**DATED 202**

**OXFORDSHIRE COUNTY COUNCIL**

**- and -**

**CONTRACT**

**FOR THE PROVISION OF LOCAL STOP SMOKING SERVICES**

S Ghuman

Head of Legal and Deputy Monitoring Officer

Oxfordshire County Council

County Hall

New Road

Oxford OX1 1ND

LS Solicitor Ref: JP/49722

LS12 Public Health Services Contract

### CONTRACT FORM

**THIS CONTRACT** is made the day of 202

**BETWEEN:**

(1) **Oxfordshire County Council** of County Hall, New Road, Oxford OX1 1ND (the **“Council”**); and

(2) **[*Full Name of Organisation*** (*and in the case of a Company, company number)*  **]** whose registered office is at [*full address and postcode/of*] (the **“Service Provider”** or **“Provider”**).

**WHEREAS:**

(A) The Council wishes to exercise its powers under section 12 Health and Social Care Act 2012 and all other enabling powers to purchase the provision of public health services on the terms and conditions appearing below.

(B) The Council issued an Invitation to Tender on *[insert date of publication of ITT/RFQ]* (the “ITT”) to potential providers (including the Service Provider) in respect of the provision of the Services and invited potential providers (including the Service Provider) to provide tenders in connection with their respective proposals and the Council’s requirements for the provision of the Services.

(C) The Service Provider submitted its tender on *[insert date of submission of tender]* in response to the ITT.

(D) On the basis of the Service Provider’s tender the Council has selected the Service Provider to provide the Services and the Service Provider undertakes to provide the same on the terms set out below

**IT IS AGREED** that this Contract comprises this Contract Form and the following documents attached to it:

The Particulars

The Conditions of Contract

The Schedules  
Schedule 1 Specification   
Schedule 2 Finance Schedule 3 Monitoring and Review

Schedule 4 Safeguarding Policies and Procedures

Schedule 5 Information Governance

Schedule 6 Serious Incident Reporting Procedure

Schedule 7 Commencement Transition Provisions

Schedule 8 Exit Transition Provisions

Annex A Method Statement

In the event and to the extent of any conflict or inconsistency between the Particulars, the Conditions of Contract, the Schedules and any Annexes, the following order of priority between them shall apply to the extent that it is necessary to resolve the conflict or inconsistency:

* the Particulars incorporating any special terms shall prevail over the Conditions of Contract, the Schedules and the Annexes;
* the Conditions of Contract shall prevail over the Schedules and the Annexes; and
* the Schedules shall prevail over the Annexes, save where and to the extent that any provisions of Annex A exceed the requirements set out at Schedule 1.

**IN WITNESS** of which the parties have executed this Contract as a Deed the day and year first above written

THE COMMON SEAL OF

**OXFORDSHIRE COUNTY COUNCIL**

Was hereunto affixed in the presence of:

………………………………………….

Head of Legal/Designated Officer

Signed as a Deed by

***[SERVICE PROVIDER]***

Acting by a Director and its Secretary or two Directors

…………………………………………… Director *(signature)*

…………………………………………… *Print name and job title*

…………………………………………… Director/Secretary *(signature)*

…………………………………………… *Print name and job title*

PARTICULARS

1. The Commencement Date is 1st January 2021 and the Service Commencement date shall be 1st April 2021.
2. This Contract shall take effect on the Commencement Date and shall continue for the Contract Period unless terminated in accordance with these Particulars, Special Conditions and/or Conditions.
3. The Contract Period is 3 years and 3 months from and including the Commencement Date
4. Contract Price is the price set out in Schedule 2 (Finance) including all prices and rates specified therein.
5. Council’s Contact is Adam Briggs
6. Service Provider’s Representative is [*name of representative*]
7. The Council’s option to extend in Condition 7 applies and the Contract Period may be extended for up to 2 years in aggregate.
8. The Council’s right to break the Contract in Condition 29 does apply.
9. Insurance Requirements include the following:

|  |  |  |
| --- | --- | --- |
| Type of Insurance | Required (Yes/ No) | Level (£) (minimum) |
| Trustee Liability  (Condition 23.1.3) (unincorporated charities only) | No |  |
| Fidelity Guarantee  (Condition 23.1.4) | No |  |
| Professional Indemnity  (Condition 23.1.5) | Yes | Five million on each  and every claim basis |
| Clinical Negligence  (Condition 23.1.6) | Yes | Twenty million in  aggregate or membership of NHS Litigation Authority |
| Sexual abuse and molestation (Condition 23.1.7) | Yes | Five million on each  and every claim basis |

1. The Council’s email address for notices is Adam.Briggs@Oxfordshire.gov.uk
2. The Service Provider’s email address for notices is [insert email address].
3. The Council’s postal address for notices shall be Adam Briggs, Consultant in Public Health, Public Health Team, Peoples Directorate, County Hall, New Road Oxford OX1 1ND
4. The names and/or job titles of persons to whom disputes should be referred under Condition 33.1 to are:

For the Council: Director of Public Health, Oxfordshire County Council

For the Service Provider:

1. Special Conditions – The following special conditions apply.

SC1 Termination under the Public Contract Regulations 2015

SC1.1 If the Service Provider was, at the time of contract award, in one of the situations referred to in Regulation 57(1) (including as a result of the application of Regulation 57(2)) of the Public Contracts Regulations 2015, the Council may, without prejudice to any other rights or remedies of the Council, terminate the Contract by notice in writing, such notice to have effect from the date specified in it.

SC1.2 Termination pursuant to Condition SC1.1 shall be deemed to be termination under Condition 28.2 for the purposes of Conditions 28.3 and 30.3.

SC1.3 If the circumstances allowing the Council to terminate the Contract pursuant to Condition SC1.1 arise the Service Provider must promptly notify and provide all related information reasonably required by the Council to the Council.

SC1.4 In the event that:

SC1.4.1 the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contract Regulations 2015; or

SC1.4.2 the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaty on the Functioning of the European Union or the Treaty on the European Union and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union,

the Council may, without prejudice to any other rights or remedies of the Council, terminate the Contract by giving reasonable notice to the Service Provider.

SC2 Volumes

SC2.1 The Service Provider acknowledges that no guarantee is given by the Council in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Council.

SC2.2 The Service Provider must comply with all reasonable requests of the Council to assist it with understanding and managing the levels of Activity for the Services.

### SC3 Business Continuity Plan

### The Service Provider shall ensure it has appropriate business continuity arrangements in place to deliver the Services without disruption. The Service Provider shall:

### SC3.1 provide the Council with a robust business continuity plan and disaster recovery arrangements for the Services;

### SC3.2 provide the Council with evidence to demonstrate these are in place and are reviewed at least annually;

### SC3.3 regularly test all contingency arrangements, providing relevant evidence and outcomes of tests to the Council; and

### SC3.4 immediately notify the Council in the event of a business continuity incident or a significant disaster which requires the business continuity plan referred to in Special Condition SC3.1 to be invoked.

SC4 Never Events

If, and each time a Never Event occurs, the Council shall apply the Never Event Consequence set out in Schedule 6 *(Serious Incident Reporting Procedure)* applicable to the Never Event in accordance with relevant Guidance.

SC5 Service User Health Records

SC5.1 The Service Provider shall create, maintain, store and retain Service User Health Records for all Service Users. Subject to Special Condition SC 17.1 and Condition 30.2 the Service Provider shall retain such records for the periods of time identified in relevant Enactments and securely destroy them thereafter.

SC5.2 The Service Provider shall at the reasonable request of the Council promptly transfer or deliver a copy of the Service User Health Record held by the Service Provider for any Service User for which the Council is responsible to the Council or a third party provider of healthcare or social care services designated by the Council.

SC5.3 The Service Provider shall:

SC5.3.1 use Service User Health Records solely for the execution of the Service Provider’s obligations under this Contract; and

SC5.3.2 give each Service User full and accurate information regarding his/her treatment and shall evidence that in writing in the relevant Service User Health Record.

SC6 Co-operation

SC6.1 The Service Provider shall co-operate fully and liaise appropriately with:

(a) the Council;

(b) any third party provider from whose care the Service User may be transferred to the Service Provider;

(c) any third party provider to whose care the Service Provider may transfer or discharge the Service User;

(d) any third party provider which may be providing care to the Service User at the same time as the Service Provider’s provision of the relevant Services to the Service User; and;

(e) primary and social care services,

in order to

SC6.1.1 ensure that a consistently high standard of care for the Services User is at all times maintained;

SC6.1.2 ensure a co-ordinated approach is taken to promoting the quality of Service User care spanning more than one provider; and

SC6.1.3 achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Services Users, employees of the Council or members of the public.

SC6.2 The Service Provider shall ensure that the provision by it of any activity to any third parties shall not hinder or in any way adversely affect its delivery of the Services to the Council or its performance of this Contract generally.

SC7 Good Clinical Practice

The Service Provider shall carry out the Services in accordance with Good Clinical Practice.

SC8 Emergency Preparedness and Resilience including Major Incidents

SC8.1 The Service Provider shall act in accordance with national and local civil contingency plans and comply with the Civil Contingencies Act 2004 to the extent applicable.

SC8.2 The Service Provider, where appropriate, shall have plans to manage all surges in activity.

SC8.3 The parties shall contribute to and co-operate in the development and review of any relevant Major Incident Plan.

SC8.4 If required the parties shall assist in the development of and participate in joint planning and training exercise connected with any relevant Major Incident Plans and shall participate in joint planning and training exercises for emergency preparedness with other NHS organisations, contracted healthcare providers, local authorities and other local organisations.

SC8.5 The Service Provider and the Council shall have and maintain an up-to-date Emergency Response Plan unless otherwise agreed by the Council.

SC8.6 If there is a Major Incident the parties shall:

SC8.6.1 comply with any relevant Major Incident Plan; and

SC8.6.2 implement their Emergency Response Plan.

SC8.7 In the event of a Major Incident the Service Provider shall provide the Council with such further assistance as may reasonably be required by the Council to deal with the Major Incident, and the right of the Council to reduce sums under Condition 6.5 shall not apply where such right has arisen as a result of the Service Provider complying with its obligations under this Clause SC8.

SC8.8 In the event of a Major Incident the Council shall provide the Service Provider with such further assistance as may reasonably be required by the Service Provider to deal with the Major Incident.

SC9 Counter-fraud and Security Management

SC9.1 Prior to the Commencement Date, the Service Provider shall put in place appropriate Counter Fraud and Security Management Arrangements.

SC9.2 Within 1 month of the Service Commencement Date, the Service Provider shall undertake a risk assessment of its Counter Fraud and Security Management Arrangements, using the applicable Crime Risk Assessment Toolkit.

SC9.3 Where any risks are identified following completion of the risk assessment pursuant to Clause SC9.2, the Service Provider shall remedy such risks by implementing the relevant mitigating actions in accordance with NHS Protect guidance (issued pursuant to the NHS Business Authority Directions).

SC9.4 The Service Provider shall on request by the Council permit any of:

SC9.4.1 a counter fraud specialist nominated by the Council from time to time;

SC9.4.2 a security management specialist nominated by the Council from time to time;

SC9.4.3 a person duly authorised to act on behalf of the persons specified in SC9.4.1 or SC9.4.2;

to review the Counter Fraud and Security Management Arrangements put in place by the Service Provider pursuant to SC9.1 and the Service Provider shall implement such modifications to those arrangements within such time periods as a person described in SC10.4.1 to SC9.4.3 may reasonably require.

SC9.5 The Service Provider shall, promptly upon becoming aware of;

SC9.6.1 any suspected fraud or corruption involving a Service User or public funds, report matter to the person nominated in accordance with SC 9.4.1;and/or

SC9.6.2 any security incident or security breach involving Staff who deliver the Services or involving Council resources, report such matter to the person nominated in accordance with SC 9.4.2.

SC10 Serious Incident Reporting

### In this Special Condition SC10 except where the context otherwise requires, the following expressions shall have the following meanings:

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

**“Monitor”** means the public office established under the Health and Social Care (Community Health and Standards) Act 2003 with responsibility for authorising NHS Foundation Trusts and accountable to Parliament, and continuing under section 31 of the National Health Service Act 2006, and any successor body or bodies from time to time, as appropriate;

**“Patient Safety Incident”** means any unintended or unexpected incident which could have or did lead to harm to one or more Service Users; and

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

### SC10.1 The Service Provider shall comply with the arrangements for notification of Serious Incidents to CQC and to any other regulatory body as appropriate, in accordance with all Enactments.

SC10.2 The Service Provider shall, in accordance with the timescales set out in Schedule 6 (*Serious Incident Reporting Procedure)*, send the Council a copy of any notification it gives to CQC, any other regulatory body or Monitor where that notification directly or indirectly concerns any Service User.

SC10.3 The parties shall comply with the:

SC10.3.1 arrangements for investigating Serious Incidents; and

SC10.3.2 procedures for implementing and sharing the Lessons Learned in relation to Serious Incidents,

that are agreed between the Service Provider and the Council and set out in Schedule 6 (*Serious Incident Reporting Procedure).*

SC10.4 The Service Provider shall comply in all respects with the procedures:

SC10.4.1 relating to Patient Safety Incidents; and

SC10.4.2 for implementing and sharing the Lessons Learned in relation to Patient Safety Incidents,

that are agreed between the Service Provider and the Council and set out in Schedule 6 (*Serious Incident Reporting Procedures).*

SC10.5 The Council shall have complete discretion to use the information provided by the Service Provider under this Special Condition SC10 and Schedule 6 (*Serious Incident Reporting Procedure)* in any report which it makes to Monitor, CQC, any NHS Body, any Strategic Health Authority, any office or agency of the Crown, or any other appropriate regulatory or official body in connection with such Serious Incidents, or in relation to the prevention of Serious Incidents, provided that it shall in each case notify the Service Provider of the information disclosed, and the body to which it has disclosed it.

SC10.6 The Service Provider must consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;

### SC11 Death of a Service User

### The Service Provider shall maintain and operate a policy that complies with Good Clinical Practice and Good Industry Practice and all relevant Enactments, which details the procedures that it shall follow in the event of the death of a Service User whilst in the Service Provider’s care.

### SC12 Consent

### The Service Provider shall operate a patient consent policy to comply with Good Clinical Practice, Good industry Practice and all relevant Enactments.

### SC13 Efficiency and Performance Improvements

SC13.1 During the term of this Contract at the reasonable request of the Council, the Service Provider must:

(a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the parties may agree a continuous improvement plan for this purpose;

(b) implement such improvements; and

(c) where practicable following implementation of such improvements at the discretion of the Council either (i) decrease the price to be paid by the Council for the Services; or (ii) subject to the agreement of the Service Provider enhance or increase the Services provided at the same price.

SC13.2 If requested by the Council, the Service Provider must identify the improvements that have taken place in accordance with Special Condition SC13.1, by reference to any reasonable measurable criteria notified to the Service Provider by the Council.

SC13.3 In the event that the Council is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Service Provider, then the Council may, without prejudice to any other rights or remedies it may have under this Contract consult with the Service Provider and require the Service Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 10 Working Days or such other period of time as the Council may direct.

### SC14 Service Quality Performance Indicators

### SC14.1 The Service Provider must achieve the targets attached to the Service Quality Performance Indicators set out in Schedule 3.

### SC14.2 For the avoidance of doubt breach of the required target in relation to a Service Quality Performance Indicator will constitute a Default and may depending on its severity constitute a material Default.

### SC15 Suspension

### SC15.1 Following suspension of the Services or part thereof pursuant to Condition 28.4 the Service Provider must at the reasonable request of the Council and for a reasonable period:

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

### b) at the cost of the Service Provider:

### (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative successor provider; and

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

### SC15.2 As part of its compliance with Special Condition SC15 the Service Provider may be required by the Council to agree a transition plan with the Council and/or any alternative successor provider.

SC16Transition Provisions

SC16.1 The provisions of Schedule 7 (Commencement Transition Provisions) shall apply to the Contract Period prior to the Service Commencement Date.

SC16.2 The provisions of Schedule 8 (Exit Transition Provisions) shall apply to the period before and after the expiry of the Contract.

SC17. Protection of Personal Data

In these conditions and schedules, except where the context otherwise requires, the following expressions shall have the following meanings:

**“Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, Data Protection Officer** shall have the same meaning set out in the Data Protection Legislation;

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

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

**“Data Protection Legislation”** means the EU General Data Protection Regulation EU 2016/679(GDPR), the Data Protection Act 2018 and any subordinate legislation made under such Acts 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.

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

**“Privacy Notice”** means a notice to Data Subjects complying with and providing all the information required to Data Subjects under Data Protection Legislation.

“Process” and “Processing” shall have the same meanings as set out in the Data Protection Legislation but for the purposes of this Contract shall include both manual and automatic processing.

SC17.1 With respect to the parties' rights and obligations under this Contract, the parties agree that unless otherwise agreed in writing the Council is the Data Controller and the Service Provider is the Data Processor. For the avoidance of doubt, and notwithstanding any other provisions of this Contract, the Service Provider shall transfer all Personal Data processed on behalf of the Council to the Council on expiry or termination of the Contract, unless the Council otherwise specifies.

SC17.2 The Service Provider shall in connection with the provision of the Services and the performance of its obligations under the Contract:

SC17.2.1 comply with the requirements of the Data Protection Legislation; and

SC17.2.2 comply with the provisions in Schedule 5 (Information Governance) .

SC17.3 Without prejudice to any other provisions of this Contract, the provisions of Conditions 12 and 21 shall apply to Personal Data to the same extent as applicable to Council Data.

SC17.4 The Council may on not less than 30 Working Days’ notice to the Service Provider amend this Contract to ensure that it complies with Data Protection Legislation.

SC18. Prevent Obligations

For the purposes of this Special Condition SC18:

**“Prevent Strategy”** means the strategy published by the Government in 2011 to prevent people from being drawn into terrorism as set out in the document “Prevent Duty Guidance in England and Wales” (<https://www.gov.uk/government/publications/prevent-duty-guidance>)

### SC18.1. Any member of Staff who becomes aware of a person at risk of radicalisation must promptly raise a safeguarding concern in accordance with the Council’s safeguarding policies and procedures.

SC18.2. Where the nature of the Services is such that Staff are in contact with persons who may be at risk of being drawn into terrorism:

SC18.1.1 the Service Provider shall provide all reasonable support and assistance to the Council in respect of the Council’s duties under the Prevent Strategy; and

SC18.1.2.    the Service Provider shall ensure that all Staff are given appropriate training in the Prevent Strategy including the identification and referral of those at risk of being drawn into terrorism.

### CONDITIONS OF CONTRACT

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### CONDITIONS OF CONTRACT

***part one – formalities***

1 Definitions and Construction

1.1 In these conditions and schedules, except where the context otherwise requires, the following expressions shall have the following meanings:

**“Activity”** means any levels of clinical services and/or Service User flows set out in Schedule 1;

**“Associated Company”** means any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company (“holding company” and “subsidiary company” having the same meanings as in section 1159 of the Companies Act 2006);

**“Carers”** means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage;

**“Commencement Date”** means the date specified as such in the Particulars;

**“Conditions”** means these conditions;

**“Consent”** means:

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

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

**“Consultant”** means a person employed or engaged by the Service Provider of equivalent standing and skill as a person appointed by an NHS Body in accordance with all Enactments governing the appointment of consultants;

**“Contract”** means this contract incorporating the Contract Form, the Particulars, the Conditions and the Schedules and annexes to them (if any);

**“Contract Price”** is defined in the Particulars;

**“Council Data”** means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:

1. are supplied to the Service Provider by or on behalf of the Council; or
2. the Service Provider is required to generate, process, store or transmit pursuant to this Contract.

**“Council Premises”** means any premises owned, occupied or used by the Council;

**“Council’s Contact”** means the person specified in the Particulars and any such other person as may be appointed by the Council and notified in writing to the Service Provider to act generally or for specified purposes or periods;

**“Counter Fraud and Security Management Arrangements”** means the security management arrangements, including those for anti-fraud work put in place by the Service Provider in accordance with Special Condition SC9:

1. for the security of Staff, for Service Users and for Council resources, with reference to the NHS security management service strategy and the NHS security management service national framework as updated or replaced from time to time; and
2. to prevent and detect fraud by the Staff, by or in relation to, Service Users and/or in relation to public funds with reference to NHS counter-fraud strategy and the NHS counter-fraud national framework as updated or replaced from time to time;

**“CQC”** means the care quality commission established under the Health and Social Care Act 2008 or successor body;

**“Crime Risk Assessment Toolkit”** means the risk assessment toolkits found at www.nhsbsa.nhs.uk/Protect;

**“DBS”** means the Disclosure and Barring Service or any successor body;

**“DBS Checked Member of Staff”** means a member of Staff for whom a Disclosure has been obtained and if holding any convictions has been approved in writing by the Council in accordance with Condition 8.7;

**“Default”** means any breach of the obligations of the Service Provider under the Contract or any default, act, omission or negligence of the Service Provider or Staff in connection with or in relation to the subject matter of the Contract;

**“Disclosure(s)”** means the disclosure(s) referred to in Conditions 8.3.1 and 8.3.2;

**“DO”** means the designated officer as set out in the statutory guidance document entitled ‘Working Together to Safeguard Children’;

**“EIRs”** means the Environmental Information Regulations 2004;

**“Emergency Response Plan”** means each party’s operational plan to respond to Major Incidents in accordance with the requirements of any relevant Major Incident Plans;

**“Enactments”** means directives, statutes, regulations, orders, judgments of relevant courts, instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, judgment, instrument, code or guidelines and references to any statute shall also include any secondary legislation made under it and references in the Contract to a specific Enactment shall be construed on this basis;

**“Finance Schedule”** means the finance schedule set out in Schedule 2;

**“FOIA”** means the Freedom of Information Act 2000;

**“Force Majeure Event”** means any event or occurrence which is outside the reasonable control of the party concerned and which is not attributable to any act or failure to take preventative action by that party, including fire (save where such fire is due to the negligence or fault of that party); natural flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

a) any industrial action occurring within the Service Provider’s or its sub-contractor’s organisation; or

b) the failure by any sub-contractor of the Service Provider to perform its obligations under any sub-contract;

**“Good Clinical Practice”** means using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider, including assigning a Consultant to each Service User who will be clinically responsible for that Service User at all times during the Service User’s care by the Service Provider;

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to all Enactments and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

**“Guidance”** means any applicable health or social care guidance, direction or determination which the Council and/or the Service Provider has a duty to have regard to, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Service Provider by the Council and/or the Department of Health;

**“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, semi-conductor topography rights, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off;

**“Invitation to Tender”** means the invitation for providers to bid or provide quotes for the provision of the Services;

**“Local HealthWatch”** means the Local Healthwatch organisation as described in s 222 of the Local Government and Public Involvement in Health Act 2007 (as amended by the Health and Social Care Act 2012) or successor body with similar functions;

**“Major Incident”** means an event or occurrence which is designated as such by Category 1 Responders (as designated by the Civil Contingencies Act 2004) or by the Major Incident Plan;

**“Major Incident Plan”** means the plan implemented in each local authority area in accordance with the Civil Contingencies Act 2004 to plan for and coordinate responses to civil emergencies;

**“Method Statement”** means, where an Annex A (Method Statement) is included the Contract, the Service Provider’s agreed proposals for delivery of the Services set out at that Annex A;

**“Monitoring and Review Schedule”** means the monitoring and review schedule set out in Schedule 3;

“Never Event” means events or occurrences which should never occur in delivering the Services as set out in Schedule 6 as revised, re-issued or replaced by Guidance from time to time;

“Never Event Consequence” means the sum calculated in accordance with Schedule 6;

“NHS Body” means a health service body as defined in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of the Health and Social Care Act 2012;

**“NICE”** (the National Institute for Health and Clinical Excellence) means the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body);

“Pathway” means an evidence-based plan of goals and key elements of care for a Service User that facilitates the communication, co-ordination of roles and sequencing of the activities of a multi-disciplinary care team, Service Users, Carers and Legal Guardians, the aim of which to enhance quality of care by improving Service User outcomes, promoting Service User safety, increasing Service User satisfaction and optimising the user of resources;

“Prohibited Act”means the following acts:

1. offering (directly or indirectly), promising or giving any person working for or engaged by the Council a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;
2. requesting (directly or indirectly), agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
3. committing any offence: (i) under the Bribery Act 2010; (ii) under any Enactment creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

(d) defrauding, attempting to defraud or conspiring to defraud the Council;

**“Quality Standards”** means the quality standards published by the National Institute for Health and Clinical Excellence, BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1 (Specification);

**“Regulated Activity”** has the meaning given to it in the SVGA;

**“Regulated Activity Provider”** has the meaning given to it in the SVGA;

**“RIDDOR”** means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

**“Service Commencement Date”** is the date specified as such in the Particulars;

**“Service Provider’s Representative”** means the person specified in the Particulars and any such other person as may be appointed by the Service Provider and notified in writing to the Council to act generally or for specified purposes or periods;

**“Services”** means the services to be provided as specified in the specification set out in Schedule 1 and in the Method Statement, subject to the order of precedence set out in the Contract Form;

**“Service User”** means a patient or service user of the Council or any other patient, client or customer who is referred or presents to the Service Provider or otherwise receives Services under this Contract;

**“Service User Health Record”** means a record which consists of information relating to the particular physical or mental health or condition of a Service User, (whether in electronic form or otherwise)

**“Staff”** means all persons, whether paid or unpaid, engaged by the Service Provider to perform the Contract or used in the performance of the Contract including the Service Provider’s employees, agents and Sub-contractors;

**“Sub-Contractor”** means a third party at any stage of remoteness from the Council in a subcontracting chain appointed for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract;

**“Suspension Event”** means any circumstances excluding a Force Majeure event which may in the reasonable opinion of the Council create an immediate and serious threat to the health or safety of any Service User or may result in a material interruption in the provision of any one or more of the Services;

**“SVGA”** means the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012;

**“Tender”** means the Service Provider’s response to the Invitation to Tender; and

**“Working Day”** means Monday to Friday inclusive other than bank holidays and any other public holidays.

1.2 The definitions given in the Particulars apply.

1.3 Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction.

1.4 The headings and titles in the Contract are for ease of reference only and shall not be taken into account in its construction or interpretation.

1.5 The expression “person” used in the Contract shall include any individual, partnership, local authority or incorporated or unincorporated body.

1.6 The expression “including” means including without limitation or prejudice to the generality of any preceding description, defining term, phrase or word(s) and “include” shall be construed accordingly;

1.7 The Contract constitutes the entire understanding between the Service Provider and the Council in relation to the subject matter of the Contract and supersedes all prior contracts, undertakings, representations and negotiations whether oral or written except that nothing in this condition shall exclude or restrict liability for fraudulent or fundamental misrepresentations.

1.8 This Contract may be executed in any number of counterparts and this shall have the same effect as if the signatures and, where applicable, seals on the counterparts were on a single copy of this Contract.

2 Formation of Contract and Sufficiency of Information

2.1 Inspection of Premises and other investigations

2.1.1 The Service Provider shall be deemed to have inspected the premises (including any equipment) where the Services are to be performed before tendering and otherwise to have understood the nature and extent of the services to be provided and be satisfied in relation to all matters connected with the performance of the Contract.

2.1.2 Information relating to such premises may have been provided to assist in the preparation of tenders but these details cannot be guaranteed and it shall be deemed that the Service Provider has satisfied itself as to their correctness.

2.2 The Service Provider shall be deemed to have satisfied itself before submitting the Tender as to the accuracy and sufficiency of the rates and prices stated by the Service Provider in the Tender which shall (except in so far as is otherwise expressly provided in the Contract) cover all the Service Provider’s obligations under the Contract and the Service Provider shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Tender.

2.3 The Service Provider warrants and represents that all written statements and representations in any written submissions made by the Service Provider as part of the procurement process, including without limitation its response to the selection questionnaire (if applicable), its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Service Provider has otherwise disclosed to the Council in writing prior to the date of this Contract.

2.4 The Service Provider warrants and represents that it has full capacity and authority and all necessary consent (including where its procedures require the consent of its parent company) to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Service Provider.

3 Applicable Law and Jurisdiction

The Contract and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with English law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

##### PART TWO - SERVICE PROVISION AND OBLIGATIONS OF THE SERVICE PROVIDER

4 Provision of the Services

The Service Provider will provide the Services from the Service Commencement Date until the end of the Contract Period and will otherwise perform its obligations under the Contract in accordance with the terms of this Contract. Time is of the essence in respect of this obligation to perform the Services from the Service Commencement Date.

5 Service Standard

* 1. The Service Provider will provide the Services, and perform its   
     obligations under the Contract, with all due skill, care and diligence in accordance with Good Industry Practice and all relevant professional and technical standards including without limitation the Quality Standards and any further standards specified in the schedules.

5.2 The Service Provider is responsible for the accuracy of all information supplied to the Council in connection with the provision of the Services and will pay the Council any and all costs occasioned by any discrepancies, errors or omissions in such information.

5.3 Where applicable the Service Provider shall maintain accreditation with the relevant Quality Standards authorisation body.

5.4 The Service Provider shall, (unless otherwise lawfully agreed with the Council in writing) comply, where applicable, with the registration and regulatory compliance guidance of and all requirements and enforcement actions issued from time to time by CQC and any other relevant regulatory body including without limitation NICE and Local Healthwatch.

5.5 Without prejudice to its other obligations under the Contract, the Service Provider must promptly notify the Council if it becomes aware of any circumstances which may affect its ability to perform the Contract in accordance with its terms.

6 Contract Price

6.1 In consideration of the performance of the Service Provider’s obligations under the Contract, the Council shall pay the Contract Price.

6.2 The Contract Price shall be the full and exclusive remuneration of the Service Provider in respect of the supply of the Services. Unless otherwise specified in the Finance Schedule, the Contract Price shall be deemed to include every cost and expense of the Service Provider directly or indirectly incurred in connection with the performance of the Services.

6.3 Unless otherwise set out in the Particulars or the Finance Schedule the Contract Price is exclusive of value added tax (“**VAT**”) where VAT is applicable. The Council shall pay to the Service Provider any VAT chargeable on the Contract Price subject to the provision to the Council of a proper VAT invoice.

6.4 Where the Service Provider submits an invoice to the Council in accordance with this Condition 6 and the Finance Schedule, the Council will consider and verify that invoice in a timely fashion.

6.5 Unless a shorter period is agreed in the Finance Schedule, the Council shall pay the Service Provider any sums due under such an invoice (or part thereof) no later than a period of 28 days from the date on which the Council has determined that the invoice (or part thereof) is valid and undisputed.

6.6 Where the Council fails to comply with Condition 6.4 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Condition 6.5 after a reasonable time has passed.

6.7 Unless otherwise agreed in the Finance Schedule, invoices shall be submitted monthly in arrears for Services provided.

6.8 Where an invoice is disputed, the parties shall seek to resolve the dispute promptly and, if necessary, the matter shall be dealt with in accordance with Condition 33. The Council shall be under no obligation to pay the disputed charge until the dispute has been resolved. For the avoidance of doubt, where an invoice is disputed in part, the Council shall pay such part of the invoice which is not in dispute in accordance with Condition 6.5.

6.9 Each invoice shall:

6.9.1 be submitted to the address of the Council specified in the Finance Schedule (or if none is specified to the address set out in the Contract Form);

6.9.2 contain a detailed breakdown of Services supplied;

6.9.3 be supported by any information required by the Council to substantiate such invoice; and

6.9.4 comply with any other provisions in the Finance Schedule in respect of invoices.

6.10 Without prejudice to any other right or remedy of the Council, the Council may, acting reasonably, reduce payment in respect of any Services which the Service Provider has failed to provide or has provided inadequately.

6.11 Without prejudice to any other right or remedy of the Council, where any sum of money is recoverable from or payable by the Service Provider or any Associated Company under the Contract or any other contract between the Service Provider or an Associated Company and the Council (including in all instances any sum which the Service Provider or an Associated Company is liable to pay in respect of any breach of contract), the Council may deduct that sum from monies payable by the Council to the Service Provider under the Contract.

6.12 In the event of termination or expiry of this Contract, the Service Provider shall repay to the Council any part of the Contract Price which it has been paid in respect of Services not provided by the Service Provider at the date of termination or expiry.

6.13 In its performance of this Contract the Service Provider shall not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User (other than in accordance with this Contract or any Enactment).

7 Extension of the Contract

Unless otherwise specified in the Particulars the Council may extend the Contract Period on the same terms (including, for the avoidance of doubt, at the same Contract Price) upon written notice to the Service Provider provided always that unless otherwise agreed with the Service Provider or specified in the Particulars, no less than six (6) months’ prior notice will be given on each occasion. The maximum period for which the Contract may be extended (if applicable) is specified in the Particulars.

1. Staff

8.1 When requested by the Council on reasonable grounds the Service Provider shall, following reasonable notice, make available to the Council records of all Staff involved in the provision of the Services.

8.2 The Service Provider’s employment systems shall accord with the Council’s policy on checking criminal records and the Service Provider shall on request supply to the Council such information as it may reasonably require to ensure that its employment systems do so accord.

8.3 The Service Provider shall:

8.3.1 ensure that Staff whose work falls within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and, where the Services involve a Regulated Activity, all Staff carrying out a Regulated Activity are subject to a valid criminal record check undertaken through the DBS (either by the Service Provider undertaking such check or by the Service Provider carrying out a status check of the Staff member’s certificate with the DBS) at an enhanced level where permissible and including a check against the adults' barred list and/or the children's barred list where permissible;

8.3.2 where:

a) Staff whose work falls within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; and/or

b) Staff carrying out a Regulated Activity, where the Services involve a Regulated Activity,

have lived and/or worked abroad for a continuous period of three months or more in the preceding five years, obtain a criminal records check, or ‘Certificate of Good Character’, from their country of origin and those countries in which they have lived and /or worked. Where such checks or certificates and other documentation are provided in a foreign language they must be translated and that translation supported by a “Certificate of Authenticity of Translation”;

8.3.2 monitor its procedures to ensure that the appropriate checks are carried out for all Staff.

8.3.3 ensure that all Disclosures pursuant to Condition 8.3.1 are renewed as required by any relevant Enactments and, in respect of any Staff working in domiciliary care and/or working with children, not less than every three (3) years and that the Service Provider checks Disclosures upon renewal.

8.3A Where the Services involve a Regulated Activity, the provisions of this Condition 8.3A shall apply:

8.3A.1 The parties acknowledge that the Service Provider is, for the purposes of the SVGA, a Regulated Activity Provider, with ultimate responsibility for the management and control of the Regulated Activity provided pursuant to the Contract.

## 8.3A.2 The Service Provider warrants that at all times for the purposes of the Contract it has no reason to believe that any Staff are barred from the provision of the Services under the SVGA.

## 8.3A.3 The Service Provider shall refer information about any Staff member to the DO (and to the DBS if required by the DBS) where it has concerns about such Staff member or it removes permission for such Staff member to carry out the Services (or would have, if such Staff member had not otherwise ceased to carry out the Services) because, in its opinion, such Staff member has harmed or poses a risk of harm to the users of the Services. Such reference shall be made within 24 hours of the earlier of such concerns arising or the removal of such permission.

8.3A.4 The Service Provider shall not employ or use the services of any Staff who are barred from, or whose previous conduct or records indicate that they would not be suitable to carry out, any Regulated Activity or who may otherwise present a risk to users of the Services.

8.4 Pending the receipt of the relevant Disclosure no member of Staff requiring a Disclosure under Condition 8.3.1 shall be used in the provision of the Services unless in the case of Staff carrying out a Regulated Activity such member is accompanied at all times by a DBS Checked Member of Staff, the Council’s consent has been obtained and any relevant provisions in Schedule 4 have been complied with.

8.5 The Service Provider shall obtain the written consent of the Staff referred to in Condition 8.3.1 to pass the Disclosures to the Council where those Disclosures reveal a conviction or other relevant information which indicates such Staff may pose a risk to the Council, Council staff or users of Council services.

8.6 Where a Disclosure reveals a conviction or other relevant information (as defined in Condition 8.5 above) the Service Provider shall carry out a risk assessment in accordance with the Council’s instructions and shall share the details of such risk assessment with the Council’s Contact.

8.7 The Service Provider shall ensure that where a conviction or other relevant information (as defined in Condition 8.5 above) is revealed by a Disclosure or otherwise no such Staff referred to in Conditions 8.3.1 and 8.3.2 shall be used in the provision of the Services without the prior written permission of the Council’s Contact.

8.8 The Service Provider shall provide details of its policies and procedures for recruitment, training, development, supervision and other Staff-related policies when requested to do so.

8.9 The Service Provider will ensure that it has in place an effective whistleblowing procedure whereby Staff may raise in confidence concerns about possible malpractice without fear of victimisation, subsequent discrimination or disadvantage.

8.10 Staff involved in the delivery of the Services shall be supplied with and must display a form of identification by the Service Provider. The Service Provider shall ensure that such identification is returned to the Service Provider on the last day of employment of such member of Staff and retained as part of the Service Provider’s Staff records.

8.11 The Service Provider shall retain Staff records for six (6) years following the last day such Staff are engaged in providing the Services.

8.12 When requested by the Council on reasonable grounds, the Service Provider will cease to use any member of Staff specified by the Council for the provision of the Services.

* 1. The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council upon request) to prevent the Service Provider and its Staff from committing a Prohibited Act and shall enforce it where appropriate.
  2. The Service Provider shall have sufficient appropriately qualified and experienced medical, nursing and other clinical and non-clinical Staff to ensure that the Services are provided in all respects and at all times in accordance with this Contract. If requested by the Council, the Service Provider shall as soon as practicable and by no later than 20 Working Days of receipt of such written request, provide the Council with evidence of the Service Provider’s compliance with this Condition 8.14.
  3. The Service Provider shall ensure that the Staff:
     1. if applicable, are registered with and where required have completed their revalidations by the appropriate professional regulatory body;
     2. possess the appropriate qualifications, experience , skills and competencies to perform the duties required of them and be appropriately supervised (including where appropriate preceptorship and rotations arrangements), managerially and professionally;
     3. are covered by the Service Provider’s insurance arrangements (as identified and to the extent set out in Condition 23 for the provision of the Services; and
     4. are aware of and respect equality and human rights of colleagues, Service Users, Carers and the public
  4. The Service Provider shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:
     1. proper and sufficient continuous professional and personal development, training and instruction;
     2. full and detailed appraisal in terms of performance and on-going education and training; and
     3. professional leadership commensurate with the Services

each in accordance with Good Clinical Practice and Good Industry Practice and the standards of their relevant professional body, if any.

9 Monitoring/Review

9.1 Subject to Condition 9.2 below the Service Provider shall maintain comprehensive and accurate records of work carried out in the provision of the Services and shall retain such records and Council Data for a minimum of six (6) years from the date of termination or expiry of the Contract or such longer period as may be required under any Enactment or such other period as specified by the Council.

9.2 If and when required by the Council any Personal Data held under or in connection with the Contract must be securely destroyed and/or permanently deleted.

9.3 The Service Provider shall retain Staff records for six (6) years following the last day Staff are engaged in providing the Services or such longer period as may be required under any Enactment.

9.4 The Service Provider shall provide the Council with access to all Council Data and records relating to the Services upon request.

9.5 The Service Provider shall provide and supply to the Council at no cost to the Council such other information or access to such information (including the Service Provider’s policies and procedures) as the Council may reasonably request as to the provision of the Services and the performance of the Service Provider’s obligations under the Contract and render the Council all reasonable assistance in connection with their monitoring and review.

9.6 The Service Provider shall permit the Council, or its nominated auditor, to access the Service Provider’s premises and records on reasonable notice in order to audit the Service Provider’s performance of the Contract.

9.7 The Council is required to monitor and report to the Department for Energy and Climate Change (“**DECC”**) on its service providers' CO2 emissions on an annual basis. The Service Provider undertakes to provide the Council with such information relating to its CO2 emissions as the Council may require from time to time in order to fulfil its obligations to DECC.

9.8 The Service Provider’s Representative shall liaise with the Council’s Contact on all day-to-day matters relating to the Contract.

9.9 The Service Provider shall not prevent a person authorised by the Local Healthwatch to enter the premises where the Services are provided and observe the provision of the Services.

9.10 The parties shall comply with the provisions of Schedule 3 (Monitoring and Review).

10 Change Control

10.1 Without prejudice to Conditions 28.6 and 29, insofar as is lawful, the Council may give reasonable written notice from time to time requesting changes to the Services (whether by way of discontinuance of any Services, the addition of new Services or increasing or decreasing the quantity of the Services, or changes to the locations where or the manner in which the Services are to be provided) for any reason whatsoever.

* 1. In the event of such a change being requested, the Contract Price may also be varied. Such variation to the Contract Price shall be calculated by the Council and agreed with the Service Provider and shall be such amount as properly and fairly reflects the nature and extent of the change to the Services in all the circumstances.
  2. The Service Provider shall provide such information as may be reasonably required to establish the feasibility of the change to the Services and to enable a variation to the Contract Price to be calculated.
  3. Save for a decrease to the Contract Price pursuant to Special Condition SC13 no change to the Services or the Contract Price shall have effect unless agreed between the parties and recorded in writing and signed on behalf of the Council and the Service Provider.

11 Statutory Obligations

11.1 The Service Provider shall, in the provision of the Services and the performance of its obligations under the Contract, comply with all Enactments.

11.2 The Service Provider shall act in respect of any person who receives Services under the Contract as if it were a public authority for the purposes of the Human Rights Act 1998. This Condition 11.2 shall be enforceable by persons who receive Services under the Contract.

12 Council Data and Security Requirements

12.1 The Service Provider acknowledges that the Council Data is the property of the Council and the Council hereby reserves all Intellectual Property Rights which may subsist in the Council Data.

12.2 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Council Data.

12.3 The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Council.

12.4 To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council or any provider acting on the Council’s behalf to deliver services similar to the Services as requested by the Council. The Service Provider shall take all actions necessary to ensure that it can legally comply with this obligation.

12.5 The Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data.

12.6 The Service Provider shall ensure that any system or media on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council’s written instructions.

12.7 All Council Data shall be stored in a useable format to ensure that the Service Provider can comply with Condition 30.2.1.

12.8 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Service Provider’s default so as to be unusable, the Council may:

1. require the Service Provider (at the Service Provider’s cost and expense) to restore or procure the restoration of the Council Data and

the Service Provider shall do so as soon as practicable but not later than five Working Days from the corruption, loss or degradation; and/or;

1. itself restore or procure the restoration of the Council Data and shall be repaid by the Service Provider any reasonable costs and expenses incurred in doing so.

12.9 If at any time the Service Provider suspects or has reason to believe that the Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Council immediately and take such remedial action as the Council shall reasonably require or as may be necessary to preserve, safeguard or restore the Council Data and keep the Council informed of all remedial action taken.

12.10 The Service Provider shall comply with all relevant Council policies where the Service Provider has access (remote or otherwise) to any systems or equipment of the Council.

12.11 Where the Service Provider access the Council’s ICT Systems, it must comply with all instructions and guidance issued by the Council from time to time relating to the Service Provider’s access and use (remote or otherwise) of the Council’s ICT systems and ensure all Staff are made aware of this obligation. The Service Provider must ensure that it has a comprehensive training system in place for all Staff, including induction procedures and regular awareness sessions related to information sharing protocols.

12.12 Where the Service Provider accesses the Public Services Network in connection with the Services, the Service Provider shall comply with the standards set out in the Public Services Network Code of Connection and shall provide to the Council such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with the obligations referred to in Condition 12.11. For the avoidance of doubt the Public Services Network Code of Connection referred to in this Condition 12.12 shall mean all such policies as amended or substituted by government.

12.13 The Service Provider shall permit the Council, or its nominated agent, to access the Service Provider’s premises to test its data security measures and its compliance with this Conditions 12.

13 Equal Opportunities

13.1 The Service Provider shall not, in relation to the employment of  
persons for the purposes of providing the Services or in relation to the provision of the Services to any person, unlawfully discriminate within the meaning of any Enactment relating to discrimination or equality whether in relation to race, gender, religion or belief, disability, age, sexual orientation or otherwise and shall where reasonably requested by the Council assess and monitor its policies and practices as to their impact on the promotion of equality and report on this to the Council.

13.2 The Service Provider shall, in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services, comply with the duties imposed by the Equality Act 2010 and will assist the Council in meeting its duties under the Equality Act 2010.

13.3 This Condition 13 shall be enforceable by persons who receive Services under the Contract.

14 Health and Safety

14.1 The Service Provider shall at all times comply with the requirements of the Health and Safety at Work etc Act 1974 and of all other Enactments pertaining to health and safety which may apply in the performance of the Contract.

14.2 Without prejudice to the generality of Condition 14.1, the Service Provider shall maintain its own health and safety policy in accordance with the Health and Safety at Work etc Act 1974. The Service Provider shall provide a copy of such policy to the Council upon request and shall notify the Council of any revision to it.

14.3 The Service Provider will promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Contract including, without limitation, all RIDDOR incidents.

* 1. Whilst on Council Premises, the Service Provider shall ensure that Staff comply with the Council’s safety policies (and any amendments to them notified to the Service Provider) and with the proper requirements of the Council’s safety officers.

* 1. The Council may suspend the supply of the Services in the event of non-compliance by the Service Provider on health and safety matters and the Service Provider shall not resume provision of Services unless the Council is satisfied that the non-compliance has been rectified.

15 Intellectual Property Rights

15.1 The Service Provider warrants and represents that neither the performance of the Contract nor the provision or use of the Services will in any way constitute an infringement or other violation of any Intellectual Property Rights of any third party.

15.2 Before utilising any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights, the Service Provider shall procure the necessary licences to enable the Council to use such material at all times for the Council’s purposes at no cost to the Council.

15.3 All Intellectual Property Rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs, reports or other material:

* + 1. furnished to or made available to the Service Provider by the Council shall remain the property of the Council;

15.3.2 prepared by or for the Service Provider for use, or intended for use, in relation to the performance of the Contract shall belong to the Council and the Service Provider shall not, and shall procure that Staff shall not (except when necessary for the implementation of the Contract) without prior approval of the Council, use or disclose any such Intellectual Property Rights. The Service Provider shall, at its cost and expense, do all such further acts and things and execute or procure the execution of all such documents as the Council may reasonably require, for the purpose of transferring any such Intellectual Property Rights to the Council.

1. TUPE

16.1 The Service Provider will following a request from the Council fully and accurately disclose all information relating to Staff engaged in providing the Services including the total number of Staff whose employment with the Service Provider or a Sub-Contractor is liable to be terminatedat the expiry of the Contract (but for operation of law) (the “**Relevant Staff”**), their age and gender, the terms and conditions of their employment (including salary, bonus payments, allowances, pay settlements, redundancy entitlement, relevant collective agreements, pension entitlement and working arrangements), their job titles and the qualifications required for each position.

16.2 The Service Provider shall comply with any such requests as soon as reasonably practicable and in any event, within 21 days of being so requested, and at no cost to the Council. The Service Provider agrees with the Council that the information provided shall be complete, accurate and up to date and that it shall notify the Council promptly of any changes occurring between the date of submission of the information and the end of the Contract.

16.3 The Service Provider shall permit the Council to use the information for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and related Enactments and for the purposes of re-tendering.

16.4 The Service Provider shall enable and assist the Council and any such persons as the Council may determine to communicate with and meet Staff and relevant Staff representatives and the Service Provider shall co-operate with any new provider to ensure a smooth transition.

16.5 The Service Provider shall within the period of 12 months immediately preceding the end of the Contract Period or, if earlier, following the making of a request pursuant to Condition 16.1 be precluded from:

16.5.1 making any material increase or decrease in the numbers of Relevant Staff other than in the ordinary course of business and with the Council's prior written consent (such consent not to be unreasonably withheld or delayed);

16.5.2 making any increase in the remuneration or other change in the terms and conditions of the Relevant Staff other than in the ordinary course of business and with the Council’s prior written consent (such consent not to be unreasonably withheld or delayed); and

16.5.3 transferring any of the Relevant Staff to another part of its business or moving other employees from elsewhere in its business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent (such consent not be unreasonably withheld or delayed).

16.6 The Service Provider shall indemnify the Council and any replacement provider engaged by the Council to perform any of the Services or any service equivalent or similar to any of the Services and keep them both fully indemnified in respect of any claims, losses, costs, expenses, demands and liabilities:

16.6.1 arising from the provision of information or the failure to provide information under this Condition 16; or

16.6.2 which relate to any claim which is or may be brought by any employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party arising out of their employment with the Service Provider or a Sub-Contractor or its termination; or

16.6.3 arising from any breach of the requirements of Condition 16.5.

17 Freedom of Information

17.1 The Service Provider shall co-operate with the Council and supply to it all information properly required in connection with any request received by the Council under the FOIA or the EIRs and shall supply all such information and documentation at no cost to the Council within 7 days of a request from the Council.

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

17.3 The Council may publish this Contract in its entirety to the general public (but with any information which is exempt from disclosure under the FOIA and/or the EIRs redacted).

18 Safeguarding Policies and Procedures

18.1    The Service Provider shall comply with Schedule 4 (Safeguarding Policies and Procedures).

18.2 Where the Service Provider is providing Services to adults it shall comply with the Oxfordshire Safeguarding Adults Board’s policies and procedures as amended from time to time.

18.3 Where the Service Provider is providing Services to children or young people:

18.3.1 the Service Provider shall ensure that it has in place systems, policies and procedures to ensure the protection of children and young people consistent with the Oxfordshire Safeguarding Children Board’s (“OSCB’s”) Procedures Manual (http://oxfordshirescb.proceduresonline.com/), as amended from time to time, and section 11 of the Children Act 2004 and shall ensure compliance with such systems, policies and procedures; and

18.3.2 unless completed and returned prior to the Commencement Date as part of the Contract procurement process the Service Provider shall complete and return to the Council within one month of the Commencement Date an OSCB “Section 11- Self Assessment” using the toolkit provided by the Council’s designated quality and contracts officer. Throughout the Contract Period, upon the anniversary of the Commencement Date and at other times upon the reasonable request of the Council, the Service Provider shall update the ‘Section 11- Self Assessment’ and return it to such officer. The Service Provider shall promptly address any shortcomings identified.

**PART THREE – GENERAL**

19 Complaints

19.1 If any complaint or significant concern is made or raised (whether orally or in writing) concerning the Services, the Service Provider shall immediately investigate it in a courteous and efficient manner and take such corrective action as is appropriate. The Service Provider shall record details of all complaints and concerns and how they were resolved in a written register. The register will be freely available to the Council.

19.2 The Service Provider shall provide any information requested by the Council in connection with any complaint or significant concern relating to the Services (whether made to the Council or the Service Provider and whether made orally or in writing) and co-operate fully and promptly in every way required by the Council or by any person or body conducting any investigation regarding a complaint or significant concern including attending meetings, and permitting Staff to attend meetings and allowing access to and investigation of documents and data.

20 Gratuities  
  
The Service Provider shall ensure that no Staff solicit any gratuity or tip or any other form of money taking or reward, collection or charge for any of the Services save for charges explicitly provided for in this Contract.

21 Confidentiality

21.1 The Service Provider shall not, and shall ensure that Staff shall not use or disclose any Council Data and other confidential material provided by the Council pursuant to the Contract or by any user of the Services otherwise than for the performance of the Contract save as may be agreed by the Council or required by law.

For the avoidance of doubt, confidential information shall not include (a) any information obtained from a third party who is free to divulge such information; (b) any information which is already in the public domain otherwise than as a breach of this Contract; or (c) any information which was rightfully in the possession of a party prior to the disclosure by the other party and lawfully acquired from sources other than the other party.

21.2 The Service Provider shall take all necessary precautions to ensure that confidential information is only made available to Staff on a “need to know” basis and shall ensure that such Staff are aware of and comply with the confidentiality obligations under the Contract.

22 Indemnity  
  
The Service Provider shall indemnify and keep indemnified the Council from and against any and all claims, demands, proceedings, actions, damages, costs, expenses, loss and liability arising from a Default, save to the extent that it arises from any default or negligence of the Council or its employees provided always, for the avoidance of doubt, that this does not extend to any loss of profits suffered by the Council.

23 Insurance

23.1 Without prejudice to Condition 22, the Service Provider shall at all times maintain insurance cover with a reputable company, as follows:

23.1.1 public liability insurance (minimum of £5,000,000 (five million) per claim);

23.1.2 employers liability insurance (minimum of £10,000,000 (ten million) per claim);

23.1.3 trustee liability insurance in the sum specified in the Particulars;

23.1.4 fidelity guarantee in the sum specified in the Particulars;

23.1.5 professional indemnity insurance in the sum specified in the Particulars which insurance shall be maintained for no less than 12 years where the Contract is executed as a deed and otherwise for no less than 6 years after the end of the Contract Period;

23.1.6 clinical negligence insurance where the provision or non-provision of any part of the Services (or any other services under this Contract) may result in a clinical negligence claim in the sum specified in the Particulars which insurance shall be maintained for no less than 12 years where the Contract is executed as a deed and otherwise for no less than 6 years after the end of the Contract Period; and

23.1.7 sexual abuse and molestation public liability insurance where the provision of any part of the Services (or any other services under this Contract) may result in a sexual abuse or molestation claim in the sum specified in the Particulars which insurance shall be maintained for no less than 12 years where the Contract is executed as a deed and otherwise for no less than 6 years after the end of the Contract Period.

23.2 The Service Provider shall supply to the Council annually and at any other time within 14 days of request a copy of all insurance policies, cover notes, premium receipts or such other documents (including evidence of membership of NHS Litigation Authority where applicable) as may satisfy the Council that such insurance is in place.

23.3 The Service Provider shall give immediate notice to the Council in the event of any incident in connection with the Services which causes any personal injury or damage to property and which may be the subject of a claim under the Council’s insurance and shall give all information and assistance that the Council’s insurers may require and shall not make any admission without the written consent of the Council’s insurers. The Service Provider shall permit the Council’s insurers to take proceedings in the name of the Service Provider to recover compensation in respect of any matter covered by the Council’s insurers. This Condition 23.3 is without prejudice to Condition 22.

23.4 The Service Provider shall immediately notify the Council if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Rights in connection with the performance of the Contract.

24 Publicity and Advertising

24.1 The Service Provider shall not without prior consultation with the Council seek any publicity or, without prior notification, make any announcement to the press or respond to press enquiries relating to the Services and shall, where reasonably practicable, agree joint press releases with the Council.

24.2 If so requested by the Council the notepaper and other written material of the Service Provider and its sub-contractors relating to the delivery of the Services shall carry only logos and markings approved by the Council. This may include, but shall not be limited to, such banner or logo as the Council shall use to identify the Services from time to time. All publicity and marketing material produced by the Service Provider (or its sub-contractors) in relation to this Contract shall be submitted to the Council for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.

25 Assignment and Sub-Contracting

25.1 The Service Provider shall not assign the benefit or advantage of the Contract in whole or in part.

25.2. The Service Provider shall not sub-contract the provision of the Services to any person to whom any of the mandatory exclusion criteria set out at Regulation 57 of the Public Contracts Regulations 2015 apply.

25.3. Without prejudice to Condition 25.2, the Service Provider shall not sub-contract the provision of the Services to any person without the written consent of the Council and should such consent be given it shall not relieve the Service Provider from any liability or obligation under the Contract and the Service Provider shall be responsible for the acts, omissions, defaults or neglect of any sub-contractor and its agents or employees in all respects as if they were the acts, omissions, defaults or neglect of the Service Provider.

25.4. Where the Council gives consent to the Service Provider sub-contracting the Services (or any part of the Services) under Condition 25.3, such consent shall be limited to the matters within the scope of that permission and the Service Provider shall not proceed unless it has satisfied any matters required by the Council as a condition of grant of its consent.

25.5 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

25.5.1 provisions having the same effect as Conditions 6.4 to 6.6 of this Contract (**“Sub-Contractor Payment Provisions”**); and

25.5.2 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 6.4 to 6.6, Condition 25.6 and this Condition 25.5 of this Contract.

25.6 Where the Service Provider enters into a Sub-Contract the Service Provider shall comply with the Sub-Contractor Provisions subject to compliance by the Sub-Contractor with the Sub-Contract. Without prejudice to any other right or remedy of the Council under this Contract the Council may withhold payment of the Contract Price to the extent the Service Provider fails to comply with this Condition 25.6.

25.7 Without prejudice to Condition 25.5, where the Service Provider enters into a Sub-Contract such Sub-Contract must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable and the Service Provider shall procure that the sub-contractor complies with such terms.

25.8 In Conditions 25.5 to 25.7 “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

26 No Agency/Employment/Partnership

Nothing in this Contract shall be construed as creating a legal partnership or contract of employment or a relationship of principal and agent between the Council and the Service Provider and the Service Provider shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the Council and nor shall the Service Provider hold itself out as having authority to bind the Council and shall ensure that Staff do not hold themselves out likewise.

27 Service of Notices

27.1 Any demand or notice required to be given under the Contract shall be sufficiently served if:

27.1.1 served personally on the addressee;

27.1.2 sent by prepaid first class recorded delivery post to the registered office or last known address of the Service Provider where notice is required to the Service Provider and, unless otherwise set out in the Particulars or notified by the Council in accordance with this Condition 27.1, to the name of the Council’s Contact, County Hall, Oxford OX1 1ND where notice is required to the Council; or

27.1.3 subject to Condition 27.2, emailed to the address of the relevant party set out in the Particulars or such other address as the party may from time to time notify to the other party in accordance with this Condition 27.1.

27.2 Demands or notices served by email shall only be valid if the demand or notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in Condition 27.1.1 or 27.1.2 within two Working Days.

27.3 Any demand or notice served in accordance with:

27.3.1 Condition 27.1.1 shall be deemed to have been served on the date of delivery if it is delivered before 4pm on a Working Day and otherwise on the next Working Day;

27.3.2 Condition 27.1.2 shall be deemed to have been served two Working Days from the date of posting;

27.3.3 Condition 27.1.3 shall be deemed to have been served on the date of delivery if it is sent before 4pm on a Working Day and otherwise on the next Working Day unless in either case an error message is received.

28 Termination

28.1 The Council may terminate the Contract by notice in writing, such notice to have effect from the date specified in it, and recover from the Service Provider the amount of any loss resulting from such termination if the Service Provider or any of its Staff (in all cases whether or not acting with the Service Provider’s knowledge):

28.1.1 commit a Prohibited Act, or

### 28.1.2 give any financial or other advantage to any person working for or engaged by the Council.

28.2 If the Service Provider:

28.2.1 commits a material Default and the Service Provider has not remedied the Default to the satisfaction of the Council within 20 days or such other shorter or longer period which may be specified by the Council after issue of a written notice specifying the Default and requesting it to be remedied; or

28.2.2 commits a material Default which is not capable of remedy; or

28.2.3 commits a Default on a persistent or repeated basis whether in respect of the same or different obligations of the Service Provider under the Contract and whether or not rectified; or

28.2.4 (i) fails to obtain any Consent;

(ii) loses any Consent; or

(iii) has any Consent varied or restricted,

the effect of which might reasonably be considered by the Council to have a material adverse effect on the provision of the Services; or

28.2.5 has any necessary registration cancelled by the CQC or other regulatory body as applicable; or

28.2.6 is an individual or a firm and a petition is presented for the Service Provider’s bankruptcy or a criminal bankruptcy order is made against the Service Provider or any partner in the firm, or the Service Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or an administrator is appointed to manage the Service Provider’s affairs; or

28.2.7 is incorporated and passes a resolution for its winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation the Service Provider or any person gives or files notice of intention to appoint an administrator or such an administrator is appointed, or the court makes a winding-up order, or the Service Provider makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

28.2.8 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

28.2.9 ceases to carry on its business or disposes of all its assets or ceases to carry on a substantial part of its business or disposes of a substantial part of its assets which in the reasonable opinion of the Council would materially affect the delivery of the Services; or

28.2.10 undergoes a change of control and for this purpose where the Service Provider is a company, there is a change of control if the majority of shares carrying a right to vote in the Service Provider or its holding company are acquired by a person who is not at the date of the Contract a major shareholder (“holding company” having the same meaning as in section 1159 of the Companies Act 2006) save that if there is a change of control which is only a change from one subsidiary company to another (“subsidiary company” having the same meaning as in section 1159 of the Companies Act 2006) then that shall be deemed not to be a change of control for the purposes of this Condition 28.2.10; or

28.2.11 is subject to any event or proceedings in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 28.2.7 to 28.2.10; or

28.2.12 is convicted (or any member of Staff is convicted) of a serious criminal offence related to the Service Provider’s business or professional conduct;

28.2.13 commits (or any member of Staff commits) an act of grave misconduct in the course of the Service Provider’s business;

28.2.14 is in breach of the warranty at Condition 2.3;

28.2.15 has provided any information as part of its Tender including that given in the questionnaire or given information to the Council at any time prior to the Council entering into a binding contract with the Service Provider which proves to be materially untrue or incorrect; or

28.2.16 has a contract for services which are similar to the Services terminated by the Council due to the Service Provider’s default,

then in any such circumstances the Council may, without prejudice to any other rights or remedies of the Council, terminate the Contract in whole or in part (whereupon a corresponding reduction in the Contract Price shall be made) by notice in writing, such notice to have effect from the date specified in it.

28.3 Where the Contract is terminated in whole or in part by the Council under this Condition 28:

28.3.1 the Council shall be entitled to recover from the Service Provider the amount of any loss resulting from the termination including, but not limited to, the cost of arranging alternative provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period in excess of that which would have been paid to the Service Provider (such additional expenditure calculated on the basis that there had been no early termination of the Contract); and

28.3.2 the Council shall cease to be under any obligation to make any payment relating to the terminated services until the costs, loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and the Council shall then be entitled to deduct from any sum or sums due from the Council to the Service Provider under the Contract the amount of such costs, loss and/or damage.

28.4 The Council shall be entitled to suspend the provision of the Services or part thereof and carry out itself, or engage a third party to carry out, the Services or any of them on a temporary basis (without terminating the Contract) on the occurrence and for the duration of a Suspension Event or where the Service Provider is in Default and the Service Provider shall be liable for any costs incurred by the Council in this regard.

28.5 If the Council commits a material breach of the Contract which:

28.5.1 the Council has not remedied to the satisfaction of the Service Provider within 20 days or such longer period which may be specified by the Service Provider after issue of a written notice specifying the material breach and requesting it to be remedied; or

28.5.2 is not capable of remedy,

then in any such circumstances the Service Provider may, without prejudice to any other rights or remedies of the Service Provider terminate the Contract by notice in writing, such notice to have effect from the date specified in it.

28.6 The Council shall be entitled to terminate the Contract or reduce the Services on written notice to the Service Provider where the Council’s funding is reduced (including, for the avoidance of doubt, totally withdrawn). For the avoidance of doubt, no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.

28.7 If any of the circumstances allowing the Council to terminate the Contract pursuant to Conditions 28.2.4 to 28.2.15 inclusive arise the Service Provider must promptly notify and provide all related information reasonably required by the Council to the Council.

29 Break  
  
The Council shall have the right to terminate the Contract in whole or in part at any time by giving not less than 6 months’ written notice to the Service Provider unless otherwise specified in the Particulars. For the avoidance of doubt, no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.

30 Recovery and Handover on End of Contract and Effect of Termination

30.1 The expiry or termination of this Contract for whatever reason shall not affect any provisions of the Conditions capable of surviving or operating in the event of termination of the Contract (including without limitation Special Condition SC 17.2, Conditions 8.1, 8.11, 9.2-9.5, 16.4, 16.6, 23.1.5-23.1.7, 23.4, 28.3, 28.6 and 30 and Schedule 8) and termination of this Contract shall be without prejudice to the rights and remedies of one party against the other party.

30.2 On expiry or termination of the Contract howsoever arising, the Service Provider shall, unless the Council requests destruction of the Council Data, make arrangements with the Council to forthwith deliver to the Council, at no additional cost:

30.2.1 all Council Data. Where the Council Data is delivered to the Council it shall be delivered in such usable format as the Council may reasonably specify, or in the case of IT data, in Common Data Interchange Format (CIF) unless otherwise specified by the Council;

30.2.2 all the property issued or made available to the Service Provider by the Council (including, but not limited to, materials, clothing, equipment, vehicles, documents, information, access keys) in its possession or under its control or in the possession or under the control of any Staff.

Where the Council requests destruction of the Council Data, the Service Provider shall securely destroy and permanently delete the Council Data forthwith and shall provide a certificate signed by an authorised signatory confirming that such materials have been destroyed.

30.3 When this Contract expires or terminates (for whatever reason), the Council may, for a period of six (6) months thereafter, require the Service Provider to use all reasonable endeavours to assist the Council in the transfer of the provision of the Services to either the Council or a third party nominated by the Council and give the Council and/or such third party nominated by the Council such help as may be reasonably necessary to enable such transfer to take place smoothly. This shall be at the Service Provider’s cost where the Contract is terminated under Condition 28.1 or 28.2 above and otherwise at the Service Provider’s then current rates, unless otherwise agreed.

31 Business Continuity and Force Majeure

31.1 Without prejudice to Condition 4.2, the Service Provider shall ensure it has appropriate business continuity arrangements in place to deliver the Services without disruption and shall implement such arrangements in the event of any Force Majeure Event, emergency, disaster or other circumstance which affects the ability of the Service Provider to provide the Services.

31.2 If either party is affected by a Force Majeure Event it shall immediately notify the other party in writing of the matters constituting the Force Majeure Event and shall keep that party fully informed of any relevant change of circumstances whilst such Force Majeure Event continues.

31.3 The party affected by the Force Majeure Event shall take all reasonable steps available to it to minimise the effects of the Force Majeure Event on the performance of its obligations under the Contract.

31.4 Save as provided in Conditions 31.6 and 31.7, a Force Majeure Event shall not entitle either party to terminate the Contract and neither party shall be in breach of the Contract, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to a Force Majeure Event.

31.5 If the party affected by a Force Majeure Event fails to comply with any of its obligations under Conditions 31.1, 31.2 or 31.3 above then no relief for the Force Majeure Event, including the provisions of Condition 31.4 above, shall be available to it and the obligations of each party shall continue in force.

31.6 If a Force Majeure Event results in the suspension of the provision of the Services, the Council shall not be obliged to pay the Contract Price until such time as such suspension has ceased. If the provision of the Services is partly suspended, the Council shall pay a pro rata amount for those Services it has received.

31.7 If in the Council’s reasonable opinion a Force Majeure Event results in disruption to more than 50% of the Services provided and such disruption continues for a continuous period of a month or longer (unless otherwise specified in the Particulars), the Council shall be entitled to terminate the Contract on giving one week’s notice to the Service Provider with termination taking effect upon the expiry of such notice.

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

31.9 The Service Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.

31.10 In the event of industrial action by the Staff, the Service Provider shall seek prior written approval from the Council to its proposals to continue to perform its obligations under this Contract.

31.11 If the Service Provider’s proposals referred to in Condition 31.10 are considered insufficient or unacceptable by the Council acting reasonably, then this Contract may be terminated with immediate effect by the Council by notice in writing.

32 Severance  
  
If any of these Conditions become or are declared by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way impair or affect any other provisions all of which shall remain in full force and effect and the parties shall negotiate in good faith to amend such provision so that, as amended, it is valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

33 Disputes and Mediation

33.1 A dispute relating to the provision of the Services, the Contract Price, or payments which cannot be resolved in the first instance between the Service Provider’s Representative and the Council’s Contact within a month shall be referred to the persons specified in the Particulars.

33.2 Nothing in this Condition 33 shall prejudice the right of either party to apply to the court for interim relief to prevent the violation by the other party of any proprietary interest or any breach of that party’s obligations.

33.3 Services to be provided under the Contract shall not cease or be delayed by this dispute resolution procedure.

33.4 If any dispute cannot be resolved between the Service Provider and the Council within a month of referral as set out in Condition 33.1, then the Service Provider or the Council may refer the matter to mediation in accordance with the Centre for Effective Dispute Resolution’s (**“CEDR”**) Model Mediation Procedure.

33.5 To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this Condition 33. The initiating party shall send a copy of such request to CEDR.

33.6 If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue.

33.7 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation either party may commence proceedings.

33.8 For the avoidance of doubt, the use of the disputes procedure will not delay, or take precedence over, any use of the default or termination procedures.

34 Waiver

34.1 The failure of the Council or the Service Provider to exercise any right or remedy shall not constitute a waiver of that right or remedy.

34.2 No waiver shall be effective unless it is communicated to the Council or the Service Provider in writing and expressly stated to be a waiver.

34.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

34.4 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude and are without prejudice to any rights or remedies provided by law, in equity or otherwise.

35 No Fetter

Nothing in the Contract shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its statutory functions.

36 Variations to the Contract

No variation to the Contract shall have any effect unless it is made in writing and signed on behalf of the Council and the Service Provider.

37 The Contracts (Rights of Third Parties) Act 1999

37.1 Other than as set out in Conditions 11.2, 13.3 and 16, the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract, but this does not affect any rights which are available apart from this Act.

37.2 Any amendment to this Contract may be made, including altering or extinguishing any third party rights, without the consent of any third party.