1. AGREEMENT

This is an Agreement made this \_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ between:

**WARRINGTON BOROUGH COUNCIL**, Town Hall, Sankey Street, Warrington, WA1 1UH (the "Council")

and

XXXXXXXXXX of XXXXXXXXXXXX(Registered Company Number XXXXXXX) (the “Provider”)

1. ARTICLES OF AGREEMENT

The Council wishes to have provided the Service as set out in this Contract.

And

The Provider is willing to provide the Service in accordance with the provisions of this Contract.

1. NOW IT IS AGREED

(i) That this Contract constitutes the entire agreement between the Council and the Provider relating to the subject matter of the Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

(ii) The Provider shall provide the Service in accordance with the terms of this Contract for the Contract Period;

(iii) So long as the Provider provides the Service in accordance with this Contract and to the satisfaction of the Council the Council shall make payments to the Provider as provided in the Contract.

1. COMMENCEMENT DATE OF AGREEMENT XXXXXX
2. EXPIRY DATE OF AGREEMENT XXXXXXX

The COMMON SEAL of WARRINGTON BOROUGH COUNCIL

Was hereunto affixed in the presence

Of

IN WITNESS WHEREOF the parties have executed this Contract as a deed the day and year first before written

Executed and delivered as a Deed

for and on behalf of Warrington Borough Council by

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signatory

Executed and delivered as a Deed

by acting **XXXXXXXXXXXXXXXXX**

by a Trustee and Secretary or 2 Directors

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FORM OF CONTRACT**

This Agreement is made up of these Articles of Agreement and the following scheduled documents:

SCHEDULE 1: CONTRACT CONDITIONS

SCHEDULE 2: SERVICE SPECIFICATION

SCHEDULE 3: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

SCHEDULE 4: SCHEDULE FOR JOINT CONTROLLER AGREEMENTS

1. INDEX TO CONTRACT CONDITIONS
2. [Definitions](#Definitions)
3. [Contract Period](#ContractPeriod)
4. Authorised Officer
5. Designated Manager
6. [Contract Standard](#ContractStandard)
7. Monitoring, Access and Information
8. [Confidentiality and Copyright](#Confidentiality)
9. Health and Safety
10. Human Rights
11. [Staff Recruitment Training and Supervision](#Staff)
12. [Employees](#Employees)
13. Sub-Contracting and Assignment of Service
14. [Prevention of Bribery](#Bribery)
15. [Insurance and Indemnity](#Insurance)
16. [Pricing](#Pricing)
17. Payment
18. Variation
19. [Corrective Action](#Corrective)
20. [Termination](#Termination)
21. [Dispute Resolution](#DisputeRes)
22. Complaints
23. [Freedom of Information Act 2000](#FOI)
24. Business Continuity
25. [Local Government Ombudsman](#LGOmbudsman)
26. TUPE
27. [Waiver](#Waiver)
28. Notices
29. Rights of Third Parties
30. Severability
31. [Force Majeure](#ForceMaj)
32. The Governing Law and Jurisdiction
33. Headings
34. Transparency Code
35. Blacklisting
36. [Whistleblowing](#Whisteblowing)
37. Equal Opportunities
38. Computer Data
39. Modern Slavery

CONTRACT CONDITIONS

If there are any inconsistencies between the documents forming the Agreement then these Contract Conditions shall prevail.

1. DEFINITIONS
   1. In the Conditions and in the Articles of Agreement the following expressions shall have the following meaning: -

“Authorised Officer” means the person described in Clause 3

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

“Commencement and Expiry Date” means the dates set out in the Articles of Agreement

“Contract Period” means the period specified in Clause 2

“Contract Price” means the sum specified in Clause 15

“Contract Standard” means the standard specified in Clause 5

“Confidential Information” means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

“Controller, Data Subject, means as defined in the GDPR

Personal Data, Personal Data

Breach, Data Protection Officer”

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy

“Data Protection Impact means an assessment by the Controller of

Assessment” the envisaged processing on the protection of Personal Data.

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

“Data 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.

“Designated Manager” means the person described in Clause 4

“DPA 2018” means Data Protection Act 2018

“Employee” means employees of the Council including trainees

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

“Index” means the All Items Index of the Retail Price Index excluding mortgages (RPIX) issued by the Office for National Statistics or any other Government Department

“Joint Controllers” means where two or more Controllers jointly determine the purposes and means of processing

“LED” means Law Enforcement Directive *(Directive (EU) 2016/680)*

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 3 (Security).

“Prohibited Act”means the following constitute Prohibited Acts:

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

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

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

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

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

“Provider Party” means the Provider's agents and contractors, including each Sub-Contractor.

**“**Provider Personnel” meansall employees, agents, consultants and contractors of the Provider or of any Sub-Contractor.

"Purchase Order" means the order form or document used by the Service User to order the Service from the Supplier and which specifies that these conditions apply to it

“Review Date” means the anniversary of the Commencement Date or the first working day thereafter

“Service” means the provision of the xxxxxxxxxxx service in accordance with the requirements of this Contract and covered by Purchase Orders issued pursuant to this Contract

"Staff" means all persons, including volunteers, involved in the provision of the Service, whether or not the Provider formally employs them.

**“**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 Agreement.

“Sub-Contractor” means the third party that enters into a Sub-Contract with the Provider.

“Sub-processor” means any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement

“Transparency Code” means the Local Government Transparency Code 2014 as issued and updated from time to time.

“Working days” means Monday to Friday each week of the year, save for Public Holidays.

* 1. Words imparting the singular also include the plural and vice versa where the context requires
  2. A reference to any Act of Parliament or any Order, Regulation, Statutory Instrument, Code of Practice, Guidance or the like shall be deemed to include a reference to any amendment or re-enactment of the same.

1. CONTRACT PERIOD
   1. This Contract commences on the Commencement Date and shall continue to be the governing Agreement (subject to variation and termination as provided for in this Agreement) for the Service provided by the Provider until the Expiry Date.
   2. The Council may by giving not less than six months’ written notice prior to the Expiry Date renew the Agreement for further periods of one year, not exceeding two years beyond the expiry date, on similar or changed terms following agreement with the Provider as to such renewal and terms or by variation in accordance with Clause 17 of schedule 1 of this Contract, but excluding this clause 2.2.
2. AUTHORISED OFFICER
   1. The Authorised Officer who shall let and supervise the Contract on behalf of the Council shall be XXXXXXXXXXXX, Warrington Borough Council, (who may act through designated representatives.)
3. DESIGNATED MANAGER
   1. The Provider shall appoint a Designated Manager who shall carry overall responsibility for day to day contract performance on behalf of the Provider and shall hold a position of sufficient seniority to be able to make policy level decisions on behalf of the Provider.
   2. The Provider shall confirm in writing to the Council, the identity, address and telephone numbers of the person appointed as Designated Manager and of any subsequent appointment and of any authorised deputy.
   3. Any notice, information, instruction or other communication given or made to the Designated Manager shall be deemed to have been made to the Provider.
4. CONTRACT STANDARD
   1. The Provider shall at all times comply with all relevant statutory obligations.
   2. The Provider shall operate the Service in a manner, which is consistent with the policies of the Council and shall consult the Council's Authorised Officer or his representative as to the application of these policies.
   3. The “Contract Standard” means such standard as complies in each and every respect with all relevant provisions of the Contract and where and to the extent that no criteria are stated in the Contract the standard is to be to the entire satisfaction of the Authorised Officer.
5. MONITORING, ACCESS AND INFORMATION
   1. The Provider shall allow the Authorised Officer reasonable access to any premises under the Provider's control on which the Service is provided for the purposes of monitoring the Contract Standard, including the carrying out of spot checks.
   2. The Provider shall institute, maintain and demonstrate a properly documented system of quality assurance to ensure that the Contract Standard is maintained at all times. This system shall be open to inspection by the Authorised Officer.
   3. The Provider shall co-operate with the Authorised Officer and shall comply with all reasonable requests from the Authorised Officer in monitoring and evaluating the quality value for money and the effectiveness of the Provider's provision of the Service.
   4. The Authorised Officer may from time to time examine the Provider’s financial position in order to assure himself of the ability of the Provider to continue to provide the Service. Such information shall only be used by the Council and its Officers for the purposes set out in this Clause 6 and shall not be used for any purpose relating to the determination of prices for the Service under this or any other like Agreement.
   5. This Contract shall be reviewed by both the Provider and the Council annually or at any other time as agreed between the parties.
   6. In the event of the Provider being unable to provide the Service or any part of it the Provider shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration of such inability. Nothing in this Clause shall alter the Provider’s obligation to provide the Service.
6. CONFIDENTIALITY AND COPYRIGHT
   1. All information and Data including Personal Data obtained and used in connection with the Service shall remain the property of the Council and shall be processed for the sole purpose of undertaking the providers obligations under this Contract and for no other purpose
   2. The Provider shall on expiration or early determination of this Contract return all information and Data including Personal Data to the Council within seven days of such expiry or determination
7. HEALTH AND SAFETY
   1. The Provider shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974, The Management of Health & Safety at Work Regulations:1999 and of any other Acts, Regulations or Orders or rules of law pertaining to health and safety**.**
   2. The Provider shall comply with its general statement of safety policy, which must include all services. The Provider shall forthwith nominate a person to be responsible for health and safety matters.
   3. The Provider shall ensure that its employees comply with the Council’s general statement of safety policy (which shall be supplied by the Authorised Officer on request) and with the lawful requirements of the Council’s Health & Safety Officer.
8. HUMAN RIGHTS
   1. The Provider acknowledges that in performing its obligations under this Contract it may be a public authority for the purposes of the Human Rights Act 1998, and that it is unlawful to exercise functions deemed to be of a public nature in a way that is incompatible with those rights contained in the European Convention of Human Rights and incorporated into English Law by the Human Rights Act 1998.
   2. In providing the Service the Provider shall throughout the Contract Period and at its own cost be subject to the same duty in respect of Human Rights in the same way as if it were the Council.
   3. The Provider shall undertake or refrain from undertaking such actions as the Council may request so as to enable the Council to discharge its duty under the Human Rights Act 1998
9. STAFF RECRUITMENT, TRAINING & SUPERVISION
   1. The Provider shall be responsible for ensuring an appropriate infrastructure to deliver the Service. It shall be responsible for the staffing, management and co-ordination of the Service provided by the Provider, including the recruitment, supervision and training of Staff and volunteers.
   2. Information on convictions shall be required by way of an application form. The Provider shall not employ any person who discloses any convictions without first obtaining written approval from the Authorised Officer or his/her representative.
   3. The Provider shall ensure that recruitment processes comply with all current appropriate registration standards and criteria to ensure Staff are appropriate for working with Clients.
   4. The Provider shall ensure that potential employees are aware that the position they are applying for is exempt from the provisions of the Rehabilitation of Offenders Act 1974, (Exceptions Order) 1975, and they shall therefore declare all criminal convictions, even if in other circumstances such convictions would be regarded as spent.
   5. The Provider shall ensure that information on convictions is requested by way of an application form. The Provider shall not employ any person who discloses any convictions without first obtaining written approval from the Authorised Officer or his/her representative.
   6. The Protection of Freedoms Act 2012 made provision for the setting up of the Disclosure and Barring Service (DBS) to implement Part V of the Police Act 1997 the purpose of which is to improve access to criminal records for the purpose of making employment related and volunteering checks. There are two levels of disclosure which are relevant to people working within the service
   7. The Provider shall ensure that Staff who commence working in the Service who deal with Client’s will be subject to checking through the DBS and have full POVA and/or POCA checks completed as relevant. There are two levels of disclosure which are relevant to people working in and around the care industry. These are standard and enhanced disclosure.
      1. Standard Disclosure – Applies to Staff whose normal duties are concerned with the provision of care services to Clients. In this context care services means accommodation and nursing or personal care in a care home or own home which enables the person to live independently.
      2. Enhanced Disclosure – Applies to Staff whose normal duties involve regular caring for, training supervising or being in sole charge of persons aged under 18 or vulnerable Clients.
   8. In this Contract all Staff whose normal duties involve carrying out work with Clients, shall require an enhanced disclosure.
   9. The Provider shall ensure that:
      1. All Staff have had the appropriate disclosure prior to commencing employment and that they have complied fully with the DBS Code of Practice.
      2. Staff provide a full employment history, including periods of unemployment and proof of qualification. Any gaps in employment history must be fully investigated.
      3. Two written references are received direct from the referee for all Staff appointments. One of the references must be from the current or most recent employer. Relevant concerns raised in a reference shall be pursued.
      4. Staff recruitment and selection procedures include methods of testing for aptitude, sound judgement, a realistic understanding of Clients’ needs, and ability to withstand personal stress and a willingness to discuss sensitive personal issues and receive support.
      5. Staff undertake a probationary period during which time they are assessed and supported as to their suitability prior to being confirmed in post.
      6. Staff have clear written terms and conditions of employment and a job description.
   10. The Provider shall have a working supervision system for Staff that is conducted in accordance with professional/vocational registration requirements.
10. STAFF
    1. The Provider shall employ sufficient persons to ensure that the Service is provided at all times and in all respects to the Contract Standard.
    2. The Provider shall ensure that every person employed in the provision of the Service is at all times properly and sufficiently qualified, competent, careful, skilled, honest, experienced, instructed and supervised as the case may be with regard to the Service and in particular: the tasks such person has to perform; all relevant provisions of the Contract; all relevant policies, rules, procedures, standards and statutory requirements.
    3. Should the Provider become aware of any incident, offence, alleged offence or conviction which calls into question a member of Staff's suitability to perform their duties, then the Provider shall not continue to employ the individual within the Service.
11. SUB-CONTRACTING AND ASSIGNMENT OF THE SERVICE
    1. The Council shall be entitled to assign the benefit of this Contract to any of its statutory successors and shall give written notice of any assignment to the Provider.
    2. The Provider shall not assign this Contract or any part of it except with the express written permission of the Council (such permission shall not be unreasonably withheld or delayed) and the reasons for any refusal shall be supplied to the Provider in writing at the time of notification of any refusal.
    3. The Provider shall not sub-contract the Service or any part of it except with the express written permission of the Council (such permission not to be unreasonably withheld or delayed).
    4. The parties agree that upon any assignment there shall occur a reciprocal release of each party’s rights and obligations to the other under this Contract save for liability in respect of any antecedent breaches.
12. PREVENTION OF BRIBERY
    1. The Provider:
       1. shall not, and shall procure that any Provider Party and all Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;
       2. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
    2. The Provider shall:
       1. if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
       2. within seven Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this clause 13 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
    3. The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Provider Party or Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
    4. If any breach of clause 13.1 is suspected or known, the Provider must notify the Council immediately.
    5. If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 13.1, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for five years following the expiry or termination of this Agreement.
    6. The Council may terminate this Agreement by written notice with immediate effect if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 13.1. [In determining whether to exercise the right of termination under this clause 13.5, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:
       1. with the authority; or,
       2. with the actual knowledge;

of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or

in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.]

* 1. Any notice of termination under clause 13.6 must specify:
     1. the nature of the Prohibited Act;
     2. the identity of the party whom the Council believes has committed the Prohibited Act; and
     3. the date on which this Agreement will terminate.
  2. Despite clause 20 (Dispute Resolution), any dispute relating to:
     1. the interpretation of clause 13; or
     2. the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

* 1. Any termination under clause 13.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

1. INSURANCE AND INDEMNITY
   1. The Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of, or in any way arising out of the provision of the Service in relation to the injury to, or death of, any person and loss of, or damage to, any property including property belonging to the Council except and to the extent that it may arise out of the act default or negligence of the Council its employees or agents not being the Provider or employed by the Provider.
   2. Without thereby limiting its responsibilities under this Clause 14, the Provider shall insure with a reputable insurance company its liabilities under Clause 14.1. The Council and the Provider will work together to resolve any questions of suitability of the Provider's chosen insurer raised by the Council.
   3. The insurance in respect of any personal injury to, or death of, any person arising under a contract of service with the Provider and arising out of an incident occurring during the course of such person’s employment shall comply with the Employer’s Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988 and any statutory orders made thereunder.
   4. The levels of insurance required to meet the requirements of Clause 14.3 Employers Liability will be £10,000,000.
   5. For all claims other than under Clause 14.3 & 14.4 against which this Clause 14 requires the Provider to insure, typically Public Liability Insurance, the minimum insurance cover shall be the sum of £5,000,000 or such greater sum as the Provider may choose in respect of any one incident and the Provider’s insurance policy effecting such cover shall have the interest of the Council endorsed thereon, or shall otherwise expressly by its terms confer its benefits upon the Council.
   6. The Provider shall ensure all certificates from its insurers or brokers confirm that the Provider’s insurance policies comply with this Clause 14 and the Provider shall supply to the Council on request copies of all insurance policies, cover notes, premium receipts and other necessary documents.
   7. The Council shall indemnify and keep indemnified the Provider against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in any way arising out of the provision of the Service in relation to the injury to, or death of, any person, or loss of, damage to, any property including property belonging to the Provider to the extent that it may arise out of the act, default, or negligence of the Council, its employees or agents other than the Provider its employees and agents
2. PRICING
   1. The Contract Prices as detailed in Schedule ??? shall cover all aspects of the Service as detailed herein. The Contract price shall be exclusive of VAT and all other taxes. The Contract Price from XXXXXX 2012 to XXXXXXX 2013 shall be XXXXXXXXXXXXX.
   2. The Contract Price shall be reviewed on the 1st April each year, and in any event a minimum of 12 months after the commencement of this Agreement. The Provider shall be offered an increase or decrease the maximum of which shall be determined by the Authorised Officer and shall take into account:
      1. The purchasing power of the Council
      2. Agreed changes in the Service Specification
      3. Significant changes in the pattern of service delivery
   3. Due consideration shall be taken of any changes in the index of retail prices including changes in the earnings index. The Provider may choose to accept an increase less than the quoted maximum. Any adjustment in Price shall be implemented from the beginning of the first accounting period of the new financial year.
   4. The Provider shall be advised within one month of the Review Date if the Council is to exercise its discretion to increase the Contract Price, and where an increase is to be allowed, the actual increase shall be notified to the Provider as soon as is reasonably practicable following the Council's decision.
   5. If on the Review Date the cost of any item to the Provider is varied (by reason of any variation in the cost of labour, materials, fuel, transport or in the rate of any relevant tax or otherwise) the price for such an item payable to the Provider for its supply under this agreement shall be varied by the same amount as the cost to the Provider has varied., provided that:-
      1. any claim by the Provider for a variation in price shall be proved to the satisfaction of the Council by the production of such evidence as the Council shall reasonably require.
      2. any agreement for a variation in price shall be recorded in writing and signed on behalf of the Council, and shall take effect on the date agreed.
      3. a variation in price shall only apply to orders placed after it has taken effect, unless otherwise agreed by the Council.
      4. until a variation in place has been agreed the Provider shall ensure continuity of supply of all Items included in this Agreement and shall not delay their delivery.
3. PAYMENT
   1. Payment of the Contract Price shall be made by the Council to the Provider 30 days in arrears upon receipt of an invoice from the Provider.
   2. Where the Contractor submits an invoice to the Council in accordance with paragraph 16.1, the Council will consider and verify that invoice in a timely fashion.
   3. The Council shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.
   4. Where the Council fails to comply with paragraph 1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of paragraph (2) after a reasonable time has passed.
   5. Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub- Contract:
      1. Provisions having the same effect as clauses 16.1 to 16.4 of this Agreement; and
      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 clauses 16.1 to 16.4 of this Agreement.
4. VARIATION
   1. These Contract Conditions and the Service Specification may not be varied unless a variation, expressed to be such in accordance with this Clause 17, is agreed in writing and signed by both the parties.
5. CORRECTIVE ACTION
   1. If the Provider fails to provide the Service in a manner that complies with the provisions of this Contract (but not so as to entitle the Council to proceed for termination pursuant to Clause 19) or where the Council fails to comply with the provisions of this Contract the party not in default will serve upon the party alleged to be in default a notice in writing stating: -
      1. The precise manner in which the party is in default.
      2. The action which (in the opinion of the party not in default) the party in default must take to remedy the default.
      3. A reasonable period (bearing in mind the nature of the default) in which the party in default should take the action referred to in Sub-Clause 18.1 (ii)
   2. If following the expiry of the time referred to in a notice served pursuant to Clause 18.1 the Provider remains in default in the manner so specified the Council may proceed to terminate the Agreement in relation to any Service User affected by such default or in the case of the Council being in default the Provider may terminate the Services in relation to any Service User affected by such default.
   3. If in the opinion of the Council the Provider fails satisfactorily to provide the Service to the Contract Standard, then without prejudice to any other right or remedy the Council may have and, at the Authorised Officer’s election, with or without terminating this Contract the Council may:
      1. Itself provide or procure the provision of the relevant part of the Service from a third party until in the Council’s reasonable view the Provider has remedied the breach; and/or
      2. Deduct from any sums due or otherwise charge to the Provider the reasonable cost of any Service so provided together with relevant administrative costs.
      3. Suspend the allocation of new work to the Provider
   4. Where the Council remains in default under the terms of this Contract the Provider shall be entitled to payment from The Council
6. TERMINATION
   1. Either party may terminate this Contract by giving not less than 3 months’ notice in writing to the other.
   2. The Council may terminate this Contract forthwith by notice in writing to the Provider if the Provider fails to correct any item on a notice issued in accordance with Clause 18 or fails to correct all items on such list on two or more occasions**.**
   3. The Council may terminate this Contract by notice in writing to the Service Provider without following the procedure set out in Clause 18 if the Provider is in material breach of contract which in the reasonable opinion of the Council has seriously prejudiced the interests of the Council or the Service Users.
   4. The Provider may terminate this Contract immediately by written notice to the Council if the Council commits a breach of any of its obligations under this Contract provided that where the breach is capable of remedy written notice has been served on the Council specifying the breach and requiring it to be remedied within a reasonable period and the breach remains un-remedied at the end of such period.
   5. The Council may terminate this Contract immediately by written notice to the Provider if the Provider shall become bankrupt or have a receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a Court shall make an order to that effect or if the Provider shall enter into any composition or arrangement with its creditors or shall become insolvent.
   6. The council may terminate this Contract where 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 Regulations
   7. The council may terminate this Contract where the contractor had, at the time of contract award, been in one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
   8. the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties 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 TFEU.
   9. Any termination of this Contract howsoever caused shall not affect or prejudice any accrued rights or liabilities of either party arising under this Contract.
7. DISPUTE RESOLUTION
   1. If there is a dispute between the Provider and the Council concerning the interpretation or operation of this Contract, then either Party may notify the other in writing that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Designated Manager to resolve, negotiating on the basis of good faith.
   2. If after fourteen [14] Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 20.1 (above), the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to a meeting of the relevant Executive Director of the Council, (or a person appointed by him to act on her behalf) and a Senior Manager of the Provider, to resolve, negotiating on the basis of good faith.
   3. If after twenty-one [21] Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 20.2 (above), the dispute has not been resolved then the Parties agree to enter into Early Neutral Evaluation in accordance with the guidance issued by the Centre for Effective Dispute Resolution (‘**CEDR**’).
   4. The Parties accept that Early Neutral Evaluation will (unless the Parties agree otherwise) produce a non-binding result that aims to provide an objective and independent assessment of the merits of a matter in dispute.
   5. The Parties agree to pay the fee for Early Neutral Evaluation in equal shares.
   6. At any time before the issue of the Evaluator’s Recommendation the Parties may agree to refer the Dispute to mediation. In that case each of the Parties notifies the Evaluator and CEDR, and the Early Neutral Evaluation is suspended. If the Dispute is settled by mediation, the Early Neutral Evaluation comes to an end and the Parties settle the fees and expenses of the Evaluator and of CEDR. If the Dispute is not settled by mediation, the Early Neutral Evaluation resumes.
   7. If matters are referred to Mediation the Parties will act, in accordance with the CEDR Model Mediation Procedure 2001 (the ‘**Model Procedure’**) or such later edition as may be in force from time to time.
   8. The Council and the Provider shall seek to agree the identity of a Mediator with an appropriate professional background and or expertise. If the Council and the Provider do not agree on the identity of the Mediator then either Party may request CEDR to appoint one.
   9. The Parties shall seek to agree the specific matters in dispute and prepare an agreed document for the Mediator of the matters in dispute.
   10. The procedure in the Model Procedure will be amended to take account of:
       1. any relevant provisions in this Contract; or
       2. any other agreement which the Council and the Provider may enter into in relation to the conduct of the mediation ("**Mediation Agreement**").
   11. Both Parties must:
       1. use their best endeavours to ensure that the mediation starts within twenty [20] Working Days of service of the notice referred to in Clause 20.3 (above); and
       2. pay the Mediator’s fee in equal shares (unless the Provider can show to the Councils satisfaction that this would cause it serious financial difficulty in which case the Council shall consider whether it should pay the Mediator’s fee in full).
   12. At the conclusion of the Mediation if the Parties have reached an agreement the Mediator will facilitate the drawing up of a settlement agreement which shall be binding on the Parties, but if the dispute has not been settled by Mediation within ten [10] Working Days of the Mediation starting then either Party may commence litigation proceedings (but not before then).
   13. Neither Party shall be precluded by Clause 20.7 (above), from taking such steps in relation to Court proceedings as the Council or the Provider (as the case may be) may deem necessary or desirable to protect their respective positions. This shall include:
       1. issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; and
       2. applying for interim relief.
   14. The use of the dispute resolution procedures set out in this Clause 20, (Dispute Resolution)shall not delay or take precedence over the provisions for termination set out in Clause 18 (Corrective Action) and Clause 19 (Termination).
8. COMPLAINTS
   1. The Provider shall have and implements a written policy and procedural guidance on representations and complaints in accordance with legal requirements.

1. FREEDOM OF INFORMATION ACT 2000
   1. The Provider shall provide all reasonable assistance to enable the Council to comply with any request received under the Freedom of Information Act 2000 (“the FOI Act”), including when it becomes applicable to Police Authorities, and the guidance contained in the code of Practice issued under Section 45 of the FOI Act.
   2. In the event that any request made under the FOI Act relates to the Provider, the services, the contract price or any other matter which falls under the auspices of this agreement, the Council shall consult with the Provider prior to disclosure.
   3. The guiding principle of the Council will be that all information should be disclosed except where it can demonstrate good reason not to disclose. If the Provider wishes to reserve any information from disclosure under the FOI Act it must put forward any information or classes of information which it is wished to have (reserved information) reserved and the grounds of the exemption which relate to the information which may be one of more of the following:
      1. the information constitutes a trade secret and is eligible for exemption under section 43(1) of the FOI Act.
      2. the disclosure of the information would prejudice the commercial interest of any person under section 43(2) of the FOI Act.
      3. the information will be disclosed by the Provider to the Council **and** that the nature of the information, or the circumstances in which it is imparted or the circumstances are otherwise such as to justify the acceptance by the authority of an obligation of confidence in respect of it section 41(1) of the FOI Act.
      4. the information is personal data or otherwise relates to the private life of an individual which is appropriate for protection under section 40 of the FOI Act.
      5. any other specific exemption under the FOI Act.
   4. In relation to all other information the Council shall have an absolute discretion to determine the question of disclosure having consulted with the Provider in accordance with the clause above.
   5. The Provider shall indemnify the Council and hold it harmless from and against all liability, costs, claims, actions, losses, damages and expenses whatsoever arising directly or indirectly as a result of any decision by the Information Commissioner that information classed by the Provider as confidential should be disclosed under the FOI Act.
   6. The Council will not enter into contractual terms which purport to restrict the disclosure of information held by the Council and relating to the contract and will look to reject confidentiality clauses relating to the terms, value and performance wherever possible.
   7. Any request received by the Provider or third party for disclosure of information owned by the Council, such information may include matters relating to, or arising out of the performance of the Agreement, should, without delay, be forwarded to the Council to be dealt with in order to comply with its obligations and legal duties under the FOI Act, within the requisite period (20 working days), and the Provider or third party should assist the Council in responding to the access request.
2. BUSINESS CONTINUITY
   1. The Provider accepts that they have to assist the Council in meeting the Council’s obligations under the Civil Contingencies Act 2004. Under this Contract the Provider agrees to assist the Council in meeting its obligations under this Act.
   2. The Provider shall:
      1. operate a Business Contingencies Policy for as long as this Contract is in force; and
      2. develop and adopt a Business Continuity Plan, (taking into account the Civil Contingencies Act 2004); and
      3. provide the Council with a copy of any such plan at its request.
   3. Failure by the Provider to comply with its obligations under Clause 23.2 (above) may be regarded as a fundamental breach of this Contract.
   4. The Provider acknowledges and accepts that his obligations under this Clause 23 shall include the following, and for the avoidance of doubt this list is non-exhaustive:
      1. undertake regular risk assessments and business impact analysis in relation to this Contract, not less than once every twelve months; and
      2. implement exercise plans, (business continuity plan tests) on a regular basis, but not less than once every two years; and
      3. provide the Council with a written report which summarises the results on the exercise plans in Clause 23.4.2 (above). Such a report should highlight any actions or remedial measures necessary as a result of those exercises.
   5. The Provider shall notify the Council in advance of any Business Continuity Plan Test and the Council reserves the right to attend any such test.
   6. The Council shall have the right to carry out an open audit of the Business Continuity Plan. The Council agrees to give the Contractor at least twenty-four hours’ notice of any such audit. The Provider warrants that the Council shall have unfettered access to and the ability to reproduce and retain any pertinent documentation deemed appropriate by it during any such audit, subject to Clause 7 (Confidentiality and Copyright).
   7. The Council (at its sole discretion) may require the Provider to carry out additional Business Continuity Plan Tests, where the Council deems it necessary. The Council agrees to meet the Provider’s costs in carrying out any such additional tests.
3. LOCAL GOVERNMENT OMBUDSMAN
   1. In the event of a complaint being made to the Local Government Ombudsman (“the Ombudsman”) concerning the Provider’s actions, omissions or defaults in carrying out the Services under this Contract, the Provider should be aware that it may become subject to investigation by the Ombudsman. In such circumstances the Provider will be required to co-operate in any such investigation, and produce any information or explanation, either in writing or by the attendance for interview by the Ombudsman. Of any person within the Provider’s control or produce any document within its control as may reasonably be requested.
   2. Should a finding of maladministration and injustice, as a result of fault by the Provider be made by the Ombudsman, the Council shall be entitled to deduct from sums due to the Provider any payment made by the Council to a complainant arising from such findings. The Council shall also be entitled to deduct from sums due to the Provider any payment to a complainant under the terms of an early settlement of a complaint made to the Ombudsman without any formal investigation and report by him.
4. TUPE
   1. The Council and Contractor recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of this Contract, and should they so apply that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of full operations.
   2. During the period of six months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract or the Contractor stops trading, and within 20 working days of being so requested by the Council, the Contractor shall fully and accurately disclose to the Council for the purposes of TUPE all information relating to its employees engaged in providing the Service under this Contract, in particular, but not necessarily restricted to, the following :
      1. the total number of Staff whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law; and
      2. for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed staff do not have to be given); and
      3. full information about the other terms and conditions on which the affected staff are employed (including but not limited to their working arrangements), or about where that information can be found; and

i. details of pensions entitlements, if any; and

ii. job titles of the members of staff affected and the qualifications required for each position.

* 1. The Contractor shall permit the Council to use the information for the purposes of TUPE and of re-tendering. The Contractor will co-operate with the re-tendering of the Service by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.
  2. The Contractor agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under this Clause 25.
  3. The Contractor agrees to indemnify the Council from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which this Contract is terminated and/or transferred to any third party (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
  4. In the event that the information provided by the Contractor inaccordance with this Clause 25 becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Council of the inaccuracies and provide the amended information.
  5. The provision of this Clause 25 shall apply during the continuance of this Contract and after its termination howsoever arising.

1. WAIVER
   1. The failure by the Council to take any particular action against the Provider in relation to a breach of this Contract by the Provider does not mean that it accepts or condones the breach and shall not limit its future action in reliance on that or any other breach.
2. NOTICES
   1. Any demand, notice, or other communication required under the terms of this Contract shall be sufficiently served if:
      1. Served personally on the addressee or
      2. Sent by prepaid first class recorded delivery post, by telex, electronic mail or facsimile transmission to the registered office or last known address of the intended recipient, and, if so sent will, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting, or on successful transmission, as the case may be.
3. RIGHTS OF THIRD PARTIES
   1. Nothing in the Contracts (Rights of Third Parties) Act 1999 will operate to give any third party the right to enforce any term of this Agreement except where expressly provided for in this Agreement.
4. SEVERABILITY
   1. If any provision of this Contract is or becomes illegal, void or invalid, that shall not affect the legality and validity of the other provisions.
5. FORCE MAJEURE
   1. The Council and the Provider shall be released from future performance of their obligations under this Contract in the event of national emergency, war, prohibitive governmental regulations or of any other cause beyond the reasonable control of the Council or the Provider, or any of terms which renders the performance of this Contract impossible, whereupon all money due under this Contract shall be paid immediately.
6. THE GOVERNING LAW AND JURISDICTION
   1. This Contract is governed by, and shall be construed in accordance with English Law and both parties shall submit to the jurisdiction of the English Courts prohibitive governmental regulations or of any other cause beyond the reasonable control of the Council or the Provider, or any of terms which renders the performance of this Agreement impossible, whereupon all money due under this Agreement shall be paid immediately
7. HEADINGS
   1. The headings to any part of this Contract do not affect its interpretation.
8. TRANSPARENCY CODE
   1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA (“the Act”) the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information.
   2. The Authority shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act
   3. Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Authority decides.
9. BLACKLISTING
   1. The Service Provider must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities.
   2. Breach of this clause is a material default which shall entitle the Council to terminate the Contract with immediate effect.
10. WHISTLEBLOWING
    1. The Public Interest Disclosure Act 1998 (PIDA) provides workers in the UK with a safe alternative to silence. It enables workers to raise concerns about wrongdoing responsibly. PIDA protects them if they raise a concern about wrongdoing internally and, in most cases, with a regulator. It also protects workers who make wider disclosures where there is a valid reason to go wider, and the particular disclosure is reasonable
    2. Nothing in this Agreement shall prejudice any rights that the Supplier Employee(s) has or may have under PIDA and/or any obligations that the Employee has or may have to raise concerns about the safety and care with regulatory or other appropriate statutory bodies pursuant to his or her professional and ethical obligations including those obligations set out in guidance issued by regulatory or other appropriate statutory bodies from time to time.
11. EQUAL OPPORTUNITIES
    1. The Provider as employer shall comply with the requirements of the Equality Act 2010, and accordingly, shall not treat one group of people less favourably than others because of their colour, race, culture, religion, gender, nationality, age, marital status, sexual orientation, disability or ethnic origin in relation to decisions to recruit, train or promote employees or the provision of any services supplied by the Provider or in its obligations under this Contract.
    2. If any Court or Tribunal, or the Equality and Human Rights Commission should make any finding that the Provider has unlawfully discriminated against any person then the Provider shall take all necessary steps to prevent the re occurrence of such unlawful discrimination and the Authorised Officer shall be entitled to require the Provider to provide it with full details of the steps taken.
    3. The Provider's equal opportunities policy shall be set out in any instructions and documentation circulated to those members of Staff concerned with recruitment, training, promotion and the provision of the Service.
    4. The Provider shall conform (in so far as is permitted by law and in so far as has been communicated) to the Equality of Opportunities Policy of the Council.
12. DATA PROTECTION
    1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor unless otherwise specified in Schedule 3. The only processing that the Processor is authorised to do is listed in Schedule 3 by the Controller and may not be determined by the Processor.
    2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
    3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
13. systematic description of the envisaged processing operations and the purpose of the processing;
14. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
15. an assessment of the risks to the rights and freedoms of Data Subjects; and
16. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
    1. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
17. process that Personal Data only in accordance with Schedule 3 unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
18. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
19. nature of the data to be protected;
20. harm that might result from a Data Loss Event;
21. state of technological development; and
22. cost of implementing any measures;

1. ensure that :
   * + 1. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 3);
       2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
          1. are aware of and comply with the Processor’s duties under this clause;
          2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
          3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
          4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
2. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
   * + 1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
       2. the Data Subject has enforceable rights and effective legal remedies;
       3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
       4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
3. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
   1. Subject to clause 37.6, the Processor shall notify the Controller immediately if it:
      1. receives a Data Subject Request (or purported Data Subject Request);
      2. receives a request to rectify, block or erase any Personal Data;
      3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
      4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
      5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
      6. becomes aware of a Data Loss Event.
   2. The Processor’s obligation to notify under clause 37.5 shall include the provision of further information to the Controller in phases, as details become available.
   3. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 37.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
4. the Controller with full details and copies of the complaint, communication or request;
5. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
6. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
7. assistance as requested by the Controller following any Data Loss Event;
8. assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.
   1. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
      1. the Controller determines that the processing is not occasional;
      2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
      3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
   2. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.
   3. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
   4. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
      1. notify the Controller in writing of the intended Sub-processor and processing;
      2. obtain the written consent of the Controller;
      3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 37 such that they apply to the Sub-processor; and
      4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
   5. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
   6. The Controller may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
   7. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Controller may on not less than 30 Working Days’ notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
   8. Where the Parties include two or more Joint Controllers as identified in Schedule 3 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 4 in replacement of Clauses 37.1-37.14 for the Personal Data under Joint Control.

**38         MODERN SLAVERY**

38.1 The Provider undertakes, warrants and represents that:

38.1.1 neither the Provider nor any of its officers, employees, agents or subcontractors has:

(a)         committed an offence under the Modern Slavery Act 2015 (a "MSA

         Offence"); or

(b)         been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(c)          is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

38.1.2   it shall comply with the Modern Slavery Act 2015;

38.1.3  information supplied to the Council prior to the award of the Agreement in relation to  modern slavery and human trafficking  are complete and accurate; and it shall notify the Authorised Officer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Provider’s obligations under this Clause.  Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider’s obligations.

38.2   Any breach of this Clause 38 by the Provider shall be deemed a material breach of the Agreement and shall entitle the Customer to terminate the Agreement immediately.

**SCHEDULE 2**

**SPECIFICATION OF THE SERVICES**

**S1.** **OPERATION OF THE FRAMEWORK**

S1.1 This Agreement is the framework Agreement the provision of training for childcare staff the audience will be working within a childcare setting including childminders, day nursery staff, children’s centre staff and occasionally council employees

S1.2 This agreement does not guarantee the Provider any work as this is subject to the outcomes of a mini-competition (“the Mini-Competition”), however that competition will only take place between the providers on the framework approved to participate in that lot.

S1.3 In operating a Mini-Competition the Council will invite all providers within the relevant lot capable of meeting the requirement to take part in the Mini-competition. If the requirement spans more than one of the lots then all providers approved in all relevant lots will be invited to take part in the Mini-Competition.

S1.4 The Council will formulate a project brief containing all details of the requirement and the timescale for delivery, and send this to all capable providers, setting a time limit for submission. The project brief shall also contain details of how the submissions will be assessed. Once assessment of submissions has taken place the decision shall be notified to all providers participating in the Mini-Competition.

S1.5 Following the Mini-Competition the Council shall place a booking for the individual Course or series of Courses with the successful provider, through an official purchase order.

S2.6 The Council may suspend the Provider from taking part in a Mini-Competition where the Provider is in receipt of a default notice in accordance with Clause 18 of the Contract Conditions hereto.

S2. **CANCELLATION OF BOOKINGS**

S2.1 Where the Council has made a booking for a Course through a purchase order and that Course is cancelled by the Council the Council shall pay to the Provider 100% of the Contract Price if the Course is cancelled with less than 48 hours notice (72 hours notice if the course is scheduled to take place on a Monday) the Council shall pay 50% of the Contract Price if the Course is cancelled with up to 7 days notice. Where the Council has given more than 7 days notice the Provider shall not be entitled to any payment from the Council.

S2.2 Where the Provider cancels a course the Council shall not pay to the Provider the Contract Price.

S3. **VENUE**

S3.1 The Council shall provide a venue for the training courses in most cases, this will be in consultation with the Provider as to the requirements of the Provider and the Course. However where the Provider wishes to arrange a training venue this should be notified to the Council during a mini-competition and accordingly priced.

S4. **MATERIALS**

S4.1 The Provider shall provide all materials for the provision of courses. The Council may provide a flipchart, projector or other audio visual equipment where the Provider identifies this requirement during a Mini-Competition.

S4.1 The Provider shall provide a certificate for those Service Users successfully completing a Course. The Provider shall provide the Council with details of those Service Users which pass and fail each Course.

S5. **MONITORING**

S5.1 The Provider shall provide the Council with information as required by the Council for monitoring the provision of Courses. The Council will monitor the provision of Courses by the use of feedback sheets at the end of each Course. Officers of the Council may attend a Course for monitoring purposes, such officers shall not be included in the number’s as a Service User.

S6 **COURSE PROVISION**

S6.1 All Courses shall link directly to the Early Years Foundation Stage (EYFS) and the Common Core of skills and knowledge for the children’s workforce. Courses shall be tailored to meet the needs of the Service Users in that they shall be focussed towards a childcare audience.

S6.2 The Provider shall comply with the requirements of the Course Specifications as detailed in the Course Specifics at Schedule 3 hereto.

**General text applicable to all lots**

The courses shall be provided for up to approximately 22 service users at any one time in a suitable venue, usually sourced and funded by the Council.

The trainer must be able to be offer deliver flexibly during weekdays, evenings and weekends as required.

A minimum number of delegates will also be set depending on budget and venue.

The course titles given are indicative of the courses required under each lot. Other courses may be requested in response to sector needs and developments.

**Lot 1**

**Health and Safety**

**Health and Safety at Work**

**Level 2 Award in food safety in catering**

**Healthy eating and menu planning**

**Risk assessment**

**Fire awareness**

**Manual handling**

**Lot 2**

**First Aid**

**Paediatric and emergency first aid**

**First aid at work**

**Lot 3**

**Leadership and management**

**Managing your team**

**The role of the leader in an early years setting**.

**Effective peer observation**

**Business and finance**

**Effective communication and assertiveness**

**Lot 4**

**EYFS**

**Positive behaviour management**

**Physical activity in the early years**

**Maths in the Early Years**

**Understanding the world**

**Expressive art and design**

**The safeguarding and welfare requirements**

**Planning for the prime areas of learning**

**A number-rich environment**

**Natural, sensory and heuristic play**

**The importance of the outdoor learning environment**

**A quality indoor learning environment**

**Observation, planning and assessment**

**Working with 2 year olds**

**The importance of play**

**Understanding the Unique Needs of Babies**

**Attachment and the role of the Key Person**

**Listening to the views of young children**

**Enabling smooth transitions**

**Working in partnership with parents, carers and other organisations**

**Lot 5**

**Working with the over fives**

**Positive behaviour management for the over fives**

**Lot 6**

**Equality, diversity and inclusion**

**The role of the ENCO (Equalities Named Coordinator)**

**The role of the new SENCO**

**The role of the established SENCO**

**Schedule 3: Schedule of Processing, Personal Data and Data Subjects**

**Schedule 3 Processing, Personal Data and Data Subjects**

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

* + 1. The contact details of the Controller’s Data Protection Officer are: **[Insert** Contact details]
    2. The contact details of the Processor’s Data Protection Officer are: **[Insert** Contact details]
    3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
    4. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 37.1.  [**Guidance:** You may need to vary this section where (in the rare case) the Customer and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data:  *“Notwithstanding Clause 37.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:*  ***[Insert*** *the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]*  *In respect of Personal Data under Joint Control, Clause 37.1-37.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead.”* |
| Subject matter of the processing | *[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.*  *Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]* |
| Duration of the processing | *[Clearly set out the duration of the processing including dates]* |
| Nature and purposes of the processing | *[Please be as specific as possible, but make sure that you cover all intended purposes.*  *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data being Processed | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| Categories of Data Subject | *[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]* |
| Plan for return and destruction of the data once the processing is complete  UNLESS requirement under union or member state law to preserve that type of data | *[Describe how long the data will be retained for, how it be returned or destroyed]* |

**Schedule 4: Schedule for Joint Controller Agreements**

**Schedule 4: Joint Controller Agreement**

**[Guidance:** insert only where Joint Controller applies in Schedule X]

In this Annex the Parties must outline each party’s responsibilities for:

* providing information to data subjects under [Article 13 and 14](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN) of the GDPR.
* responding to data subject requests under [Articles 15-22](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN) of the GDPR
* notifying the Information Commissioner (and data subjects) where necessary about data breaches
* maintaining records of processing under [Article 30](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN) of the GDPR
* carrying out any required Data Protection Impact Assessment
* The agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Clause 37.2-37.14.

You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.

Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Schedule 4 should be used instead of Clause 37.1-37.15.