly arises from the negligence breach of the Contract or applicable law by the Council.

22.2 During the Term, the Contractor shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, employers' liability insurance and public liability insurance (the **Required Insurances**) to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

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

- 22.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 22.5 The Contractor shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Contract.

INFORMATION

23. FREEDOM OF INFORMATION

- 23.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with these information disclosure requirements.
- 23.2 The Contractor shall and shall procure that its Sub-Contractors shall: (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receipt; and (b) provide all necessary assistance to and co-operate with the Council in dealing with a Request for Information.
- 23.3 The Council shall be responsible for determining at its absolute discretion whether any Commercially Sensitive Information and/or any other Information: (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or (b) is to be disclosed in response to a Request for Information.
- 23.4 The Contractor acknowledges that the Council may be obliged under the FOIA or the EIR to disclose Information without consulting with the Contractor.

24. DATA PROTECTION

- 24.1 The parties shall comply with Schedule 8.

25. CONFIDENTIALITY

- 25.1 Subject to Condition 25.2, a party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.
- 25.2 A receiving party may disclose the disclosing party's confidential information to the extent such confidential information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible.

26. AUDIT

- 26.1 During the Term and for a period of 6 (six) years after the Termination Date, the Council may conduct or be subject to an audit.
- 26.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this Condition 26 more than twice in any calendar year.
- 26.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 26.4 Subject to the Council's obligations of confidentiality, the Contractor shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit.
- 26.5 The Council shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 26.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition 26, unless the audit identifies a material failure to perform its obligations under the Contract in any material manner by the Contractor in which case the Contractor shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 26.7 If an audit identifies that:
- (a) the Contractor has failed to perform its obligations under the Contract in any material manner, the parties shall agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Council has overpaid any Charges, the Contractor shall pay to the Council the amount overpaid within twenty days. The Council may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and
 - (c) the Council has underpaid any Charges, the Council shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Contractor in relation to invoicing within 30 days.

27. INTELLECTUAL PROPERTY

- 27.1 The Contractor assigns to the Council, with full title guarantee and free from all third party rights, the Intellectual Property and all other rights in the products of the Services.
- 27.2 The Contractor shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as

the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property and all other rights assigned to the Council in accordance with Condition 27.1.

- 27.3 The Contractor shall obtain waivers of any moral rights in the products of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

TERMINATION

28. TERMINATION FOR BREACH

- 28.1 The Council may terminate the Contract in whole or part with immediate effect by the service of written notice on the Contractor in the following circumstances:
- (a) if the Contractor is in breach of any material obligation under the Contract provided that if the breach is capable of remedy, the Council may only terminate the Contract under this Condition 28.1 if the Contractor has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;
 - (b) if the Contractor repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - (c) if a Catastrophic Failure has occurred;
 - (d) if a resolution is passed or an order is made for the winding up of the Contractor (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Contractor becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Contractor's property or equipment;
 - (e) if the Contractor ceases or threatens to cease to carry on business in the United Kingdom;
 - (f) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Contractor to which the Council reasonably objects.
 - (g) [this agreement has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
 - (h) the Contractor was, at the time when this agreement was awarded, in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and therefore should not have been awarded this agreement;
 - (i) any competent court makes an award for ineffectiveness of this agreement under the Public Contracts Regulations 2015; or

- (j) this agreement should not have been awarded to the Contractor in view of a serious infringement of the obligations of the Treaty on European Union, the TFEU or the Public Contracts Directive 2014 that has been declared by the Court of Justice of the European Union under a procedure under Article 258 of TFEU.]
- 28.2 The Council may terminate the Contract in accordance with the provisions of Condition 29, Condition 30, Condition 31 and Condition 32.
- 28.3 Without prejudice to any other right or remedy that the Council may have under the Contract, if the Council considers the Contractor is in breach of its obligations under Condition 13 then the Council will follow the Safeguarding Suspension/Termination Procedure.
- 28.4 If the Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Contractor indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
- 28.5 The rights of the Council under this Condition 28 are in addition to and without prejudice to any other rights the Council may have whether against the Contractor directly under this Contract or at law.
- 28.6 The Contractor may terminate the Contract in the event that the Council commits a Termination Payment Default by giving 30 days' written notice to the Council. If the Council remedies the Termination Payment Default in the 30 day notice period, the Contractor's notice to terminate the Contract shall be deemed to have been withdrawn.
- 29. TERMINATION ON NOTICE**
Without affecting any other right or remedy available to it, the Council may terminate the Contract in whole or in part at any time by giving three months' written notice to the Contractor.
- 30. UNFORESEEN EVENTS**
- 30.1 Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Contractor shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Contractor from carrying out its obligations under the Contract for a continuous period of more than 40 Working Days, the Council may terminate this Contract immediately by giving written notice to the Contractor.
- 31. PREVENTION OF BRIBERY**
- 31.1 The Contractor undertakes to the Council that:

- (a) it will not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act;
- (b) it has, or, if it has not, it will promptly implement, and will maintain in place, "Adequate Procedures", as referred to in section 7(2), Bribery Act and any guidance issued by the Secretary of State under section 9, Bribery Act, to prevent any Associated Person (as defined by section 8, Bribery Act) from undertaking any conduct that would give rise to an offence under section 7, Bribery Act; and
- (c) from time to time, at the reasonable request of the Council, it will confirm in writing that it has complied with its undertaking under Condition 31.1(a) and Condition 31.1(b) and will provide any information reasonably requested by the Council in support of such compliance.

31.2 A breach of this Condition 31 shall entitle the Council to terminate the Contract by giving written notice to the Contractor and such notice shall specify the date of termination.

32. ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES

32.1 In performing its obligations under the agreement, the Contractor shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- (b) comply with the Anti-Slavery Policy;
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (d) include in its contracts with its direct Sub-Contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Condition 32.

32.2 The Contractor shall indemnify the Council against any losses incurred by, or awarded against, the Council as a result of any breach of the Anti-slavery Policy or the Modern Slavery Act 2015.

32.3 The Council may terminate this agreement with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of the Anti-Slavery Policy or the Modern Slavery Act 2015.

33. CONSEQUENCES OF TERMINATION

33.1 On the expiry of the Term or if the Contract is terminated in whole or in part for any reason the Contractor shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Contractor.

33.2 On termination of the Contract the Contractor shall procure that all data and other material belonging to the Council shall be delivered to the Council forthwith and

the Contractor's Authorised Representative shall certify full compliance with this Condition.

- 33.3 The provisions of Condition 22 (Indemnities and Insurance), Condition 23 (Freedom of Information), Condition 24 (Data Protection), Condition 25 (Confidentiality), Condition 26 (Audit), Condition 28 (Termination for Breach) and this Condition 33 (Consequences of termination) shall survive termination or expiry of the Contract.

GENERAL PROVISIONS

34. GENERAL

- 34.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 34.2 If any of the provisions of the Contract is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.
- 34.3 Nothing in the Contract shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of the Contract.
- 34.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 34.5 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Council.
- 34.6 Unless the Contactor has the prior written consent of the Council, the Contactor shall not: (a) make any press announcements or publicise the Contract or its contents in any way; or (b) use the Council's name or brand in any promotion or marketing or announcement of orders.
- 34.7 The Contract shall be governed by and construed in accordance with the law of England. The parties agree, subject to Condition 19, that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.
- 34.8 No variation of the Contract shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.
- 34.9 Any notice to a party under or in connection with this Contract shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in the Contract. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are

confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

- 34.10 The Contract Documents, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter of the Contract and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

SCHEDULE 1 COUNCIL POLICIES

SCHEDULE 2 CHARGES AND PAYMENT

1. MENU PRICING

		Year 1 (excl VAT)	Year 2 (excl VAT)	Year 3 (excl VAT)
Item No.	Description of Activity			
Year one set up (only)	Year 1 Set up only	£4,325.00		
	Training workshops (year 1 only)	£2,000.00		
Annual Charges	Monthly managed data collection service from all participating GP practices in Croydon	£9,000.00	£9,000.00	£9,000.00
	Provision of N3 hosted secure central database (where applicable) - managed and mainted	£8,000.00	£8,000.00	£8,000.00
	Provision of functionality to deliver centralised invitations	£4,000.00	£4,000.00	£4,000.00
Annual postage charges	Invitation costs (13,500 invitations, 4590 postal reminders and 6885 SMS text reminders per year	£4,110.40	4110.4	4110.4
	Total Price	£31,435.40	£25,110.40	£25,110.40

SCHEDULE 3 CONTRACT MANAGEMENT

1. AUTHORISED REPRESENTATIVES

- 1.1 The Council's initial Authorised Representative: Bevolv Fearon
- 1.2 The Contractor's initial Authorised Representative: Dr Julian Brown

2. KEY PERSONNEL

3. MEETINGS

- 3.1 Type contract meetings
- 3.2 Quorum
- 3.3 Frequency quarterly
- 3.4 Agenda tbc

4. REPORTS

- 4.1 Type data collections report
- 4.2 budget and invitations report
- 4.3 Contents
- 4.4 Frequency - monthly
- 4.5 Circulation list – Bevolv Fearon, Leanne Bobb, Sally Hudd

SCHEDULE 4 EXIT MANAGEMENT PLAN

Exit Management Plan

1. GENERAL OBLIGATION

On termination or expiry of the Contract for any reason, the Contractor will provide all reasonable assistance to the Council to facilitate the orderly transfer of the Services back to the Council or to enable another party chosen by the Council (in this Schedule, a **New Contractor**) to take over the provision of all or part of the Services. The remaining provisions of this Schedule will not prejudice or restrict the generality of this obligation.

2. PLANS AND PROCEDURES

The Contractor will produce and maintain plans and procedures demonstrating the manner in which it will fulfil its obligations under this Schedule, which plans and procedures shall be subject to the reasonable approval of the Council from time to time.

3. CONTINUATION OF THE PROVISION OF SERVICES

The Council shall be entitled to require the Contractor to continue to provide the Services for three months after termination of the Contract upon the same payment terms if, in the opinion of the Council, such continuation is required in order to allow for the orderly transfer of the Services to the Council or a New Contractor.

4. DUTY TO DOCUMENT THE SERVICES

4.1 The Contractor shall prepare a description of the Services, technical specifications, user manuals, operating manuals, process definitions and procedures, all as required by the Council or any service provider to provide the Services, or services equivalent to the Services, on termination of the Contract (the **Documentation**) within three months of the Commencement Date and shall after that ensure that it is kept up to date.

4.2 The Contractor shall promptly and fully answer all reasonable questions about the Services which may be asked by the Council for the purpose of adequately understanding the manner in which the Services have been provided or for the purpose of allowing any New Contractor (or potential New Contractor) to conduct 'due diligence'.

5. EQUIPMENT

Where the Services provided to the Council are dependent on equipment which is not owned by the Council, the Contractor will ensure the necessary migration of programs, data and other materials from such equipment to similar equipment owned by the Council or a New Contractor. Implementation of the change shall be carried out by the Contractor in such a way as to cause the minimum possible disruption to the supply of the Services.

6. CONTRACTS, SOFTWARE, AND KNOW-HOW

- 6.1 Upon the Contractor ceasing to provide the Services its rights and obligations in respect of the Contract shall cease (but without prejudice to any liability accrued at the date of such cessation). Where the Contractor has entered into Sub-Contracts for the sole purpose of providing the Services to the Council, the Council may require the Contractor to use all reasonable endeavours to procure that those Sub-Contracts are assigned to the Council or a New Contractor.
- 6.2 The Contractor shall, to the extent that it has not done so prior to termination, fully comply with the provisions of the Contract as to the licensing of Intellectual Property and the delivery of Documentation.
- 6.3 The Council shall be entitled to use (and to authorise any New Contractor to use), free of charge but on a non-exclusive basis, all know-how and other information acquired by the Contractor in the course of providing the Services or otherwise used by the Contractor in the provision of the Services, whether or not such know-how or information was produced specifically or used exclusively to provide the Services.

7. PREMISES

All rights of access and occupation granted to the Contractor in respect of the Premises will cease when the provision of Services ceases in accordance with the Contract.

8. PERSONNEL

The parties acknowledge and agree that where all or part of the Services cease to be provided by the Contractor for any reason and where all or part of the Services continue to be provided by the Council and/or the New Contractor, there may be a Relevant Transfer and in which case the provisions of Condition 14 and Schedule 4 shall apply.

SCHEDULE 5 TUPE

1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay or under the Agency Workers Regulation 2010, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Contractor by virtue of the application of TUPE.

Contractor's Final Staff List: the list of all the Contractor's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Contractor's Provisional Staff List: the list prepared and updated by the Contractor of all the Contractor's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Contractor or Sub-contractor to the Council or any Replacement Contractor.

Staffing Information: in relation to all persons detailed on the Contractor's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

2. APPLICATION OF TUPE ON COMMENCEMENT

- 2.1 The Parties believe that TUPE will not apply to this Contract on commencement. The Council does not give any warranty as to whether or not TUPE applies in these circumstances.
- 2.2 The Contractor shall be liable for and indemnify and keep indemnified the Council against (a) all Employment Liabilities arising from the Contractor's provision of the Services; (b) any failure to meet all remuneration, benefits, entitlements and outgoings for any person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date ; (c) all claims, losses, damages, costs (including all legal fees) and expenses arising out of or in connection with any failure of the Contractor to comply with its obligations under TUPE.
- 3. EMPLOYMENT EXIT PROVISIONS**
- 3.1 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 the Contract, or 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 then the Council or Replacement Contractor will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Contractor shall [and shall procure that any Sub-Contractor shall] on receiving notice of termination of the Contract or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services, the Contractor's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Contractor shall notify the Council of any material changes to this information as and when they occur.
- 3.3 At least 14 days prior to the Service Transfer Date, the Contractor shall [and shall procure that any Sub-Contractor shall] prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Contractor's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4 The Council shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services that are substantially the same type of services as (or any part of) the Services.

- 3.5 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information (**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 Contractor's Final Staff List.
- 3.6 The Contractor shall [and shall procure that any Sub-Contractor shall] ensure at all times that it has the right to provide the TUPE Information under Data Protection Laws.
- 3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the [six] months prior to termination of the Contract shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Contractor shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.8 The Contractor shall indemnify and keep indemnified in full the Council [and at the Council's request each and every Replacement Contractor] against all Employment Liabilities relating to:
- 3.8.1 any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services; or
- 3.8.2 any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor),
- arising from or connected with any failure by the Contractor 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.
- 3.9 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.
- 3.10 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8, to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.11 Despite paragraph 3.10, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract 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.

Part 1. Transfer of employees N/A

1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from any Third Party Employer to the Contractor or Sub-contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Contractor or Sub-contractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay or under the Agency Workers Regulation 2010, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Contractor by virtue of the application of TUPE.

Contractor's Final Staff List: the list of all the Contractor's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Contractor's Provisional Staff List: the list prepared and updated by the Contractor of all the Contractor's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Contractor or Sub-contractor to the Council or any Replacement Contractor.

Staffing Information: in relation to all persons detailed on the Contractor's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information

and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Contractor or Sub-contractor by virtue of the application of TUPE [as listed in Part 2 of this Schedule 10].

Third Party Employer: a service provider engaged by the Council to provide [some of the] Services to the Council and whose employees will transfer to the Contractor on the Effective Date.

2. TRANSFER OF EMPLOYEES TO THE CONTRACTOR

- 2.1 The Council and the Contractor agree that TUPE will apply to this Contract and the contracts of employment of any Third Party Employees shall transfer to the Contractor or Sub-contractor. The Contractor shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The Relevant Transfer shall occur on the Effective Date.
- 2.2 The Contractor shall be liable for and indemnify and keep indemnified the Council and at the Council's request any Third Party Employer against Employment Liabilities arising from or as a consequence of:
 - 2.2.1 any proposed changes to terms and conditions of employment the Contractor or Sub-Contractor may consider taking on or after the Effective Date;
 - 2.2.2 any of the employees informing the Third Party Employer they object to being employed by the Contractor or Sub-Contractor; and
 - 2.2.3 any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Contractor or Sub-Contractor may consider taking on or after the Commencement Date.
- 2.3 The Contractor shall be liable for and indemnify and keep indemnified the Council and at the Council's request any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the the Third Party Employees, and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
- 2.4 The Contractor shall immediately on request by the Council and/or the Third Party Employer provide details of any measures that the Contractor or any Sub-Contractor of the Contractor envisages it will take in relation to any employees of any Third Party Employer including any proposed changes to terms and conditions of employment. If there are no measures, the Contractor shall give confirmation of that fact, and shall indemnify the

Council and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 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 the Contract, or 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 then the Council or Replacement Contractor will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Contractor shall [and shall procure that any Sub-Contractor shall] on receiving notice of termination of the Contract or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services, the Contractor's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Contractor shall notify the Council of any material changes to this information as and when they occur.
- 3.3 At least 14 days prior to the Service Transfer Date, the Contractor shall [and shall procure that any Sub-Contractor shall] prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Contractor's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4 The Council shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information (**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 Contractor's Final Staff List.
- 3.6 The Contractor shall [and shall procure that any Sub-Contractor shall] ensure at all times that it has the right to provide the TUPE Information under Data Protection Laws.
- 3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the [six] months prior to termination of the Contract shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The

Contractor shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

3.8 The Contractor shall indemnify and keep indemnified in full the Council [and at the Council's request each and every Replacement Contractor] against all Employment Liabilities relating to:

3.8.1 any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services; or

3.8.2 any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor),

arising from or connected with any failure by the Contractor 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.

3.9 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.

3.10 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8, to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.11 Despite paragraph 3.10, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract 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.

Part 2. Third party employees

Third Party Employees

SCHEDULE 6 - COMMERCIALLY SENSITIVE INFORMATION

DETAILS OF ANY CONTRACTOR INFORMATION TO BE CLASSIFIED AS
COMMERCIALLY SENSITIVE

SCHEDULE 7 - SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

Part 1- Contractor's Obligations

1. For the purposes of this Schedule **Safeguarding Policy and Procedure** means the Council's policy and procedure for the safeguarding of people, as amended from time to time, and which, for the time being, are contained in the documents entitled:[in relation to Adults: (a) Safeguarding Vulnerable Adults in Croydon: Part 1, The Policy (v3, May 2010); and (b) Safeguarding Vulnerable Adults in Croydon: Part 2, The Procedures (v3, May 2010).] [In relation to children: London Child Protection Procedures and Practice Guidance as issued and from time to time updated by the London Safeguarding Children Board]
2. The Contractor shall ensure that all individuals engaged in the provision of the Services are:
 - 2.1 subject to a valid enhanced disclosure check undertaken through the Criminal Records Bureau including a check against the adults' barred list or the children's barred list, as appropriate;
 - 2.2 are registered with ISA.
3. The Contractor shall:
 - 3.1 monitor the level and validity of the checks made under Condition 1 for each member of staff on at least a yearly basis; and,
 - 3.2 retain the results of and provide copies of any checks undertaken pursuant to Condition 1 to the Council's Authorised Representative on request.
4. The Contractor warrants that at all times for the purposes of the Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor 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.
5. The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
6. The Contractor shall:
 - 6.1 comply with all of the obligations of a provider under the Safeguarding Policy and Procedure; and
 - 6.2 adopt, within 10 Working Days of the Contract Date, and follow written policies and procedures to ensure the safeguarding of vulnerable people and, as a minimum, those policies and procedures shall reflect all the requirements of the Safeguarding Policy and Procedure
7. The Contractor shall promote best practice by ensuring that:

- 7.1 it reviews and updates the policies and procedures that it adopts pursuant to Condition 6 on at least a yearly basis;
- 7.2 all Contractor Personnel receive training as required under Condition 9; and
- 7.3 it follows safe employment procedures.
- 8. The Contractor shall ensure that:
 - 8.1 the issue of safeguarding of people is included in its induction procedures for all Contractor Personnel; and
 - 8.2 it regular updates Contractor Personnel as to safeguarding matters.
- 9. The Contractor shall provide training on safeguarding matters to all Contractor Personnel and the Contractor shall require Contractor Personnel to undertake such training to a level that is commensurate with their role in the safeguarding people process. The Contractor shall maintain and keep training records of all such training undertaken by Contractor Personnel so as to evidence the Contractor Personnel' attendance and the level of training undertaken. The Contractor shall, at the Council's request, make training records available to the Council's Authorised Representative.
- 10. The Contractor shall ensure that information regarding complaints procedures and safeguarding matters is readily available and accessible to all stakeholders including but not limited to service users, their carers and families, and Contractor Personnel.
- 11. The Contractor shall undertake regular (being not less than once every three months) risk assessments of service users in order to identify issues of vulnerability. The Contractor shall integrate such risk assessments into its assessments' practise, care planning and person-centred planning processes so as to reduce risk and increase service users' self protection mechanisms.
- 12. The Contractor shall establish and encourage good lines of communication amongst Contractor Personnel and its supervisory personnel and amongst service users, relatives and other professionals in order to foster an "open culture" within the Contractor's organisation.
- 13. The Contractor shall ensure that the Contractor Personnel make accurate, factual and contemporaneous notes of all incidents that potentially raise issues relating to the safeguarding of vulnerable people and shall procure that the Contractor Personnel provide the Contractor with a copy of all notes within 24 hours of the occurrence of any such incident. The Contractor shall keep all notes and records relating to such incidents for at least six years following the end of the Contract Period.
- 14. The Contractor shall operate robust recruitment procedures for all prospective Contractor Personnel who will come into or who are likely to come into any contact with vulnerable people and such procedures shall first and foremost have regard to the safeguarding of people. The Contractor shall, on request, provide the Council with details of its recruitment procedures.

15. If, as part of the Contractor's recruitment process, a prospective recruit is to visit or come into contact with any service users, the Contractor shall ensure that a suitably qualified, full-time member of its staff accompanies such prospective recruit at all times.
16. The Contractor shall adopt and maintain comprehensive procedures for the reporting of and the management of any allegation against a member of Contractor Personnel of a failing to safeguard people. The Contractor shall ensure that such procedures: (a) promote the safety and welfare of vulnerable people; and, (b) comply with any statutory requirements.
17. The Contractor shall immediately (and in any event within 24 hours) notify the Council's "Safeguarding Adults' Lead" (as notified to the Contractor's Authorised Representative by the Council's Authorised Representative) and the Council Representative if it becomes aware, has reason to believe, or suspects that an adult is likely to be, is being, or has been abused or injured by a member of the Contractor Personnel. In such circumstances, the Contractor shall consider whether it is appropriate to suspend that member of the Contractor Personnel and shall take such emergency measures (by way of example, but without limitation, informing the police or seeking medical assessment/treatment) as it deems appropriate to the situation. The Contractor must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Council. If applicable, the Contractor shall also notify the Care Quality Commission and ISA of any such incidents.
18. If the Contractor suspends or dismisses a member of Contractor Personnel by reason of an allegation or finding of abuse, or failing to safeguard an adult, the Contractor shall follow recognised safeguarding people guidance (including that of government and other relevant professional bodies). The Contractor shall keep full and detailed records of all such suspensions and dismissals (which shall include but is not limited to the name and address of the dismissed, or suspended member of Contractor Personnel; the nature of the allegation or finding; the names and contact details of the victim and any witnesses; and any relevant evidence) and the Contractor shall immediately notify (and in any event within 24 hours) the Council' Authorised Representative and any other interested supervisory body of such suspension or dismissal.
19. The Contractor shall, within 10 Working Days of the Contract Date, adopt a written code of conduct for all Contractor Personnel which details clear standards of conduct relating to personal and sexual relationships between Contractor Personnel and service users or other vulnerable people

Part 1B

The following additional provisions apply only in relation to safeguarding children and in that context only shall have priority in the event of any conflict with Part 1A of this Schedule

1. The Contractor shall at all times act to safeguard and promote the wellbeing of the service users and in particular, but without prejudice to the generality of the foregoing, Contractor shall:
 - 1.1 act in accordance with the Council's multi-agency/local procedures and guidance for safeguarding children and adults, and comply with:
 - 1.1.1 London Child Protection Procedures (2014)
 - 1.1.2 Working Together to Safeguard Children (2013)
 - 1.1.3 Pan London Adult Safeguarding Procedures (2011)
 - 1.1.4 Children Act 1989
 - 1.1.5 Children Act 2004 including the specific requirements under Section 11
 - 1.1.6 Care Act 2014
 - 1.1.7 Mental Capacity Act (2005) and the Deprivation of Liberty Standards
 - 1.1.8 Protection of Freedoms Act 2012
 - 1.1.9 Data Protection Act 1998/Public Disclosure Act 1998
2. The Contractor shall maintain comprehensive procedures that: (a) promote the safety and welfare of children and adults at risk; and, (b) comply with any statutory requirements including those set out in the documents listed.
3. The Contractor must have a designated person of sufficient seniority for safeguarding adults/children and such designated person's responsibility is essentially to make sure that the Contractor's safeguarding policy is robust and implemented.
4. The Contractor must ensure that it complies and that its Staff are aware of, understand, and fully comply with and are competent to undertake their responsibilities set out in the documents listed at paragraph 2 above to safeguard all service users including those service users who do not have capacity to make informed choices, or where their capacity or their ability to make informed choices is unknown or subject to doubt.
5. The Contractor shall provide training on safeguarding matters to all Contractor Personnel and the Contractor shall require Contractor Personnel to undertake such training, ensuring they have an understanding of their safeguarding roles and responsibilities to a level that is commensurate with their duties to safeguard adults and children and to meet the competencies outlined in any national framework for Safeguarding in accordance with the requirements of the legislation listed at paragraph 2 above and any other relevant statutory requirements and government guidance relating to safeguarding adults and children.
6. The Contractor shall maintain and keep training records of all such training undertaken by Contractor Personnel so as to evidence the Contractor Personnel's attendance and the level of training undertaken. This training

should include active encouragement to Contractor Personnel in respect of whistle blowing if they become aware of suspected abuse.

7. The Contractor shall, at the Council's request, make training records available to the Council.
8. The Contractor shall ensure that the issue of safeguarding of adults and children is included in its induction procedures for all Contractor Personnel.
9. The Contractor must ensure that professional boundaries are maintained between Contractor Personnel and service users so that service users are safeguarded from any form of abuse or exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhuman or degrading treatment through deliberate intent, negligent acts or omissions or ignorance by the Contractor Personnel in accordance with the Contractor's written policies and procedures.

Safer Recruitment

10. The Contractor must, and must ensure that any Sub-Contractor must, at its own cost, in respect of all Contractor Personnel which the Contractor employs in delivering the Services at Premises, where they will come into contact with service users, comply with the requirements of the Disclosure and Barring Service ("DBS") and copies of Contractor Personnel DBS certificates shall be supplied to the Council when requested.
11. The Contractor shall adhere to its safe employment procedures as set out in the Contractor's Response Document which shall, as a minimum:
 - 11.1 operate robust recruitment procedures for all prospective Contractor Personnel who will come into or who are likely to come into any contact with adults and children and those who supervise the provision of the Services;
 - 11.2 first and foremost have regard to the safeguarding of adults and children;
 - 11.3 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);
 - 11.4 ensure that all Contractor Personnel are suitable to provide the Services before they commence the provision of the Services; and
 - 11.5 ensure that the Contractor does 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 safeguarding risk.
12. The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor 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.

13. The Contractor shall, on request, provide the Council with details of its recruitment procedures.
14. The Contractor shall ensure that, and shall ensure that any Sub-contractor ensures that, before any Contractor Personnel perform the Services:
 - 14.1 each of the Contractor Personnel is questioned as to whether they have any convictions, cautions, reprimand, bind-overs or warnings or are subject to any pending criminal proceedings for which they have been formally charged which may be relevant to their employment with the Contractor; and
 - 14.2 the results are obtained for each member of Contractor Personnel of a Standard DBS Check, Enhanced DBS Check, an Enhanced DBS & Barred List Check (a "DBS Check"), as appropriate to the role in which the relevant member of Contractor Personnel will be engaged; and
 - 14.3 provide written confirmation to the Council Authorised Representative that all Contractor Personnel have undergone any required DBS check required including in relation to Contractor Personnel involved in a Regulated Activity an ABL and/or CBL check as appropriate.
 - 14.4 Where a DBS Check discloses a conviction, caution or other information the Contractor shall notify the Council. Where the outcome of a DBS Check suggests that the member of Contractor Personnel should not be engaged to provide or supervise the provision of the Services, the Council shall, acting reasonably, be entitled to require the Contractor to remove the member of Contractor Personnel from the Services. Upon being advised of this requirement the Contractor shall immediately remove the member of Contractor Personnel and shall not re-instate that person without the prior written consent of the Council.
 - 14.5 Until the DBS clearance of any particular member of Contractor Personnel is confirmed then the relevant member of Contractor Personnel must only attend the Premises when partnered at all times by a member of the Contractor Personnel who has DBS clearance.
15. The Contractor agrees and undertakes that it shall repeat the process set out at paragraph 15 no less frequently than once every three years in respect of all of its Contractor Personnel engaged in the performance of the Services.
16. The Council shall be entitled to check against its records the names of any Contractor Personnel engaged by the Contractor to provide or supervise the provision of the Service and shall be entitled to exercise the same rights as set out in paragraph 11. In checking such records the Council shall be entitled to request from the Contractor such information as it shall reasonably require enabling it to undertake the aforementioned check.
17. The Council shall in no circumstances be liable either to the Contractor and or any member of its Contractor Personnel in respect of any liability, loss or damage occasioned by any action whatsoever taken in accordance with paragraph 11-13 and the Contractor shall fully and promptly indemnify and keep the Council and where relevant any Replacement Contractor

indemnified against any claim made by such member of Contractor Personnel.

18. The Contractor shall pay any charges which may be levied against the Council by the DBS and any costs of the Council where the Council is processing any DBS applications on behalf of the Contractor.
19. The Contractor shall ensure that it has internal systems and processes in place such that the Council is notified immediately of any member of Contractor Personnel who, subsequent to the carrying out of the checks described in paragraph 11 is subject to any convictions, cautions, pending criminal proceedings or any other information which may be relevant to their employment with the Contractor. The Contractor shall in such circumstances follow the directions of the Council Authorised Representative including any direction to remove Contractor Personnel from Service provision under this Contract and shall not reinstate them without the prior written consent of the Council.
20. The Contractor must ensure that all Contractor Personnel are eligible to work in the UK in accordance with Section 8 of the Asylum & Immigration Act 1996 and take all reasonable steps to satisfy itself that the documentation submitted by a member of Contractor Personnel or person to be employed as a member of Contractor Personnel is genuine.
21. The Contractor shall require all persons to be employed as Contractor Personnel to:
 - 21.1 complete a declaration as to their health prior to their commencing work in accordance with Good Industry Practice;
 - 21.2 provide satisfactory references.
22. The Contractor shall comply with any additional requirements of the Council which, without limitation, arise from the introduction of further legislation, codes of practice, safeguarding policies relating to the protection of children and/or vulnerable adults.
23. Nothing in this Contract shall prevent the Contractor from the hiring of agency staff in cases of emergency or to cover absence. All agency staff shall be subject to the same staff vetting procedures and staffing matters as set out in paragraph 11 as Contractor Personnel employed directly by the Contractor.
24. Other than in exceptional circumstances (such as providing basic information in an acute emergency) it is expected that the Contractor will only use professional interpreters and translators who are appropriately registered with an agency or professional body, qualified, insured and in respect of whom appropriate DBS checks have been carried out.
25. The Contractor 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 any child or adult at risk.

Reporting concerns

26. The Contractor shall maintain comprehensive procedures for the reporting of and the management of any allegation against a member of Contractor Personnel of a failing to safeguard adults and children compliant with legislation at paragraph 2. These procedures should ensure referral to the Council.
27. The Contractor shall immediately (and in any event within 24 hours) notify the Council and if it becomes aware, has reason to believe, or suspects that a child or adult is likely to be, is being, or has been abused or injured by a member of the Contractor Personnel.
28. The Contractor shall ensure that the Contractor Personnel make accurate, factual and contemporaneous notes of any incidents relating to the safeguarding of adults and children and that the Contractor Personnel provide the Contractor with a copy of all notes within 24 hours of the occurrence of any such incident. The Contractor shall keep all notes and records relating to such incidents for at least six years following the end of the Term.
29. The Contractor shall consider whether it is appropriate to suspend that member of the Contractor Personnel and shall take such emergency measures (by way of example, but without limitation, informing the police or seeking medical assessment/treatment) as it deems appropriate to the situation. The Contractor must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Council.
30. If the Contractor suspends or dismisses a member of Contractor Personnel by reason of an allegation or finding of abuse, or failing to safeguard a child or adult, the Contractor shall follow recognised safeguarding guidance (including that of government and other relevant professional bodies).
31. The Contractor shall keep full and detailed records of all such suspensions and dismissals (which shall include but is not limited to the name and address of the dismissed, or suspended member of Contractor Personnel; the nature of the allegation or finding; the names and contact details of the victim and any witnesses; and any relevant evidence) and the Contractor shall immediately notify (and in any event within 24 hours) the Council and any other interested supervisory body of such suspension or dismissal.
32. The Contractor is reminded of its legal obligation to refer relevant information to the Independent Safeguarding Authority ("ISA"), where there is a concern relating to the harm or the risk of harm to children or vulnerable adults or where there is a concern about the behaviour or conduct of an Individual. The Contractor agrees to comply with this obligation in a timely manner and in accordance with the guidance issued by ISA.

Quality Assurance and Auditing

- 33. The Contractor acknowledges that the Council has responsibilities to seek assurance and supporting evidence from Contractors that they are adhering to safeguarding legislation and are sufficiently carrying out their safeguarding responsibilities in the provision of the Services under this Contract. The Contractor shall:
 - 33.1 ensure that Contractor Personnel shall cooperate with and give reasonable assistance to the Council to enable the Council to comply with the Children Act 2004 and the Care Act 2014 in order to safeguard and promote the welfare of Children and adults
 - 33.2 use all reasonable endeavours to assist the Council in complying with the Council's duty to discharge its functions having regard to the need to safeguard and promote the welfare of children and adults;
 - 33.3 participate in any Council exercises including section 11 quality assurance and auditing processes to enable it to be satisfied that the obligations of this Schedule have been met.
 - 33.4 immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this Schedule have been met.
 - 33.5 provide all reasonable assistance to the Council, any Relevant Authority (including the Care Quality Commission or Office for Standards in Education, Children's Services and Skills) or inter-agency group in conducting any review (including Serious Case Reviews and/or Domestic Homicide Reviews), investigation or consultation into how local professionals and organisations can improve cooperation and service delivery to enhance child protection including but not limited to Serious Case Reviews.

SCHEDULE 8 – DATA PROTECTION

1. DATA PROCESSING

- 1.1 Where the Contractor, pursuant to this Contract, processes Personal Data on behalf of the Council, the Contractor acknowledges that the Council is the Data Controller and the owner of such Personal Data, and that the Contractor is the Data Processor.

2. COMPLIANCE WITH DATA PROTECTION LAWS

- 2.1 The Data Processor warrants that it has complied, and shall continue to comply, with the requirements of the applicable Data Protection Laws and all other data protection legislation in any jurisdiction relevant to the exercise of its rights or the performance of its obligations under this Contract.

3. DATA PROCESSING OBLIGATIONS

- 3.1 In respect of any Personal Data to be processed by the Data Processor pursuant to this Contract for which the Council is Data Controller, the Data Processor shall:
- 3.1.1 have in place and at all times maintain appropriate technical and organisational measures, which may be reviewed by the Council at its discretion, and in such a manner as is designed to ensure the protection of the rights of the data subject and to ensure a level of security appropriate to the risk and shall implement any reasonable security measures as requested by the Council from time to time;
 - 3.1.2 not engage any sub-processor without the prior specific or general written authorisation of the Council (and in the case of general written authorisation; the Data Processor shall inform the Council of any intended changes concerning the addition or replacement of other processors and the Council shall have the right to object to such changes);
 - 3.1.3 ensure that each of the Data Processor's employees, agents, consultants, subcontractors and sub-processors are made aware of the Data Processor's obligations under this Schedule and enter into binding obligations with the Data Processor to maintain the levels of security and protection required under this Schedule. The Data Processor shall ensure that the terms of this Schedule are incorporated into each Contract with any sub-processor, subcontractor, agent or consultant to the effect that the sub-processor, subcontractor, agent or consultant shall be obligated to act at all times in accordance with duties and obligations of the Data Processor under this Schedule. The Data Processor shall at all times be and remain liable to the Council for any failure of any employee, agent, consultant, subcontractor or sub-processor to act in accordance with the duties and obligations of the Data Processor under this Schedule;
 - 3.1.4 process that Personal Data only on behalf of the Council in accordance with the Council's instructions and to perform its obligations under this Contract

or other documented instructions and for no other purpose save to the limited extent required by law;

- 3.1.5 (at no additional cost to the Council) immediately on termination of the Contract, permanently remove the Personal Data (and copies) from the Data Processor's systems, or (at the request of the Council) deliver to the Council (in such format as the Council may require) a full and complete copy of all Personal Data, and, following confirmation of receipt from the Council, permanently remove the Personal Data (and copies) from the Data Processor's systems, and the Data Processor shall certify to the Council that it has complied with these requirements, and such Personal Data shall remain confidential in perpetuity;
- 3.1.6 ensure that all persons authorised to access the Personal Data are subject to obligations of confidentiality and receive training to ensure compliance with this Contract and the Data Protection Laws;
- 3.1.7 make available to the Council all information necessary to demonstrate compliance with the obligations laid out in Article 28 of GDPR and this Schedule and allow for and contribute to audits, including inspections, conducted by the Council or another auditor mandated by the Council, of the Data Processor's data processing facilities, procedures and documentation (and the facilities, procedures and documentation of any sub-processors) in order to ascertain compliance with this Schedule, within 5 working days of request by the client and, following any such audit, without prejudice to any other rights of the Council, the Data Processor shall implement such measures which the Council considers reasonably necessary to achieve compliance with the Data Processor's obligations under this Schedule; provided that, in respect of this provision the Data Processor shall immediately inform the Council if, in its opinion, an instruction infringes Data Protection Laws;
- 3.1.8 taking into account the nature of the processing, provide assistance to the Council, within such timescales as the Council may require from time to time, in connection with the fulfilment of the Council's obligation as Data Controller to respond to requests for the exercise of data subjects' rights pursuant to Chapter III of the GDPR to the extent applicable;
- 3.1.9 provide the Council with assistance in ensuring compliance with articles 32 to 36 (inclusive) of the GDPR (concerning security of processing, data breach notification, communication of a personal data breach to the data subject, data protection impact assessments, and prior consultation with supervisory authorities) to the extent applicable to the Council, taking into account the nature of the processing and the information available to the Data Processor;
- 3.1.10 (at no additional cost to the Council) deal promptly and properly with all enquiries or requests from the Council relating to the Personal Data and the data processing activities, promptly provide to the Council in such form as the Council may request, a copy of any Personal Data requested by the Council;

- 3.1.11 (at no additional cost to the Council) assist the Council (where requested by the Council) in connection with any regulatory or law enforcement authority audit, investigation or enforcement action in respect of the Personal Data;
- 3.1.12 immediately notify the Council in writing about:
- (a) any potential or actual Data Breach or any potential or actual accidental loss, disclosure or unauthorised access of which the Data Processor becomes aware in respect of Personal Data that it processes on behalf of the Council;
 - (b) any request for disclosure of the Personal Data by a law enforcement authority (unless otherwise prohibited);
 - (c) any request or complaint received directly from a data subject (without responding other than to acknowledge receipt); and
 - (d) any communication the Contractor receives from the Information Commissioner's Office or other regulatory body.
- 3.1.13 maintain a record of its processing activities in accordance with Article 30 of the GDPR; and
- 3.1.14 indemnify the Council against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council or for which it may become liable as a result of or in connection with any failure of the Data Processor, its employees, agents, consultants, subcontractors or sub-processors to comply with this Schedule.
- 3.1.15 The Council may, at any time on not less than 30 Working Days' notice, revise this paragraph 3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 3.1.16 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

4. INTERNATIONAL DATA TRANSFERS

- 4.1 In respect of any Personal Data to be processed by a party acting as Data Processor pursuant to this Contract for which the other party is Data Controller, the Data Processor shall not transfer the Personal Data outside the EEA or to an international organisation without:
- 4.1.1 obtaining the written permission of the Data Controller;
 - 4.1.2 ensuring appropriate levels of protection, including any appropriate safeguards if required, are in place for the Personal Data in accordance with the Data Protection Laws;

- 4.1.3 notifying the Data Controller of the protections and appropriate safeguards in paragraph 4.1.2 above;
- 4.1.4 documenting and evidencing the protections and appropriate safeguards in paragraph 4.1.2 above and allowing the Data Controller access to any relevant documents and evidence.

5. DETAILS OF PROCESSING ACTIVITIES

- 5.1 The following table sets out the details of processing as required by Article 28 of GDPR:

Purposes for which the Personal Data shall be processed Please specify the purposes for which the Data Processor intends to process the Personal Data.	
Description of the categories of the data subjects Please specify the categories of data subject whose Personal Data shall be processed under this Contract.	
Description of the categories of Personal Data Please specify the categories of Personal Data that shall be processed under this Contract and identify any categories that can be considered sensitive personal data in bold .	
Description of transfers of Personal Data to a country outside of the EEA Please record transfers of Personal Data outside of the EEA, recording the country and/or international organisation and, where applicable, please document suitable safeguards.	
The envisaged time limits for erasure of the different categories of Personal Data Please specify how long you think the Personal Data will be retained for, where possible.	
General description of technical and organisational security measures	

Where possible, please describe the measures put in place under Article 32(1) GDPR.	
Authorised Sub-Processors List the sub-processors who will process Personal Data.	