



Rutland
County Council



CONTRACT

for

THE PROVISION OF A **XXX SERVICE
IN RUTLAND**

Between

RUTLAND COUNTY COUNCIL DISTRICT COUNCIL
of Catmose, Oakham, Rutland, LE15 6HP (“the Council”)

and

PROVIDER NAME

(Company Registration Number **xxx** and Charity Registration Number
xxx) whose registered address is at
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 (“the Provider”)

Commencement Date: **DATE**

Expiry Date: **DATE**

Dated**2016**

Contents

1. DEFINITIONS AND INTERPRETATION..... 2

2. HEADINGS 5

3. NOTICES 5

4. ENTIRE AGREEMENT 6

5. CONTRACT PERIOD 6

6. PERFORMANCE 6

7. PROVIDER’S CONTRACT MANAGER 7

8. WARRANTY..... 7

9. PROVIDER’S EMPLOYEES..... 8

10. PRICE AND PAYMENT 9

11. BREAK CLAUSE 10

12. RECOVERY OF SUMS 10

13. TERMINATION 10

14. CONSEQUENCES OF TERMINATION 11

15. DISPUTE RESOLUTION PROCEDURE..... 12

16. SURVIVAL 12

17. EXIT ARRANGEMENTS..... 12

18. LIABILITY AND INSURANCE..... 13

19. LIMITATION OF LIABILITY 133

20. INTELLECTUAL PROPERTY..... 14

21. CONFIDENTIALITY 15

22. PUBLICITY AND STATEMENTS 15

23. DATA PROTECTION..... 15

24. FREEDOM OF INFORMATION..... 15

25. RECORD KEEPING AND MONITORING 16

26. HEALTH AND SAFETY 16

27. CORPORATE REQUIREMENTS 16

28. PREVENTION OF BRIBERY AND FRAUD 17

29. LAW AND CHANGE IN LAW 18

30. CONTRACT VARIATION..... 19

31. THIRD PARTY RIGHTS 19

32. NO WAIVER..... 19

33. SEVERANCE 19

34. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY 19

35. FORCE MAJEURE 20

36. INDUCEMENTS..... 20

37. COSTS AND EXPENSES 21

38. NO AGENCY OR PARTNERSHIP 21

39. NON SOLICITATION AND OFFERS OF EMPLOYMENT 21

40. INSPECTION OF PROVIDER’S PREMISES 21

41. LAW AND JURISDICTION 23

42. COUNCIL’S POLICIES 23

43. EQUALITIES..... 23

44. COMMITMENT TO ENVIRONMENTAL IMPROVEMENT..... 23

45. COMPETITION ACT 23

46. WHISTLEBLOWING 23

47. TUPE..... 23

48. VAT 25

49. DISCLOSURE & BARRING SERVICE (DBS) REQUIREMENTS 25

50. SAFEGUARDING AND SERIOUS UNTOWARD INCIDENTS 27

51. COMPLAINTS AND SERIOUS UNTOWARD INCIDENTS 28

52. QUALITY STANDARDS AND GOVERNANCE..... 28

53. WORKFORCE COMPETENCIES AND TRAINING 29

SCHEDULE 1 SERVICE SPECIFICATION 310

SCHEDULE 2 PRICING 32

SCHEDULE 3 CONTRACT REPRESENTATIVES 32

SIGNATURE PAGE..... 33

SERVICES AGREEMENT

This Agreement is made on the _____ day of _____ 2016

BETWEEN:

- (1) **Rutland County Council** District Council of Catmose, Oakham, LE15 6HP (the "Council"); and
- (2) **Provider Name** registration number **XXX** of **registered address**
(the "Provider")

(together "the Parties" and each a "Party").

WHEREAS:

The Council and the Provider have entered into this Contract (as defined below) whereby the Provider shall provide the Services (as defined below) on the terms and conditions set out in this Contract and the Council shall pay to the Provider the Price in respect of those Services.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

In this Contract the following terms and expressions shall have the following meanings:

- "Assigned Employees" In respect of clause 47 (TUPE) an individual employed by the Provider wholly or mainly in the performance of the Services.
- "Business Day" any day other than a Saturday or Sunday or a public or bank holiday in England.
- "Change in Law" the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
- "Commencement Date" means **DATE**
- "Confidential Information" any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Service, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data (within the meaning of the DPA).
- "Contract" means these terms and conditions, and any Schedules.
- "Contract Period" means **DATE to DATE. or DATE if the Council opts to extend the Contract**
- "Control" control as defined by section 416 of the Income and Corporation Taxes Act 1988.

“Council”	means Rutland County Council and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“Council’s Contract Manager”	the person duly appointed by the Council and notified in writing to the Provider to act as the representative of the Council for the purpose of the Contract or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer (as set out in Schedule 3) (to be completed on award)
“DPA”	The Data Protection Act 1998.
“Delivery Instructions”	the instructions provided in the Specification and any other information that the Council considers appropriate to the provision of the Services.
“Employee”	any person employed by the Provider to perform the Contract which will also include the Provider’s servants, agents, voluntary and unpaid workers and sub-contractors and representatives or, in respect of clause 47 (TUPE) and any other TUPE obligation, an individual employed by the Provider in the performance of the Services.
“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause 35.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
“Good Industry Practice”	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Provider engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract.
“HRA”	the Human Rights Act 1998.
“Intellectual Property Rights”	patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Personnel”	those persons named in the Quotation as the key personnel and any replacements from time to time notified under clause 8.2.6 (Warranty).
“Law”	any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply.
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“Materials”	any and all works of authorship and materials developed, written or prepared on whatever media for the purposes of or in connection with the Services including, without limitation, any and all reports, studies, data, databases, diagrams, charts, specifications, software, pre-contractual and contractual documents and all drafts thereof and working papers relating thereto
“Price”	the price of the Services as set out in the Quotation. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
“Pricing Schedule”	set out in Schedule 2 (to be attached on award)
“Provider”	<p>the legal entity that provides the Services. This can be either:</p> <p>An individual (sole trader); A partnership; An organisation (incorporated e.g. limited company, charity, limited liability or partnership)</p> <p>and where applicable this shall include the Provider's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members.</p>
“Provider’s Contract Manager”	the name of the person notified to the Council by the Provider as the person responsible for managing the contract as set out in Schedule 3 (to be completed on award)
“Quotation”/”Tender”	the Provider’s quotation/tender for the Services in response to the Council’s Request for Quotation/Invitation to Tender.
“Replacement Provider”	any company, organisation or person who replaces the Provider following termination or expiry of all or part of this Contract
“Request for Quotation” / ”Invitation to Tender”	the Council’s Request for Quotation /Invitation to Tender for the Contract.

“Service(s)”	the service(s) described in the Specification to be supplied by the Provider in accordance with the Contract together with all equipment required and any associated goods provided by the Provider in relation to those services.
“Service Users”	Means those individuals who access the Services
“Specification”	the Specification setting out the Council's detailed requirements in relation to the Services set out in Schedule 1 (to be attached on award).
“Sub-contractor”	means any person engaged by or on behalf of the Provider as may be permitted under this Contract.
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as may be amended or replaced from time to time

1.2 Reference in this Contract to:

- 1.2.1 any statute, statutory instrument, order, regulation or other similar instrument ("legislation") shall be construed as a reference to the legislation as amended or re-enacted from time to time;
- 1.2.2 (except where the context otherwise requires) words denoting the singular include the plural and vice-versa, words denoting any gender include all genders and words denoting persons include service providers and corporations and vice-versa; and
- 1.2.3 any reference to a clause or Schedule shall mean a clause or schedule to this Contract.

1.3 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

1.4 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

2 HEADINGS

2.1 The index and headings to the clauses, appendices and Schedules of this Contract are for convenience of reference only and will not affect its construction or interpretation.

3 NOTICES

3.1 Any notice required by this Contract to be given by either Party to the other shall be in writing and shall be served personally, by fax, by email or by sending it by registered post or recorded delivery to Rutland County Council, Catmose, Oakham, LE15 6HP.

3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save

where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

4 ENTIRE AGREEMENT

- 4.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 4.1 shall not exclude liability in respect of any fraudulent misrepresentation.

5 CONTRACT PERIOD

- 5.1 The Contract shall commence on the Commencement Date and, **subject to clause 5.2** shall continue for the Contract Period until terminated as hereinafter provided.
- 5.2 **The Council shall have the option to extend the Contract for a further period of XXX years from the end of the Contract Period. If the Council chooses to extend the Contract, the Provider shall be notified in writing within 3 months of the end of the Contract Period.**

6 PERFORMANCE

- 6.1 The Services shall be provided in accordance with the Specification.
- 6.2 The Provider shall perform the Services described in the Specification in accordance with the Contract and shall comply and co-operate with any reasonable instructions given by the Council's Contract Manager.
- 6.3 Subject as hereinafter provided the Provider shall devote such time, attention, skill, knowledge and experience as may be necessary for the proper discharge of its duties.
- 6.4 The Provider shall provide the Council's Contract Manager with management information reports as specified in the Specification.
- 6.5 The Provider will not during the Contract Period undertake any additional activities or accept other engagements which would directly interfere with or preclude the performance of the duties required from time to time under this Contract or which might lead to any conflict of interest between the Provider and the best interests of the Council.
- 6.6 The Provider shall be responsible for compliance with and ensure that all obligations are performed in accordance with the health and safety requirements.
- 6.7 The Provider shall, in performance of the Services, comply with the requirements of the Cabinet Office report on Data Handling Procedures in Government and with any security policy notified by the Council to the Provider from time to time.
- 6.8 The Provider is deemed to have satisfied himself as to the scope, extent and location of work to be carried out under the Contract.
- 6.9 The Provider will, be responsible at its own cost and expense for the provision of all necessary staff, materials and equipment for the management and execution of any obligation under the Contract.
- 6.10 The Provider shall comply with the staff vetting procedures in respect of all staff employed or engaged in the provision of Services whose role involves the handling of information of a sensitive or confidential nature or information that is subject to any relevant security measures.

- 6.11 The Provider shall train and ensure that all staff employed or engaged in the provision of the Services are trained to an appropriate standard for the purposes of performing the Services.
- 6.12 If the Provider at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Provider from performing the Services in accordance with the Contract, the Provider shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
- 6.13 If the Provider at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Provider shall inform the Council immediately.
- 6.14 If the Provider has a change in Control, the Provider shall inform the Council as soon as reasonably practicable.
- 6.15 The Council retains the Provider for the performance of the Services on a non-exclusive basis and the Provider accepts such appointment to provide the Services on the terms of this Contract.
- 6.16 The Provider shall have regard to clause 52 ("Quality Standards and Governance") and comply with the various requirements set out therein.

7 PROVIDER'S CONTRACT MANAGER

- 7.1 The Provider shall employ a competent and authorised Contract Manager authorised to act on behalf of the Provider for all purposes connected with the Contract. This could be the service manager or another suitable, authorised Employee.
- 7.2 The Provider shall ensure that the Council is aware who the Contract Manager is and who, in their absence, is suitable and authorised to act.
- 7.3 The Provider shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the Contract Manager. The Provider shall give maximum possible notice to the Council before changing its Contract Manager.

8 WARRANTY

- 8.1 The Provider warrants and represents that:
 - 8.1.1 it has the authority to enter into this Contract and to perform the Services;
 - 8.1.2 it has and will continue to have all necessary rights in and to any software or Intellectual Property Rights or any other Materials made available by the Provider to the Council necessary to perform the Services; and
 - 8.1.3 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document required by Law which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform the Services or its obligations under the Contract.
- 8.2 The Provider warrants and represents that the Services will be provided:
 - 8.2.1 in a proper, skilful and workmanlike manner;

- 8.2.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with good industry practice and, where applicable, will be subject to staff vetting procedures and any security policy notified to the Provider from time to time;
 - 8.2.3 in accordance in all respects with the requirements of any applicable Law from time to time in force and that it has and will continue to hold all necessary regulatory approvals from any regulatory body necessary to perform the Provider's obligations under the Contract;
 - 8.2.4 in accordance with the Contract and any descriptions provided by the Provider;
 - 8.2.5 to the reasonable satisfaction of the Council;
 - 8.2.6 by Key Personnel who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Provider; and
 - 8.2.7 in a way that the Provider takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Provider.
- 8.3 The Provider warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:
- 8.3.1 be free from defects in design, material and workmanship; and
 - 8.3.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 8.4 Without prejudice to the Council's rights to terminate under this Contract, if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:
- 8.4.1 require the Provider to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
 - 8.4.2 subject to clause 18 (Liability and Insurance) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

9 PROVIDER'S EMPLOYEES

- 9.1 The Employees, engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at those premises and when outside those premises.

- 9.2 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final.
- 9.3 The Provider shall replace any of the Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any such Employees for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 9.4 The Provider shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause 9.

10 PRICE AND PAYMENT

- 10.1 The Council shall pay the Price for the Services to the Provider as set out in Schedule 2 (to be attached on award) of the Contract, which shall be inclusive of all costs and expenses incurred by the Provider in providing the Services.
- 10.2 The Price shall be payable by the Council **monthly/quarterly** in arrears provided that the Provider submits a proper invoice containing appropriate details as agreed with the Council's Contract Manager together with documentary evidence required in support.
- 10.3 Unless otherwise agreed in writing by both Parties, within fifteen (15) days of the end of each **month/quarter** the Provider shall submit an invoice to the Council. Such invoices shall contain details of the Services provided by the Provider as agreed by the Provider's Contract Manager and be supported by documentary evidence, where applicable.
- 10.4 Payment of any undisputed invoice will be made no later than thirty (30) calendar days following the date of receipt and agreement of the invoice by the Council for Services completed to the satisfaction of the Council.
- 10.5 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Provider has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- 10.6 The Council will be entitled but not obliged at any time or times without notice to the Provider to set off any liability of the Council to the Provider against any liability of the Provider to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Provider into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause 10.6 will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
- 10.7 The Council, acting by the Council's Contract Manager, may from time to time propose an increase, decrease or change in the scope, frequency or performance of the Services (a "Variation"). Any such Variation shall be discussed with the Provider. Where such Variation is agreed with the Provider, the Provider shall be bound to carry out the Services as so varied. Upon such variation the Price payable to the Provider shall be revised in accordance with clause 30.2.
- 10.8 Where any Variation is agreed in accordance with clause 30 the Parties shall jointly agree to revise the Price to properly and fairly reflect the nature and extent of the

Variation. The Provider shall provide the Council's Contract Manager with such information and documentation as the Council's Contract Manager may reasonably require to calculate the change in Price required by the Variation.

11 BREAK CLAUSE

- 11.1 By mutual agreement either the Council or the Provider may terminate the whole or any part of this Contract by giving the other three (3) months notice in writing indicating its intention to do so.

12 RECOVERY OF SUMS

- 12.1 If any sum of money shall at any time have been, or becomes, recoverable from, or payable by the Provider to the Council, the Council is entitled to deduct that money from any moneys due under this Contract or any other contract between the Council and the Provider, irrespective of when such money shall have been or becomes payable or recoverable.

13 TERMINATION

- 13.1 The Council shall be entitled to terminate this Contract and the Provider's engagement without any payment in lieu of notice, compensation or damages forthwith upon the Council becoming aware of the following:

13.1.1 if the Provider shall be in material or persistent breach of any of the terms and conditions in this Contract or shall wilfully neglect or refuse to carry out any of the Services; or

13.1.2 if the Provider or anyone providing Services on behalf of the Provider shall act in any way which may, in the opinion of the Council, bring the Council into disrepute.

- 13.2 The Council may forthwith cancel the Contract and recover from the Provider any amount the Council has lost in cancelling the same, if the Provider or anyone acting on its behalf (whether with or without the knowledge of the Provider) shall have:

13.2.1 offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward in respect of the Contract or any other agreement for doing or for bearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract or any other agreement with the Council;

13.2.2 shown or forborne to show any favour or disfavour to any person in relation to the Contract or any other agreement with the Council;

13.2.3 committed an offence under the Prevention of Corruption Acts 1889 to 1916; or

13.2.4 given any fee or reward which is an offence under s.117(3) of the Local Government Act 1972.

- 13.3 The Council may terminate the Contract by notice in writing with immediate effect with no liability to make any further payment to the Provider (other than in respect of amounts accrued in accordance with clause 14.1) where the Provider

13.3.1 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 Contract; or

- 13.3.2 becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement; or
 - 13.3.3 appoints a receiver or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation; or
 - 13.3.4 is guilty of any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Provider or the Council into disrepute or is materially adverse to the interests of the Council; or
 - 13.3.5 suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Provider ceases to trade; or
 - 13.3.6 commits any serious or repeated breach of non-observance of any of the provisions of the Contract or refuses or neglects to comply with any reasonable and lawful directions of the Council; or
 - 13.3.7 has an administrator appointed for it on behalf of a creditor; or
 - 13.3.8 is subject to an application for the appointment of an administrator; or
 - 13.3.9 is subject to a notice to appoint an administrator; or
 - 13.3.10 is in circumstances which entitle the Court or a creditor to appoint a receiver, manager or administrator save for the purposes of a solvent reconstruction or amalgamation.
- 13.4 The proper exercise by the Council of its right of termination under this clause 13 shall be without prejudice to any other rights or remedies which the Council may have or be entitled to exercise against the Provider.
- 13.5 Either Party may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the other Party with immediate effect if that other Party commits a default and:
- 13.5.1 the default is not remedied within 30 Business Days, or such other period as may be agreed between the Parties, after issue of a written notice specifying the default and requesting it to be remedied; or
 - 13.5.2 the default is not capable of remedy; or
 - 13.5.3 the default is a fundamental breach of the Contract.
- 13.6 The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances if the Provider shall commit a material or persistent breach of this Contract or shall wilfully neglect or refuse to carry out any of the Council's reasonable instructions.

14 **CONSEQUENCES OF TERMINATION**

- 14.1 On termination of the Contract pursuant to clause 13.3.1, 13.3.3, 13.3.5, 13.6 or 33.1 the Council shall:
 - 14.1.1 pay to the Provider sums due and reasonably incurred up to the date of termination where the Council has received Services to the equivalent value;

14.1.2 pay to the Provider sums due for expenditure incurred after the date of termination only in so far as it is a result of commitments entered into by the Provider in good faith before the date on which notice of termination was given and which cannot be voided on or before the termination date. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence of losses reasonably and actually incurred by the Provider as a result of termination within 5 Business Days of receiving the notice of termination provided that any such sum payable in accordance with this clause 14.1 shall only be payable by the Council if it would have been payable in accordance with this Contract if it had not been terminated.

14.2 The Council shall not be liable under clause 14.1.2 to pay any sum which was claimable under insurance held by the Provider, or when added to any sum paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

15 DISPUTE RESOLUTION PROCEDURE

15.1 If a dispute arises between the Council and the Provider in connection with the Contract, the Parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level within 10 Business Days of written notice of dispute being served by one Party on the other without recourse to legal proceedings.

15.2 If a dispute is not resolved within (10) Business Days of referral under clause 15.1 then either Party may refer it to senior representatives of each party for resolution who shall meet for discussion within 10 Business Days or longer period as the Parties may agree.

15.3 Provided that both Parties consent, a dispute not resolved in accordance with clauses 15.1 and 15.2, shall first be referred to mediation or other alternative dispute resolution procedure as agreed between the Parties, each acting in good faith. If the Parties are unable to agree a procedure or any aspect of a procedure they will seek assistance from the Centre of Dispute Resolution at Exchange Tower, 1 Harbour Exchange Square, London, E14 9GB. Unless otherwise agreed the Parties will share equally the costs of mediation and the use of mediation will be without prejudice to the rights of the Parties in all respects if the mediation does not achieve an agreed resolution of the dispute within 40 Business Days (or such longer period as the Parties may agree) of the notice of dispute being served.

15.4 Unless the Contract shall have already been terminated or abandoned the Provider shall in every case continue to proceed with the Services in accordance with this Contract.

16 SURVIVAL

16.1 The following clauses will survive termination or expiry of the Contract: Clause 14 (Consequences of Termination), Clause 18 (Liability and Insurance), Clause 20 (Intellectual Property), Clause 21 (Confidentiality), Clause 23 (Data Protection), Clause 24 (Freedom of Information), Clause 25 (Record Keeping and Monitoring), Clause 47 (TUPE), Clause 33 (Severance), Clause 39 (Non Solicitation and Offers of Employment) and Clause 41 (Law and Jurisdiction).

17 EXIT ARRANGEMENTS

17.1 The Provider shall support the Council in managing the smooth and timely transition of the Contract by providing all necessary reasonable resources and information for ending the Contract and or handing over the Services to the Council or its

Replacement Provider. The Provider shall provide a detailed exit plan to the Council at least three months before the expiry of the Contract.

18 LIABILITY AND INSURANCE

- 18.1 The Provider shall maintain insurance necessary to cover any liability arising under the Contract.
- 18.2 The Provider shall, prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request, provide evidence that all premiums relating to such insurances have been paid.
- 18.3 Neither Party excludes or limits liability to the other for death or personal injury caused by its negligence or any such liability which it is not permissible to exclude by Law.
- 18.4 The Provider shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of, or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by an act or omission of the Provider. This clause 18.4 shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or by any circumstances within its or their control.
- 18.5 The Provider shall notify the Council as soon as possible and in any event within 48 hours of any incident that may lead to any claim, demand or proceedings and shall supply such particulars or details thereof as the Council shall reasonably require.
- 18.6 The Provider shall fully and promptly indemnify the Council in respect of any damage whatsoever caused by any Employees, whether such damage be caused by negligence or in any other way whatsoever to any land, building or chattel in the ownership, occupation or possession of the Council arising out of or in consequence of the performance of the Contract or the performance of the Services.
- 18.7 The Provider shall at all times throughout the Contract Period of this Contract maintain in force such policies of insurance with reputable insurers or underwriters as are sufficient to cover its liability under this Contract.
- 18.8 The provisions of this clause 18 shall survive the expiry or termination of this Contract for whatever reason.

19 LIMITATION OF LIABILITY

- 19.1 Subject to clause 13.1, the Council's total liability arising under, or in connection with, this Contract, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:
- 19.1.1 for non-payment of invoices for Services purchased, to the amount unpaid;
or
- 19.1.2 for any other type of liability, to the amount paid for the Services under the Contract.
- 19.2 Subject to clause 19.1, the Provider's total liability arising under, or in connection with, this Contract, whether in tort (including negligence or breach of statutory duty),

contract, misrepresentation, restitution or otherwise, shall be limited to five (5) million pounds or one hundred and twenty five percent (125%) of the total Price whichever is the greater.

19.3 Subject to clause 13.1, neither Party will be liable to the other Party for:

19.3.1 any indirect, special or consequential loss or damage; or

19.3.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

19.4 Subject to clause 19.2 the Council may, amongst other things, recover as a direct loss:

19.4.1 any additional operational and/or administrative costs and expenses arising from the Provider's default;

19.4.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's default;

19.4.3 the additional cost of procuring replacement Services for the remainder of the Contract Period; and

19.4.4 any anticipated savings.

20 INTELLECTUAL PROPERTY

20.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

20.1.1 provided to the Provider by the Council shall remain the property of the Council;

20.1.2 prepared by or for the Provider specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract.

20.2 The Council shall be entitled to use, modify, arrange and copy all property, copyright and all other intellectual property rights (including but without limitation the database rights in any database ("the Intellectual Property") in the Materials developed, originated, written or prepared by the Provider (whether individually or jointly with the Council) for the purposes of this Contract, which Intellectual Property the Provider by this Contract assigns to the Council with full title guarantee.

20.3 The Provider grants the Council a non-exclusive licence to use any pre-existing Intellectual Property Rights in order to make use of the Services.

20.4 At the request of the Council the Provider shall do all such things and sign all documents or instruments reasonably necessary in the Council's opinion to enable the Council to obtain, defend and enforce its intellectual Property in such Materials.

20.5 The Provider warrants that the Materials will (so far as they do not comprise Material originating from the Council) be original works of authorship and the use or possession by the Council will not subject the Council to any claim for infringement of any proprietary rights of any third party.

20.6 The Provider agrees to notify the Council in writing of any breach or claim of breach of any intellectual property in use for the purposes of this Contract and shall indemnify

the Council against any and all claims, liability, loss, damages, costs and expenses which the Council may incur or suffer as a result of a breach by the Provider of the warranties set out in this clause.

- 20.7 The Provider agrees that the Council is entitled to all property, copyright and other intellectual property rights in all Materials developed, originated, written, prepared or contributed to by the Council whether or not changed or developed by the Provider.
- 20.8 At the termination of the Contract the Provider shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

21 CONFIDENTIALITY

- 21.1 The Provider and the Council shall keep confidential all Confidential Information shared between them obtained under or in connection with this Contract and shall not divulge the same to any third party without the written consent of the Party in whom the ownership of the Confidential Information is vested.
- 21.2 The provisions of this clause 21 shall not apply to:
- 21.2.1 any information in the public domain otherwise than by breach of this Contract;
 - 21.2.2 information obtained from a third party who is free to divulge the same;
 - 21.2.3 any information which is personally developed;
 - 21.2.4 any information required to be disclosed by Law.
- 21.3 The Parties shall divulge Confidential Information only to those persons who are directly involved in providing the Services under this Contract and shall ensure that such persons are aware of and comply with these obligations as to confidentiality.
- 21.4 The provisions of this clause 21 shall continue in perpetuity.

22 PUBLICITY AND STATEMENTS

- 22.1 The Provider will not use any corporate logos of the Council nor refer to the Council or this Contract or the Services, directly or indirectly, in connection with any product, promotion or publication, without the prior written permission of the Council. For the avoidance of doubt, the restriction contained in this clause 22 shall apply equally to any references to the Council in any form or medium.
- 22.2 The Provider shall not at any time whether during the Contract Period or thereafter make any public statement in relation to the Council or its businesses, affairs, customers or clients unless authorised by the Council and shall not after this engagement has been terminated wrongfully represent themselves as being engaged by or connected to the Council.

23 DATA PROTECTION

- 23.1 The Provider shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the DPA (as amended or re-enacted from time to time).

24 FREEDOM OF INFORMATION

- 24.1 Notwithstanding anything to the contrary contained or implied in any documents, negotiations leading to the formation of this Contract or in this Contract:

- 24.1.1 the Council shall be entitled to publish and/or release any and all terms or conditions of this Contract, the contents of any documents and/or information relating to the formation of this Contract under the provisions of the FOIA, EIR or the Local Government Transparency Code 2014, (“the Code”), as it sees fit;
- 24.1.2 nothing contained in this Contract shall prevent the Council from disclosing and/or publishing under the FOIA or the EIR any term or condition or information contained in or relating to the formation of this Contract.
- 24.2 The Provider shall:
 - 24.2.1 co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the FOIA or the EIR;
 - 24.2.2 supply all such information and documentation at no cost to the Council and within seven days of receipt of any such request.
- 24.3 The Provider shall not publish or otherwise disclose any information contained in this Contract or in any negotiations leading to it without the Council's previous written consent.

25 RECORD KEEPING AND MONITORING

- 25.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Provider shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request allow the Council or the Council's authorised representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.
- 25.2 The Provider will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

26 HEALTH AND SAFETY

- 26.1 The Provider and all persons engaged in providing the Services shall comply fully with the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations, all health and safety policies of the Council and any other Laws relating to the health and safety of Employees and others who may be affected by the Provider's work activities.

27 CORPORATE REQUIREMENTS

- 27.1 The Provider shall comply with the terms of the Human Rights Act as if it were a public body and was subject to its terms.
- 27.2 The Provider shall comply with all Council policies and rules, such as, but not limited to:
 - 27.2.1 equality and diversity policies;
 - 27.2.2 sustainability;

- 27.2.3 information security rules;
- 27.2.4 whistleblowing and/or confidential reporting policies; and
- 27.3 The Provider shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 27.4 The Provider shall comply with all relevant Laws relating to its Employees however employed including (but not limited to) the compliance in Law of the ability of the Employees to work in the United Kingdom.
- 27.5 If the Provider has a finding against it relating to its obligations under clause 27.4 it will provide the Council with:
 - 27.5.1 details of the finding; and
 - 27.5.2 the steps the Provider has taken to remedy the situation.

28 PREVENTION OF BRIBERY AND FRAUD

- 28.1 The Provider:
 - 28.1.1 shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and shall ensure that any Sub Contractor and all Provider Personnel shall, in connection with this Agreement comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010
 - 28.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 28.2 The Provider shall:
 - 28.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.
 - 28.2.2 within 28 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this clause 28 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 28.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Sub Contractor or Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
 - 28.3.1 Any anti bribery policy put in place by the Provider shall in addition include the Provider's Prevention of Fraud policy, which shall incorporate the Council's Counter Fraud Prevention Strategy. The Council's Counter Fraud

Prevention Strategy may be located on the Council's website at the following link <http://www.rutland.gov.uk/pdf/Counter%20Fraud%20Strategy.pdf>.

- 28.3.2 The Provider shall as part of the arrangements put in place pursuant to Clause 28.3 use an appropriate Crime Risk Assessment Toolkit to identify risks and put systems and processes to mitigate those risks.
- 28.3.3 The Provider shall on request permit the Council's Counter Fraud Specialist to review the Provider's Counter Fraud Arrangements. Following such a review the Provider shall implement within a timescale agreed by the Council, any modifications the Council deems necessary to ensure Counter Fraud Arrangements continue to remain effective.
- 28.3.4 If any breach of clause 28 is suspected or known, the Provider must notify the Council immediately. If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 28, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 28.4 The Council may terminate this Agreement by written notice with immediate effect if the Provider, Sub Contractor or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 28. In determining whether to exercise the right of termination under this clause 28.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:
- a) with the authority; or,
 - b) with the actual knowledge;
- of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.
- 28.5 Any notice of termination under clause 28.4 must specify:
- a) the nature of the Prohibited Act;
 - b) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - c) the date on which this Agreement will terminate.
- 28.6 Despite clause 15 (Dispute resolution), any dispute relating to:
- a) the interpretation of clause 28; or
 - b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 28.7 Any termination under clause 28.4 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

29 LAW AND CHANGE IN LAW

- 29.1 The Provider shall comply at all times with the Law in its performance of the Contract.

- 29.2 On the occurrence of a Change in Law which has a direct effect upon the Price the Parties shall meet within 10 Business Days of the Provider notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Provider. If the Parties, within 10 Business Days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either Party may refer the matter to dispute resolution in accordance with clause 15.
- 29.3 Any agreed additional sums payable as a result of the operation of clause 29.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Provider double recovery of any increase in costs.

30 CONTRACT VARIATION

- 30.1 Subject to clause 30.2, no variation or modification to the Contract is valid unless it is in writing and signed by both Parties.
- 30.2 The Council shall be entitled to issue to the Provider in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised delivery instructions. The Provider shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in their Quotation.

31 THIRD PARTY RIGHTS

- 31.1 Nothing in this Contract shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999 (the "Act"). No variation of this Contract and no supplemental or ancillary agreement to this Contract shall create any such rights unless expressly so stated in any such agreement by the Parties. This does not affect any right or remedy of a third party which exists or is available from the Act.

32 NO WAIVER

- 32.1 Failure by either Party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other Party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the Parties to enforce any provision in accordance with its terms.
- 32.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 3 (Notices).

33 SEVERANCE

- 33.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

34 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

- 34.1 Neither the Council nor the Provider shall assign or sub-contract this Contract or any part thereof without the prior written consent of the other Party. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract.

- 34.2 The Provider shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, Sub-contractors, servants, agents and Employees as though they were its own.
- 34.3 If the Council novates, assigns, transfers, charges, mortgages, sub-contracts, delegates or deals in any other manner with all or any of its rights under the Contract the Provider shall continue to provide the Services as agreed under this Contract, at no additional cost in so far as no additional obligations are placed upon the Provider in performing the Services.
- 34.4 In the event the Provider engages a Sub-contractor for the purpose of providing the Services, (in whole or in part), the Provider shall include a requirement within the sub-contract to provide for the following: (i) payment will be made to the Sub-contractor no later than 30 days from the date on which the invoice is regarded as valid and undisputed; (ii) that invoices submitted for payment by the Sub-contractor shall be considered by the Provider in a timely fashion; (iii) any undue delay in considering and verifying an invoice is not sufficient justification for failing to regard it as valid and undisputed.

35 FORCE MAJEURE

- 35.1 Neither Party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
- 35.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Provider against the Council nor entitle the Provider to terminate the Contract.
- 35.3 Industrial action by, or illness or shortage of the Employees, agents or Sub-contractors, failure or delay by any of the Provider's suppliers to supply goods, components, services or materials and breach of the Provider's warranties under clause 8 shall not be regarded as an event of Force Majeure.
- 35.4 Neither Party shall incur any liability if it is delayed in the performance of its obligations as a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract. If a Party is unable to perform its obligations under the Contract as a result of a Force Majeure event for a period in excess of 4 months (commencing on the date of the notice provided in accordance with clause 35.5), the other Party may terminate the Contract by notice in writing with immediate effect.
- 35.5 If either Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall notify the other as soon as reasonably possible and shall estimate the period such failure or delay shall continue.
- 35.6 If the event of Force Majeure continues for more than two (2) months either Party may give written notice to the other to terminate the Contract immediately or on a set termination date.
- 35.7 If the Contract is terminated in accordance with clause 35 neither Party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

36 INDUCEMENTS

- 36.1 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Provider is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
- 36.2 The Provider warrants that it has not paid commission nor agreed to pay any commission to any employee or representative of the Council by the Provider or on the Provider's behalf.
- 36.3 Where the Provider engages in conduct prohibited by clauses 36.1 and 36.2 in relation to this or any other contract with the Council, the Council has the right to:
- 36.3.1 terminate the Contract and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
- 36.3.2 recover in full from the Provider any other loss sustained by the Council in consequence of any breach of this clause 36 whether or not the Contract has been terminated.

37 COSTS AND EXPENSES

- 37.1 Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

38 NO AGENCY OR PARTNERSHIP

- 38.1 Nothing contained in this Contract, and no action taken by the Parties pursuant to this Contract, will be deemed to constitute a relationship between the Parties of partnership, joint venture, principal and agent or employer and employee. Neither Party has, nor may it represent that it has, any authority to act or make any commitments on the other Party's behalf.

39 NON SOLICITATION AND OFFERS OF EMPLOYMENT

- 39.1 The Provider agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:
- 39.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or
- 39.1.2 attempt, or knowingly assist or procure any other person to do the above.

40 INSPECTION OF PROVIDER'S PREMISES

40.1 The Provider shall permit the Council to make any inspections which may reasonably be required in respect of the Provider's premises in relation to the Contract.

41 LAW AND JURISDICTION

41.1 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

42 COUNCIL'S POLICIES

42.1 The Council will make its own policies with regard to, for example, equalities, health & safety, environmental and they are available to the Provider upon request.

43 EQUALITIES

43.1 The Provider shall comply with its statutory obligations under the Equality Act 2010, and accordingly will not treat one group of people less favourably than others because of their protected characteristic which includes age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation in relation to decisions to recruit, train or promote Employees or in the Services it provides.

44 COMMITMENT TO ENVIRONMENTAL IMPROVEMENT

44.1 The Provider shall work with the Council in so far as necessary to improve the effects of the Services on the environment both in terms of the 'direct effects' and the 'service effects'.

44.2 In this respect the Provider shall use its best endeavours to improve the environmental efficiency of the Services and provide a flexible approach to the management of the Services.

44.3 The Provider shall consider environmental efficiency as part of the operational planning process on an ongoing basis throughout the Contract.

45 COMPETITION ACT

45.1 The Council reserves the right in appropriate circumstances to make this Contract and all documents related or connected to it available to the Office of Fair Trading and other statutory regulators.

46 WHISTLEBLOWING

46.1 The Council is committed to tackling fraud, abuse and other forms of malpractice and it has a Whistleblowing Policy that also applies to any Provider working or providing services to the Council. A copy of this policy is available upon request.

47 TUPE

47.1 The Council makes no assurances or representations as to the effect of TUPE on the Contract.

47.2 The Provider has acknowledged that it has formed its own view as to whether TUPE applies in respect of the Services.

47.3 It is agreed between the Council and the Provider that the Price will not be varied after the commencement of the Contract on the grounds that TUPE does or does not apply irrespective of the belief of either Party prior to the Commencement Date.

- 47.4 The Provider shall immediately upon request by the Council provide the Council with details of any measures which the Provider (or Sub-contractor) envisages it or they will take in relation to any Employees who are or will be subject to any transfer from the Provider (and Sub-contractor) and shall indemnify the Council against all injuries, claims, costs and expenses (including legal expenses) and/or damages resulting from any failure by the Provider or Sub-contractor to comply with this obligation.
- 47.5 In the event of any future transfer to the Council or any Replacement Provider or Sub-contractor on the expiry or early termination of the Contract or as a consequence of part of the Contract not being provided by the Provider, the Provider will use all reasonable endeavours to procure that it or any Sub-contractor will:-
- 47.5.1 comply with its obligations under TUPE;
- 47.5.2 immediately upon request provide to the Council a list containing details of the Employees eligible to transfer and such other appropriate information reasonably required by the Council to enable it to disclose as appropriately to third parties invited to tender or submit a quotation for any subsequent contract(s) covering the Services. This list to be provided to the Council shall contain the following:-
- nature of job/job description;
 - current salary;
 - length of service;
 - contracted hours and percentage of those contracted hours spent on the Contract;
 - retirement age;
 - arrangements for overtime and whether this is contractual;
 - any factors that may affect redundancy entitlement;
 - any outstanding industrial injury claims or other claims or actions;
 - whether any probationary period is current;
 - period of notice to terminate employment;
 - current pay agreement and any agreed settlement yet to come into effect;
 - age;
 - gender;
 - annual leave entitlement;
 - sick leave entitlement;
 - maternity and paternity leave arrangements;
 - special leave entitlement;
 - other benefits e.g. season tickets, loans, car provision;
 - whether they are a member of a company pension scheme;
 - location and contractual provisions relating to this;
 - terms and conditions of employment;
 - details of company pension scheme; and
 - any other information reasonably requested by the Council.
- 47.6 The Provider warrants that the above information when provided to the Council will be accurate and complete in all respects, that it will immediately inform the Council in writing of any changes to that information between the date provided and the date of any replacement Contract and that it will have discharged all known liabilities relating to its Employees. If the Provider fails to provide the required information or does not provide it accurately and completely, updated as necessary, the Council reserves the right to exclude the Provider from being invited to tender or submit a quotation for any subsequent contract(s) (if the Provider would otherwise have qualified for invitation) or to disqualify the Provider from submitting a bid for any subsequent contract(s) or to reject a bid from the Provider for any subsequent contract(s).

- 47.7 The Provider shall take all reasonable steps to ensure that otherwise than in the bona fide course of business it (or its Sub-contractor) it will not without the consent of the Council in any period between the date on which the information is provided and any expiry or termination of the Contract:-
- 47.7.1 vary or purport to vary the terms and conditions of employment of Employees eligible for TUPE transfer;
 - 47.7.2 increase the number of transferring Employees; or
 - 47.7.3 assign or redeploy any transferring Employees to other duties unconnected to the Contract to avoid a transfer.
- 47.8 The Provider will use its reasonable endeavours (and likewise its Sub-contractor) to procure that any Employee eligible for TUPE transfer is not dismissed for a reason connected to the transfer and will indemnify the Council or any Replacement Provider against direct or indirect loss, damages, claims, costs and expenses (included legal expenses) suffered or incurred by the Council or any Replacement Provider:-
- 47.8.1 in relation to the employment or termination of employment of any Employee during the period leading up to a TUPE transfer;
 - 47.8.2 in relation to a breach or non-observance of any collective agreement, custom, practice or arrangement (whether legally binding or not) with a trade union or staff association in respect of Employees eligible to TUPE transfer;
 - 47.8.3 to the extent that it arises any failure by the Provider (and its Sub-contractor) failure to comply with obligations under TUPE in respect of Employees eligible for transfer; and
 - 47.8.4 in relation to vicarious liability owed to third parties arising or connected with the eligible Employees' contracts of employment which arises from any act or omission on the part of the transferring Employee in the period leading up to the TUPE transfer.

48 VAT

- 48.1 The Contract Price does not include VAT. If VAT is payable then the Council must pay this in addition to the Contract Price provided that the Provider supplies the Council with a proper VAT invoice.
- 48.2 If the Provider is providing a service on which VAT is chargeable (including services which attract a zero rate of VAT) the Provider must provide the Council with an invoice for payment of the Contract Price on or as soon as possible after the Commencement Date. This invoice should cover the period from the Commencement Date until the end of the current Financial Year. After that, the Provider must send the Council an invoice at the start of, and in respect of, each new Financial Year. The invoice must set out details of the Services for which payment is claimed and such other supporting information and documentation as the Council may reasonably require from time to time.

49 DISCLOSURE & BARRING SERVICE (DBS) REQUIREMENTS

- 49.1 The Provider must comply with Leicestershire & Rutland's Safeguarding Adults Policy and Procedures as amended from time to time, which can be found by using the following link:

http://www.rutland.gov.uk/health_and_social_care/safeguarding_adults.aspx

- 49.2 These relate to the management of suspicions or allegations of abuse of vulnerable adults, aged 18 years and over
- 49.3 The Provider must comply with Leicestershire & Rutland's Safeguarding Children Policy and Procedures as amended from time to time, which can be found using the following link:

http://www.rutland.gov.uk/health_and_social_care/safeguarding_children.aspx

The policy and procedures are about managing suspicions or allegations of abuse to children until they reach the age of eighteen.

The Provider shall make the necessary arrangements to ensure compliance with the requirements of Section 11 of the Children Act 2004, the Safeguarding Vulnerable Groups Act 2006 (the "SVA Act"), and the duty to safeguard and promote the welfare of children in the delivery of all aspects of the Services.

- 49.4 Without prejudice to the generality of clause 49.3, the Provider shall ensure that all Employees and individuals engaged in the provision of the Services are registered and enrolled on the Independent Safeguarding Authority list and are subject to a valid enhanced disclosure check through the Disclosure and Barring Service ("DBS") including a check against the adults' barred list and the children's barred list, and the Provider shall monitor the level and validity of the checks under this clause 49.4 for each Employee. The Provider shall ensure that no Employees or individuals engaged in the provision of the Services are barred from the activity in accordance with the provisions of the SVA Act.
- 49.5 Subject to clause 49.6, but without prejudice to the generality of clause 49.3, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must, without limitation:
- 49.5.1 complete the Employment Checks;
 - 49.5.2 ensure that the individual is enrolled on the Independent Safeguarding Authority list;
 - 49.5.3 carry out an enhanced disclosure check through the DBS (including a check against the adults' and children's barred lists); and
 - 49.5.4 complete such other checks as required by the DBS or the SVA Act.
- 49.6 Subject to Clause 49.7 the Provider may engage a person pending the receipt of the checks required under clause 49.5 with the prior written agreement of the Council.
- 49.7 Where Clause 49.6 applies, the Provider will ensure that until the requirements of clause 49.5 have been complied with and all checks obtained, the following safeguards will be put in place in respect of the individual:
- 49.7.1 an appropriately qualified and experienced Employee shall be appointed to supervise the individual;
 - 49.7.2 wherever it is possible, the supervisor appointed under clause 49.7.1 shall be on duty at the same time as the individual, or shall be available to be consulted;

- 49.7.3 the individual shall be accompanied at all times by another Employee, preferably the appointed supervisor, whilst providing or involved in any way in respect of the Services; and
- 49.7.4 any other reasonable requirements of the Council.
- 49.8 The Provider shall keep records of all checks carried out pursuant to clauses 49.4 and 49.5 which shall be stored in accordance with the DBS Code of Practice and the DPA. On or before the Commencement Date the Provider shall provide the Council with details of the disclosure numbers and dates the disclosures were made, in respect of all Employees. As and when additional checks are carried out (pursuant to clauses 49.4 or 49.5) the Provider shall provide the Council with details of the disclosure numbers and dates the disclosures were made, promptly.
- 49.9 Where the disclosure information on a DBS certificate reveals criminal activity, a risk assessment must be carried out and kept by the Provider and a copy provided promptly to the Council upon completion.
- 49.10 The Provider shall inform the Council as soon as practicably possible if any Employee commits any act (whether criminal or otherwise) which calls into question their suitability or prevents them from performing their duties or whose relevant previous convictions become known to the Provider.
- 49.11 The Provider will comply with Good Industry Practice and any relevant industry standards and guidance in relation to following good practice and carrying out repeat DBS checks where required.
- 49.12 The Council reserves the right to visit the Provider's organisation to audit and check disclosure information and checks required under clauses 49.4 and 49.5 are up to date.
- 49.13 The Provider shall comply with any reasonable instruction issued by the Council that the Provider should not use any particular Employee or person in the performance of this Contract where the Council has a reasonable belief that the safety or wellbeing of Service Users or any other persons, may be affected.
- 49.14 The Provider shall promptly provide such information and documentation as requested by the Council from time to time, to enable the Council to satisfy itself that the Provider is complying with its obligations under this Clause 49.
- 49.15 For the avoidance of doubt, and without prejudice to clause 6.11, the Provider shall bear the costs of or arising from complying with this Clause 49.
- 49.16 The Provider shall indemnify the Council against all Liabilities incurred by the Council arising from or connected to of the Provider's failure to comply with this clause 49.

50 SAFEGUARDING AND SERIOUS UNTOWARD INCIDENTS

- 50.1 The Provider will comply with all requirements of the Children and Families Act 2014 to adequately assess and safeguard children and young people who are at significant risk and refer all such cases appropriately and in accordance with local protocols.
- 50.2 The Provider will comply with all requirements of the Care Act 2014 and herein acknowledges its duty to safeguard vulnerable adults from abuse and its responsibility to act on actual or suspected cases of abuse appropriately, including referral and in accordance with local protocols.

- 50.3 The Provider will comply with all requirements of the Mental Health Act 2007 and the Mental Capacity Act 2005 and in particular ensure that it abides by the requirements of the Deprivation of Liberties Safeguards.
- 50.4 The Provider shall be required to comply with the Leicestershire & Rutland Local Safeguarding Children's Board policies and procedures and when called upon to do so, demonstrate how this is being done.
- 50.5 The Provider must comply with the Leicestershire & Rutland Adult Safeguarding Board policies and procedures and when called upon to do so, demonstrate how this is being done.

51 COMPLAINTS AND SERIOUS UNTOWARD INCIDENTS

- 51.1 The Service will agree with the Council the approach to managing and responding to complaints and serious incidents which will include ensuring appropriate alignment and integration with RCC policies and procedures related to complaints and serious untoward incidents. All complaints and incidents must be logged, recorded and documents made available to the Council if and when requested and in respects of serious untoward incidents these must be reported to the Council within one working day.
- 51.2 All deaths known to the Service must be logged, recorded and documents made available to the Council if and when requested. These must be reported to the Council within one working day of the Service becoming aware of the death. This is regardless of whether the death occurred in service, or was in any way related or otherwise to the service received.
- 51.3 Any investigation undertaken relating to a serious untoward incident or to the death of a Service User must be shared with the Council.

52 QUALITY STANDARDS AND GOVERNANCE

- 52.1 Corporate Governance; Statutory and other regulations, policies and procedures.
 - 52.2.1 The Service is required to ensure that a set of standards and written protocols is agreed and implemented to regulate procedures, to guide day-to-day practices, and to maintain safe and effective operation of the Service. These should be in accordance with the key principles of Children & Families Act 2014; the Care Act 2014; the Mental Health Act 2007; Mental Capacity Act 2005 (delete as appropriate & insert any additional relevant national legislation/guidance) and meet the Council's standards. Copies should be available to all staff, and to Service Users or potential Service Users on request. The list below is not exhaustive and additional appropriate policies and procedures may be required. The Council may seek appropriate advice on the contents of all policies and procedures.
 - 52.2.1.1 Equal opportunities and anti-oppressive practice, specifically including anti-bullying policy.
 - 52.2.1.2 Health and Safety, including occupational health and Control of Infection (including post-exposure prophylaxis and/or any additional relevant).
 - 52.2.1.3 Safeguarding for children.
 - 52.2.1.4 Safeguarding for vulnerable adults.
 - 52.2.1.5 Complaints, compliments and comments.

- 52.2.1.6 Service User involvement.
- 52.2.1.7 Adverse incidents reporting and monitoring of incidents/accidents involving staff, volunteers and Service Users.
- 52.2.1.8 Management of violence.
- 52.2.1.9 Fire.
- 52.2.1.10 Codes of conduct and rights of Service User.
- 52.2.1.11 Drugs and alcohol in the workplace.
- 52.2.1.12 Confidentiality.
- 52.2.1.13 Service exclusions.
- 52.2.1.14 Whistle-blowing

52.2 Clinical Governance (*where relevant*)

- 52.2.1 The Service will be expected to have in place comprehensive clinical governance and quality assurance systems agreed with the Council and this is expected to include:
 - 52.2.1.1 Designated named clinical governance lead.
 - 52.2.1.2 Operation in accordance with, and participation in, the clinical governance activity of their parent body (as applicable) and also any clinical governance work being undertaken by the Council.
 - 52.2.1.3 Requirement to meet criteria set by the Care Quality Commission and any other relevant body.

53 WORKFORCE COMPETENCIES AND TRAINING

- 53.1 The Service will ensure that all staff are competent in their role and are actively engaged in staff development procedures. The Service will:
 - 53.1.1 Be able to evidence their compliance with any national occupational standards, and employ staff according to relevant procedures and competencies and ensure that all job descriptions are mapped to national occupational standards and outline the role, responsibilities and competencies required to effectively carry out the post.
 - 53.1.2 Ensure that all staff are aware of and comply with relevant sections of national legislation governing their roles.
 - 53.1.3 Ensure that staff induction, supervision and appraisal procedures are all in place and submit copies and review dates of all human resources policies and protocols on request.
 - 53.1.4 Identify and make available resources for ongoing training needs and professional development, including attendance at any training deemed appropriate and necessary by the Council.

- 53.1.5 Ensure that all staff receive training in accordance with the organisation's mandatory training programme and that this is consistent with the Council's training and development plans.
- 53.1.6 Ensure that the training of staff will be determined by an ongoing competency analysis, based on national occupational standards.
- 53.1.7 Have appropriate conduct and disciplinary procedures approved by the Council in place and enforce these.
- 53.1.8 Have a named individual as a contact for workforce issues, who will disseminate information to the respective colleagues.
- 53.1.9 Ensure that there is at all times a sufficient level of appropriate staff cover to provide a safe, effective and accessible service.

53.2 **Staff**

- 53.2.1 The Service must maintain and keep information on individual staff members, which should include personal details:
 - 53.2.1.1 Recruitment and induction details.
 - 53.2.1.2 Occupational Health screening details.
 - 53.2.1.3 Training details including frequency.
 - 53.2.1.4 Supervision and appraisal details.
 - 53.2.1.5 Disclosure and Barring Service, Protection of Vulnerable Adult or Independent Safeguarding Authority check.
 - 53.2.1.6 Copies of certification and references.
- 53.2.2 Formal supervision and management appraisal for all staff must be provided on a regular basis as should separate clinical supervision for key staff. Staff providing supervision should be adequately trained and supported to do so.

53.3 **Medical Staff** *(if relevant)*

- 53.3.1 The Provider will ensure that medical practitioners working in or on behalf of the Service, whether directly employed or not, have both the competence and expertise to assess and treat the most complex cases. Where relevant, they will have undergone accredited specialist medical training. Practitioners will at all times prescribe only within their level of competence and in accordance with NICE and DH guidelines.

53.4 **Volunteers** *(if relevant)*

- 53.4.1 If the Provider uses volunteers within the project, they must be properly vetted, trained, supervised and supported appropriately.
- 53.4.2 The Service will be expected to have a clear policy in place with regards to the use of volunteers, which will be made available to the Council on request.

SCHEDULE 1

SERVICE SPECIFICATION (to be included in final Contract)

SCHEDULE 2

Pricing Schedule (to be included in final Contract)

SCHEDULE 3

REPRESENTATIVES

Council's Contract Manager	Provider's Contract Manager
<p>Name: NAME, JOB TITLE</p> <p>Address: Rutland County Council Catmose, Oakham. LE15 6HP</p> <p>Telephone: 01572 722577</p> <p>Email: xxx@rutland.gov.uk</p>	<p>Name: NAME, JOB TITLE</p> <p>Address: XXX XXX XXX XXX</p> <p>Telephone:</p> <p>Email: XXX.XXX@XXX</p>
Council's second representative	Provider's second representative
<p>Name: NAME, JOB TITLE</p> <p>Address: Rutland County Council Catmose, Oakham. LE15 6HP</p> <p>Telephone: 01572 722577</p> <p>Email: xxx@rutland.gov.uk</p>	<p>Name: NAME, JOB TITLE</p> <p>Address: XXX XXX XXX XXX</p> <p>Telephone:</p> <p>Email: XXX.XXX@XXX</p>

IN WITNESS of which a duly authorised Representative of the Council and the Provider have executed this Contract on the day and year first above written

SIGNED for and on behalf of

RUTLAND COUNTY COUNCIL DISTRICT COUNCIL

By its Authorised Signatory

Signed

Print Name

Title

Date

SIGNED for and on behalf of

PROVIDER NAME

BY its Authorised Signatory

Signed

Print Name

Title

Date
