**AGREEMENT FOR SERVICES**

**FORM OF AGREEMENT**

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| **NAMES AND ADDRESSES OF THE PARTIES:** | | |
| **The Council:**  Wokingham Borough Council  Civic Offices  Shute End  Wokingham  Berkshire  RG40 1BN | **The Provider:**  Company Number: | |
| **AGREEMENT:** | | |
| This agreement is dated the ………………………day of ……………………………….  The Provider has the necessary skill, knowledge and experience to perform the Services. In reliance upon that skill, knowledge and experience the Council has selected to appoint the Provider to provide the Services and the Provider agrees to provide the Services in accordance with the Council’s Standard Terms & Conditions for Services attached to this form of agreement. | | |
| **DEFINITIONS:** | | |
| **Services:** As set out in the **Schedule 1** annexed to this Agreement.  **Charges & Payment:** As set out in the **Schedule 2** annexed to this Agreement.  **Commencement Date:**  **Term:** 2 years **to** 31st March 2025  The Council may at its absolute discretion (and at any time within the Term above) by giving written notice to the Provider of not less than 3 (three) Months, extend the Contract for a further period or periods up to 2 years after initial Term. The provisions of the Contract will apply throughout any such extended period. | | |
| **STANDARD CLAUSES:** | | |
| **Clause 11.2 (Indemnity and Insurance)**  Employers Liability Insurance minimum liability of value £5 million  Public Liability Insurance minimum liability of £5 Million  Professional Indemnity Insurance minimum liability of value £1 million  *(if appropriate to the service)*  Medical Malpractice Insurance minimum liability of value £10 million  *(if appropriate to the service)*  **Clause 16.2 (Termination)**  Without limiting its other rights or remedies, either party may terminate this Agreement by giving the other party 6 months written notice | | |
| **OPTIONAL CLAUSES** | | |
| **Clause 6 (Safeguarding)**  xX  **Clause 12 (Data Protection)** | | |
| **SIGNATURE (The Council):** | | **SIGNATURE (The Provider):** |
| Signed by a duly authorised signatory for and on behalf of the Council:  SIGNED…………………………………….  NAME……………………………………….  TITLE………………………………………..  DATE……………………………………….. | | Signed by a duly authorised signatory for and on behalf of the Provider:  SIGNED…………………………………….  NAME……………………………………….  TITLE………………………………………..  DATE……………………………………….. |

**STANDARD TERMS & CONDITIONS FOR SERVICES**

1. **Interpretation**
   1. Definitions. In this agreement, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

**Charges:** the charges payable by the Council for the supply of the Services in accordance with clause 9.

**Commencement Date:** means the Commencement Date set out in the attached form of agreement.

**Confidential Information:** means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the Council or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts and including (but not limited to) information that the Provider creates, develops, receives or obtains in connection with this Agreement, whether or not such information (if in anything other than oral form) is marked confidential.

**Council Materials:** has the meaning set out in clause 3.3(i).

## **Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

## **DPA 2018**: UK Data Protection Act 2018

**Data Protection Impact**

**Assessment**: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Legislation**: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

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

**Deliverables:** all documents, products and materials developed by the Provider or its agents, Providers and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Environmental Information**

**Regulations:** the Environmental Information Regulations 2004 (SI 2004/3391) or any amendments or renactments thereof 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.

**FOIA Exemption:** any applicable exemption to the FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA).

## **GDPR**: the General Data Protection Regulation (Regulation (EU) 2016/679) or as implemented into domestic law

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| **Invoice Payment Date:** | The date on which the Council executes its payment run in respect of the relevant Invoiced Charges; |

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**LED:** Law Enforcement Directive (Directive (EU) 2016/680) or its implementation into domestic law

**Personal Data:** shall have the same meaning as set out in the DPA 2018.

## **Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Services:** the services, including without limitation any Deliverables, to be provided by the Provider under this agreement as set out in the Specification.

**Specification:** the description or specification for the Services set out in Schedule 1.

## **Sub-processor**: any third Party appointed to process Personal Data on behalf of the Provider related to this Agreement.

**Term:** means the Term set out in the attached form of agreement.

**TUPE**  means the Transfer of Undertaking (Protection of Employment) Regulations 2006 and any associated regulations

* 1. The following rules of interpretation apply in this agreement:
     1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
     2. a reference to a party includes its personal representatives, successors or permitted assigns;
     3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and
     4. any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those,

1. **term**
   1. This agreement shall take effect on the Commencement Date and shall continue for the Term unless terminated earlier in accordance with the terms of this agreement.
2. **Supply of Services**
   1. The Provider shall from the Commencement Date and for the Term provide the Services to the Council.
   2. The Provider shall meet any performance dates for the Services specified in the Specification.
   3. In providing the Services, the Provider shall:
      1. co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
      2. perform the Services with the best care, skill and diligence in accordance with best practice in the Provider's industry, profession or trade;
      3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Provider's obligations are fulfilled in accordance with this agreement;
      4. use personnel who have the necessary standard of English language skills to enable the Council to fulfil its fluency duty set out in the Code of Practice issued under s.80 of the Immigration Act 2016
      5. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Provider by the Council;
      6. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
      7. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
      8. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
      9. observe all health and safety rules and regulations and any other security requirements that apply;
      10. hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Provider (“**Council Materials**”) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation;
      11. not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Provider acknowledges that the Council may rely or act on the Services; and

### Comply with all Council policies, procedures and security guidelines relating to information security and data protection; in particular the Supplier and Third Party Acceptable Usage Policy and related security policies which can be found at <http://www.wokingham.gov.uk/council-and-meetings/open-data/plans-policies-and-strategies/>

* + 1. keep confidential all matters relating to this agreement and on or before termination the Provider shall ensure that all documents and/or computer records in its possession are delivered up to the Council or securely destroyed.

# Confidential information

4.1 The Provider acknowledges that in the course of the Term he will have access to Confidential Information. The Provider has therefore agreed to accept the restrictions in this clause 4.

4.2 The Provider shall not (except in the proper course of his duties), either during the Term or at any time after the Termination Date, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

(a) any use or disclosure authorised by the Council or required by law; or

(b) any information which is already in, or comes into, the public domain otherwise than through the Provider's unauthorised disclosure.

4.3 At any stage during the Term, the Provider will promptly on request return all and any Council property in his possession to the Council.

# Conflict of interest

## In undertaking the Services, the Provider shall at all times act in the best interests of the Council and shall at no time subordinate or otherwise undermine the Council’s interests to the advantage of its own interests or those of any third party.

## The Provider shall immediately notify the Council in writing upon becoming aware of any actual or potential conflict of interest between the interests of the Council and itself or any other client or prospective client and will take all necessary steps to remove or avoid the cause of such conflict of interest to the satisfaction of the Council.

# Safeguarding

Safeguarding Adults

6.1 The Provider shall at all times comply with the requirements of section 42-47 of the Care Act 2014 and the Pan Berkshire Safeguarding Adults Policy and Procedures, including any updates and/or replacement documents, and also comply with the requirements of any Regulatory Body to which the Provider is subject, including Deprivation of Liberty regulations and any change in such requirements. The Provider will at all times have arrangements (“the Provider’s Arrangements”) in force for safeguarding and promoting the welfare of vulnerable adults which are compliant with the local Safeguarding Adults Procedures and will ensure that additional internal procedures or inter-agency protocols are consistent with these procedures. In the event of a Safeguarding Adults Review, the Provider will comply fully with any request by the West of Berkshire Safeguarding Adults Board (SAB) for access to information, or to supply an Individual Management Review, or other report, including adherence to timescales, with investigations being conducted by an appropriate senior member of management staff.

Safeguarding Children

6.2 ‘Working Together to Safeguard Children’ and ‘Section 11 of the Children Act 2004’ places a statutory duty on all Providers ‘who provide services for, or work with children’ or young people, to ‘safeguard and promote the welfare of children’.

6.3 The Provider shall at all times comply with the requirements of Section 11 of the Children Act 2004 and the Child Protection Procedures relevant to the Local Safeguarding Children Board (LSCB) in which the child is placed (e.g. Berkshire Child Protection Procedures). The Provider will at all times have arrangements (“the Provider’s Arrangements”) in force for safeguarding and promoting the welfare of children which are compliant with the local LSCB Child Protection Procedures and the Provider’s duties in ‘Working Together to Safeguard Children’ and will ensure that any additional internal procedures or inter-agency protocols are consistent with these procedures.

Safeguarding requirements applying to both Adults and Children

6.4 Providers shall ensure that:

6.4.1 All staff and volunteers (including temporary staff) ‘are made aware of the Provider’s Arrangements’;

6.4.2 They publish written policies that explicitly state ‘clear priorities for safeguarding and promoting the welfare of children’ and vulnerable adults in ‘strategic policy documents’ and that they ensure the effective dissemination, and implementation, of these policies to staff and volunteers;

6.4.3 They provide ‘a clear line of accountability within the organisation for work on safeguarding’ and promoting welfare and demonstrate ‘a clear commitment by the Provider to the importance of safeguarding and promoting welfare’;

6.4.4 Their staff and volunteers are subject to Safer Workforce processes and checks, including, ‘recruitment and human resources management procedures that take account of the need to safeguard and promote welfare, including arrangements for appropriate checks on new staff and volunteers’, this includes conducting appropriate checks with the Disclosure and Barring Service (DBS) and making referrals to the DBS upon termination of employment or resignation of the employee if the legal criteria are met. The DBS checks shall be renewed every 3 (three) years as a minimum at the Provider’s own cost.

6.4.5 They adhere to local LSCB and SAB ‘Procedures for dealing with allegations of abuse against members of staff and volunteers’, including arrangements for notifying the Local Authority Designated Officer (LADO), for Services in relation to Children and Young People;

6.4.6 They ensure that all staff and volunteers undertake appropriate training, and to ensure that this is kept up-to-date by refresher training at regular intervals;

6.4.7 They respect the confidentiality of individuals and adhere to the SAB and Wokingham Borough Council’s LSCB Information Sharing and Assessment Protocols, which summarises local ‘arrangements to work effectively with other organisations to safeguard and promote welfare, including arrangements for sharing information’, (subject to any relevant provisions of the Data Protection Act);

6.4.8 They disseminate and implement ‘appropriate whistle-blowing procedures, and a culture that enables issues about safeguarding and promoting the welfare of children and vulnerable adults to be addressed’;

6.4.9 They maintain accurate and up-to-date records of decision making and actions taken;

6.4.10 They are at all times sensitive to needs arising from race, culture, religion, sexual orientation or linguistic background;

6.4.11 They furnish the client or their agents on their reasonable request, with copies of their records relating to any of the above;

6.4.12 They notify Commissioners within five working days of safeguarding incidents involving their staff or clients that arise in the course of delivering their service.

6.5 The Provider should refer to the SAB and LSCB’s website for Safeguarding resources (‘Safeguarding Toolkit’) to assist them in fulfilling these responsibilities.

6.6 Compliance with these minimum standards will primarily be monitored in review meetings by the Contract Manager/Officer.

6.7 The Local Safeguarding Children Board will monitor Provider compliance with Safeguarding requirements in its Section 11 Audit (Section 11 of the Children Act 2004). Failure to comply with any part of this Clause will be deemed a Material Breach of the Contract.

6.8 The Provider must make available a copy of any of their internal safeguarding policies and procedures to the Council on request.

6.9 Upon the Council’s reasonable request, a copy of the Provider’s records relating to the protection of vulnerable adults and children from abuse made in relation to the Service(s) and its response must be supplied.

6.10 The Provider shall adopt Safeguarding Policies and such policies shall comply with the Pan Berkshire Safeguarding Policies as amended from time to time and the Provider shall comply at all times with any new local or national safeguarding policies which may be introduced.

6.11 At the reasonable written request of the Council, and within the specified timescale, the Provider must provide evidence to the Council that it is addressing any safeguarding concerns.

6.12 If requested by the Council, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

1. **Council remedies**
   1. If the Provider fails to perform the Services by the applicable dates set out in the Specification or the Provider fails to perform the Services to the standard set out in the Specification, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:
      1. to terminate this agreement with immediate effect by giving written notice to the Provider;
      2. to refuse to accept any subsequent performance of the Services which the Provider attempts to make;
      3. to recover from the Provider any costs incurred by the Council in obtaining substitute services from a third party;
      4. where the Council has paid in advance for Services that have not been provided by the Provider, to have such sums refunded by the Provider; or
      5. to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Provider's failure to meet such dates or standards.
   2. The terms of this agreement shall extend to any substituted or remedial services provided by the Provider.
   3. The Council's rights under this agreement are in addition to its rights and remedies implied by statute and common law.
2. **Council's obligations**

The Council shall:

* + 1. provide the Provider with reasonable access at reasonable times to the Council's premises for the purpose of providing the Services; and
    2. provide such information to the Provider as the Provider may reasonably request and the Council considers reasonably necessary for the purpose of providing the Services

1. **Charges and payment**
   1. The Charges for the Services are set out in the Schedule 2, and shall be the full and exclusive remuneration of the Provider in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include only costs and expenses of the Provider directly or indirectly incurred in connection with the performance of the Services.
   2. The Provider shall invoice the Council quarterly in advance. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice in a timely fashion.

## The Council’s standard payment term is 30 days of receipt of a valid and undisputed invoice.

## For the purposes of this agreement, payment date is the date the payment leaves the Council’s bank account. Payment receipt date will be subject to the standard bank transfer timescales;

* 1. All amounts payable by the Council under this agreement are exclusive of amounts in respect of value added tax chargeable for the time being (“VAT”). Where any taxable supply for VAT purposes is made under this agreement by the Provider to the Council, the Council shall, on receipt of a valid VAT invoice from the Provider, pay to the Provider such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
  2. The Provider shall maintain complete and accurate records of the time spent and materials used by the Provider in providing the Services, and shall allow the Council to inspect such records at all reasonable times on request.
  3. The Council may, without limiting its other rights or remedies, set off any amount owed to it by the Provider under this agreement against any amount payable by the Council to the Provider under this agreement.
  4. The Provider will not distribute the Charges or any part of it to any of its shareholders, trustees or members.
  5. The Provider will maximise the use of the funding where possible and work to demonstrate that they will be able to obtain further funding for the Service in future years rather than relying on the level of Council funding represented by the agreement.
  6. Funding under this agreement is contingent upon the Council having budget available and there is no guarantee of future funding after this agreement has ended.

1. **Monitoring of Performance and Compliance**

## The Provider shall comply with the monitoring arrangements set out in the Service Specification including, but not limited to, providing such data and information as the Provider may be required to produce under this agreement.

## At the Council’s request, the Provider shall supply the Council with any Information necessary to confirm the Provider’s compliance with any aspect of the agreement. The Provider must agree to use the Council’s online contract management system Atamis or any such system which the Council may use to replace it. The Provider must allow the Council’s staff reasonable access to any premises and paperwork in relation to the Service at any time.

## In addition, the Council retains the right to make ad-hoc requests for Information on any other aspects of the Service. This Information may be used to develop the Council’s strategies for commissioning future Services or to support development of the market.

## As a requirement in respect of a discharge of their duty, the Council may require the Provider to supply financial Information concerning their continuing financial viability. The Council shall treat this Information in the strictest of confidence and shall use it only for the purpose requested. Any concerns arising from the Information shall be fully discussed between the Parties.

1. **Indemnity and Insurance**
   1. The Provider shall keep the Council indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with:
      1. any claim made against the Council by a third party arising out of, or in connection with, the supply 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 Provider, its employees, agents or sub Providers; and
      2. any claim brought against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services.
   2. For the duration of this agreement and for a period of six years thereafter, the Provider shall maintain in force, with a reputable insurance company, professional indemnity insurance (where relevant) and public liability insurance in the sums set out in the attached form of agreement to cover the liabilities that may arise under or in connection with this agreement and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
   3. This clause 11 shall survive termination of this agreement.

## **DATA PROTECTION**

## Shared Personal Data

## This clause sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

## Effect of non-compliance with Data Protection Legislation

## Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.

## 12.3 Particular obligations relating to data sharing

## Each party shall:

## ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

## give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

## process the Shared Personal Data only for the Agreed Purposes;

## not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

## ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;

## ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

## not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:

## complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and

## ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

# Freedom of information

* 1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements.
  2. The Provider shall and shall procure that its Sub-Providers shall:
     1. transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
     2. provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
     3. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
  3. The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
     1. is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
     2. is to be disclosed in response to a Request for Information.
  4. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

13.6 **equal opportunities**

The Provider shall adopt a policy to comply with the requirements of the Equality Act 2010 and, accordingly, shall not treat one individual or group of people less favourably than others because of colour, race, nationality, ethnic origin, religion or belief, gender, gender reassignment, sex, sexual orientation, disability, age, marital status or because they have entered into a civil partnership, pregnancy or maternity and, further, shall seek to promote equality among its personnel and generally

1. **dispute resolution**

In the event that a dispute arises in respect of this agreement or the Services the parties will meet within ten Business Days of a request by either party and the parties shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within twenty Business Days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven Business Days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.

1. **Termination**
   1. Without limiting its other rights or remedies, the Council may terminate this agreement with immediate effect by giving written notice to the Provider if:
      1. the Provider commits a material or persistent breach of this agreement and (if such a breach is remediable) fails to remedy that breach within five days of receipt of notice in writing of the breach;
      2. the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
      3. the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
      4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
      5. the Provider (being an individual) is the subject of a bankruptcy petition order;
      6. a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
      7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Provider (being a company);
      8. a floating charge holder over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
      9. a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
      10. any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(i) (inclusive);
      11. the Provider suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
      12. the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
      13. The Provider commits an offence under the Bribery Act 2010.
   2. Without limiting its other rights or remedies, the Council may terminate this agreement by giving the Provider written notice as detailed in the attached form of agreement.
2. **Consequences of termination**

On termination of this agreement for any reason:

* + 1. the Provider shall immediately deliver to the Council all Deliverables whether or not then complete, and return all Council Materials. If the Provider fails to do so, then the Council may enter the Provider's premises and take possession of them. Until they have been returned or delivered, the Provider shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this agreement;
    2. the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination; and
    3. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
    4. If, as a result of termination or contract expiry, the Service(s) are to be taken over, in part or full, by an alternative provider, the Provider must co-operate with the incoming provider. This includes providing information in a timely manner and within any deadline set, and liaising with the incoming provider regarding a handover of service user’s cases.

1. **Human Rights & Modern Slavery**

## The Provider shall not do or omit to do anything which may be incompatible with a Convention Right (as defined by Section 1 of the Human Rights Act 1998) or otherwise act or omit to act in a manner entitling any person to instigate any proceedings against the Council as a public authority for any remedy and the Provider shall indemnify the Council against any damages awarded or any other costs or expenses for which the Council shall become liable insofar as the same may be payable in consequence of the Providers failure to observe the requirements of this clause.

## In performing its obligations under the agreement, the Provider shall:

(a)   comply with all applicable anti-slavery and human trafficking laws, statutes, regulations (and codes) from time to time in force including but not limited to the Modern Slavery Act 2015; and

(b)   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;

(c)   include in contracts with its direct subcontractors and Providers provisions which are at least as onerous as those set out in this Clause

(d)   notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.

(e)   maintain a complete set of records to trace the last tier of the supply of all goods and Service provided to the Council in connection with this agreement; and permit the Council and its third party representatives to inspect the Provider’s premises, records, and to meet the Provider’s personnel to audit the Provider’s compliance with its obligations under this Clause

17.3 The Provider represents and warrants that at the date of this agreement it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

17.4 The Council may terminate the agreement with immediate effect by giving written notice to the Provider if the Provider commits a breach of this Clause.

1. **General**
   1. **Force majeure:**

Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this agreement if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Provider from providing any of the Services for more than two weeks, the Council shall have the right, without limiting its other rights or remedies, to terminate this agreement with immediate effect by giving written notice to the Provider.

* 1. **Assignment and subcontracting:**
     1. The Provider shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement without the prior written consent of the Council.
     2. The Council may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under this agreement and may subcontract or delegate in any manner any or all of its obligations under this agreement to any third party or agent.
  2. **Notices:** 
     1. Any notice or other communication required to be given to a party under or in connection with this agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
     2. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
     3. This clause 19.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this agreement shall not be validly served if sent by e-mail.
  3. **Waiver and cumulative remedies:** 
     1. A waiver of any right under this agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
     2. Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.
  4. **Severance:** 
     1. If a court or any other competent authority finds that any provision (or part of any provision) of this agreement is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
     2. If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
  5. **No partnership**

18.6.1 Nothing in this agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

18.6.2 The Provider must not represent to anyone, nor allow any of its employees or agents to represent to anyone, that it is the Council’s agent or servant for any purpose whatsoever.

18.6.3 The Provider must not enter into a Contract on the Council’s behalf or on behalf of any of the Individuals, or in any way claim that it is authorised to do so. This includes not binding the Council or any of the Individuals to carrying out, varying, releasing or discharging any obligation, whether or not by way of a formal Contract.

18.6.4 The Provider does not have the power under this Contract to make, vary, discharge or waive any bye-law or regulation of any kind and it must not represent itself as having any such power.

* 1. **Third parties**

A person who is not a party to this agreement shall not have any rights under or in connection with it.

* 1. **Variation**

Any variation, including any additional terms and conditions, to this agreement shall only be binding when agreed in writing and signed by Council.

* 1. **Governing law and jurisdiction**

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

18.10 **TUPE**

18.10.1 The parties agree that TUPE may apply to this Agreement and the Provider agrees to provide reasonable assistance to the Council to provide any necessary information to the Council in this respect, The Provider should also seek independent legal advice as to its application

18.10.2 At any time during or up to 2 (two) years after the expiration or termination of this agreement the Provider shall supply within 20 working days upon request by the Council such Information as may be reasonably required to comply with the TUPE Regulations and this Contract for disclosure to third parties intending to submit Tenders or otherwise offering to enter into any subsequent Contract for the provision of the Service.

18.10.3 The Information to be provided in accordance with this clause may include but shall not be limited to:

18.10.3.1 Information the Provider is under a duty to supply under the TUPE Regulations;

18.10.3.2 pensions Information relating to the Transfer of Employment (Protection of Pensions) Regulations 2005; and

18.10.3.3 any other Information in relation to those transferred staff as may reasonably be required by the Council under this clause or generally or to comply with the Provider’s statutory obligations.

18.10.4 In the event that the Council seeks the information described in this clause in connection with the re-tendering or other re-provision of the Service, the Council shall be entitled to pass any Information supplied to it by the Provider to other persons selected to tender or otherwise provide the Service provided that the Council shall do so only on condition that such other persons undertake to use the Information supplied only for the purposes of submitting a tender or otherwise providing the Service.

18.10.5 The Provider shall, in a separate list but at the same time as in clause 18.10.2 supply to the Council information in relation to employees of their contractors and sub-contractors where such employees are engaged in the provision of the Service.

18.10.6 The Provider shall co-operate, and where relevant shall procure the co-operation of their contractors and so as to secure the proper and efficient transfer of any relevant employees.

18.10.7 The Provider undertakes not to change personnel or their remuneration or Service delivery structure during the last six (six) Months of the agreement without prior discussion with the Council for bona fide economic or operational reasons related to delivery of the Service under the Contract, including but not limited to changes to preclude or promote the application of the TUPE Regulations upon Termination or expiry of the agreement.

18.10.8 The Provider shall indemnify the Council and keep it indemnified against, and hold it harmless from, all losses, costs, demands, charges, proceedings, damages, expenses and all other liabilities whatsoever in respect of any claim made by or on behalf of any person involved in the provision of the Service (whether or not transferred from their employment) and which claim arises from that person's involvement in the Service whether as their employee or any contractor of theirs or a previous Provider of the Service, or otherwise under the TUPE Regulations including for the avoidance of doubt any alleged breach of the TUPE Regulations.

18.10.9 Without Prejudice to any other provision in this clause, the Provider shall fully co-operate with and assist the Council in complying with sections 100 and 101 of the Local Government Act 2003 (Staff transfer matters general/pensions) and any direction or guidance issued there under in so far as they are applicable to this Contract.

18.10.10Payment of redundancy compensation for which the Provider’s Staff may be eligible on expiry or termination of the agreement shall be the Provider’s sole responsibility.

18.10.11For the avoidance of doubt the Provider remains responsible for all costs, losses, expenses, liabilities otherwise incurred as a result of the expiry of this Contract, including but not limited to, any costs associated with the application of TUPE to this Contract.

**SCHEDULE 1 - SPECIFICATION**

**SCHEDULE 2 – CHARGES AND PAYMENT**

This Schedule contains details of the Charges and the method and times of payment of the Charges.

1. The annual value of the Charges is £ which will be paid to the Provider by instalments on the dates and in the amounts below. The Council reserves the right to pay to a different schedule when necessary or as appropriate to the identified cash flow needs of the Provider, subject to reasonable notice (at least one month) and subsequent mutual agreement.

£ on 1 April or shortly thereafter

£ on 1 July or shortly thereafter

£ on 1 October or shortly thereafter

£ on 1 January or shortly thereafter

**SCHEDULE 2 – METHOD STATEMENT**

Appendix 1 - Processing, Personal Data and Data Subjects

The Provider shall comply with any further written instructions with respect to processing by the Council.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | Provision of services in specification. This includes any individuals and their families / carers using or referred to the services provided  Section 12 of the Terms and Conditions will only apply to personal data provided by the Council to the Provider. This will usually occur as part of a customer referral.  For all other personal data relating to the service, and for any other customer personal data obtained after initial referral and not from the Council, the supplier will be the Data Controller. |
| Duration of the processing | For the period of the contract plus 6 years. |
| Nature and purposes of the processing | The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation, or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.  The purpose of the processing means the statutory obligation in the provision of the service (Article 9(2)(h) of the GDPR (with a similar article in the Data Protection Bill 2018)). |
| Type of Personal Data | Includes: all personal details, name, address, date of birth, telephone number, images, Social Care ID, medical records, biometric data, including social media data etc. of the service user their families/carers |
| Categories of Data Subject | Individuals/Service users covered by this service and their families/carers |
| 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 | At the end of the contract, depending on the instructions from the Council, the Provider must erase and/or return to the Council or to any person it may specify, all data, information, files, records, documents etc (in whatever format they may be held) which the Council supplied to the Provider for the purposes of this Contract, or which the Council produced or augmented by the Provider in connection with the carrying out of its obligations under this Contract.  Unless the Council authorises the Provider to do so, or it is required by law to do so, it must not retain any copies of Personal Data of the individuals /service users covered by the services or their families / carers. |