



**Dorset Council**

**and**

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**FRAMEWORK AGREEMENT**

**relating to**

**the Provision of Short Breaks for Children who are Disabled**

**REFERENCE NUMBER DC-CS/2019-17**

## **CONTENTS**

### **Parties to the Agreement**

### **Background**

### **Definitions and Interpretation**

1. Scope of Framework Agreement and Award of Call-Off Contracts
2. Entire Agreement
3. Agreement Period
4. Provider Status
5. Provider's Obligations
6. Provider's Personnel
7. Service Continuity
8. Variations and Waivers
9. Financial Arrangements
10. Information
11. Audit
12. Confidentiality
13. Data Protection
14. Freedom of Information
15. Warranties
16. Liability and Indemnities
17. Insurance
18. Assignment and Sub-Contracting
19. Rights of Third Parties
20. Discrimination
21. Mental Capacity Act 2005
22. Human Rights Act 1998
23. Health and Safety
24. Service Provision
25. Safeguarding Children and Vulnerable Adults
26. Service User and Carer Involvement
27. Quality Assurance and Control
28. Complaints/Representations and Compliments
29. Contract Management and Monitoring Arrangements
30. Agreement Non-Compliance

31. Resolution of Disputes
32. Legal/Ombudsman Proceedings
33. Statutory Functions
34. Intellectual Property
35. Publicity
36. Severance
37. Termination
38. Prevention of Corruption
39. Consequences of Termination or Suspension
40. Force Majeure
41. Law and Jurisdiction
42. Change in Law
43. Conflict of Interest
44. Right of Set Off
45. Local Healthwatch
46. TUPE
47. Notices
48. Recovery of Sums Due
49. IR35 Rules and Employment Status
50. Whistleblowing

**Appendices:**

- Appendix 1 Service Specification
- Appendix 2 Pricing Schedule
- Appendix 3 Processing, Personal Data and Data Subjects

## PARTIES TO THE AGREEMENT

This Agreement is made between:

**Dorset Council** ('the Purchaser') whose principal place of business is at County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ ; and

..... ('the Provider') whose registered office is at registered office, company registration number.....

## BACKGROUND

- A. The Purchaser has appointed the Provider to the Framework to provide Services on a call-off or/ and block contract basis in respect of the Lots awarded in accordance with the terms and conditions of this Framework Agreement.
- B. The Services are grouped into Category Groups as follows:

Category	Category Details
<b>Category A:</b>	<b>Specialist Services</b> <ul style="list-style-type: none"> <li>• Residential overnight short breaks</li> <li>• Weekend, after school and holiday short break sessions</li> <li>• Sessional support work</li> </ul>
<b>Category B:</b>	<b>Targeted Services</b> <ul style="list-style-type: none"> <li>• Outreach one to one services including befriending/buddy/PA schemes (at home or in the community)</li> <li>• After school, holiday and weekend play, sports and activity sessions for all ages</li> <li>• Activity, day and evening sessions for young people aged 15-18 and/ or 18-25 years</li> </ul>

- C. This Framework Agreement sets out the procedure to be followed by the Purchaser in commissioning Services and the obligations of the Provider during and after the Agreement Period.
- D. It is the intention of the Parties to this Framework Agreement that there will be no obligation for the Purchaser to call off any Services under this Framework Agreement during the Agreement Period.

## DEFINITIONS AND INTERPRETATION

For the purposes of this Agreement the following definitions shall apply: -

'Agreement Period'	the period specified in Clause 2.1 (as extended if applicable) or ending on earlier termination in accordance with this Contract.
'Agreement Review'	the arrangements made by the Purchaser with the Provider to consider any aspect of the Agreement or the performance of the Services.

'Call-Off Contract' or 'Contract'		a legally binding agreement for the provision of the Services between the Purchaser and the Provider comprising an Order and made in accordance with the terms and conditions of this Agreement and specifically excluding the Provider's terms and conditions of business.
'Commercially Sensitive Information'		any information so specified and provided by the Provider to the Purchaser in confidence.
'Confidential Information'		any information which has been designated as confidential by either party or by any Service User that ought to be considered as confidential (however it is conveyed) which either party may receive or obtain in connection with the operation of this Agreement.
'Contract Manager'		the competent person nominated by the Provider who shall: - (i) be the nominated officer of the Provider; (ii) manage the Agreement and make decisions about the provision of the Services.
'Contract Price'		the price payable (exclusive of any applicable VAT) to the Provider by the Purchaser for the Services as set out in the Pricing Schedule at Appendix 2 for the full and proper performance of its obligations under this Contract.
'Contracts Officer'		the person nominated by the Purchaser who shall:  (i) manage and administer the Agreement; (ii) arrange payment for the Services; (iii) monitor the Provider on a regular basis to ensure that the Agreement is adhered to; (iv) be responsible for ensuring that the information requested from the Provider, as detailed in Clause 9, is provided by the Provider at the time specified.
'Financial Year'		a period of 12 months from 1 April in one year to 31 March in the next.
'Framework Agreement' or 'Agreement'		this agreement consisting of these terms and conditions, the appendices, the invitation to tender, the Provider's tender submission and any documents accompanying it.
'Framework'		the arrangements the Purchaser is putting in place for the provision of the Services by the appointment of a number of providers subject to the terms of this Framework Agreement.

'Lot'		the Services grouped into defined categories as set out above.
'Order'		a written instruction in whatever form from the Purchaser to the Provider requiring Services to be provided for a defined period.
'Personnel'		all persons employed by the Provider together with the Provider's volunteers, agents and sub-contractors used in the performance of the Services.
'Premises'		any location where the Services are performed.
'Provider'		the Provider including its Personnel, agents, successors and permitted assigns, which is responsible for providing the Services.
'Service Specification'		the document at Appendix 1 which sets out the level, scope and standards of the Services to be provided under this Agreement.
'Service User(s)'		an individual who is, or will be, receiving the Services in accordance with the Service Specification and any related documents appended. Where appropriate, references to Service User shall include the Service User's carer.
'Services'		the Services that the Provider is obliged to provide to Service Users as specified in this Agreement including for the avoidance of doubt the Services set out in the Service Specification and the Service User's care plan, if applicable.
'TUPE'		the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
'Working Day'		Monday to Friday inclusive but not including any declared public holiday.

In this Contract:

- Headings do not affect its interpretation or construction;
- Words importing the singular include the plural and vice versa;
- References to numbered clauses and appendices are references to the relevant clause in or appendix to this Agreement;
- Words importing any gender include every gender;

- Any reference to an enactment includes a reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.
- In the event of any conflict between the clauses and appendices, the appendices shall prevail.
- References to the Purchaser and the Provider include references to any successor body or person to which shall fall the right to enforce the benefit of this Agreement or to which shall be transferred any statutory function of the Purchaser or the Provider whether by way of act of Parliament, statutory instrument, express agreement or deed or otherwise.

## **1. SCOPE OF FRAMEWORK AGREEMENT AND AWARD OF CALL-OFF CONTRACTS**

- 1.1 This Agreement provides a Framework for the Purchaser to use the Services of the Provider and is not intended to impose any restriction on the ability of the Purchaser to use the services of other providers. There will be no obligation on the Purchaser to award any Order under this Agreement during the Agreement Period.
- 1.2 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Purchaser in respect of the total quantity or value of the Services to be ordered by it pursuant to this Agreement and the Provider acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.
- 1.3 The Purchaser appoints the Provider as a potential supplier of the Services and the Provider shall be eligible to be considered for the placing of an Order for the Services by the Purchaser during the Agreement Period on the terms of this Agreement.
- 1.4 This Agreement does not constitute an Order to the Provider to carry out any work on behalf of the Purchaser. The Purchaser shall only authorise the Services to be provided by way of placing an Order.
- 1.5 If the Purchaser decides to source Services through the Framework Agreement it may award a Call-Off Contract in accordance with the procedure set out in the Service Specification and on the terms laid down in this Framework Agreement.

## **2. ENTIRE AGREEMENT**

- 2.1 This Agreement contains the whole agreement between the parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

## **3. AGREEMENT PERIOD**

- 3.1 This Agreement shall commence on 1<sup>st</sup> April 2022 and shall continue until 31<sup>st</sup> March 2023 unless terminated earlier in accordance with the provisions of this Agreement.
- 3.2 The Framework Agreement may be extended for one further period of 12 months by mutual agreement of the parties. The Purchaser shall give reasonable notice to the

Provider of its intention to offer an extension of the Framework Agreement which shall normally be one month before the Framework Agreement end date.

#### **4. PROVIDER STATUS**

- 4.1 In carrying out the Services, the Provider shall be acting as Principal and not as the agent of the Purchaser.
- 4.2 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.
- 4.3 Neither party shall have, nor represent that it has, any authority to make commitments on the other party's behalf. The Provider shall ensure that its Personnel do not say or do anything that might lead another person to believe that the Provider is acting as an agent of the Purchaser.

#### **5. PROVIDER'S OBLIGATIONS**

- 5.1 The Provider shall provide the Services during the Agreement Period fully in accordance with the Service Specification at Appendix 1 and the terms of this Agreement.
- 5.2 The Provider shall perform the Services with all reasonable care and skill, to avoid injury to persons or damage to property and so as to conform with all relevant legislative requirements and all relevant standards and specifications, whether specified in this Agreement or not.
- 5.3 The Provider shall ensure that suitable up to date contact details and arrangements are maintained for the Purchaser at all times and, as may be the case, Service Users.
- 5.4 The Provider shall assist the Purchaser in reviewing the planning, provision and operation of the Services, comply with the reasonable directions of the Purchaser and use all reasonable endeavours to carry out the Services in accordance with any variations to the Service Specification.
- 5.5 The Provider shall attend contract review meetings as reasonably required.
- 5.6 The Provider shall perform the Services in such a way as to promote the safe, efficient and professional delivery of the Services, and so as not to cause damage to the public perception of the Services or the reputation of the Purchaser.
- 5.7 The Provider shall properly manage and monitor the performance of the Services at all times, and immediately notify the Purchaser of any actual or potential problems that affect or might affect the delivery of the Services.
- 5.8 The Provider shall provide all Personnel, equipment, Premises, resources and other things required for the provision of the Services and shall maintain such equipment and Premises and other resources in a safe, serviceable and clean condition.

#### **6. PROVIDER'S PERSONNEL**

- 6.1 The Provider warrants and represents that all its Personnel assigned to the performance of the Services shall be suitably qualified, trained and experienced to provide the Services required and shall be made fully aware of the Provider's



obligations under this Agreement as it affects them in the performance of the Services.

- 6.2 The Provider shall at all times employ and assign to the Services Personnel who are fit and competent to provide the Services and of sufficient number to ensure that the Services are provided at all times in accordance with this Agreement.
- 6.3 The Provider shall promptly replace any Personnel assigned to the Services and who cease to be in its employment or under its control for whatever reason and such replacements shall have the equivalent skill levels and shall in every way be suitable for the performance of the Services.
- 6.4 The Provider shall ensure all Personnel deployed on the Services are properly managed and sufficiently instructed and supervised with regard to the provision of the Services.
- 6.5 The Provider shall give and shall ensure that its Personnel give all reasonable assistance to the Purchaser in the investigation of complaints, disciplinary matters, claims for damages and similar matters.
- 6.6 The Purchaser shall have power upon written notice to require the Provider, but not unreasonably or vexatiously, to remove any Personnel from involvement in the Services whose admission or continued presence would be, in the reasonable opinion of the Purchaser, undesirable. The decision of the Purchaser shall be final and conclusive.
- 6.7 The Purchaser shall in no circumstances be liable either to the Provider or to any Personnel in respect of any award, cost, expenses, liability, loss or damage occasioned by such a removal and the Provider shall fully indemnify the Purchaser in respect of any claims made.

## **7. SERVICE CONTINUITY**

- 7.1 The Provider shall have contingency arrangements in place, as approved by the Purchaser, to ensure continuity of the Services at all times at no extra cost to the Purchaser. These shall include, but not be limited to, arrangements to deal with staff absences.
- 7.2 The Provider shall demonstrate, on request by the Purchaser for the duration of the Contract, that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services, including an insolvency event affecting the Provider or any key sub-contractor, such plans and arrangements being appropriate to the scale of the Provider's commitments under the Contract.
- 7.3 The Purchaser reserves the right to request detailed evidence of contingency plans, such as sight of the Provider's business continuity plan and evidence of the testing of the plan, and to require review and/or amendment of the plan and any other contingency arrangements to meet the Purchaser's requirements and in any event the Provider shall review the plans as a minimum every six months.

## **8. VARIATIONS AND WAIVERS**

- 8.1 The Purchaser reserves the right to require changes to the Services ('a Service Variation') for any reason including to meet the Purchaser's policy prevailing at the time.
- 8.2 The Purchaser shall give reasonable written notice of any such Service Variation to the Provider.
- 8.3 In the event of a Service Variation, the Contract Price may also be varied. Such variation in the Contract Price shall be calculated by the Purchaser and agreed in writing with the Provider and shall be an amount which properly and fairly reflects the nature and extent of the Service Variation. The Contract Price prevailing at the time of the Service Variation shall be used as the basis for valuing such variation insofar as may be reasonable otherwise a fair valuation shall be made.
- 8.4 The Provider shall promptly provide such information as may be reasonably required to enable such a variation in the Contract Price to be calculated.
- 8.5 In the event of dispute, the matter shall be determined in accordance with the dispute resolution procedure at Clause 31.
- 8.6 The Purchaser and Provider may vary the Agreement by mutual written consent.
- 8.7 Failure by either party to insist on strict performance of the Agreement or to exercise any right or remedy on breach of any provision of the Agreement shall not constitute a waiver of the Agreement conditions or a waiver of any subsequent breach or default in the performance of the Agreement. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

## **9. FINANCIAL ARRANGEMENTS**

- 9.1 The Purchaser shall pay the Provider the Contract Price for the Agreement Period as detailed in the Pricing Schedule at Appendix 2.
- 9.2 The Contract Price shall be inclusive of all costs, expenses and overheads but exclusive of VAT which shall be charged at the prevailing rate.
- 9.3 All payments shall be made in sterling, unless otherwise agreed between the parties.
- 9.4 Payment shall be made within 30 days of receipt of a valid invoice for the Services performed to the satisfaction of the Purchaser.
- 9.5 Where the Provider enters into a sub-contract for the provision of the Services, the Provider shall include in that sub-contract a provision for payment within 30 days of receipt of a valid invoice.
- 9.6 If the Provider withdraws, makes unavailable or fails to provide the Services, either temporarily or permanently, the Provider shall reimburse the Purchaser the relevant proportion of the Contract Price in respect of the period of unavailability, unless otherwise agreed in advance with the Purchaser.
- 9.7 If the Purchaser intends to withhold all or any part of a payment it shall give reasonable notice to the Provider to that effect, which notice shall specify the amount proposed to be withheld and the ground for doing so.

- 9.8 In the event of an extension to the Agreement Period, the Purchaser reserves the right to review and change the Contract Price.
- 9.9 Subject to Clause 8, the Contract Price shall remain fixed for the duration of the Agreement.

## **10. INFORMATION**

- 10.1 The Provider shall maintain accurate documented information as may be required by the Purchaser.
- 10.2 The Provider shall submit to the Contracts Officer the following information: -
- 10.2.1 a written report, where appropriate, detailing evidence that the Services are meeting the objectives of this Agreement;
  - 10.2.2 a copy of the audited (or inspected) accounts as soon as they are available and an up-to-date copy of the governing document of the Provider, if not provided to the Purchaser previously;
  - 10.2.3 a copy of the Provider's current insurance policy(ies) in accordance with the requirements of Clause 17 if not provided previously.
- 10.3 The Purchaser may inspect books of accounts, financial documents and other records held by the Provider and may visit establishments at any time and without notice to view the performance of the Services and obtain such explanations as may be considered necessary in so far as they concern matters pertaining to the Agreement and any Service User using the Services.
- 10.4 The Provider shall ensure that all information held pertaining to Service Users is kept secure and reasonable steps are taken to prevent theft or loss.
- 10.5 The Purchaser reserves the right to seek from and share relevant information with other care and medical service providers, the Care Quality Commission, OFSTED, other local authorities, the police and Clinical Commissioning Groups (as appropriate to the Services), in response to concerns raised in relation to standards of service provision or in relation to any child or adult protection investigation.
- 10.6 The Provider shall comply with the requirements of the Pan-Dorset Multi-Agency Safeguarding Procedures in relation to information sharing.

## **11. AUDIT**

- 11.1 The Provider shall keep and maintain until six years after the Agreement has ended, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Services provided, all expenditure reimbursed by the Purchaser and all payments made by the Purchaser.
- 11.2 The Provider shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Agreement.

## **11. CONFIDENTIALITY**

- 12.1 Each party, its Personnel and any other person associated with either party shall keep confidential:-
  - 12.1.1 the terms of this Agreement; and
  - 12.1.2 any and all Confidential Information that it may acquire in relation to any other party or Service User.
- 12.2 No party shall use or disclose the other party's Confidential Information, without prior written consent, except to persons and for the purpose of performing this Agreement, or where disclosure is expressly permitted under this Agreement.
- 12.3 The Provider shall only use the Purchaser's Confidential Information for the purposes of this Agreement.
- 12.4 The Provider shall take reasonable steps to ensure the Purchaser's Confidential Information is only given to its Personnel, professional advisors or consultants as strictly necessary for the performance of this Agreement. The Provider shall ensure its Personnel, professional advisors or consultants are aware of the Provider's confidentiality obligations under this Agreement.
- 12.5 The obligations on a party set out in Clauses 12.1 to 12.4 shall not apply to any Confidential Information which:-
  - 12.5.1 a party can demonstrate is or becomes public knowledge otherwise than by breach of this Agreement;
  - 12.5.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
  - 12.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 12.5.4 is independently developed without access to the Confidential Information;
  - 12.5.5 is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000.
- 12.6 Nothing in this Clause shall prevent the Purchaser from:-
  - 12.6.1 disclosing any Confidential Information for the purpose of:-
    - 12.6.1.1. the examination and certification of the Purchaser's accounts; or
    - 12.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Purchaser has used its resources; or
  - 12.6.2 disclosing any Confidential Information obtained from the Provider:
    - 12.6.2.1 to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other

contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or

- 12.6.2.2 to any person engaged in providing any services to the Purchaser for any purpose relating to or ancillary to this Agreement

provided that in disclosing information under sub-paragraph 12.6.2 the Purchaser discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate

- 12.7 The Provider shall ensure that its Personnel are aware of the Provider's confidentiality obligations under this Agreement.
- 12.8 In the event that the Provider fails to comply with this Clause, the Purchaser reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 12.9 Information which the Service User wishes to be regarded as Confidential Information shall not be disclosed unless particular circumstances dictate otherwise, for example where there is prima facie evidence of a crime having been committed, or the information is directly relevant to the Services being provided or withholding the information would place Service Users or potential Service Users at risk, in which case the information must, in the first instance, be shared with the Purchaser.
- 12.10 As the security, safety and well-being of Service Users takes precedence over issues of confidentiality, where the Provider has received information that a Service User has been abused whilst in receipt of the Services or is at risk of abuse, the Provider shall report this immediately to the Purchaser and/or the police as appropriate and shall co-operate fully with any subsequent procedures. In the same way, where the Purchaser has received information that a Service User has been abused or is a risk of abuse, the Purchaser shall report this immediately to the police and/or other agencies with a responsibility for the protection of vulnerable groups.
- 12.11 This Clause shall survive termination of this Agreement indefinitely.

### 13. DATA PROTECTION

#### Definitions

For the purposes of this Clause, the following terms shall have the following meanings:

**Data Controllers in Common** where both Parties are Controllers and process Personal Data under the Contract independently of the other;

**Data Protection Legislation:** the GDPR and any applicable national implementing laws as amended from time to time, the DPA 2018 and any other relevant legislation as amended from time to time to the extent that it relates to the processing of personal data and privacy;

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

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** have the meaning given in the GDPR;

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

**Data Subject 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;

**DPA 2018:** Data Protection Act 2018;

**GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679);

**Joint Controllers or Joint Control** where two or more Controllers jointly determine the purposes and means of processing;

**Processor Personnel** means all directors, officers, employees, agents, consultants and contractors of the Processors and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

**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;

**Sub-processor:** any third party appointed to process Personal Data on behalf of that Processor related to this Contract.

- 13.1 The Parties acknowledge that for the purposes of the Data Protection Legislation the Purchaser is the Controller and the Provider is the Processor unless otherwise specified in Appendix 3 The only processing that the Processor is authorised to do is listed in Appendix 3 by the Controller and may not be determined by the Processor.
- 13.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 13.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 13.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Appendix 3, unless the Processor is required to do otherwise by law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
  - (i) nature of the data be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Appendix 3);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46 or Part 3 of the DPA 2018) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by law to retain the Personal Data.

13.5 Subject to Clause 13.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
- (f) becomes aware of a Data Loss Event.

13.6 The Processor's obligation to notify under Clause 13.5 shall include the provision of further information to the Controller in phases, as details become available.

13.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 13.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.



- 13.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 13.10 The Processor shall designate its own data protection officer if required by the Data Protection Legislation.
- 13.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 13.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 13.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 13.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice instruct the Processor to amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **Joint Controllers and Data Controllers in Common**

- 13.15 Where the Parties include two or more Joint Controllers or Data Controllers in Common, those Parties shall comply with the following Clauses (in replacement of Clauses 13.1-13.14 above) in relation to the Personal Data in respect of which it is Controller.
- 13.16 The Parties acknowledge that they are Joint Controllers or Data Controllers in Common for the purposes of the Data Protection Legislation in respect of the

Personal Data under the Contract as described in Schedule 4 and as such are responsible for complying with and discharging their own duties under the Data Protection Legislation and these Clauses.

- 13.17 Each Party shall comply with 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 Contract with immediate effect.
- 13.18 Each Party shall be responsible for meeting their obligations under the GDPR in providing information to any Data Subject in respect of whose Personal Data that Party is Controller.
- 13.19 Each Party shall be responsible for responding to a Data Subject Request in relation to Personal Data for which it is Controller in compliance with the GDPR.
- 13.20 Each Party shall provide reasonable assistance to the other Party in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:
  - (a) promptly inform the other Party in the event of receipt of a Data Subject Request in relation to the Personal Data for which it is the Controller;
  - (b) provide the other Party with reasonable assistance in complying with any such Data Subject Request;
  - (c) not disclose or release any Personal Data in response to a Data Subject Request without first consulting the other Party;
  - (d) promptly notify the other Party if it receives any other request, complaint or receives any other request, complaint or communication relating to that Party's obligations under the Data Protection Legislation;
  - (e) promptly notify the other Party if it receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - (f) promptly notify the other Party if it receives a request from any third party for disclosure of Personal Data under the Contract where compliance with such request is required or purported to be required by law; and
  - (g) promptly notify the other Party if it becomes aware of a Data Loss Event.
- 13.21 Each Party shall comply with its obligation to notify a Personal Data Breach to the Information Commissioner's Office and, where applicable, Data Subjects, under the GDPR in respect of the Personal Data for which it is Controller, (having first liaised with the other Party to agree which Party shall notify the Personal Data Breach to the Information Commissioner's Office), and each Party shall inform the other Party of any Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner's Office or Data Subject.
- 13.22 The Parties agree to provide reasonable assistance to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

- 13.23 The Parties shall maintain complete and accurate records and information in respect of the Personal Data for which it is Controller and which it is processing in order to demonstrate compliance with the GDPR and to allow for audit of its Data Processing activity by the other Party's designated auditor.
- 13.24 Each Party shall, if relevant, be responsible for carrying out a Data Protection Impact Assessment in relation to the Personal Data for which it is Controller prior to commencing processing of such Personal Data and shall ensure compliance with its obligations under the Data Protection Legislation with respect to Data Protection Impact Assessments.
- 13.25 Each Party shall ensure it has in place Protective Measures which are appropriate to protect against a Data Loss Event affecting the Personal Data it is processing, having taken account of the nature of the data to be protected, the harm that might result from a Data Loss Event; the state of technological development and the cost of implementing any measures.
- 13.26 Each Party that is processing Personal Data under the Contract shall ensure that its Personnel do not process such Personal Data except in accordance with this Contract, take all reasonable steps to ensure the reliability and integrity of any Personnel who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the duties under this Clause;
  - (b) are subject to appropriate confidentiality undertakings;
  - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
  - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 13.27 No Party processing Personal Data under the Contract shall transfer such Personal Data outside of the EU unless the following conditions are fulfilled:
- (a) appropriate safeguards are provided in relation to the transfer (in accordance with the GDPR or Part 3 of the DPA 2018);
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Controller processing the Personal Data complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.
- 13.28 Where the Controller is processing Personal Data under the Contract, before allowing any Sub-processor to process such Personal Data, it shall:
- (a) notify the other Party in writing of the intended Sub-processor and processing;

- (b) obtain the prior written consent of the other Party;
- (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause such that they apply to the Sub-processor;
- (d) provide the other Party with such information regarding the Sub-processor as the other Party may reasonably require; and
- (e) remain fully liable for all acts or omissions of any of its Sub-processors.

13.29 Each Party shall provide the other with contact details of at least one employee as a point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a Personal Data Breach, and the regular review of the Parties' compliance with the Data Protection Legislation.

13.30 To the extent that the Parties agree that one Party will process Personal Data on behalf of the other Party in connection with this Contract, the Party processing the Personal Data shall, in relation to such processing;

- (a) carry out that processing only on the written instructions of the other Party;
- (b) at the written direction of the other Party, delete or return Personal Data processed solely on behalf of the other Party (and copies of such Personal Data) on termination of the Contract unless required by law to store the Personal Data;
- (c) not transfer such Personal Data outside the European Economic Area for the purposes of the processing without the prior written consent of the other Party.

#### **14. FREEDOM OF INFORMATION**

14.1 The Provider acknowledges that the Purchaser is subject to the requirements of the Freedom of Information Act 2000 ('the FOIA') and shall assist and co-operate with the Purchaser (at the Provider's expense) to enable the Purchaser to comply with its information disclosure requirements.

14.2 The Provider shall:-

- 14.2.1 transfer all requests for information to the Purchaser (where it is reasonably apparent that such are intended to be requests for information for the Purchaser) as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
- 14.2.2 provide the Purchaser with a copy of any information in its possession or power in the form that the Purchaser requires within five Working Day (or such other period as the Purchaser may specify) of the Purchaser requesting that information; and

- 14.2.3 provide all necessary assistance as reasonably requested by the Purchaser to enable the Purchaser to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.
- 14.3 The Purchaser shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:-
- 14.3.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 FOIA; or
- 14.3.2 is to be disclosed in response to a request for information.
- 14.4 In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Purchaser.
- 14.5 The Provider acknowledges that the Purchaser may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA, be obliged to disclose Information:
- 14.5.1 without consulting with the Provider; or
- 14.5.2 following consultation with the Provider and having taken its views into account.
- 14.6 The Provider shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Purchaser to inspect such records as requested from time to time.
- 14.7 The Provider acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Purchaser may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.3.

## **15. WARRANTIES**

- 15.1 The Provider warrants and represents to the Council that:
- 15.1.1 it has the full capacity and authority to enter into and perform this Contract, and that the Contract is executed by a duly authorised representative of the Provider;
- 15.1.2 it shall perform the Services using reasonable care and skill with suitably qualified Personnel, to a standard which conforms to generally accepted industry standards and practice;
- 15.1.3 it shall use all reasonable endeavours to achieve the outcomes in the Service Specification and that the outcomes shall be in accordance in all material respects with the Service Specification and accompanying documents;
- 15.1.4 the Provider's Personnel shall have the necessary skills, professional qualifications and experience to perform the Services in accordance with the Service Specification and industry standards and practice, the Provider being responsible for all costs, fees, expenses, and charges for training necessary or required for the Provider to perform the Services;

15.1.5 it has obtained all necessary and required licences, consents and permits to perform the Services;

15.1.6 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording or any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract;

15.1.7 as at the Contract commencement date, all information, statements and representations contained in its tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Contract and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

15.1.8 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 affect its ability to perform its obligations under this Contract which may be entered into with the Council.

- 15.2 Each of the parties acknowledges that in entering into this Contract it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Contract and any Clauses, warranties or other terms implied by statute, common law or custom and practice are excluded from this Contract to the fullest extent permitted by Law.

## **16. LIABILITY AND INDEMNITIES**

- 16.1 Neither party excludes nor limits its liability to the other party for death or personal injury caused by its negligence or that of its Personnel, agents or sub-contractors, fraud by it or its Personnel or for any breach of obligation implied by Part 2 of the Supply of Goods and Services Act 1982.
- 16.2 The Provider shall indemnify the Purchaser fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising out of or in connection with this Agreement, caused directly or indirectly by any act or omission of the Provider in providing the Services unless such injury, loss, damage, cost or expense is caused by the negligence or wilful misconduct of the Purchaser.
- 16.3 Subject to Clauses 16.1 and 16.2, neither party shall be liable to the other in any event for any loss of profits, turnover, business opportunities, damage to goodwill or anticipated savings and/or indirect or consequential loss or damage.
- 16.4 The Purchaser shall not, under any circumstances, be liable for any damage to the Provider's property or Premises.
- 16.5 The parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 16 is held to be invalid under any law, it shall be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability shall be subject to the remaining limitations and provisions set out in this Clause 16.

- 16.6 Nothing in this Clause 16 shall act to reduce or affect a party's general duty to mitigate its loss.

## **17. INSURANCE**

- 17.1 The Provider shall at all times effect and maintain appropriate insurance policies with a reputable insurer in relation to the provision of the Services.
- 17.2 Public liability insurance shall be maintained in such sum as is deemed prudent in all the circumstances by the Provider and in any event with a minimum level of indemnity of £5 million for any one claim.
- 17.4 Employers' liability cover shall be maintained with a minimum of £10 million for any one claim.
- 17.5 The Provider shall maintain motor vehicle insurance to cover all liabilities to third parties arising from the performance of the Services.
- 17.6 The Provider shall produce evidence of the insurances in force before commencement of the Services, and as subsequently required by the Purchaser. A copy of the insurance documents shall be submitted to the Contracts Officer.
- 17.7 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Clause, the Purchaser may make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from the Provider. Such failure may be regarded as a serious breach of this Agreement.
- 17.8 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Agreement.
- 17.9 For the avoidance of doubt, minimum insurance levels shall not be a limit of liability under the Agreement.

## **18. ASSIGNMENT AND SUB-CONTRACTING**

- 18.1 The Provider shall not transfer, assign or sub-contract directly or indirectly to any person or organisation any part of this Agreement without the previous written permission of the Purchaser.
- 18.2 Sub-contracting any part of this Agreement shall not relieve the Provider of any obligation or duty attributable to the Provider under this Agreement.
- 18.3 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 18.4 Any such permitted transfer, assignment or sub-contracting shall be on the same terms as this Agreement, unless otherwise agreed between the parties.
- 18.5 The Purchaser shall be entitled to assign the benefit of the Agreement or any part and shall give written notice of any assignment to the Provider.
- 18.6 The Purchaser shall be entitled to novate this Agreement to any statutory successor which substantially performs any of the functions that the Purchaser previously performed.

## **19. RIGHTS OF THIRD PARTIES**

- 19.1 In accordance with the Contracts (Rights of Third Parties) Act 1999, a person who is not a party to this Agreement shall not have any rights under or in connection with it.

## **20. DISCRIMINATION**

- 20.1 The Provider shall at all times operate a policy of equal opportunity in both staffing recruitment and service delivery. The Provider shall be required to forward a copy of this policy to the Purchaser when required and demonstrate its operation in the performance of the Services.
- 20.2 The Provider shall not unlawfully discriminate in the provision of the Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership, religion or belief or age and, without prejudice to the generality of the foregoing, shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation.
- 20.3 The Provider shall take all reasonable steps to secure the observance of this Clause by all Personnel engaged in the Services.
- 20.4 In the event of a finding of discrimination being made by any court or employment tribunal against the Provider or any sub-contractor appointed by the Provider during the performance of the Services, or of an adverse finding in any formal investigations by the Equality and Human Rights Commission during the performance of the Services, the Provider shall inform the Purchaser of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 20.5 The Provider shall indemnify the Purchaser in respect of any claims against the Purchaser which arise by reason of the Provider's breach of the legislation referred to in Clause 20.2 where such breach arises in the performance of its obligations under this Agreement.
- 20.6 The Provider may be required to answer questions raised by the Purchaser on matters referred to in this Clause.

## **21. MENTAL CAPACITY**

- 21.1 The Provider shall comply at all times with the requirements of the Mental Capacity Act 2005 ('the Act') and the Deprivation of Liberty Safeguards in the provision of the Services.

## **22. HUMAN RIGHTS ACT 1998**

- 22.1 The Provider shall, at all times when providing the Services act in a way that is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998.
- 22.2 The Purchaser shall be empowered to suspend the provision of the Services or part thereof in the event of non-compliance with this Clause by the Provider. The Provider shall not resume provision of the Services or such part until the Purchaser is satisfied that the non-compliance has been rectified.



## **23. HEALTH AND SAFETY**

- 23.1 The Provider shall comply with the Health and Safety at Work etc Act 1974, and any other acts, orders and regulations and codes of practice relating to health and safety in the performance of the Services, including the Manual Handling Operations Regulations 1992 as amended, and are required to operate written policies which demonstrate such compliance.
- 23.3 The Provider's Premises shall conform to all requirements of the Chief Fire Officer and the requirements of the Regulation Reform (Fire Safety) Order 2005 and the Provider shall carry out a fire risk assessment to ensure Service Users are adequately protected against fire at all times.
- 23.4 The Purchaser shall be empowered to suspend the provision of the Services or part thereof in the event of non-compliance by the Provider with its legal duties in health and safety matters. The Provider shall not resume provision of the Services or such part until the Purchaser is satisfied that the non-compliance has been rectified.
- 23.5 The Purchaser places great emphasis on compliance with both the letter and spirit of health and safety legislation and expects full co-operation by the Provider with all statutory bodies including Environmental Health.
- 23.6 The Provider shall promptly notify the Purchaser of any health and safety hazards or any incident which causes personal injury or damage which may arise in connection with the performance of the Services.

## **24. SERVICE PROVISION**

- 24.1 The Provider shall perform the Services in accordance with the principles of the Purchaser's 'Corporate Privacy, Dignity and Respect' Framework. Full details of the Framework can be accessed through the Purchaser's website.
- 24.2 If applicable to the Services the Provider shall adhere to the requirements of the Autism Act 2009 which provides a statutory framework to improve the provision of Services to meet the needs of children with autistic spectrum conditions.

## **25. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- 25.1 The Provider shall fully adopt and implement the Pan-Dorset Safeguarding Children Partnership Safeguarding Procedures and the Pan-Dorset Safeguarding Children Partnership (PDSCP) policies and procedures  
<http://pandorsetscb.proceduresonline.com/contents.html> The Provider shall follow and fully implement the prescribed procedures in relation to safer recruitment  
[http://pandorsetscb.proceduresonline.com/g\\_safe\\_rec.html](http://pandorsetscb.proceduresonline.com/g_safe_rec.html) and all other child safeguarding procedures. The provider shall evidence compliance with these procedures.
- 25.2 Where it relates to the service provided the Provider shall comply with the requirements of the Dorset Multi-Agency Safeguarding Adults Policy and Procedures (2015), these can be found at:  
<https://www.dorsetforyou.gov.uk/dorsetsafeguardingadultsboard>
- 25.3 The Provider shall fully comply with the Dorset Safeguarding Framework for Commissioned Services as described in the Safeguarding Children's Services Standards Dorset Council document.

## **26. SERVICE USER AND CARER INVOLVEMENT**

- 26.1 Service Users and carers shall be involved in all decisions which affect the provision of the Services and, where possible, in the planning of the delivery of the Services.

## **27. QUALITY ASSURANCE AND CONTROL**

- 27.1 The Provider shall adhere to the standards of service detailed in the Service Specification.

- 27.2 The Provider shall demonstrate compliance with its obligations under this Agreement and maintain a quality control programme in accordance with the Service Specification. This must include individual service user feedback processes using formats which are accessible to all service users. Information must be made available to the Purchaser in respect of all aspects of contract compliance and quality control on request. Particular emphasis will be placed on the following areas:-

- a) Recruitment, selection, management of Personnel, supervision and training.
- b) Service provision and outcomes. The Provider shall achieve the measurable outcomes specified in the Service Specification (Appendix 1) and demonstrate forward planning and consistency of delivery.
- c) Representation and the handling of Service User complaints.
- d) Policies and procedures operated by the Provider and resultant practices within the Provider's organisation.

- 27.3 For the avoidance of doubt, nothing in this Agreement is intended to prevent the Provider from achieving higher quality standards than those required by this Agreement and/or any regulator and the Provider shall make all reasonable efforts to comply with all best practice guidance in relation to the provision of the Services.

## **28. COMPLAINTS/REPRESENTATIONS AND COMPLIMENTS**

- 28.1 The Provider shall establish and implement a procedure for examining Service Users' complaints regarding the Services. Service Users must be informed of the means of registering a complaint. The procedure shall confirm how complaints are dealt with, a time scale for responses and how Service Users' are informed of the outcome of a complaint.

- 28.2 The complaints procedure adopted by the Provider shall recognise the difficulty some Service Users may feel in raising a complaint because of their potential vulnerability. The procedure shall ensure that Service Users are encouraged and facilitated to make complaints through a range of methods with representation if necessary.

- 28.3 The Provider shall maintain a log of complaints showing:-

- The name and address of the Service User;
- The name and address of the complainant (if different);
- The nature of the complaint;
- The response to the complaint and the time taken to respond; and
- The level of satisfaction of the complainant.

The log of complaints shall be accessible to the Purchaser on request. In addition, the Provider must supply to the Purchaser an analysis of complaints and their outcomes, if requested.

- 28.4 Where a complaint remains unresolved, it shall be recorded in the Provider's log book and a copy of the record shall be forwarded to the Purchaser's Contracts Officer within two days of the Service User notifying the Provider that they remain unsatisfied.
- 28.5 Where a Service User remains dissatisfied following a complaint, the Provider shall inform the Service User of the Children's Services Directorate's complaints procedure operated by the Purchaser, which may then be instigated if the Service User so wishes.
- 28.6 The Provider shall also notify Service Users that they may, if they wish, complain directly to the Purchaser's Children's Services Directorate without going through the Provider's own complaints procedure. The address to contact is:-

The Complaints Officer  
Children's Services Directorate  
County Hall,  
Colliton Park  
Dorchester  
Dorset, DT1 1XJ

Alternatively, the Children's Services Directorate's complaints procedure can be accessed on the Purchaser's 'Dorset Council' website.

- 28.7 The Provider and its Personnel shall co-operate fully with the Purchaser in investigating and resolving complaints and every endeavour shall be made to improve the Services in the light of valid complaints in order to minimise complaints and reduce the likelihood of future complaints.
- 28.8 Complaints shall be an item for discussion at contract review meetings.

## **29. CONTRACT MANAGEMENT AND MONITORING ARRANGEMENTS**

- 29.1 The Provider shall take appropriate steps (which may include one or more contract implementation meetings) with the Purchaser to confirm the preferred communication and other procedures at the outset of the Agreement.
- 29.2 The Provider shall promptly give notice to the Purchaser of the identity of the Provider's Contract Manager appointed to manage the Services and any replacement for him. Any Contract Manager shall be appropriately qualified and/or experienced for his responsibilities in relation to the Services.
- 29.3 The Purchaser shall monitor Agreement compliance, all financial and operational aspects of the Services and the standards of the Services provided with particular emphasis on quality.
- 29.4 The Contracts Officer shall be responsible for arranging and/or carrying out the monitoring of the Services using various approaches depending on the purpose of the monitoring, e.g. routine monitoring visit, contract review meeting, or a visit instigated as a result of a specific concern regarding the quality of the service being provided by the Provider.

29.5 In relation to the Purchaser's visits:

29.5.1 For planned visits such as routine monitoring and routine follow-up visits, the Provider shall be contacted in advance of the monitoring visit. If the suggested time and date is not convenient, the Provider shall contact the Contracts Officer without delay to arrange a mutually convenient time.

29.5.2 All other visits shall be carried out by the Purchaser without giving prior notice to the Provider. Unannounced visits shall include visits in response to Safeguarding referrals or complaints registered with the Purchaser.

29.6 In relation to Contract Review meetings, these shall be held as and when requested as specified within the Service Specification, between the Provider's Contract Manager and/or other representatives and the Purchaser's Contracts Officer. The purpose of these meetings shall be to:-

- (i) monitor, review and evaluate the performance of the Provider against the Service Specification;
- (ii) evaluate and review the information reported by the Provider in accordance with the Service Specification.
- (iii) ensure that the data to be produced in accordance with the Service Specification has been reported accurately and that targets have been achieved. If not achieved, a plan of action shall be agreed between the parties.
- (iv) measure the outcomes against the Service Specification and discuss and identify areas for improvement or more focus;
- (v) provide an opportunity for the Provider and the Purchaser to openly discuss any areas for future development, gaps in provision, current barriers to success, etc.

29.7 Where there are areas of non-compliance with the terms of this Agreement, the Provider shall be notified in writing in accordance with Clause 30.

29.8 The Provider shall comply with all records and monitoring requirements, as specified in this Agreement and the Service Specification.

29.9 Any costs incurred by the Provider in attending any meetings shall be at the Provider's expense.

29.10 The Provider shall ensure that the Purchaser and/or their representatives or agents have unrestricted access to the Services in order to benchmark, inspect, review and assess service delivery.

### **30. AGREEMENT NON-COMPLIANCE**

30.1 For the purposes of this Clause, 'Agreement Non-Compliance' means that in the opinion of the Purchaser, the Provider has failed either in whole or in part to comply with the terms of this Agreement.

30.2 Agreement Non-Compliance may be:

- 30.2.1 'Cautionary Non-Compliance' meaning that in the opinion of the Purchaser, a particular aspect of the Services provided is not satisfactory (but does not amount to Serious Non-Compliance or Unacceptable Non-Compliance);
- 30.2.2 'Serious Non-Compliance' meaning that in the opinion of the Purchaser there is Agreement Non-Compliance which places a service user at serious risk to their physical, mental or emotional well-being;
- 30.2.3 'Unacceptable Non-Compliance' meaning that in the opinion of the Purchaser there is Agreement Non-Compliance which places a service user at unacceptable risk to their physical, mental or emotional well-being which for the avoidance of doubt shall amount to a fundamental breach of the Agreement.
- 30.3 Where the Purchaser is satisfied through the contract monitoring process or by any other means (which shall be at the discretion of the Purchaser) that Agreement Non-Compliance has occurred, the Provider shall be informed at the earliest opportunity.
- 30.4 Where the Purchaser is satisfied that there has been Agreement Non-Compliance the Purchaser shall:-
  - 30.4.1 make an assessment of the severity of the Agreement Non-Compliance and the risks or potential risks to service users; and
  - 30.4.2 if the Purchaser identifies risks or potential risks to service users, carry out an investigation. For the avoidance of doubt and at the Purchaser's discretion, the investigation may include a risk assessment of service users in receipt of the Services funded by the Purchaser; and
  - 30.4.3 categorise the Agreement Non-Compliance as:
    - 30.4.3.1 'Unacceptable Non-Compliance'; or
    - 30.4.3.2 'Serious Non-Compliance'; or
    - 30.4.3.3 'Cautionary Non-Compliance'.
- 30.5 If Agreement Non-Compliance is categorised as Unacceptable Non-Compliance, notice shall be served forthwith by the Purchaser on the Provider terminating the Agreement.
- 30.6 If Agreement Non-Compliance amounts to Serious Non-Compliance then the Purchaser shall suspend the Agreement forthwith by notice to the Provider until such time as in the opinion of the Purchaser the Serious Non-Compliance has been remedied. This shall not prevent the Purchaser taking alternative action at its discretion to remedy the non-compliance in accordance with the terms of this Agreement.
- 30.7 Otherwise than when Agreement Non-Compliance amounts to Unacceptable Non-Compliance, the Provider shall be given a reasonable period of time as determined by the Purchaser and notified to the Provider to remedy the Agreement Non-Compliance.
- 30.8 If the Agreement Non-Compliance amounts to Cautionary Non-Compliance or Serious Non-Compliance and the Provider fails to remedy the non-compliance to the satisfaction of the Purchaser within such reasonable time period as is notified to the

Provider under Clause 30.7 then the Purchaser shall be entitled to terminate the Agreement forthwith by notice.

- 30.9 If Serious Non-Compliance and/or Cautionary Non-Compliance occur on more than three occasions the Purchaser may at its discretion terminate the Agreement immediately by notice to the Provider.
- 30.10 The Purchaser reserves the right to implement a Cautionary Non-Compliance or Serious Non-Compliance in relation to any pending child or adult protection referrals made under the multi-agency child or adult protection processes as a reasonable means to safeguard the welfare of any service users.
- 30.11 Notwithstanding the foregoing, in the event that the Purchaser reasonably considers that there has been Agreement Non-Compliance, then the Purchaser may, without prejudice to, and in addition to, its rights under this Clause and Clause 36, do any of the following:
  - 30.12.1 Make such deduction from the Contract Price to be paid to the Provider as the Purchaser shall reasonably determine to reflect the sums paid or sums which would otherwise be payable in respect of such of the Services as the Provider shall have failed to provide or performed inadequately which shall include in the event of the suspension under Clause 30.6;
  - 30.12.2 Without terminating this Agreement itself provide or procure the provision of part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Purchaser that the Provider will be able to perform such part of the Services in accordance with the Agreement.
  - 30.12.3 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 provide or procure a third party to provide such a part of the relevant Services.
- 30.13 The Purchaser may charge to the Provider any cost in respect of the provision of such part of the relevant Services by the Purchaser or by a third party to the extent that such costs exceed the Contract Price which would otherwise have been payable to the Provider for such part of the relevant Services.

## **31. RESOLUTION OF DISPUTES**

- 31.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences on matters relating to this Agreement or the provision of the Services.
- 31.2 In the event that any disagreement or difference of opinion arises out of this Agreement which cannot be resolved by the Purchaser's Contracts Officer and the Provider's representative, the matter shall be dealt with as follows:
  - 31.2.1 the contract managers for the Purchaser and the Provider shall meet to seek resolution. In the event that they do not meet within ten Working Days of the date on which either party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred to the Purchaser's

Director of Children's Services and the Provider's Chief Executive (or equivalent) or their nominee for resolution.

31.2.2 if within fourteen Working Days of the matter having been referred for resolution in accordance with Clause 31.2.1 no agreement has been reached as to the matter in dispute, the parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below.

31.3 An independent expert shall be appointed by agreement between the parties. The parties shall promptly furnish to such expert all information relating to the dispute to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the parties taking into account the respective rights and obligations of the parties.

31.4 The decision of the expert shall be final and binding on the parties.

31.5 The parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.

31.6 Alternatively, the parties may agree to refer the matter for decision to arbitration whereupon the parties shall comply with the following provisions:

31.6.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

31.6.2 the arbitration fees shall be met by the Purchaser and the Provider in equal shares;

31.6.3 the decision of the arbitrator shall be binding on the parties.

## **32. LEGAL/OMBUDSMAN PROCEEDINGS**

32.1 On written request from the Purchaser, the Provider or any of its Personnel, agents, officers or sub-contractors shall provide to that Purchaser all relevant information (including but not limited to documentation and statements from any Personnel, agent, officers or sub-contractor) and shall co-operate fully with and provide assistance and give evidence in connection with:

32.1.1 any legal or quasi-legal inquiry, arbitration or court proceedings in which the Purchaser may become involved; or

32.1.2 any internal Purchaser disciplinary hearing arising out of or in connection with the Services or these Clauses;

32.1.3 any investigation by the Local Government and Social Care Ombudsman.

## **33. STATUTORY FUNCTIONS**

33.1 Nothing in the Agreement or these Clauses shall be read as preventing or inhibiting the Purchaser from carrying out any such statutory or regulatory duty as each may respectively be under, or as derogating therefrom, or as inhibiting or fettering the exercise of any statutory or regulatory power which either may respectively possess.

## **34. INTELLECTUAL PROPERTY**

- 34.1 Neither Party shall acquire the intellectual property rights of the other.
- 34.2 The Provider shall not use the Purchaser's logo without prior consent.

### **35. PUBLICITY**

- 35.1 The Provider shall seek written approval from the Purchaser prior to the publication of any publicity where the Purchaser is acknowledged.

### **36. SEVERANCE**

- 36.1 If any Clause of this Agreement is declared by any judicial or other competent authority or considered by the parties to be void, voidable, illegal or otherwise unenforceable:
  - 36.1.1 The parties shall amend that provision in such reasonable manner as mutually agreed.
  - 36.1.2 At the discretion of the parties it may be severed from this Agreement and the remaining Clauses of this Agreement shall except whether otherwise provided remain in full force and effect unless otherwise terminable.

### **37. TERMINATION**

- 37.1 The Purchaser may by notice in writing to the Provider terminate this Agreement as from the date of service of such notice if:-
  - 37.1.1 the Provider passes a resolution or a court makes an order that the Provider be wound up otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation; or
  - 37.1.2 circumstances exist which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation to make a winding-up order regarding the Provider; or
  - 37.1.3 the Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Services; or
  - 37.1.4 the Provider becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986.
  - 37.1.5 the Provider has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertakings, assets or income, or has passed a resolution for its winding up;
  - 37.1.6 the Provider has a petition presented to any court for its winding up or for an administration order;
  - 37.1.7 the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;



- 37.1.8 the Provider suffers any distraint, execution or other process to be levied or enforced on any of its property by any third party and is not paid out, withdrawn or discharged within 7 days;
  - 37.1.9 the circumstances specified in Clause 38 arise;
  - 37.1.10 the Provider has becomes bankrupt or makes a composition or arrangement with its creditors, or has a proposal in respect of the business for voluntary arrangements for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986; or
  - 37.1.11 the Provider has been convicted of a criminal offence or act of grave misconduct in the conduct of its business within the meaning of Regulation 57(8)(c) of the Public Contracts Regulations 2015; or
  - 37.1.12 the Provider has failed to comply with any obligations relating to the payment of any taxes or social security contributions.
- 37.2 The Purchaser may only exercise its right under Clause 37.1.3 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Provider shall notify the Contracts Officer immediately any change of control occurs.
- 37.3 Either the Purchaser or the Provider may at any time by notice in writing to the other party terminate this Agreement as from the date of service of such notice whenever any of the following events occurs:-
- 37.3.1 the other party commits a material breach of any of its obligations under or in relation to this Agreement which is not capable of remedy or, if capable of remedy, is not remedied within 30 days after receipt of written notice from the non-breaching party of its intention to terminate; or
  - 37.3.2 the other party is continually in breach or commits a series of repeated breaches of this Agreement, which cannot be remedied with 30 days of written notice from the non-breaching party of its intention to terminate.
- 37.4 The Purchaser may terminate the Agreement with immediate effect:-
- 37.4.1 in accordance with Clause 30; or
  - 37.4.2 if in the Purchaser's reasonable opinion continuation of the Agreement would cause risk to the life, health or well-being of any Service User or potential Service User.
- 37.5 The parties may terminate the Agreement at any time on giving to the other not less than 1 months' notice in writing.
- 37.6 In any case where immediate termination is permitted, the Purchaser may, at its discretion, initially suspend the Agreement.
- 37.7 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued at or prior to termination and subject thereto neither party shall have any further obligations to the other under this Agreement. The Clauses of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

### **38. PREVENTION OF CORRUPTION**

38.1 The Purchaser shall be entitled to terminate the Agreement immediately and recover from the Provider the amount of any loss or damage resulting from such cancellation if, in relation to this Agreement or any contract with the Purchaser, the Provider or any person employed by him or acting on his behalf shall have committed:-

38.1.1 any fraud

38.1.2 an offence under the Bribery Act 2010 or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

### **39. CONSEQUENCES OF SUSPENSION OR TERMINATION**

39.1 Following termination by the Purchaser of this Agreement, the Provider shall be entitled to such proportion of the Contract Price as represents a fair and reasonable value of that part of the Services carried out up to the date of termination provided always that the Purchaser reserves the right to deduct from any such sum the amount of any claim the Purchaser may have in respect of any breach and / or failure by the Provider to perform its obligations under this Agreement.

39.2 The Purchaser shall not in any circumstances be liable to the Provider for any losses or expenses arising out of termination or suspension, and no payment shall be due from the Purchaser under this Agreement during any period of suspension.

39.3 Where the Purchaser terminates or suspends the Agreement as a consequence of a breach by the Provider, the Purchaser shall be entitled to recover from the Provider:

39.3.1 any costs (including any administration costs) reasonably incurred by the Purchaser in respect of the supply of any part of the Services by the Purchaser or a third party; and

39.3.2 the amount of any other loss (including any administration costs) incurred by the Purchaser as a result of having to suspend or terminate the Agreement.

The Purchaser shall take all reasonable steps to mitigate any additional expenditure.

39.4 The Provider shall upon the termination of the Agreement immediately deliver up to the Purchaser all correspondence, documents and other property belonging to the Purchaser which may be in his possession or under his control.

39.5 The provisions of this Clause shall survive the termination or expiry of this Agreement.

### **40. FORCE MAJEURE**

40.1 Neither party shall be liable for any delay in, or non-performance of, any obligation under the Agreement (other than the payment of money) caused by an event beyond the reasonable control of that party including but not limited to acts of God, war, explosion, fire, strike, flood, riot or civil commotion or any act or omission of the other party, or a force majeure event affecting a supplier, sub-contractor or a third party.

- 40.2 In the event such circumstances persist beyond a reasonable period given the nature of the event and its effect on the obligations under this Agreement, then the other party shall have the right, for so long as the circumstances which prevent performance continue, to terminate this Agreement by giving not less than 30 (thirty) Working Days' written notice to the other party.

#### **41. LAW AND JURISDICTION**

- 41.1 This Agreement shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English Courts.
- 41.2 This Agreement is binding on the Purchaser and the Provider, their successors and assignees.

#### **42. CHANGE IN LAW**

- 42.1 The Provider shall neither be relieved of its obligations to perform its obligations under this Agreement nor be entitled to an increase in the Contract Price and/or any charges payable as a result of a change in law, if the change and its effect are known at the commencement of the Agreement.
- 42.2 If a change in law occurs or is shortly to occur which will significantly affect the provision of the Services or the cost of doing so, the Provider shall notify the Purchaser to express an opinion of the likely effects of the change including:-
- 42.2.1 whether any change is required to the Services, the Contract Price or this Agreement; and
- 42.2.2 whether the Provider requires any relief from compliance with its obligations.
- 42.3 If the parties to this Agreement agree upon the effects of the change in law and any financial consequences such agreement shall be implemented through the variation provisions of Clause 8.
- 42.4 In the case of any dispute arising under this Clause, it shall be resolved in accordance with Clause 31.

#### **43. CONFLICT OF INTEREST**

- 43.1 The Provider shall use reasonable endeavours to ensure that it and any of its Personnel, agents, suppliers or sub-contractors are not placed in a position where in the reasonable opinion of the Purchaser there is or may be an actual or potential conflict between the pecuniary or personal interests of the Provider and others and the duties owed to the Purchaser under the provisions of the Agreement. The Provider shall immediately disclose to the Purchaser full particulars of any such conflict of interest which may arise.
- 43.2 Where such a conflict does arise the Provider shall take such reasonable steps as are required by the Purchaser for ending or avoiding the actual or potential conflict of interest or alleviating its effect. If the Provider fails to comply or is unable to comply with such measures, then the Purchaser shall have the right by notice in writing to terminate this Agreement immediately. If the Purchaser terminates this Agreement in accordance with this Clause, it shall reimburse the Provider against any commitments, liabilities or expenditure incurred or to be incurred which are reasonably and properly payable by the Provider in connection with the Services.

However, it is expressly agreed that the Purchaser shall not be liable to pay any severance payment or compensation to the Provider for loss of profits.

- 43.3 The provisions of this Clause shall apply during the continuance of the Agreement and for a period of two years after its termination.

#### **44. RIGHT OF SET OFF**

- 44.1 Without prejudice to any other rights and remedies available to it, the Purchaser shall be entitled to set off all or any of its liabilities to the Provider against all or any of the Provider's liabilities to it, and any liability, damage, loss, charge or expense which the Purchaser has incurred in consequence of any breach by the Provider of its obligations under the Agreement.

#### **45. LOCAL HEALTHWATCH**

- 45.1 In accordance with the provisions of the Local Government and Public Involvement in Health Act 2007 as amended by the Health and Social Care Act 2012, the Provider shall allow members of the Local Healthwatch to inspect Services commissioned by the Purchaser under this Agreement.

#### **46. NOT USED**

#### **47. NOTICES**

- 47.1 Any notice to be given under this Agreement shall be in writing and shall be hand delivered or sent by first class mail to the address of the Provider or the Purchaser at the address set out at the head of this Agreement or such other address as that party may from time to time notify to the other party in accordance with this Clause.
- 47.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received:
- 47.2.1 if delivered by hand before 4pm on a Working Day, at the time of delivery, otherwise receipt shall be deemed to occur at 9am on the next following Working Day; or
- 47.2.3 if delivered by first class inland mail, two Working Days after the day of posting.
- 47.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted.

#### **48. RECOVERY OF SUMS DUE**

- 48.1 Whenever any sum of money is recoverable from, or payable by, the Provider (including any sum which the Provider is liable to pay to the Purchaser under Clauses 30 or 39) the Purchaser may unilaterally deduct that sum from any sum then due or which at any later time may become due to the Provider under any other contract with the Purchaser.
- 48.2 The Provider shall make any payments due to the Purchaser without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Purchaser to the Provider.

**49. IR35 RULES AND EMPLOYMENT STATUS**

- 49.1 The Provider agrees to notify the Purchaser as soon as reasonably practicable in the event of a change in the employment status of the Provider during the period of the Agreement within the meaning of Part 2 Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 ('the IR35 Rules') and to provide all such information regarding the same as may be reasonably requested by the Purchaser.
- 49.2 The Provider shall indemnify the Purchaser fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from the Provider's failure to comply with Clause 49.1.

**50. WHISTLEBLOWING**

- 50.1 The Provider shall be aware of and adhere to the principles set out in the Council's whistleblowing policy in reporting concerns which arise during the Agreement and shall ensure that its agents and sub-contractors do the same. The Council's whistleblowing policy can be accessed on the Council's website at [www.dorsetcouncil.gov.uk](http://www.dorsetcouncil.gov.uk)

**SIGNED BY:**

Authorised Signatory .....

For and on behalf of **the Purchaser**

Print Name .....

Position .....

Dated .....

Authorised Signatory .....

For and on behalf of **the Provider**

Print Name .....

Position .....

Dated .....

**APPENDIX 1****Service Specification to be added after award****APPENDIX 2****Pricing Schedule to be added after award****APPENDIX 3****Processing, Personal Data and Data Subjects**

1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Schedule.

**Identity of the Controller and Processor**

The Parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the Controller and the Provider is the Processor in accordance with Clause 1.1.

<b>Description</b>	<b>Guidance</b>	<b>Supplier Response</b>
Subject matter of the processing	<i>This should be a high level, short description of what the processing is about e.g. employees, service users</i>	
Duration of the processing	<i>For example, for the duration of the Agreement including any extension or in accordance with instructions from the Council</i>	
Nature and purposes of the processing	<i>Please be as specific as possible, but make sure that you cover all intended purposes.</i>  <i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission,</i>	

	<p><i>dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc</i></p>	
Type of Personal Data	<i>For example, name, address, date of birth, NI number, contact details, pay, images, job status biometric data etc</i>	
Categories of Data Subject	<i>For example, Service Users, Staff (including volunteers), students / pupils, members of the public, users of a particular website etc.</i>	
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	<i>Describe how long the data will be retained for, how it will be returned or destroyed</i>	

Your Name:

Organisation/Supplier Name:

Date:

Authorised Signature: