**Contract Between**

**The Mayor and Burgesses of the**

**London Borough of Hackney**

**and**

**XXXXXXXXXXXXXXXXXXXXX**

**for**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Direct Payment Payroll and HR service**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Contract No**

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This Contract is dated this ………… day of ………………………………….. 2020

Between:

1. **The Mayor and Burgesses of the London Borough** of Hackney, Hackney Town Hall, Mare Street, London E8 1EA("**the Council**");

and

1. **Service provider name** whose registered office/main place of business is at , United Kingdom (registered company no: )**,** (“**the Service Provider**”),

(together referred to as “**the Parties**”)

**WHEREAS NOW IT IS AGREED** as follows**:**

1. The Council requires a service provider to provide a Payroll and HR service for Direct Payment users (“the Services”) on its behalf.
2. The Service Provider is able and willing to provide the Services and has agreed to do so in accordance with the terms and conditions set out herein.

|  |  |
| --- | --- |
| **Services:** | Payroll and HR service for Direct Payment users |
| **Commencement Date:** | 1st April 2021 |
| **Term / Contract Period:** | 36 months |
| **Contract Value:** | **£100,000** |

**The Representatives for Each Party:**

**The Council's Authorised Officer for this Contract is:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | Zainab Jalil | **Title:** | Interim Head of Adults Commissioning |
| **Address** | London Borough of Hackney, Hackney Service Centre, 1 Hillman Street, E8 1DY | | |
|  |
| **Telephone:** | 020 8356 3590 | | |
| **E-mail:** | zainab.jalil@hackney.gov.uk | | |

The Authorised Officer may nominate representatives to exercise some or all of his functions as appropriate and will ensure that the Service Provider is informed, in writing, of the name of the appropriate representative(s) from time to time.

**The Service Providers Contract Manager for this Agreement is:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** |  | **Title:** |  |
| **Address** |  | | |
| **Telephone:** |  | | |
| **E-mail** |  | | |

The Contract Manager may nominate representatives to exercise some or all of his functions as appropriate and will ensure that the Council is informed, in writing, of the name of the appointed representative(s) from time to time.

# Definitions and Interpretations

* 1. In this Agreement, save where the context requires otherwise, the definitions given in Schedule 1 shall have the meanings therein ascribed to them whenever they appear in the Agreement.
  2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
  3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
  4. The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
  5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
  6. Words in the singular shall include the plural and vice versa.
  7. A reference to one gender shall include a reference to the other genders.
  8. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
  9. A reference to writing or written includes faxes and e-mail.
  10. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
  11. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
  12. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

# Contract Period

* 1. This Agreement shall take effect on the Commencement Date and shall continue for 36 Months until 31st March 2024 subject to the proper performance by the Service Provider of its obligations under the Agreement.
  2. The Council may extend the Term for further periods up to a total of 1 plus 1 years until (March 2026). If the Council wishes to extend the Agreement, it shall give the Service Provider 90 days (3) months' written notice of such intention before the expiry of the Term or Extension Period.
  3. If the Council gives such notice then the Term shall be extended by the period set out in the notice and shall be on the same terms and conditions contained in this Agreement (unless varied in writing).
  4. During the Contract Period, the Council shall be entitled to review the terms of the Agreement, the volume of Services, the payment rate and the impact of any actual or anticipated policy, budgetary or legislative changes.
  5. Following this review, the Council may require that the Agreement be varied. If both parties cannot agree the terms of this variation, then the Agreement may be terminated. Where the parties do agree on varied terms, then the Agreement shall continue in its varied form for the agreed period.
  6. This Agreement shall be the only valid contract made between the Parties and it supersedes all other contracts except those where the Parties agree otherwise in writing.
  7. If the Council does not wish to extend this Agreement it shall terminate through effluxion of time and the provisions of clause 34 shall apply.
  8. In the event that the Service Provider does not comply with the provisions of clause 2.1 in any way, the Council may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default in accordance with the provisions of clauses 30 or 31.

# The Service Provider’s Obligations

* 1. Without prejudice to any other obligations it may have under this Agreement, the Service Provider agrees as terms of this Agreement that:
     1. it will perform the Services in a proper, competent and professional manner and (unless prevented by circumstances outside the Service Provider’s control) within any timescale, dates or times specified;
     2. it will provide such tools, equipment and other resources as may be necessary for the proper performance of the Services;
     3. it will familiarise itself with and comply with any applicable provisions of legislation (including Codes of Practice) relating to health, safety and/or welfare and discrimination at work;
     4. it will familiarise itself with and comply with any applicable policies and procedures of the Council which have been drawn to the Service Provider’s attention, including in particular (but without limitation) the Equal Opportunities Policies and Codes of Conduct;
     5. It will not do anything which could render the Council legally liable to any officer, employee or other person, or could otherwise damage the reputation of the Council or expose it to legal liability;
     6. it will indemnify the Council against any loss occasioned to its property by any wilful or negligent act on the Service Provider’s part and against any other liability incurred by the Council as a consequence of the Service Provider’s breach of any of the obligations undertaken by virtue of clauses 3.1.1, 3.1.3, 3.1.4 and 3.1.5 or the use of any resources supplied by the Service Provider pursuant to clause 3.1.2 or otherwise due to any wrongful or negligent act or omission by the Service Provider;
     7. it will not delegate or sub-contract the execution of its duties under this Agreement to another person or persons without the Council’s written agreement;
     8. where any Service is stated to be subject to a specific Service Level, the Service Provider shall provide that Service in such a manner as will ensure that the achieved Service Level in respect of that Service is equal to or higher than such specific Service Level;
     9. without prejudice to clause 3.1.8, the Service Provider shall provide the Services, or procure that they are provided:
        1. in all respects in accordance with the Council's policies; and
        2. in accordance with all applicable laws;
     10. it will pay the London Living Wage to all personnel employed by or contracted to it to provide the Services; and
     11. it will account to HM Revenue and Customs for all payments made to it by the Council pursuant to this Agreement in a timely manner, and will pay by the due date any income tax and national insurance contributions to which the Service Provider is properly assessed (without prejudice to the Service Provider’s rights to appeal against such assessments) and the Service Provider will if so required by law register for Value Added Tax;
     12. it shall take appropriate steps to ensure that neither the Service Provider nor any Service Provider Personnel are placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and its duties owed to the Council under the provisions of the Agreement or to service users and will disclose to the Council full particulars of any such conflict of interest which may arise.
  2. The Service Provider warrants that at all times its staff and Representative have the necessary skills and qualifications to perform the Services.
  3. If the Council informs the Service Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the agreement or differ in any way from those requirements, and this is other than as a result of a Default by the Council, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Council.

# Compliance, Consents & Due Diligence

* 1. The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
  2. Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
  3. In performing its obligations under the agreement, the Provider shall:
     1. complywith all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including, but not limited to, the Modern Slavery Act 2015;
     2. have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance;
     3. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
     4. include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause; and
     5. comply with all applicable Law regarding health and safety.
  4. Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Service Provider shall instruct the Service Provider's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
  5. Without limiting the general obligation set out in clause 4.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):
     1. perform its obligations under this agreement (including those in relation to the Services) in accordance with:
        1. all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
        2. the Council’s equality and diversity policy as provided to the Service Provider from time to time; and
        3. any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law; and
     2. take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
     3. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.
  6. The Service Provider acknowledges and confirms that:
     1. it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
     2. it has received all information requested by it from the Council pursuant to clause 4.6.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
     3. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.6.2;
     4. it has raised all relevant due diligence questions with the Council before the Commencement Date; and
     5. it has entered into this agreement in reliance on its own due diligence.
  7. Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Service Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
  8. The Service Provider represents and warrants that at as at the Commencement Date:
     1. its responses to the Council's slavery and human trafficking due diligence questionnaire are complete and accurate; and
     2. neither the Provider nor any of its officers, employees or other persons associated with it:
        1. has been convicted of any offence involving slavery and human trafficking; and
        2. to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
  9. The Provider shall implement due diligence procedures for its subcontractors, suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
  10. The Provider shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any slavery or human trafficking concerns amongst its supply chain or of inaccuracies in any information provided to it by the Council which materially and adversely affects its ability to perform the Services or meet any specified Service Levels as may be set out herein.
  11. The Service Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Service Provider in accordance with clause 4.10 save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Council in writing.
  12. Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

# Contract Price and Payments

* 1. In return for providing the Services as detailed in the Service Specification (including any standards against which the provision of Services are to be measured) the Council shall pay the Service Provider the Contract Price as set out in Schedule 3 (Pricing & Payment). The amount or rate of payment as set out in the Pricing & Payment Schedule may only be varied by agreement in writing between the parties.
  2. The Service Provider shall invoice the Council for payment of the Charges at the time the Charges are payable. All invoices shall be directed to the Council's Representative. Any such invoices shall take into account any Service Credits which have been accrued in the previous period.
  3. The Council shall pay the Charges which have become payable in accordance with the Payment Plan within thirty (30) days of receipt of an undisputed invoice from the Service Provider, subject to the Service Provider providing the Services in accordance with any specified or agreed standard (including any recognized industry standard) or where no standard is specified to a generally acceptable standard.
  4. Payment by the Council will be made by cheque or by means of a Banks Automatic Clearing System (BACS) credit into the account supplied to the Council by the Service Provider. It will be the responsibility of the Service Provider to advise the Council of a change in its bank details.
  5. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Service Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for, or Sub-Contractor to pay, any VAT relating to payments made to the Service Provider under this agreement.
  6. Where a party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 36. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 21 days after resolution of the dispute between the parties.
  7. Subject to clause 5.6, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 31.7 for failure to pay undisputed charges.
  8. Where the Service Provider enters into a sub-contract with a supplier or contractor for the purpose of performing the Services, it shall cause a term to be included in such a sub-contract that requires payment to be made of undisputed sums by the Service Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.
  9. The Council reserves the right to recover any sum the Service Provider owes to it by deduction from or non-payment of invoices rendered by the Service Provider, and the Service Provider hereby authorises such deductions.
  10. The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council for five (5) years from the end of the contract year to which the records relate.
  11. In the event that at any time undisputed Charges equivalent to 3 months of the contract value have been overdue for payment for a period of sixty (60) days or more, the Council will have committed a Termination Payment Default.
  12. The Council reserves the right to make changes to the above payment procedure, subject to at least one month’s written notice first being given of any such changes to the payment process.
  13. The Council has the right to withhold part or all of the Charges if the Service Provider has failed to provide part or all of the Services for a specific period or periods or has failed to provide the Services in accordance with any prescribed standards or, in the absence of prescribed standards, in accordance with generally accepted (industry) standards.
  14. The Charges payable reflect the obligation on the Service Provider to pay all Service Provider Personnel engaged in the provision of the Services under this Agreement the London Living Wage, which will be reviewed in line with increases in the London Living Wage. The Service Provider’s compliance with this requirement will be monitored during the contract period.

# Service Provider’s Personnel

* 1. The Service Provider shall ensure that:
     1. each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
     2. there is an adequate number of Service Provider's Personnel to provide the Services properly;
     3. only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
     4. all of the Service Provider's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.
  2. The Council may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
  3. The Service Provider shall replace any of the Service Provider's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services. The removal and replacement of any Service Provider Personnel shall be at no additional cost to the Council.
  4. The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
  5. The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.
  6. In the event that
     1. any Service Provider Personnel engaged in the provision of the Services have access to or are responsible for processing Personal Data or shall be dealing with vulnerable adults or children, the Service Provider shall ensure that they are subject to a valid and appropriate disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and/or
     2. the Service Provider is deemed to be a Regulated Activity Provider within the meaning of the Safeguarding Vulnerable Groups Act 2006 it shall have ultimate responsibility for the management and control of the Regulated Activity provided under this agreement.
  7. The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
  8. The Service Provider shall not employ or engage in the provision of the Services any person who does not have the right to live and work in the UK or who is working in breach of their conditions of stay in the UK. In this regard the Service Provider confirms that it has taken all required “right to work” checks in accordance with immigration law to make sure that all employees are entitled to be employed or engaged by the Service Provider.
  9. The Service Provider will be liable for any loss or damage suffered by the Service User, which may arise as a consequence of negligence or criminal activities of Service Provider Personnel whilst at the premises of the Service Provider and/or Service User for the purposes of providing the Services, or any part thereof, as set out in the Specification. The Service Provider agrees to fully and promptly indemnify the Council in respect of all demands, claims, liabilities, losses, damages, costs and expenses incurred by the Council arising out of all such negligent or criminal acts by any Service Provider Personnel.

# Safeguarding Vulnerable Adults

* 1. The Service Provider will have procedures in place to ensure the safeguarding of adults at risk comply with the Council's Safeguarding Adults & Children Policies and the Safeguarding Vulnerable Groups Act 2006 (the “SVGA 2006”), which shall include, but not be limited to:
     1. the provision of training to Service Provider Personnel in accordance with the Care Act 2014 and all statutory or other requirements;
     2. appropriate staff employment procedures;
     3. appropriate and accessible reporting/whistleblowing procedures for Service Users, carers and staff who wish to make a complaint or raise a safeguarding concern (which shall not prejudice the whistleblower);
     4. codes of conduct in relation to personal relationships between staff and service users; and
     5. the conducting of DBS checks in accordance with clause 6.6.
  2. The Service Provider shall refer information about any person carrying out the Services to the DBS (and CQC where relevant) where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users.

# Publicity & Branding

* 1. The Service Provider shall not make any press announcements, publicise this Agreement or its contents in any way or use the Council’s logo without its prior written consent, which consent shall not be unreasonably withheld or delayed.
  2. The Council and Service Provider acknowledge to each other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other and the parties agree not to conduct themselves in such a way as to imply or express any such approval or endorsement.

# Liability of the Service Provider

* 1. The Service Provider will, at its own expense, comply with all statutory and/or other regulatory requirements connected with the Services and related employment of staff.
  2. The Service Provider will comply with the requirements regarding staffing and employment issues set out in Schedule 2, the Service Specification.
  3. The Service Provider has the obligation to comply with the laws covering the statutory provisions of employment, including the Immigration Asylum and Nationality Act 2006, which confers responsibility on employers, to carry out staffing checks which includes the verification of individual’s rights to work in this country.
  4. On request from the Authorised Officer the Service Provider will provide to the Council, within the timescales requested, access to any of its Employees or agents for the purpose of interviewing them in connection with the provision of all or any part of the Services.
  5. Failure on the Service Provider's part to comply with any part of this Clause 9 (Liability of the Service Provider) shall entitle the Council to terminate the Agreement.

# Liability of the Parties

* 1. Subject to clause 10.5, neither party shall not be liable to the other (as far as permitted by law) for indirect, special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
  2. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
  3. Subject to clause 10.5, the Council’s total aggregate liability to the Service Provider in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay the Contract Price that is properly due and payable and for which the Council shall remain fully liable), shall in no event exceed the Charges collected for the twelve (12) month period immediately preceding the event giving rise to the claim.
  4. The Service Provider accepts and acknowledges that any information given to the Service Provider by the Council by way of indicative quantities is given only as a guide. No claim shall be brought against the Council in tort, contract or otherwise with regard to such information.
  5. Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
     1. fraud or fraudulent misrepresentation;
     2. death or personal injury caused by its negligence;
     3. breach of any obligation as to title implied by statute; or
     4. any other act or omission, liability for which may not be limited under any applicable law.
  6. Any clause limiting the Service Provider's liability does not apply in relation to the breach of clause 17.
  7. For the avoidance of doubt the Council may from time to time (in their absolute discretion) enter into one or more contracts with other service providers and/or Back Up Service Providers for the supply of all or part of the Service (such contracts to run concurrently with this Agreement) or provide the Service, or some of it, itself.

# Indemnity

* 1. The Service Provider shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages, losses, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Council arising out of or in connection with:
     1. a breach of any warranties contained in this Agreement;
     2. the Service Provider's breach or negligent performance or non-performance of this agreement;
     3. the enforcement of this agreement;
     4. any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Council’s use of software provided by the Service Provider or their agent; or
     5. any claim made against the Council by a third party arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Service Provider, its employees, agents or subcontractors, or arising for any other reason in connection with the provision of the Services.
  2. The Service Provider’s liability and indemnity to the Council arising under this clause is a continuing liability and shall continue for the whole term of the Agreement and for all time thereafter and is without prejudice to any other rights or remedies available to the Council and shall apply whether or not the Council has been negligent or at fault.
  3. For the avoidance of doubt losses in clause 11.1 shall include the reasonable cost to the Council of the time spent by its officers in dealing with such breach and (if necessary) in making alternative arrangements for the provision of the Services or any part thereof.

# Environmental Requirements

* 1. The Service Provider shall perform the Services with due regard to the Council’s and Central Government environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
  2. As far as possible, the Service Provider shall (without reducing the quality and standards of the Services):
     1. minimise the use of materials / consumables;
     2. re-use equipment where economically possible; and
     3. dispose of redundant materials in a safe manner and with due regard to environmental protection legislation.

# Insurance

* 1. The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
     1. public liability insurance with a limit of indemnity of not less than £5 million (five million pounds) in relation to any one claim or series of claims;
     2. employer's liability insurance in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
     3. professional indemnity insurance of not less than £2 million (two million pounds) for each individual claim or series of claims during the term of this Agreement and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover, with such insurance to be maintained for a minimum of six (6) years following the expiration or earlier termination of this Agreement;
     4. where the Service Provider provides, with agreement of the Council, any special therapy to a Service User, such therapy shall be carried out by suitably qualified professionals covered by professional indemnity and public liability insurance of a minimum of £1 million;
     5. malpractice insurance of £1 million per occurrence where nursing care is provided, or the parties agree such insurance is appropriate. This cover may also be taken out as an extension to a Professional Indemnity policy;
     6. sexual abuse and molestation public liability cover – a minimum of £1 million must be provided for in respect of any one claim for proven bodily or mental injury, disease, death or suffering of a Service User following sexual abuse or molestation. This cover may also be taken out as an extension to a Professional Indemnity policy;
     7. Cyber Liability insurance (First and Third Party Risks) with a limit of indemnity of not less than two million pounds (£2,000,000) in relation to any one claim or series of claims; and
     8. adequate vehicle and passenger insurance cover,

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

* 1. The Service Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
  2. If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect their interests and may recover the costs of such arrangements from the Service Provider.
  3. The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.

# Confidentiality

* 1. Subject to clause 14.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent Service Provider Personnel from making any disclosure to any person of any matters relating hereto.
  2. Clause 14.1 shall not apply to any disclosure of information:
     1. required by any applicable law, provided that clause 16.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
     2. that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
     3. where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 14.1;
     4. by the Council of any document to which it is a party and which the parties to this agreement have agreed contains no Commercially Sensitive Information;
     5. to enable a determination to be made under clause 36;
     6. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
     7. by the Council to any other department, office or agency of the Government; and
     8. by the Council relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.
  3. Notwithstanding the provisions of clause 34, on or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council’s employees, rate-payers or service users, are delivered up to the Council or securely destroyed.
  4. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14.

# Data Protection

* 1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
  2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Service Provider is the data processor. Schedule 6 sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
  3. The Service Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
  4. Without prejudice to the generality of clause 15.1, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this agreement:
     1. process that Personal Data only on the written instructions of the Council (as set out in Schedule 6), unless the Service Provider is required by the laws of any member of the European Union or by the laws of the European Union (**Applicable Laws**) applicable to the Service Provider to otherwise process the Personal Data. Where the Service Provider is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Applicable Laws;
     2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
     3. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
        1. the Council or the Service Provider has provided appropriate safeguards in relation to the transfer;
        2. the Data Subject has enforceable rights and effective remedies;
        3. the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
        4. the Service Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
     4. notify the Council immediately if it receives:
        1. a request from a Data Subject to have access to that person's Personal Data;
        2. 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 (including any communication from the Information Commissioner);
     5. assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
     6. notify the Council immediately (and in any event within 24 hours) on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
     7. at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
     8. maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by the Council or the Council's designated auditor pursuant to clause 28;
     9. indemnify the Council against any loss or damage suffered by the Council of its obligations under this clause 15.
  5. Where the Service Provider intends to engage a Sub-Contractor pursuant to clause 39 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
     1. notify the Council in writing of the intended processing by the Sub-Contractor;
     2. obtain prior written consent to the processing;
     3. ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 15.
  6. Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 15 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 provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.
  8. For the sake of clarification, Controller, Processor, Data Subject, Personal Data, Personal Data Breach Data Protection Officer take the meaning given in the GDPR.

# Freedom of Information

* 1. The Service Provider hereby acknowledges that the Council is subject to the provisions of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations and shall assist and co-operate with the Council to enable it to comply with information discloser requirements.
  2. If the Service Provider receives a Request for Information pursuant to the FOIA (regardless of whether such request complies or does not comply with the strict requirements of the FOIA) the Service Provider shall:
     1. transfer the Request for Information to the Council within 24 hours of receipt of the request by the Service Provider;
     2. make no response to such request other than a bare acknowledgement of receipt stating that the request has been passed to the Council;
     3. take no further action in regard to such request save at the Council’s direction; and
     4. provide all assistance and Information under the Service Provider's control (within such period as the Council may specify) to the Council as it may request to enable the Council to respond to the Request for Information within the time for compliance prescribed by FOIA.
  3. The Council will be responsible (in its sole discretion) for deciding:
     1. what Information (if any) is exempt from disclosure pursuant to the FOIA; and
     2. what Information is to be disclosed pursuant to a Request for Information (regardless of whether such Information originates from the Council or the Service Provider and whether having consulted with the Service Provider prior to such disclosure or not);
  4. The Service Provider acknowledges that the provisions of this clause 16 (Freedom of Information) and of the FOIA may override any obligation of confidentiality as between the Parties and that the Council may be obliged to disclose Information without consulting the Service Provider or after having consulted the Service Provider but in opposition to their views.
  5. Each party shall bear its own costs of compliance with this clause.

# Bribery, Corruption and Gratuities

* 1. The Service Provider shall not:
     1. in connection with this Agreement commit a Prohibited Act and shall procure that all Service Provider Personnel shall not commit a Prohibited Act;
     2. offer or agree to give any person working for or engaged by the Council or any other Crown Body any gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to this agreement, or any other agreement between the Service Provider and the Council or any Crown Body, including its award to the Service Provider and any of the rights and obligations contained within it; or
     3. enter into this agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Council or any other Crown Body by or for the Service Provider, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Council before execution of this agreement.
  2. The Service Provider 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.
  3. If the Service Provider or any Service Provider Personnel, whether or not acting with the Service Provider's knowledge:
     1. breach Clause 17.1; or
     2. engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK,

in relation to this agreement or any other contract with the Council, the Council may terminate this agreement by written notice with immediate effect and recover from the Service Provider the amount of any loss resulting from such termination, including but not limited to any cost incurred by the Council in re-tendering the service hereunder.

* 1. Any termination under clause 17.3 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council.
  2. The Service Provider shall if requested, provide the Council with any reasonable assistance 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 2010;
  3. Notwithstanding clause 36, any dispute relating to:
     1. the interpretation of clause 17.1 to clause 17.3 inclusive; or
     2. the amount or value of any gift, consideration or commission,

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

* 1. Without prejudice to clauses 17.1 – 17.6 and with regards to the acceptance of small gifts from Service Users by Service Provider employees, the Service Provider and its employees shall at all times comply with the Council’s Codes of Conduct that covers the acceptance of such gifts from Service Users.

# Discrimination

* 1. The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and Equality Act 2006 (as amended), the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

# Service and Quality Outcomes Indicators

* 1. The Service Provider must carry out the Services in accordance with the Law and Good Industry Practice and must, unless otherwise agreed (subject to the Law) with the Council in writing:
     1. consider and respond to the recommendations arising from any audit, death, Serious Incident report or Service User Safety Incident report;
     2. comply with the recommendations issued from time to time by a Competent Body;
     3. comply with the recommendations from time to time contained in guidance and appraisals issued by National Institute and Care Excellence (NICE);
     4. respond to any reports and recommendations made by Health Watch Hackney; and
     5. comply with the Performance Measures that will be set out, during the implementation of the contract.

# Service User Involvement

* 1. The Service Provider shall engage, liaise and communicate with Service Users, their Carers and legal guardians in an open and clear manner in accordance with the Law, Good Clinical Practice and their human rights.
  2. As soon as reasonably practicable following any reasonable request from the Council, the Service Provider must provide evidence to the Council of the involvement of Service Users, Carers and Staff in the development of Services.

# Service Improvements and Best Value Duty

* 1. The Service Provider must to the extent reasonably practicable co-operate with and assist the Council in fulfilling its Best Value Duty (as set out in the Local Government Act 1999).
  2. In addition to the Service Provider’s obligations under clause 21.1, where reasonably requested by the Council, the Service Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Council and shall assist the Council with the preparation of any Best Value performance plans.
  3. During the term of this Agreement at the reasonable request of the Council, the Service Provider must:
     1. 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;
     2. implement such improvements; and
     3. where practicable following implementation of such improvements decrease the price to be paid by the Council for the Services.
  4. If requested by the Council, the Service Provider must identify the improvements that have taken place in accordance with clause 21.3, by reference to any reasonable measurable criteria notified to the Service Provider by the Council.

# Incidents Requiring Reporting

* 1. If the Service Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to the CQC in accordance with CQC Regulations and if the Service Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
  2. If the Service Provider gives a notification to the CQC or any other Regulatory Body under clause 22.1 which directly concerns any Service User, the Service Provider must send a copy of it to the Council’s Safeguarding Team within two (2) Business Days.
  3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the lessons learned from Serious Incidents that are agreed between the Service Provider and the Council.
  4. The Service Provider shall notify the Council within two (2) Business Days of any investigation or any proceedings brought against the Service Provider under any legislation.
  5. Subject to the Law, the Council shall have complete discretion to use the information provided by the Service Provider under this clause 22 and Appendix B (Incidents Requiring Reporting Procedure).

# Service User Health Records

* 1. The Service Provider must create, maintain, store and retain Service User health records for all Service Users. The Service Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
  2. The Service Provider must:
     1. use Service User health records solely for the execution of the Service Provider’s obligations under this Agreement;
     2. give each Service User full and accurate information regarding his/her treatment and Services received; and
     3. provide copies of a Service User’s health records to the Council when requested to do so.

# Records

* 1. The Service Provider shall also:
     1. permit the Council and its third party representatives, on reasonable notice during normal business hours to have access to and take copies of the Service Provider’s records and any other information and to meet with the Service Provider’s personnel to audit the Service Provider’s compliance with its obligations;
     2. implement annual audits of its compliance and its subcontractors' and suppliers' compliance with the Anti-slavery Policy and anti-slavery measures generally, either directly or through a third party auditor; and
     3. at its own cost, perform appropriate remediation actions to address any issues or failures identified by an audit carried out pursuant to clauses 24.1.1 and 24.1.2, within such timescales as are agreed with the Council.

# Complaints

* 1. The Service Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services.
  2. If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider’s obligations under this Agreement, then the Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Service Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Council may have under this Agreement, the Council may, in its sole discretion, uphold the complaint and take any action specified in clause 30 (Non-Performance) and clause 31 (Termination).

# Monitoring and Review Meetings

* 1. The Service Provider shall comply with any monitoring arrangements including, but not limited to, providing such data and information as the Service Provider may be required to produce under the agreement.
  2. The Council may inspect and examine the manner in which the Service Provider provides the Services without any obligation to give prior notice.
  3. The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Agreement and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix A (Details of Contract Monitoring Review Meetings).
  4. Notwithstanding the above clause, if either the Council or the Service Provider:
     1. reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
     2. considers that a report requires consideration sooner than the next scheduled Review Meeting,

that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Business Days following that notice.

* 1. This clause 26 is in addition to and does not relieve, remove or replace the Service Provider’s obligation under the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 to allow authorised representatives of Healthwatch Hackney (or any successor organisation) to enter and view the premises and to also observe the provision of the Services on the premises.

# Co-operation

* 1. The Parties must at all times act in good faith towards each other.
  2. The Service Provider must co-operate fully and liaise appropriately with the Council and any third party provider who the Service User may be transferred to or from in order to:
     1. ensure that a consistently high standard of care for the Service User is at all times maintained;
     2. ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider; and
     3. achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Council’s or members of the public.

# Audit

* 1. During the Term and for a period of 5 years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:
     1. to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including sub-contractors);
     2. to review the integrity, confidentiality and security of any data relating to the Council or any service users;
     3. to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 15 (Data Protection) and clause 16 (Freedom of Information) and any other legislation applicable to the Services;
     4. to review any records created during the provision of the Services;
     5. to review any books of account kept by the Service Provider in connection with the provision of the Services;
     6. to carry out the audit and certification of the Council’s accounts;
     7. to carry out an examination pursuant to sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;
     8. to verify the accuracy and completeness of any reports delivered or required by this agreement.
  2. Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 28 more than twice in any calendar year.
  3. The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
  4. Subject to the Council’s obligations of confidentiality, the Service Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
     1. all information requested by the above persons within the permitted scope of the audit;
     2. reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
     3. access to the Service Provider's Personnel.
  5. The Council shall endeavour to (but is not obliged to) provide at least 15 days’ notice of its or, where possible, a regulatory body's, intention to conduct an audit.
  6. The parties agree that they shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Council for all their reasonable costs incurred in the course of the audit.
  7. If an audit identifies that:
     1. the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
     2. the Council has overpaid any Charges, the Service Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
     3. the Council has underpaid any Charges, the Council shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Service Provider in relation to invoicing, within 20 days.

# Intellectual Property

* 1. The Parties agree that any trademarks, patents, trade names, logos, trade dress, domain names, copyright or licenses therein, or other enforceable intellectual property rights and whether in hard or electronic copy (collectively, "intellectual property") belonging to the other given to them under this agreement remains at all times the property of the other.
  2. Upon termination of this agreement for any reason the Parties will use reasonable endeavours to ensure that all such trademarks, trade names and material are removed from display and/or destroyed at the request of the other save where such items described at clause 29.1 are held by the Parties in compliance with any statutory obligations and/or the maintenance of proper records.
  3. The Parties undertake that they have all necessary permissions, licences and rights to use the intellectual property of third parties for the purposes of this agreement.
  4. Except as expressly provided in this agreement, no intellectual property rights shall be conveyed, transferred, or assigned by this agreement. The Parties reserve the right to approve in advance the use of their intellectual property by the other Parties in each and every instance. All intellectual property owned by a Party will remain the exclusive property of that Party and will be returned to that Party promptly after the expiration of this agreement or destroyed, at the option of the Party concerned.
  5. Each Party shall indemnify (for the purposes of this clause, “the indemnifying party”) the other parties (for the purposes of this clause, “the indemnified party”) against all actions, claims, proceedings, costs and expenses (including legal fees) arising from any actual infringement of intellectual property rights of whatever nature insofar as these relate to the intellectual property rights developed and owned by the indemnifying party or licensed to the indemnifying party which claims, actions or proceedings arise as a result of the indemnified party’s use of any of the services within the United Kingdom except that the indemnity shall not apply to any actions, claims or proceedings which are attributable to any breach of contract or negligent act or omission on the part of the indemnified party or where such actions, claims or proceedings relate to any developments of the services carried out by or at the request of the indemnified party except where the indemnifying party knew or ought to have known that such development of the services requested by the indemnified party would result in an infringement of intellectual property rights.
  6. The indemnified party shall notify the indemnifying party in writing of any such action, claim or proceeding and shall not make any admission unless the indemnifying party gives prior written consent.
  7. At the indemnifying party’s request and expense, the indemnified party shall permit the indemnifying party to conduct all negotiations and litigation. The indemnified party shall give all assistance as the indemnifying party may reasonably request and the indemnifying party shall pay the indemnified party’s costs and expenses so incurred.
  8. The indemnifying party may, at its expense; (i) obtain a licence to enable the indemnified party to continue to use the services, or (ii) modify or replace the services to avoid any alleged or actual infringement or breach or (iii) terminate the provision of the affected elements of the services. Where the indemnifying party exercises options (i) or (ii) the functionality of such modification or replacement shall not materially affect the performance of the services.

# Non-Performance

* 1. The Service Provider shall, at all times, provide Services to the standards set out in this Agreement. If the Service Provider experiences problems with service delivery or is unable to provide the Services as detailed in the Service Specification or foresees such problems, this should be brought to the attention of the Council as soon as the Service Provider becomes aware of the problem.
  2. The Council will, as far as is reasonable, support the Service Provider in attempting to identify mutually agreed solutions to enable the Service Provider to provide the Services in accordance with the service levels as set out in this Agreement. However, should this fail and the Council reasonably believes that there has been a Default which is a material breach of the Agreement by the Service Provider, then the Council may, without prejudice to its rights and remedies under the Agreement including under clause 31 (Termination), do any of the following:
     1. require the Service Provider to submit a performance improvement plan detailing why the breach has occurred and how it will be remedied (without any charge or additional charge to the Council) within ten (10) Working Days or such other period of time as the Council may direct;
     2. without terminating the Agreement, itself supply or procure the supply of all or part of the Services until such time as the Service Provider has demonstrated to the reasonable satisfaction of the Council that the Service Provider can supply all or such part of the Services in accordance with the Agreement;
     3. without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; or
     4. terminate, in accordance with clause 31 (Termination), the whole of the Agreement.
  3. If the Default is not remedied within the stipulated period or such other period as the parties may have agreed in writing, the Council may deduct from the Charges payable to the Service Provider such amount as the Council shall reasonably determine to be either necessary to effect recovery of Charges paid, or be sums which would otherwise be payable in respect of such of the Services as the Service Provider shall have either failed to provide or failed to provide to the standards set out herein and in the absence of any specified standard, to an acceptable standard. The amount of such deduction shall be certified by the Council and a copy of such certificate shall be sent to the Service Provider.
  4. Without prejudice to its rights to recover any sums due under this Agreement the Council may charge the Service Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
  5. If the Service Provider fails to supply any of the Services in accordance with the provisions of the Agreement and such failure is capable of remedy, then the Council shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Council may direct.
  6. In the event that:
     1. the Service Provider fails to comply with clause 30.5 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
     2. the Service Provider persistently fails to comply with clause 30.5,

the Council may terminate the Agreement with immediate effect by notice in writing.

* 1. For the avoidance of doubt, failure by the Service Provider to provide TUPE information when requested to do so by the Council shall also constitute a Default and be grounds for the issue of a Default Notice and to suspend payment of the Charges to the Service Provider.

# Termination

* 1. This Agreement will continue in force unless terminated through the effluxion of time or earlier in accordance with the following provisions of this clause 31.
  2. Either Party may terminate this Agreement at any time by giving six (6) months’ notice in writing. The termination of the Agreement shall be without prejudice to a Party’s right to enforce any obligation which came into being prior to termination or is intended to survive termination.
  3. The Council may terminate the Agreement by written notice to the Service Provider with immediate effect if the Service Provider commits a Default and if:
     1. the Service Provider has not remedied the Default to the satisfaction of the Council within twenty five (25) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied;
     2. the Default is not, in the opinion of the Council, capable of remedy; or
     3. the Default is a Material Breach of the Agreement.
  4. In addition to termination under clause 31.3, the Council may at any time terminate this Agreement by notice in writing with immediate effect or with effect from such date as the notice may state, for ‘Cause’, which shall mean any of the following:
     1. any serious breach of any obligation owed by the Service Provider to the Council under this Agreement, including without limitation any serious breach of the Code of Conduct;
     2. a breach that the Council reasonably believes is incapable of remedy, either at all or within a reasonable time frame;
     3. a Persistent Breach by the Service Provider;
     4. a Continuous Breach by the Service Provider;
     5. any conduct on the Service Provider’s part, whether or not in the course of performing services under this Agreement, which is likely to cause damage to the reputation or standing of the Council;
     6. any act of bankruptcy by the Service Provider;
     7. if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed or takes possession of any of the Service Provider's property or equipment;
     8. if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
     9. if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Council reasonably objects;
     10. conviction of a criminal offence other than an offence under road traffic legislation not resulting in imprisonment or disqualification from driving;
     11. failure to comply with anti-slavery laws or the anti-slavery provisions contained in clause 4.3;
     12. failure to conduct ‘right to work’ checks in accordance with the Immigration, Asylum and Nationality Act 2006;
     13. if, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and its duties owed to the Council under the provisions of the agreement; and
     14. if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
  5. The effect of a contract termination notice shall be to terminate, with effect from the date stated in the notice, any obligation on the Service Provider’s part to continue to perform the Services and to remove any obligation of the Council to pay for services performed after that date. The termination of this Agreement for ‘cause’ or for Default by the Service Provider shall not give rise to any obligation by the Council to compensate the Service Provider for any loss arising from such termination.
  6. If this agreement is terminated by the Council under clause 31.3 for a Default by the Service Provider or for cause (as set out in clause 31.4) such termination shall be at no loss or cost to the Council and the Service Provider agrees to indemnify the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
  7. The Service Provider may terminate this agreement in the event that the Council commits a Termination Payment Default (as defined in clause 5.11) by giving thirty (30) days' written notice to the Council concerned. In the event that the Council remedies the Termination Payment Default in the thirty (30) day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.
  8. For the avoidance of doubt, subject to the preceding provisions of this clause 31, any provision of this Agreement capable of being performed or of having effect following the termination hereof shall continue in effect notwithstanding the termination of this Agreement.

# Force Majeure

* 1. Subject to the remaining provisions of this clause 32, none of the Parties to this agreement shall be liable to the others for any delay or non-performance of its obligations under this agreement to the extent that such non-performance has arisen from or attributable to acts, events, omissions or accidents beyond its reasonable control (‘Force Majeure Event’), including but not limited to any of the following:
     1. acts of war;
     2. acts of God;
     3. any change of law that makes the delivery of this Agreement illegal or otherwise impossible;
     4. riots;
     5. civil commotion; and
     6. any event or circumstance which is both beyond the control of whichever party is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight and that is not covered by a party’s insurance and that it is not reasonable for a party to insure against.
  2. The corresponding obligations of the other parties will be suspended to the same extent as those of the party first affected by the Force Majeure Event.
  3. Any party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:
     1. it promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
     2. it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
     3. it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
  4. If an event of Force Majeure Event occurs then the Parties shall meet to discuss how best the Service Provider can continue to provide the Service until the Force Majeure event ceases, which may include the Council providing the Service Provider with assistance, where possible.
  5. If the Force Majeure Event prevails for a continuous period of more than thirty (30) days, a party may terminate this agreement by giving fourteen (14) days' written notice to the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.
  6. For the avoidance of doubt a Force Majeure Event shall not include any labour dispute between the Service Provider and its employees or the failure to provide the Services by any approved sub-contractors.

# Notices

* 1. Any notice given under this agreement shall be in writing in English and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at the address set out at the beginning of this Agreement, or by sending it by fax to the fax number or by e-mail to the e-mail address notified by the relevant party to the other party. Any such notice shall be deemed to have been received:
     1. if delivered personally, at the time of delivery;
     2. in the case of pre-paid recorded delivery or registered post, two (2) days from the date of posting; and
     3. in the case of fax or e-mail, at the time of successful receipt by the recipient,

provided where receipt occurs outside normal office hours (16h00) on a particular day or is not on a Working Day, receipt shall be deemed to have taken place the next Working Day, provided further that in the case of e-mail where an automated response indicates that the recipient has not had sight of the e-mail, notice by e-mail shall not be deemed to have been delivered.

* 1. In proving such service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the other party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number or e-mail address of the other party (provided that an automated response does not indicate otherwise).
  2. Any notice sent by first class post shall be deemed to be delivered on the second business day after posting. Any notice delivered by hand shall be deemed to be delivered at the time of delivery provided it was received by an employee of a Party to this Agreement.

# Consequences of Termination

* 1. On the expiry or termination of this agreement whether in whole or in part and for any reason the Service Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council’s request, a replacement service provider.
  2. On termination of this agreement or when reasonably so required by the Council before such completion, the Service Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and will permanently delete any data or electronic material from any computer equipment not in the possession of the Council on which such copy is recorded, provided that where the Service Provider is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy, it shall notify the Council in writing of such retention, giving details of the documents or materials that it must retain.
  3. The provisions of clause 11 (Indemnity), clause 13 (Insurance), clause 15 (Data Protection), clause 16 (FOI), clause 28 (Audit), clause 31 (Termination), this clause 34 (Consequences of Termination) clause 40.3 (TUPE information) and clause 41 (Exit Strategy) shall survive termination or expiry of this agreement.

# Service Provider Warranties

* 1. The Service Provider warrants and represents that:
     1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Agreement and that the Agreement is executed by a duly authorised representative of the Service Provider;
     2. in entering the Agreement it has not committed any Fraud;
     3. as at the Commencement Date, all information disclosed to the Council in anticipation of providing the Services remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement;
     4. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;
     5. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Agreement;
     6. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider’s assets or revenue;
     7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Agreement;
     8. in the three (3) years prior to the date of the Contract:
        1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
        2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
        3. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Agreement.
  2. The Service Provider must provide the Service in accordance with their obligations under this agreement and with all the skill, care and diligence to be expected of a competent service provider of the Service to be provided.

# Dispute Resolution

* 1. If a dispute arises out of this Agreement or the provision of the Services the Parties will attempt to settle it by discussion between the relevant Contract Manager and the Authorised Officer.
  2. If this fails, the issue will be referred to the Parties’ respective Directors/Chief Executives for further discussion.
  3. If it is not possible to resolve the issue in this way the Parties will use mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (the Model Procedure) and the following provisions:
     1. Either party may give a Dispute Notice (the Notice) to the other requesting mediation in accordance with these Terms and Conditions; a copy of the Notice shall be sent to CEDR.
     2. The Model Procedure may be amended to take account of any relevant provisions in the Agreement or any other additional agreement which the Parties may enter into in relation to the conduct of the mediation.
     3. If there is any question on the conduct of the mediation (including the nomination of the mediator) upon which the Parties cannot agree within fourteen days from the date of the Notice, CEDR will, at the request of either party, (and after consultation with the Parties) decide such question.
     4. The mediation shall start not later than twenty-eight days after the date of the Notice.
     5. The Parties agree that, in relation to any disputes or differences arising between them in connection with this Agreement which raise the same or parallel issues as those which are submitted to mediation under similar arrangements, they shall, so far as practicable, endeavour to appoint the same mediator for all such disputes and have all the mediation proceedings consolidated.

# No Partnership or Agency

* 1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as may expressly be provided in writing and then only for the purpose set out therein.

# Third Party Rights

* 1. Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

# Sub-Contracting and Assignment

* 1. Subject to clause 39.4, no party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other parties, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council.
  2. If the Council agrees that the Service Provider may subcontract its obligations, the Service Provider shall:
     1. implement an appropriate system of due diligence and audit for its subcontractors that is designed to ensure their compliance with the Anti-slavery Policy and provisions set out in this agreement;
     2. impose on the subcontractor all obligations and responsibilities as the Service Provider assumes towards the Council in connection with the safeguarding of vulnerable adults under this agreement. The Service Provider shall also ensure that the Council has such rights against the subcontractor’s personnel as the Council has against the Service Provider’s Personnel under this agreement. The Service Provider shall furthermore emphasise that any rights the Council shall have under this clause 39.2.2 shall not relieve, remove or replace, a subcontractor’s obligations under safeguarding legislation; and
     3. make it a requirement of subcontractors to pay their employees and other staff not less than the LLW.
  3. In the event that the Service Provider enters into any sub-contract in connection with this agreement it shall remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any sub-contractor and be responsible for the acts, omissions and neglects of its sub-contractors as if they were the acts, omissions and neglects of the Service Provider.
  4. The Council shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

# TUPE

* 1. The Service Provider acknowledges that with respect to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) the Council has made no assurances about the application or effect of TUPE on this Agreement and that it formed its own view on whether TUPE applies and has not relied on any statement or representation of the Council. The Service Provider agrees, acknowledges and accepts that the Contract Price shall not be varied on the ground that TUPE does or does not apply, irrespective of the belief of the Council or the Service Provider prior to the execution of this Agreement. No compensation or remuneration shall be payable by the Council because the nature, extent, effect or character of the obligations acquired may be different from that envisaged.
  2. The Service Provider acknowledge that, pursuant to TUPE, there may be a relevant transfer on the termination of this Agreement and shall when requested by the Council fully and accurately disclose to the Council all information that it may reasonably request in relation to the Service Provider’s staff with respect to such relevant transfer.
  3. The Service Provider shall indemnify and keep indemnified the Council against all liabilities, costs (including legal costs), expenses, damages and losses incurred by the Council arising out of or in connection with any claim made against the Council arising out of or in connection with the TUPE information provided by the Service Provider in accordance with clause 40.2.

# Exit Strategy

* 1. Without prejudice to any other rights and obligations in the agreement the Service Provider shall co-operate and provide all assistance reasonably required by the Council to ensure an orderly and uninterrupted transition of the Services to the Council or any replacement provider in the event of termination or expiry of this agreement. Such assistance shall include, but not be limited to, the provision of the following information:
     1. a list, by reference to each part of the Services, of the staff resources and key personnel (if any) used to provide such Services;
     2. details of the transfer process for use in conjunction with the Council or (as the case may be) the replacement provider, which shall include details of:
        1. the means to be used to ensure an orderly and prompt transfer of responsibility for providing the relevant Services to the replacement provider while maintaining continuing provision of the Services throughout the transfer process or until the cessation of the Services;
        2. the process for transferring to a replacement provider any Service Users to which a service is being provided by the Provider at the time of termination (assuming that the Council (as the case may be) the replacement provider will implement the physical transfer of such Service Users);
        3. the process for handing responsibility for any work in progress and/or ongoing liabilities to the replacement provider;
     3. the means for transferring data securely, safely and within legislative requirements; and
     4. the communications strategy with service users and/or any relevant third parties.
  2. The Council may require the Service Provider to prepare a written exit plan setting out the information in clause 41.1 and any other information it deems necessary, in such exit plan.
  3. Unless the Council otherwise requires, during the handover period, the Service Provider shall continue to provide the Services, satisfy the Key Performance Indicators and ensure that there is no degradation in the standard to which the Services are provided, up to the date of termination or expiry of this Contract.

# Set-off

* 1. The Council may at any time, without notice to the Service Provider, set off any liability of the Service Provider to the Council against any liability of the Council to the Service Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

# Waiver and Severance

* 1. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
  2. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
  3. If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

# Entire Agreement

* 1. This Agreement constitutes the complete agreement between the Parties with respect to the subject matter hereof and supersedes all previous communication, representation understandings and any representation promise or condition not incorporated herein shall not be binding on any party.
  2. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

# Governing Law and Jurisdiction

* 1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
  2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

**This Agreement has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.**

**EXECUTED AS A DEED** and )

**DELIVERED** by **\_\_\_\_\_\_\_\_\_\_\_\_\_** )

**\_\_\_\_\_\_\_\_\_** acting by two directors )

or by a director and its secretary )

…………………………… ………………………………

Director Print name

……………………………….. ………………………………

Director / Company Secretary Print name

**THIS COMMON SEAL OF** )

**The Mayor and Burgesses of** )

**the London Borough of** )

**Hackney** was hereunto affixed )

in the presence of: )

………………………………..

Authorised Officer

Name: ……………………………………...

# SCHEDULE 1 - DEFINITIONS AND INTERPRETATION

|  |  |
| --- | --- |
| Authorised Representatives | The person designated by the Council and the Service Provider |
| Carer | means an individual, whether paid or unpaid, who provides or intends to provide care for another adult and it appears that the carer may have any level of needs for support’  A ‘carer’ is a person who provides unpaid practical and/or emotional support to a relative or friend to help them to meet their needs |
| Charges | The charges which shall become due and payable by the Council to the Service Provider in respect of the Services in accordance with the provisions of this agreement. |
| Commencement Date | The date on which the Agreement starts as set out in the Particulars. |
| Commercially Sensitive Information | The information relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Council that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss. |
| Competent Body | Any person or organisation with statutorily delegated or vested authority, capacity, or power to perform a designated function. |
| Continuous Breach | A Default which continues past the period given to remedy the Default. |
| Crown: | The government of the United Kingdom (including the Northern Ireland Assembly & Executive Committee, the Scottish Executive and the National Assembly for Wales) including but not limited to, government ministers and government departments and particular bodies, persons and government agencies. |
| Data Protection Legislation | up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998. |
| Default | means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Service Provider Personnel in connection with or in relation to the subject-matter of the Agreement and in respect of which such Party is liable to the other. |
| Dispute Resolution Procedure**:** | The procedure set out in clause 36. |
| Environmental Information Regulations**:** | The Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| FOIA**:** | The Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| Force Majeure**:** | Any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial or labour dispute relating to the Service Provider, the Service Provider’s Personnel or any other failure in the Service Provider’s supply chain. |
| Fraud | Any offence under Law or common law creating offences in respect of fraudulent acts, fraudulent acts in relation to the Agreement, defrauding or attempting to defraud or conspiring to defraud the Crown. |
| GDPR: | the General Data Protection Regulation (Regulation (EU) 2016/679) |
| Guidance | means any applicable local authority, health or social care guidance, direction or determination which the Council and/or the Service Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006. |
| Information**:** | Has the meaning given under section 84 of FOIA. |
| Intellectual Property Rights: | any and all intellectual property rights of any nature anywhere in the world whether registered or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites. |
| Law | Any applicable Act of Parliament, subordinate legislation, exercise of the royal prerogative, enforceable European Community right, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Service Provider is bound to comply. |
| London Living Wage (LLW) | The hourly wage rate payable to employees set annually by the Living Wage Foundation and calculated by the Greater London Authority |
| Material Breach | A breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:  (a) a substantial portion of the Agreement; or  (b) the provision of the Services over any three (3) month period during the term of the Agreement.  OR  A failure by the Service Provider to comply with any statutory obligation.  OR  The repeated breach of any of the terms of this Agreement in such a manner as to reasonably justify the opinion that the Service Provider’s conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement  In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding. |
| Necessary Consents | All approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time |
| Payment Plan: | The plan for payment of the Charges. |
| Persistent Breach | A Default which has occurred on three or more separate occasions within any six (6) month rolling period. |
| Personal Data | Shall have the same meaning as set out in the Data Protection Act 1998 |
| Prohibited Act | 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. |
| Regulated Activity | Means in relation to vulnerable adults the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006. |
| Regulated Activity Provider | Means shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006. |
| Regulatory Body | Means anybody other than CQC carrying out regulatory functions in relation to the Service Provider and/or the Services. |
| Request for Information | A request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations. |
| 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 actions of the Service Provider, the Service Provider’s Personnel or the Council are likely to be of significant public concern. |
| Service Levels | The service levels to which the Services are to be provided, as set out in the Specification Schedule 2. |
| Service Provider’s Personnel | All employees, agents, consultants and sub-contractors of the Service Provider and any of the Service Provider’s sub-contractors who are engaged in the provision of the Services from time to time including students and volunteers engaged by the Service Provider. |
| Service Provider | Not only the Organisation referred to as ‘the Service Provider’ at the start of this Agreement but also anybody to whom the Service Provider / Back Up Service Provider assign its interest in this Agreement, |
| Service user | A person  (a) who has been a person who receives or who may receive the Support Services which the Service Provider is to provide under this Agreement;  (b) who wishes to accept the provision of such Service or Services by the Service Provider and  (c) whose name and Service requirements have been given in writing in the form of a Service Provider Form and other information to the Service Provider by the Council  OR  A person who is receiving a Service or Services from a Service Provider and who has arranged and bought these Services from the Agency on a private basis. The beneficiary of the Services who may also be a person for whom the Council has a duty to provide the Services pursuant to Section 21 of the National Assistance Act 1948 as amended by the National Health Service and Community Care Act 1990 and the Community Care (Residential Accommodation) Act 1992. |
| Services: | The services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in Schedule 2 (Specification). |
| Tender | The document(s) submitted by the Service Provider to the Council in response to the Council’s invitation to suppliers for formal offers to supply it with the Services. |
| Term (contract period): | A period of three (3) years commencing on the Commencement Date as may be varied by:   1. any extensions to this agreement which are agreed; or 2. the earlier termination of this agreement in accordance with its terms. |
| Termination Date: | the date of expiry or termination of this agreement |
| Value Added Tax: | Tax charged under the Value Added Tax Act 1983 or any regulations made thereunder including any interest, fine, default, surcharge or penalty. |
| Whistleblowing: | A disclosure made in the public interest to report suspected illegal activity or other form of wrongdoing at work in relation to, but not limited to, harm or suspected harm suffered by a Service User, non-compliance by the Service Provider of any statutory obligations, the health and safety of persons is at risk, the committing of a criminal offence by the Service Provider or Service Provider Personnel or the covering up of any wrongdoing. |

# SCHEDULE 2 - SERVICE SPECIFICATION

|  |  |
| --- | --- |
| **Direct Payment Payroll Service Specification**  **Managed accounts**  **Service Specification** |  |

Introduction

1. Local Authorities and Clinical Commissioning Groups (CCGs) are required to provide an adequate support service to support those who need help in managing their Direct Payments and Personal Health Budgets. A suitable payroll Service forms part of this support Service.
2. The new service will commence from 1st April 2021.

2. Purpose

1. The purpose of the Service is to provide a comprehensive personalised payroll. The Service is designed for people who are in receipt of a Direct Payment from London Borough of Hackney or Personal Health Budget from City & Hackney CCG clients who are eligible for NHS funding registered with a City & Hackney practice and who employ Personal Assistant(s).
2. The Service includes all payroll functions including monthly payment to Employees and to Her Majesty’s Revenue & Customs (HMRC) and all payroll associated costs.

**3. Service Description**

1. **3.1 KEY ACTIVITY**

The Service will provide payroll Services for Direct Payment or Personal Health Budget recipients who employ Personal Assistants, with key activities including:

* Processing payroll for staff employed by Direct Payment or Personal Health Budget recipients or their third parties.
* Registering users as Employers with HMRC, requesting that all future correspondence and paperwork is then sent to the Direct Payment Payroll Service.
* Keeping complete payroll records on users’ behalf.
* Providing users with monthly payslips for staff showing tax, pension and National Insurance deductions made on their behalf.
* Processing a P45 every time a staff member joins or leaves employment with the Employer.
* Sending users a quarterly summary of tax, pension and National Insurance due to HMRC.
* Working with The Pension Regulator and the Direct Payment Support Services to support Employers with Auto-Enrolment for pensions.
* Acting as the contact for the Pension Regulator for Direct Payments/Personal Health Budget recipients using the Direct Payment Payroll Service.
* Processing of occupational pensions including providing timely information on set ups and allocations
* Provision of appropriate IT hardware and software to:
* Electronically file an Employer’s annual return (P35) and employee’s pay and deductions summary (P14) with HMRC at the end of each tax year and providing users with a summary (P60) for staff members.
* Submit Real Time Information (RTI) to HMRC on behalf of the Employer on a monthly basis.
* Guiding users through any pay-related issues that may arise.
* Keeping users up to date with tax rates and other changes that may affect their employment responsibilities, and implementing these on their behalf where appropriate.
* Automatically enrolling all Direct Payment/Personal Health Budget eligible Employers to claim the annual Employment Allowance.
* Provide annual end of year statement of Employment Allowance to be recouped by Council, CCG and DP recipient, where applicable.
* Calculating any SSP (Statutory Sick Pay), SMP (Statutory Maternity Pay), SAP and SPP (Statutory Adoption and Paternity Pay).
* Facilitating any redundancy payments to Personal Assistants.
* Working with all key partners in the delivery and development of the service, including to ensure that their client contributions are in place.
* Supplier will need to make Employers aware of their personal liability relating to payroll fines.

In addition to the above key activities, the supplier will either be able to deliver, or are working towards being able to deliver, the following activities:

* Make available the balance of annual leave accrued for Personal Assistants (e.g. outlined on payslips or similar).

1. Supplier will also provide support and training to London Borough of Hackney and City & Hackney CCG Suppliers on the use of any web based services or other systems that they will need to interact with, as required.
2. The Service will work with commissioners to implement any new government Direct Payment and Personal Health Budget initiatives and legislation introduced relating to payroll services and to analyse impact as appropriate

The Direct Payment Payroll Service will be required to work with key partners to deliver the service. (Key partners include and not limited to London Borough of Hackney staff, Direct Payment client and their staff)

1. 3.1.1 Ending the Service
2. Supplier will end the payroll Service provided to an individual on notification from the Employer, Adult Social Care (London Borough of Hackney), or City & Hackney CCG.
3. Facilitate redundancy payments (where applicable) and process the P45s at the end of employment.
4. 3.1.2 Access to the Service
5. The service should offer a fully functional, secure, web-based service with a website suitable for use on phones, tablets and PCs which meets accessible information standards. Wherever possible the service should encourage users to use the web based service. The web-based service should also have accessible features for those who have accessibility needs. The Supplier will also need to provide a telephone support line and an email mailbox during office hours of 9am to 5pm from Monday to Friday, with a response time of answering phone within 5 rings or replying to email with an automated response and a detailed response by the next working day.
6. The Service will be provided for 52 weeks of the year on Business Days only.
7. Information should be available in a variety of formats to support communication including different languages and easy read as well as being in line with the plain english campaign.
8. **3.2 ELIGIBILITY CRITERIA**
9. The payroll Service will be available for:

* Employers who receive a Direct Payment from London Borough of Hackney.
* Employers who receive a Personal Health Budget from City & Hackney CCG and are registered with a GP practice in Hackney.
* Parents or guardians who receive Direct Payments or Personal Health Budgets on behalf of their children
* Young people transitioning from Hackney Council’s Children Social Care to Adults Social Care or Adults Health Services
* Third parties who manage the Direct Payment or Personal Health Budgets on the client’s behalf

The payroll Service covered within this contract will not be available for individuals who self-fund their own services.

1. **3.3 REFERRAL ROUTES**
2. Referral routes to the Service:

* Adult Social Care and Council’s Children’s Service
* Self-Referral
* Hackney Direct Payment Support Service
* City & Hackney CCG & NHS Providers

3.4. STAFF

1. The Supplier will at all times make available sufficient numbers of staff to deliver the Service throughout the year.
2. Where staff require training to carry out their role effectively then the Service should provide training and supervision to develop the necessary skills.
3. The Supplier will ensure that all staff be suitably trained and qualified personnel to deliver the services.additional specialist training where a specialist need is identified such as IT applications.
4. Details of all training must be recorded, regularly monitored and actioned to ensure that training remains current and appropriate to changing needs.
5. The Supplier will be required to provide qualified professional management and supervision of the Service – to include back up during periods of sickness and holidays. Staff appraisals will be at least annually and one to one supervision of staff will be at least quarterly.

4. Service Volumes

An Employer is a person who employs a Personal Assistant and pays their salary through a Direct Payment or Personal Health Budget. We estimate the numbers as 130 Employers requiring the Service per annum. Some Employers may employ more than one Personal Assistant. These figures are given for quotation purposes and are not guaranteed during the life of the contract.

The payroll for Employers will be processed regularly on a monthly basis. Each Employer will employ one or more Personal Assistants. Where multiple Personal Assistants are employed, the payroll Supplier will efficiently manage the payrolls on behalf of the Employer to minimise duplication of resources.

We are anticipating a 3% year on year increase in activity.

5. Performance

**5.1 Key Performance Indicators**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ID** | **Key Performance Indicator** | **Measure** | **Annual**  **Target** | **Evidence Source** | **Reporting mechanism** |
| 1 | Ending Service promptly | % of payrolls ended within 1 week of receiving notification to end | 100% | Payroll details | Monthly Return |
| 2 | HMRC fines - Employers | Number of Employers fined by HMRC | 0 | Payroll details | Monthly Return |
| 3 | The Pension Regulator fines - Employers | Number of Employers receiving penalty notices by The Pension Regulator | 0 | Payroll details | Monthly Return |
| 4 | Auto-Enrolment - Employers | % of Employers who have registered for Auto-Enrolment for pensions by staging date | 100% | Payroll details | Monthly Return |
| 5 | Employment Allowance - Employers | Number of eligible Employers claiming the Employment Allowance | 100% | Payroll details | Annual Return |

1. **5.2 For information only**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ID** | **Performance Description** | **Measure** | **Evidence Source** | **Reporting mechanism** |
| 6 | Pensions - Employers | Number of Employers paying pensions for their Personal Assistant and total pension amount paid per employer | Payroll details | Monthly Return |
| 7 | Pensions - Personal Assistants | Number of Personal Assistants receiving pensions in their payroll and the total pension amount paid per employee | Payroll details | Monthly Return |
| 8 | Employment Allowance Claimants - Employers | Number of eligible Employers claiming the Employment Allowance and the total amount received in Employment Allowance by Employer | Payroll details | Annual Return |
| 9 | Utilisation - Personal Assistants (monthly) | Number of Personal Assistants receiving salaries through payroll Service – in total and by Employer | Payroll details | Monthly Return |

1. **5.3 Outcomes**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ID** | **Outcome** | **Measure** | **Annual Target** | **Evidence Source** | **Reporting mechanism** |
| 10 | People have greater choice and control | % of Employers who report an increase in knowledge about their rights and responsibilities as a result of the Service | 100% | Annual Consultation Survey | Annual Consultation Report |
| 11 | People stay safe | Number of safeguarding alerts raised by the Supplier | N/A | Annual Consultation Survey | Annual Consultation Report |
| 12 | People are more confident in dealing with any problems in the future | % of Employers who report an increase in confidence about dealing with future problems as a result of the Service | 100% | Annual Consultation Survey | Annual Consultation Report |
| 13 | People are helped to maximise their income | Number of Employers who report receiving fines relating to payroll | 0 | Annual Consultation Survey | Annual Consultation Report |
| 14 | People are helped to enjoy and achieve | % of people who report a seamless Service with payroll Service | 100% | Annual Consultation Survey | Annual Consultation Report |
| 15 | Employers rate the Service as good or better | % of Employers who rated the payroll Service as good or better | 100% | Annual Consultation Survey | Annual Consultation Report |

6. Quality Requirements

The quality levels applicable to this Contract are as follows:

1. The Supplier will be required to undertake an annual quality audit in a format to be agreed with the Council and create an evaluation report to evidence that action has been taken to positively address issues arising from this. This should include positively addressing issues raised from the Annual Consultation Survey.
2. The Supplier will be required to comply with all current legislation such as The Care Act 2014 and all future legislation and HMRC guidance.
3. If trends are identified in relation to gaps in Service provision, the Supplier is required to feedback such information to the Council.
4. The Supplier will be expected to develop a Service development plan to improve Service delivery, appoint staff and contribute to the continuous improvement plan for the Service.

7. Management Information

1. The Supplier may be required to provide the following monitoring information in a format agreed with Council:

* Payroll information
* Pension information
* List of clients and a breakdown of whether they are funded through Children’s services, Adult Social Care or CCG
* List of Personal Assistants employed by each individual accessing the Service
* Provide annual end of year statement of Employment Allowance to be recouped by Council, CCG and DP recipient, where applicable.

8. Contract Management

1. The frequency of the Contract Review meetings will be determined by performance and risk measures and will be attended by representatives of the Council and the supplier. The Management Information Workbook will be submitted quarterly to the contract manager and will include:

* Key Performance Information
* Outcomes data
* Management Information
* Number and nature of compliments/complaints
* Number of safeguarding alerts raised
* Any other information required

**The frequency of contract monitoring will depend on assessed level of risk and may include:**

* Quality Review (360o Review) of the Service which will include feedback from relevant stakeholders
* Review of Management Information collated in the Management Information Workbook
* Staff numbers and changes, and skills, induction and training provided to staff
* Examination of Service User records
* Examination of staff files – supervision appraisal, training and development etc.
* Information about Quality Marks being pursued or achieved
* Review of policies and procedures
* Example of literature issued about the Service
* Training information provided to Employers, staff and partners
* Consultation material that is being proposed

9. Business Continuity

1. Business Continuity Plans must be in place for the general continuation of the Service in the event of serious disruption or emergency. As a minimum, contingency plans will cover major staff shortages, IT failure and office / working environment disruption.

A transition plan will need to be implemented (agreed with commissioners) between the contract award date and service start date to ensure a smooth transition for Employers.

# APPENDIX A - DETAILS OF CONTRACT MONITORING REVIEW MEETINGS

|  |  |
| --- | --- |
| Frequency | Agenda Items |
| Quarterly– unless otherwise advised. | * Welcome and Introductions * Contract Management Feedback * Contractual Issues – where applicable * Performance * Complaints/Safeguarding/ Serious Incidents * Provider Quality Assurance * AOB |

# APPENDIX C - PROVIDER PERFORMANCE, QUALITY OR SAFEGUARDING REPORT

|  |  |  |
| --- | --- | --- |
| **Stage** | **Indicators** | **Possible Actions** |
| Stage 1 | * Ineffective systems and processes * Late / Incomplete submission of KPI data. * Incomplete Policies | Service Improvement Plan  Monitoring of Service |
| Stage 2 | * Little or no progress to meeting actions on Service Improvement Plan * No submission of data for more than one quarter. * Inadequate or incomplete or out of time actions arising from a complaint safeguarding event. * Poor incident reporting * Capacity Issues | Performance Notice  Increased Monitoring  Formal Meetings |
| Stage 3 | * Failure to report a serious or untoward incident. * Regulatory enforcement * Serious failure (organisational or individual) resulting in harm to service user and/carer. * Breach of Contract * Acts that place service users at risk or significant harm * Inadequate, incomplete or out of time actions arising from a substantiated safeguarding event. | Contract Sanction   * + Suspension   + Formal Meetings   + Default Notice   + Termination |

# SCHEDULE 3 - PRICING AND PAYMENT

1. Contract Price per annum:

xxxxxxx

1. Total Contract value:

xxxxxx

1. Payment Schedule: see 3.3 below.

3.1) In return for providing the Services as detailed in the Service Specification (including any standards against which the provision of Services are to be measured) Hackney shall pay the Service Provider the Contract Price. The amount or rate of payment as set out in the Pricing Schedule may only be varied by agreement in writing between the parties.

3.2) The Service Provider shall invoice the Council on an annual basis by sending two copies of the invoice to the Council.

One copy shall be sent to the Payments Team at:

London Borough of Hackney

PO Box 494

Northwich, CW9 9AZ (for paper invoices)

Or Email to: [invoices@hackney.gov.uk](mailto:invoices@hackney.gov.uk)

**Email invoices must be in PDF format or TIFF image.**

One copy of the invoice must also be sent via e-mail to the Procurement and Brokerage Support Officer:

[Claire.McEwen@hackney.gov.uk](mailto:Claire.McEwan@hackney.gov.uk) or Carrie.Reynolds@hackney.gov.uk

3.3) For 2020/21 payments will be made in 4 quarterly payments on the following dates

|  |  |
| --- | --- |
| **2021/22 Payment Period** | **Payment due date** |
| April 21 - June 21 | mid May 2021 |
| July 21 - September 21 | mid September 2021 |
| October 21 - December 21 | mid November 2021 |
| January 22 - March 22 | mid February 2022 |

3.4) The invoice must include:

* The “London Borough of Hackney” clearly stated as the addressee on the very top line
* The Purchase Order number in accordance with the Councils’ “ No PO, No Pay Policy “
* The payment period in respect of each payment to be made,
* Details of the Services for which payment is claimed
* and such other supporting information and documentation as Hackney may reasonably require or request from time to time.
* Payments against this invoice will take account of sums otherwise due under the Agreement but already paid.

3.5) Failure to follow the above procedure may delay payment to the provider.

# SCHEDULE 4 - POLICIES AND PROCEDURES

1. City & Hackney SVA Protocol –

[Hackney Council - Safeguarding Adults - Information and Forms for Professionals](http://www.hackney.gov.uk/safeguarding-adults-policies.htm)

<http://www.hackney.gov.uk/safeguarding-adults-policies.htm>

1. Quality Assurance Board
2. Service Default Procedures
3. Contract Monitoring Procedures
4. Complaints Procedures

# SCHEDULE 5 - ACTS AND GUIDANCE

1. The 2016 “ADASS - London Multi-Agency Adult Safeguarding Policy and Procedures”.
2. The NHS & Community Care Act 1990
3. The Human Rights Act 1998
4. Care Act 2014
5. The Mental Health Act 1983
6. The Mental Capacity Act 2005
7. The Youth Justice and Criminal Evidence Act 1999
8. Local strategies arising from the National Service Frameworks for Mental Health (1999) and for Older People (2000) and the aims set out in Valuing People, for People with Learning Disabilities (2000).
9. Any and all other relevant European Directives and Acts of Parliament and with all relevant Statutory Orders and Regulations relating to the provision of the Service save where otherwise expressly provided.

# SCHEDULE 6 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

* + 1. The Service Provider shall comply with any further written instructions with respect to processing by the Council.
    2. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | Public task: the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law. |
| Duration of the processing | Please see length of contract to include any extension periods. |
| Nature and purposes of the processing | * · 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. * · employment processing, * · statutory obligation, * · recruitment assessment * · Needs assessment * Service Quality monitoring |
| Type of Personal Data | **Service Users**  · First name,  · Family Name  · address,  · date of birth,  · NI number,  · telephone number  · image  · Name of carer/Relative  · Medical diagnosis  · Housing status  · Income/Benefits  · Emergency contact details  · Next of Kin details  · Dietary needs  · Physical health records including allergies  · Nationality  · Times used service  · Assessments done by service  · Correspondence to and from service user  · Sexual orientation  · Gender  · Ethnicity  · Disability  ·    **Staff**  · First name,  · Family name  · address,  · date of birth,  · Qualifications  · Levels of sickness  · Appraisals  · Performance reports  · Driving licence (For ID)  · Copy of Passport (for ID)  · NI number,  · telephone number  · images  · Bank account details  · Pension details  · HMRC Reference number  · Sickness records/GP notes  · Next of Kin contact details  · DBS Reference numbers  · Nationality  · Sexual orientation  · Gender  · Ethnicity  · Disability    **Others**    · Website visits/ payments  · Supplier bank details  · Satisfaction questionnaires |
| Categories of Data Subject | · S*taff (including volunteers, agents, and temporary workers),*  · *customers/ clients,*  · *suppliers,*  · *patients,*  · *students / pupils, members of the public,*  · *users of a particular website* |
| 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 | To be retained in accordance with Hackney Council storage of records retention and disposal schedules. This includes keeping for at least 6 years from the last receipt of service unless there is a legal reason for holding the information for longer, for some legal precedent to remove it sooner.    The contractor will then delete the personal data securely.    Any ‘live’ personal data will be returned by the contractor to the Council at termination of contract at no expense to the Council. |

**SCHEDULE 7 - SERVICE DETAILS**