Thurrock Council

THIS CONTRACT is made on: 2020

between the PARTIES

1. The Council: THURROCK COUNCIL of Civic Offices, New Road, Grays, Essex RM17 6SL;
2. The Contractor:

(each being referred to as a “Party” and together as the “Parties”)

OPERATIVE PART

1. The Parties agree to contract for the provision and completion of certain services by the Contractor for the benefit of the Council (as further detailed in the Services Specification) and in accordance with and subject to the terms and conditions set out in these Contract Particulars and the Standard Terms and Conditions in Schedule 2 as amended by the Special Terms and Conditions in Schedule 1 and the other documents comprising the Contract as detailed further below.

**Contract Particulars**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Contract Title** | | **Short Breaks and Support Services for Disabled Children** | | | |
| **Unique Contract Reference Number** | | **PS/2017/579** | | | |
| **Commencement Date** | | **1 April 2020** | | | |
| **Contract Period**  **(Specify the initial term of the Contract)** | | Two (2) years | | | |
| **Option to extend (if any)**  **(Specify the number of options and the period of each option as well as the notification period for the option)** | | **12 Months** | | | |
| **Services to be called off by Order** | | **Yes 🞏** | | | **No x** |
| **No Fault Termination (Clause D1.4 applies (Yes or No)**  **If Yes state Notice Period** | | **Yes x**  **Notice Period: Three months** | | | **No 🞏** |
| **Services and any related Goods**  **(insert general description for high level information only)** | | **\*\***  **(Note the Contractor shall provide the Services and Services results, work and materials and any associated work product as detailed in the Specification of Services contained in Schedule 3 and as may be further detailed in the other Contract Documents, all in accordance with the Contract terms and conditions.)** | | | |
| **Addresses for Notice purposes:** | | 1. **The Council: Civic Offices, New Road, Grays, Thurrock, RM17 6SL** | | | |
| 1. **The Contractor:** | | | |
| **Price** | | **see attached Pricing Schedule (schedule 7 attached)** | | | |
| **Location for provision of Services:** | | **see the Services Specification in Schedule 3** | | | |
| **Specify any Special Delivery Instructions in relation to any goods if provided in relation to the Services:** | | **N/A** | | | |
| **Special Conditions** | | **N/A** | | | |
| **Council Authorised Officers** | | | | | |
| **Name** | **Position** | | | **Contact Details** | |
|  |  | | |  | |
|  |  | | |  | |
|  |  | | |  | |
| **Contractor Manager** | | | | | |
| **Name** | | | **Contact Details** | | |
|  | | |  | | |
| **Contractor Key Personnel** | | | | | |
| **Name** | **Position** | | | **Contact Details** | |
|  |  | | | **Tel:** | |
|  |  | | |  | |
|  |  | | |  | |
|  |  | | |  | |

|  |  |
| --- | --- |
| **Insurance Summary Information (to be read in conjunction with any specific insurance conditions in schedule 1)** | |
| **Insurance type:** | **Minimum level** |
| **Employer’s Liability Insurance** | As per Specification (5 million ) |
| **Public Liability Insurance** | As per Specification (5 million) |
| **Professional Indemnity Insurance** | As per Specification(2 million) |
| **Medical Malpractice Insurance(If applicable)** | As per Specification (5 million) |

**As witness** the hands of the parties hereto

**The Common Seal of**

**THURROCK BOROUGH COUNCIL**

**Was hereunto**

**Affixed in the presence of**

**Name:…………………………………………………………………………………………………..**

**Authorised Signatory:………………………………………………………………………………**

**EXECUTED AND DELIVERED as a**

**Deed by……………………………………………………………………………………………………**

**And signed by one Director**

**Director Sign:…………………………………………………………………………………...**

Name:…………………………………………………………………………………………….

WITNESS BY:

**Witness signature ;……………………………………………………………………………..**

**Name: …………………………………………………………………………………..**

**Address: ………………………………………………………………………………………**

**……………………………………………………………………………………………………...**

**……………………………………………………………………………………………………..**

**Schedule 1**

**Special Terms and Conditions**

**NOT USED**

**SCHEDULE 2**

**Standard Terms and Conditions**

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**part a - operative provisions**

1. **DEFINITIONS**

The terms and expressions used in this Contract shall have the meanings set out below:

|  |  |
| --- | --- |
| “Agreement” | this contract. |
| “Authorised Officer” | the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract identified in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer. |
| “Assigned Employees” | In respect of Clause G4 an individual employed by the Contractor wholly or mainly in the performance of the Services |
| “Business Day”  “ Caldicott Principles” | any day other than a Saturday or Sunday or a public or bank holiday in England.  the general principles that health and social care organisations should apply relating to the confidentiality and security of service users information held by them. |
| “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” | the commencement date stated in the Contract Particulars. |
| “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 Services, the business affairs, properties, assets, trading practices, developments, trade secrets, IPR, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA). |
| “Contract” | the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:  1. the Contract Particulars;  2. the Special Terms and Conditions;  3. the Standard Terms and Conditions;  4. the Tender except to the extent  that any element of the Tender has been included in the Contract Particulars. |
| “Contractor” | the contractor and where applicable this shall include the Contractor's Employees, sub-contractors, agents, representatives and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members. |
| “Contract Manager” | the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2. |
| “Contract Particulars” | the document detailing particular core information and terms agreed between the Parties with regard to the Services and the Contract which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Services and Contract Period, and the Specification and relevant extracts or parts of the Contractor’s Tender agreed to be included in the Contract Documents. |
| “Contract Period” | the initial period of the Contract as stated in the Contract Particulars plus any option period specified in the Contract Particulars that is exercised in accordance with the terms of the Contract. |
| “Contractor Personnel” | means all directors, officers, employees, agents, consultants and  contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its  obligations under this Agreement. |
| “Control” | control as defined by section 450 of the Corporation Tax Act 2010 and any subsequent amendments. |
| “Council”  “ Children” | the Council named in the Contract Particulars 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).  a child, children or young person aged 0-18 years inclusive (or older if specifically agreed and stated ) to whom the Services are to be provided. |
| “Data Protection Legislation” | (i) the GDPR, the LED and any applicable national  implementing Laws as amended from time to time (ii) the DPA 2018  to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law  about 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” | take 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 Contractor under this Agreement, and/or actual or potential loss and/or  destruction of Personal Data in breach of this Agreement, including any Personal Data  Breach. |
| “Data Subject Access Request” | a request made by, or on behalf of, a Data Subject in  accordance with rights granted pursuant to the Data Protection Legislation to access their  Personal Data. |
| “DPA 2018” | Data Protection Act 2018 |
| “Defects” | means a defect, breakdown, malfunction or failure in any goods, equipment, consumables, products or other items which may be delivered as part of or as a result of the Services under the Contract (and failure shall include failure to comply with the performance requirements in the Contract . |
| “Defects Liability Period” | Means twelve (12) months from completion of the delivery or provision of the warranted Products (save only if the Contract Particulars or Special Terms and Conditions require an alternative time period). |
| “DPA” | The Data Protection Act 1998. |
| “Delivery Instructions” | the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services. |
| “Employee”  . | any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor 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 H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies. |
| “GDPR” | the General Data Protection Regulation *(Regulation (EU) 2016/679)* |
| “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 contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract. |
| “Insolvent” | means:   * + 1. in relation to an individual or a firm:        1. a petition is presented for their bankruptcy;        2. a criminal bankruptcy order is made against the individual or any partner in the firm;        3. the individual or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors; or        4. an administrator is appointed to manage their affairs;     2. in relation to a company:        1. if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction);        2. an application is made for, or any meeting of its directors or members resolves to make an application for, an administration order in relation to it;        3. a notice of intention to appoint an administrator is filed in relation to the company;        4. an administrator or receiver is appointed;        5. a Court makes a winding-up order; or   (vi)the company makes a composition or  arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge. |
| “Intellectual Property Rights”  and “IPR” | Means all intellectual and industrial property rights including (but not limited to) patents, know-how, trade marks, registered designs, utility models, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, rights to prevent passing off for unfair competition, rights in any invention, discovery or process, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country in each case in the United Kingdom and all countries in the world and together with all renewals and extensions; |
| “Invitation to Tender” | the Council’s invitation to tender for the Contract. |
| “iSupplier” | self service application within the Thurrock Oracle system that enables registered suppliers to communicate and conduct business transactions (e.g. electronic Invoicing) with the Council via internet. |
| “Key Personnel” | those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B5.1.5. |
| “Law” | any Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, instruments, rules, orders, regulations, notices, bye-law, regulatory policy, permissions and plans for the time being deriving validity from them, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body. or any European Directives and Regulations enforceable in England and Wales. |
| “LED” | Law Enforcement Directive *(Directive (EU) 2016/680)* |
| “Liabilities”  “ Lots” | 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.  The service provision as defined in the Service Specification |
| “Oracle” | business process management software that allows an organisation to use a system of integrated applications to manage the business and automate back office functions. |
| “Order” | an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off. |
| “Party” | a party to this agreement |
| “Price” | the price or rates applicable for the Services delivered and completed in accordance with the Contract as referred to in the Contract Particulars and the Pricing Schedule. 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” | the schedule from the Tender detailing the pricing as detailed in the Contract Particulars. |
| “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. |
| “Public Contracts Directive” | Means Directive 2014/24/EU of the European Parliament and of the Council |
| “the Regulations | means The Public Contracts Regulations 2015 |
| “Regulatory Body” | means any national, regional, local or other authority, ministry, inspectorate, department, court arbitral tribunal, administrative agency or commission or any other governmental, municipal, administrative or regulatory body (in each case to the extent each of the foregoing has jurisdiction over any of the Parties, this Contract and/or the subject matter of this Contract). |
| “Replacement Contractor” | any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract |
| “Services” | the services, results, work, materials and any work product, goods, resources or other items required to be provided by the Contractor under the Contract as referred to in the Specification and other Contract documents together with the use of all equipment and resource required to perform and complete the Services to the Contract requirements.. |
| “Sub-processor” | any third Party appointed to process Personal Data on behalf of the  Contractor related to this Agreement |
| “Special Terms and Conditions” | the additional terms and conditions in Schedule 1 that were set out in the Invitation to Tender |
| “Specification” | the specification attached as part of the Contract setting out the Council's requirements in relation to the Services. |
| “Standard Terms and Conditions” | the terms and conditions set out in this document. |
| “the Treaties” | means the Treaty on European Union and the Treaty on the Functioning of the European Union |
| “Tender” | the Contractor’s tender for the Services in response to the Council’s Invitation to Tender. |
| “TFEU” | Means the Treaty on the Functioning of the European Union |
| “TUPE” | The Transfer of Undertakings (Protection of Employment) Regulations 2006. |

1. **INTERPRETATION**

In this Contract:

* 1. Any reference to a person includes 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 and a reference to a person includes a reference to that person's successors and permitted assigns.
  2. 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.

* 1. A reference to a Party or party means any party to the Contract individually and Parties or parties refers to all of the parties to the Contract collectively. A Party shall include all permitted assigns of the Party in question.
  2. Words importing the masculine gender include the feminine gender.
  3. Words in the singular include the plural and vice-versa.
  4. Words importing individuals shall be treated as importing corporations and vice-versa.
  5. The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation; and
  6. The schedules form part of this Contract.

**Part b - Provision of services**

1. **Contract Period**
   1. The Contract commences on the Commencement Date and shall continue for the Contract Period.

1. **PERFORMANCE**
   1. The Services shall be provided in accordance with the Specification and Order. If part of the Services involves the supply of goods these will be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the related goods (if any) will be delivered between 9am to 5pm on a Business Day.
   2. The time of the delivery of any goods to be supplied in relation to the performance of the Services is of essence to the Contract.
   3. The Council will have the right to observe the Contractor’s performance of the Services if the Services are not being performed on the Council’s premises.
   4. If the Contractor 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 Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
   5. If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
   6. The Council retains the Contractor for the performance of the Services on a non exclusive basis.
2. **CONTRACT MANAGER**
   1. The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
   2. The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.
3. **ORDERING PROCESS**
   1. Where this Contract is identified as requiring Orders the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.
   2. The Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.
   3. The Orders shall state the type of or part of the Services required including the Council’s requirements with regard to timescale for delivery of those Services.

B5. **RISK AND TITLE**

B5.1 Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejections which may accrue to the Council under the Contract or otherwise.

B5.2 Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.

**B6. WARRANTY**

B6.1 The Contractor warrants and undertakes for the benefit of the Council that the Services will be provided:

B6.1.1 in a proper and skilful manner;

B6.1.2 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;

B6.1.3 in accordance with the Contract and any descriptions provided by the Contractor and in all respects in accordance with the Council’s policies;

B6.1.4 to the reasonable satisfaction of the Authorised Officer;

B6.1.5 by Key Personnel (if any) 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 Contractor; and

B6.1.6 in a way that the Contractor takes every reasonable precaution to safeguard the Council’s property entrusted to the care of the Contractor.

B6.2 The Contractor warrants to the Council that to the extent that any goods, equipment or consumables or products are provided as part of the Services (all referred to as “Products”) these will:

B6.2.1 be free from Defects in design, material and workmanship; and

B6.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

In the event that any Defects appear in the Products in the Defects Liability Period, the Contractor undertakes to rectify the same expeditiously and to the reasonable satisfaction of the Council following notification of problem by the Council.

B6.3 Without prejudice to the Council’s rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:

B6.3.1 require the Contractor 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

B6.3.2 subject to clause E2 (Indemnity and Liability) 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.

**B7. CONTRACTOR’S EMPLOYEES**

B7.1 The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

B7.1.1 any member of the Contractor’s Employees; and/or

B7.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

B7.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.

B7.3 The Contractor’s 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 that establishment and when outside that establishment.

B7.4 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 and conclusive.

B7.5 The Contractor shall replace any of the Contractor’s Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor’s Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

B7.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

**part c - PRICE AND PAYMENT**

1. **PRICE AND PAYMENT**
   1. All suppliers and providers paid through the Oracle system will be required to sign up and use iSupplier.
   2. The Contractor shall submit a single VAT invoice quoting the relevant purchase order number to the Council no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable.
   3. The Council shall pay the Price for the Services to the Contractor no later than 10 days after receipt of the invoice where it is submitted through the iSupplier portal, or no later than thirty (30) days following the date of receipt of the invoice by the Council, in any other event, unless the invoice is disputed.
   4. The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor 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.
   5. Any overdue sums will bear interest from the due date until payment is made at 2% per annum over the Bank of England base rate from time to time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
   6. The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor 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 Contractor 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 will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
   7. Further details of payment, if any, are set out in the Pricing Schedule.
   8. The Contractor shall include in any contract which the Contractor enters into with a third party relating to the performance of this Contract a term requiring the Contractor to make payment to the third party no later than thirty (30) days following the date of receipt of invoice by the Contractor, unless the invoice is disputed.
   9. In entering into any contract as referred to in Clause C1.8 the Contractor shall require the third party concerned to include, within any contract which the third party enters into with another party relating to this Contract, a term requiring the third party to make payment to the other party within 30 days of receipt of undisputed invoice and the other party to include the same provision in any contract which the other party enters into, thereafter, in relation to this Contract.

**part d - termination AND CONSEQUENCES OF TERMINATION**

1. **TERMINATION**
   1. Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
      1. the Contractor becomes Insolvent; or
      2. the Contractor is convicted of a criminal offence; or
      3. the Contractor ceases or threatens to cease to carry on its business; or
      4. the Contractor has a change in control without the prior written consent of the Council which the Council believes will have a substantial impact on the performance of the Contract; or
      5. there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or
      6. the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
      7. there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
      8. the Contractor commits persistent minor breaches of this Contract whether remedied or not; or
      9. the Contractor, being an individual, dies or has an administrator, guardian or receiver appointed under the Mental Health Act 1983; or
      10. a relevant UK or other European Court declares that the Contract is ineffective (“Declaration of Ineffectiveness”); or
      11. the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9); or
      12. the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Regulations including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
      13. the contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU
   2. The Council reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.
   3. Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.
   4. Unless expressly set out otherwise in the Contract Particulars or Special Terms and Conditions, the Council may terminate this Contract by giving the Contractor three months’ written notice, for any reason at the Council’s sole discretion, irrespective of any fault or otherwise of the Contractor.
2. **CONSEQUENCES OF TERMINATION**
   1. If this Contract is terminated in whole or in part the Council shall:
      1. be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
      2. be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or
      3. be entitled to employ and pay a replacement provider to provide and complete the provision of the Services or any part thereof and recover from the Contractor the costs incurred in making those other arrangements including any additional expenditure incurred by the Council; and/or
      4. in the event that any sum of money owed by the Contractor to the Council (the Contractor’s debt) exceeds any sum of money owed by the Council to the Contractor (the Council’s debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor’s debt from any future Council’s debt or to recover the Contractor’s debt as a civil debt.
   2. Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.
   3. If the Contract is terminated pursuant to clause D1.1.10:
      1. The Council may enter into any agreement with such other persons, companies or firms as the Council may think fit in respect of the provision of the Goods and/or Services.
      2. the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Council shall reasonably determine an appropriate cessation plan (“Cessation Plan”) to:
         1. achieve an orderly and efficient cessation of the Services or (at the Council‘s request) a transition of the Services to the Council or such other entity as the Council may specify;
         2. ensure minimal disruption or inconvenience to the Council; and
         3. give effect to the terms of the Declaration of Ineffectiveness;
         4. arrange for the transfer to the Council of any property or resources transferred to the Contractor from the Council as part of the Contract.
      3. Upon agreement, or determination by the Council, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
      4. The Council shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity or other costs as a result of the termination by the Ineffectiveness Notice.
      5. The Council shall only be liable for payment in respect of accepted Goods and Services up to the date of the notice to terminate the Contract but only in so far as they are within the scope and nature contemplated in and subject to any limit stated in the Special Terms and Conditions of Contract or in the Order.
3. **DISPUTE RESOLUTION PROCEDURE**
   1. If a dispute arises between the Council and the Contractor 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.
   2. If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive of the Council or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
   3. Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
   4. Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

**part e - insurance and liabilities**

1. **INSURANCE**
   1. The Contractor shall have and maintain insurance cover with a reputable insurance company or institution necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
   2. The Contractor 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.
   3. If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.
2. **INDEMNITY AND LIABILITY**
   1. Neither party seeks to exclude or limit its liability for:
      1. death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party’s negligence);
      2. fraudulent misrepresentation; or
      3. any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
   2. Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
   3. Notwithstanding any other provision of this Contract, the Contractor shall indemnify the Council in full without limit of liability for any direct loss of and/or damage to the real or personal property of the Council or any third party, including any IPR claims, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor’s negligence, any Defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

**PART F - PROTECTION OF INFORMATION**

1. **INTELLECTUAL PROPERTY**
   1. All IPR in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
      1. provided to the Contractor by the Council shall remain the property of the Council;
      2. prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council on creation (subject only to any specific exceptions set out in the Special terms and Conditions).
   2. The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party IPR. The Contractor shall procure that the owner of the IPR grant to the Council a non-exclusive perpetual and irrevocable licence for the purpose of the Council’s functions and duties as a local authority; or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council a sub-licence for the purposes mentioned. Such licence and any sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right for the Council to sub-license, transfer and novate or assign to other Councils, any Replacement Contractor or to any other third party providing services to the Council and shall be granted at no cost to the Council.
   3. It is a condition of the Contract that the Services will not infringe the IPR of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause or any claim of IPR infringement arising from the Services or performance of the Contractor or Contractor’s Assigned Personnel.
   4. At the termination of the Contract the Contractor shall immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media and information relating to service users.
2. **CONFIDENTIALITY, PUBLICITY** **AND TRANSPARENCY** 
   1. Any documents provided by the Council and information which the Contractor may acquire as a result of or during the provision of the Services or performance of this Contract shall to the extent that it is not information which is in the public domain or required to be disclosed by operation of Law, remain the confidential information of the Council and shall not be disclosed disposed of or used for any purpose (other than proper performance of the Contract) without prior written consent from the Council.
   2. All Confidential Information provided by the Council to the Contractor or generated from the Services or Contract performance as mentioned in clause F2.1, shall be returned to the Council at the end of the Contract.
   3. Without prejudice to the Council’s obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).
   4. Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-contractors, agents, professional advisors and consultants.
   5. The Council and the Contractor acknowledge that, except for any information which is exempt from disclosure in accordance with provisions of the Freedom of Information Act (“the Act”) the text of this Contract and any schedules to this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Contract or its schedules is exempt from disclosure in accordance with the provisions of the Act.

* 1. Notwithstanding any other term of this Contract the Contractor hereby gives its consent for the Council to publish this Contract and its schedules in its entirety including from time to time agreed changes to the Contract, to the general public in whatever form the Council decides.

1. **DATA PROTECTION**
   1. The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the DPA or Legislation.
   2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 8 by the Customer and may not be determined by the Contractor.
   3. The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
   4. The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
      1. a systematic description of the envisaged processing operations and the purpose of the processing;
      2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
      3. an assessment of the risks to the rights and freedoms of Data Subjects; and
      4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
   5. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
      1. process that Personal Data only in accordance with Schedule 8, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
      2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
         1. nature of the data to be protected;
         2. harm that might result from a Data Loss Event;
         3. state of technological development; and
         4. cost of implementing any measures;
      3. ensure that :
         1. the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 8);
         2. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
            1. are aware of and comply with the Contractor’s duties under this clause;
            2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
            3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
            4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
      4. not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
         1. the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
         2. the Data Subject has enforceable rights and effective legal remedies;
         3. the Contractor 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 Customer in meeting its obligations); and
         4. the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
      5. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
   6. Subject to clause 3.7, the Contractor shall notify the Customer immediately if it:
      1. receives a Data Subject Access Request (or purported Data Subject Access Request);
      2. receives a request to rectify, block or erase any Personal Data;
      3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
      4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
      5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
      6. becomes aware of a Data Loss Event.
   7. The Contractor’s obligation to notify under clause 3.6 shall include the provision of further information to the Customer in phases, as details become available.
   8. Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 3.6 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
      1. the Customer with full details and copies of the complaint, communication or request;
      2. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
      3. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
      4. assistance as requested by the Customer following any Data Loss Event;
      5. assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with the Information Commissioner's Office.
   9. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
      1. the Customer determines that the processing is not occasional;
      2. the Customer 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
      3. the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
   10. The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer’s designated auditor.
   11. The Contractor shall designate a data protection officer if required by the Data Protection Legislation .
   12. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
       1. notify the Customer in writing of the intended Sub-processor and processing;
       2. obtain the written consent of the Customer;
       3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
       4. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
   13. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
   14. The Customer may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
   15. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
2. **FREEDOM OF INFORMATION**
   1. The Council is subject to the FOIA and the EIR (“the Acts”). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
   2. The Contractor shall assist and cooperate with the Council (at the Contractor’s expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.
3. **RECORD KEEPING AND MONITORING**
   1. In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor 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 Contractor shall on request allow the Council or the Council’s representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.
   2. The Contractor 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.

**part g - statutory obligations**

1. **HEALTH AND SAFETY**
   1. The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.
2. **CORPORATE REQUIREMENTS**
   1. The Contractor shall comply with all obligations under all relevant legislation currently in force.
   2. The Contractor shall comply with all Council policies and rules, such as, but not limited to:
      1. equality and diversity policies;
      2. sustainability;
      3. information security rules;
      4. whistleblowing and/or confidential reporting policies; and
      5. safeguarding (for children and adults)
      6. two-tier workforce policy
   3. The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, religious belief, disability, sexual orientation, marital status, or otherwise) in employment.
   4. The Contractor shall comply with all relevant legislation 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.
   5. If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:
      1. details of the finding; and
      2. the steps the Contractor has taken to remedy the situation.
3. **LAW AND CHANGE IN LAW**

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* 1. The Contractor shall comply at all times with the Law in its performance of the Contract.
  2. On the occurrence of a Change in Law which in the Council’s opinion has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor 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 Contractor. If the parties, within fourteen (14) 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 D3.
  3. Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

**G4. TUPE AND RE-TENDERING**

G4.1 It is acknowledged by the parties that TUPE may apply upon termination of this Contract and in the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.

G4.2 The Contractor authorises the Council to pass any information supplied by the Contractor, to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.

G4.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

G4.4 The Council, where it has provided information to the Contractor prior to the commencement of this Contract regarding employees of a previous contractor, makes no warranty about the accuracy of the information, but that the Council used its reasonable endeavours to provide all relevant information.

G4.5 The Contractor has sought its own advice regarding the application of TUPE and has entered this Contract on the basis of such advice.

**g5 Children / Vulnerable Adults**

G5.1 Where the Services involve unsupervised contact with children and / or adults at risk, the relevant parts of this Clause G5 shall apply, as appropriate. The Council may also require a signed undertaking from the Contractor that the provisions of this Clause G5 have been complied with prior to the Services commencing.

G5.2 The Contractor will ensure that checks are carried out on all employees in accordance with the registration requirements under the Care Standards Act 2000 and that appropriate Disclosure and Barring Service (DBS) checks are obtained.

G5.3 With regard to police checks of personnel, the Contractor undertakes:

* + 1. to ensure that all of the Contractor’s Employees who may have unsupervised contact with children or adults at risk are police checked in accordance with all prevailing Legislation (including but not limited to the Care Standards Act 2000) and the Codes of Practice for Registered Persons and other Recipients of Disclosure Information under section 122 of the Police Act 1997, and as amended by the Protection of Freedoms Act 2012 where relevant;
    2. that police checks carried out via the Contractor will only be accepted upon written confirmation from the DBS, via a DBS certificate, that the Contractor is registered with this service for the purposes of initiating police checks;
    3. where the Contractor asks the Council to process police checks, the Contractor must do so via the Council’s nominated officer as notified to the Contractor in the Specification or as otherwise notified to the Contractor by the Council in writing;
    4. to obtain the highest level of disclosure available from the DBS (including the enhanced certificate) in respect of each prospective employee, volunteer or other persons who may work with, give support to, or otherwise have direct contact with Service Users; and
    5. to update all police and DBS checks every three years; and
    6. to keep full records on the personal file of all persons who have undergone DBS (and formerly, CRB) checks.

G5.4 a. Prior to the Commencement Date, the Contractor shall submit to the Council a Child Protection Policy and written code of behaviour for staff and volunteers. These documents will, where relevant, adopt the All London Child Protection Procedures and work to the Local Safeguarding Children Board guidance and procedures. The Contractor’s Child Protection Policy must demonstrate how staff working across agencies and professions will work together to ensure children’s safety is paramount at all times. The Contractor shall incorporate any instructions given by the Authorised Officer to revise or amend such a policy.

b. Prior to the Commencement Date, the Contractor shall submit to the Council an Adult Safeguarding Policy and written code of behaviour for staff and volunteers. These documents will, where relevant, adopt the ’Protecting Adults at Risk: London multi-agency policy and procedures to safeguard adults from Abuse’ (Jan 2011). The Contractor’s Adult Safeguarding Policy must demonstrate how staff working across agencies and professions will work together to safeguard adults at risk of abuse and neglect. The Contractor shall incorporate any instructions given by the Authorised Officer to revise or amend such a policy.

G5.5 The Contractor shall at all times comply with the Child Protection and Adult Safeguarding Procedures relevant to the Local Authority and will ensure that any of the Contractor’s internal procedures or inter-agency protocols are consistent with these procedures.

G5.6 To ensure compliance with its duties under Section 11 of the Children Act 2004, the Council shall require that the Contractor demonstrates that its functions are discharged having regard to the need to safeguard and promote the welfare of children through the submission of a Self Audit to the Council. This Self Audit shall be submitted on a two year cycle in line with the LSCB protocol.

G5.7 Contractor’s staff (including employees, carers and volunteers) must:

* 1. have a clear commitment to abide by the All London (or relevant) Child Protection Procedures, and Protecting Adults at Risk: London multi agency policy and procedures to safeguard adults from abuse, as amended from time to time.
  2. be subject to the highest standard of recruitment practices, including any guidelines or codes of practice issued by the Local Safeguarding Children Board, Safeguarding Adult Board and/or the Council;
  3. maintain accurate and up to date records of decision making and actions taken;
  4. ensure they are at all times sensitive to needs arising from race, culture, religion, or linguistic background;
  5. respect confidentiality of information about individuals;
  6. share information with agencies to the extent that it is required to assess and meet the needs of the child or adult at risk
  7. receive regular mandatory child protection training; and
  8. receive regular mandatory adult safeguarding training

G5.7 The Contractor shall provide the Council, upon reasonable request, with records evidencing any of the requirements of this Clause G5. The Council reserves the right to additionally make spot checks to verify compliance with this Clause G5.

**part H - general provisions**

1. **CONTRACT VARIATION**
   1. Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.
   2. The Council shall be entitled to issue to the Contractor 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 or Specification. The Contractor shall charge or reduce the Price in the Tender for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.
2. **THIRD PARTY RIGHTS**
   1. This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.
3. **NO WAIVER**
   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.
   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 H12 (Notices).
4. **SEVERANCE**
   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.
5. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**
   1. Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.
   2. The Council shall be entitled to:
      1. assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015); or
      2. transfer, assign or novate its rights and obligations where required by Law.
   3. The Contractor 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.
6. **FORCE MAJEURE**
   1. Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
   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 Contractor against the Council nor entitle the Contractor to terminate the Contract.
   3. Industrial action by, or illness or shortage of the Contractor’s Employees, agents or subcontractors, failure or delay by any of the Contractor’s suppliers to supply goods, components, services or materials and breach of the Contractor’s warranties under clause B6 shall not be regarded as an event of Force Majeure.
   4. If the event of Force Majeure continues for more than two (2) months the Council may give written notice to the Contractor to terminate the Contract immediately or on a set termination date.
   5. If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.
7. **INDUCEMENTS**
   1. The Contractor 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 Contractor is drawn to the criminal offences under the Bribery Act 2010.
   2. The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Council by the Contractor or on the Contractor’s behalf.
   3. Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Council, the Council has the right to:
      1. terminate the Contract and recover from the Contractor 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
      2. recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.
8. **COSTS AND EXPENSES**
   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.
9. **NO AGENCY OR PARTNERSHIP**
   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.
10. **NON SOLICITATION AND OFFERS OF EMPLOYMENT**
    1. The Contractor 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 six  months following termination of this Contract:
       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
       2. attempt, or knowingly assist or procure any other person to do the above.
11. **INSPECTION OF CONTRACTOR’S PREMISES**
    1. The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor’s premises in relation to the Contract.
12. **NOTICES**
    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 or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.
    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.
13. **ENTIRE** **AGREEMENT**
    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 H13 shall not exclude liability in respect of any fraudulent misrepresentation.
14. **SURVIVAL**
    1. The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Confidentiality, Publicity and Transparency), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause G4 (TUPE and Re-Tendering), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment),and Clause H15 (Law and Jurisdiction).
15. **LAW AND JURISDICTION**
    1. This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

**Schedule 3**

**Pricing Schedule**

**Schedule 4**

**Specification**

**Thurrock Council Service Specification**

**Short Breaks for Disabled Children**

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1. **INTRODUCTION AND BACKGROUND**
   1. Thurrock Council is seeking to commission a multiple provider Select List to deliver a range of statutory Short Breaks services for some of the most vulnerable Children and Young People in Thurrock.
   2. The Select List will supply direct services across two (2) lots, listed below:

Lot 1 – Individual Support Services

Lot 2 – Residential Short Breaks

* 1. Short Breaks allow the family of a Disabled Child or Young Person to take a break from their caring responsibilities, helping to maintain their wellbeing and prevent carer or family breakdown. At the same time, Short Break activities give the Disabled Child or Young Person an enjoyable experience that supports the development of their life skills, improves their life chances, and helps them to overcome obstacles and develop positive self-esteem.
  2. The current statistics on Disabled Children in Thurrock are given below:

|  |  |
| --- | --- |
| No. Disabled Children Open to the Council | 176 |
| No. Active Cases | 130 |
| Annual Direct Commissioned Spend on Short Breaks | £400,000.00 |
| Spend on Direct Payments for Short Breaks | £481,000.00 |
| No. Families Receiving Direct Payments / Personal Budgets | 92 |
| Figures as at October 2018. | |

* 1. The Council supports the use of Personal Budgets to give Families greater choice and personalisation. Personal Budgets allow the service user to receive money directly to spend with the service provider of their choice. It is anticipated that some Children and Young People may choose to remain with their current service provider, which will be accommodated through the use of Personal Budgets.

1. **THURROCK COUNCIL PRIORITIES**
   1. The Council’s Vision and Priorities are set out below:

|  |
| --- |
| **Our vision and Priorities:**   * **People** - a borough where people of all ages are proud to work and play, live and stay * **Place** - a heritage-rich borough which is ambitious for its future * **Prosperity** - a borough which enables everyone to achieve their aspirations |

1. **THE CONTRACT / SELECT LIST**
   1. The Contract will run for a period of three years with the option to extend for a further one year.
   2. The Contract will be opened up annually at a time defined by the Council. This will allow new Providers to join the Select List providing they are successful in passing the published criteria. At such point the Council will allow existing Providers to change their pricing. Changes in pricing will influence the Provider’s score and therefore may change the ranking of Providers on the Select List.
   3. Existing Providers already accepted onto the Select List will not have to pass quality criteria upon the annual opening of the Select List, unless there are changes to legislation or local protocols that require the Council to amend its quality criteria for existing and new/future Providers.
2. **OUTCOMES**
   1. In summary, the guiding principles of the Service shall be that it:

* meets the needs of Disabled Children and their Families
* recognises that the Child’s welfare is paramount
* is Child focused and family centred
* adopts the Social Model of Disability
* offers flexibility to meet the needs of individual Disabled Children and their Families
* is designed to be fun, enjoyable, age/ability appropriate and inspire Children and Young People to achieve their aspirations
* helps to develop independent skills
* is delivered equitably, value diversity and promote equality of opportunity
  1. Families have been outspoken about their requirements for Short Breaks, stating that:
* every Short Break must make life easier for the family
* every Short Break must meet the individual needs of Disabled Children and their Families
* Short Break opportunities should be flexible and individualised
* they must feel confident that the staff looking after their Disabled Child are competent and knowledgeable
* they must know that the Care Workers fully understand their Child’s individual character and personalities, strengths, likes and dislikes, physical abilities, how they communicate, and best ways to encourage positive behaviour
* they must know that all physical care is safe
* they must be greeted, and when each Short Break is finished, concluded in the way that best suits them and their Child

1. **SAFEGUARDING**
   1. ***General principles***
      1. In addition to the requirements set out in this Section 4, the specific clauses with the standard terms and conditions of the contract with regard to safeguarding will apply.
      2. The Provider will be registered with Ofsted and CQC, as required.
      3. The Provider will participate in local safeguarding Children’s boards where required and understand their responsibilities and the responsibility of others in line with the Children Act 1989 and 2004. Adherence to these procedures may at times limit the right to confidentiality.
      4. The Provider will adhere to the Southend Essex and Thurrock Safeguarding Children Guidelines and the Southend Essex and Thurrock Safeguarding Adults Guidelines.
      5. The Provider will operate the highest standard of recruitment practice in line with the Southend Essex and Thurrock Safeguarding Children guidelines.
      6. The Provider will liaise with the Designated/Named professionals for Safeguarding Children, Social Workers, the Multi Agency Safeguarding Hub (MASH), Education, Health Visitors, General Practitioners and other medical and nursing staff on Child protection issues where required.
      7. The Provider will implement a robust mechanism in place for the reporting of Child protection concerns (in accordance with the Children’s Act 1989 and 2004).
      8. The Provider will ensure all staff working with Children and vulnerable adults have enhanced Disclosure and Barring Service (DBS). In addition, a specific check is to be carried out to ensure the individual is not on the list of those barred from working with Children and adults. Newly appointed staff will not be permitted to commence work until a satisfactory DBS has been obtained and satisfactory references received and checked.
      9. The Provider will report any DBS checks that have recorded any disclosures or intelligence from the police immediately to the Council (Children’s Services) and not proceed with any employment offer where this is identified
      10. The Provider will ensure a senior member of staff is always available as safeguarding lead (management) trained to level 3.
      11. The Provider will prepare or contribute to professional written reports that contribute to Child protection processes.
   2. ***Safe Recruitment***
      1. The Provider will ensure that there are robust recruitment processes in place. The Provider shall adhere to the following requirements as a minimum:
2. Obtain 3 written references, one from the current or last employer, and make telephone contact with the referee to confirm authenticity and obtain additional information
3. Undertake an enhanced Disclosure and Barring Service (DBS) check with a local police intelligence check for every member of staff including those that perform office functions and do not work direct with Children
4. Work history will be checked with any gaps investigated and recorded ensuring that the Provider is satisfied with any explanation, checking this with previous employers
5. Re-check DBS checks every 2 years as a minimum
6. Only accept previous DBS certificates from previous employers if the member of staff was employed in an identical role. If this is not the case a new check will be undertaken by the Provider
7. Maintain a database of DBS certificate numbers, their date and their renewal date
8. Issue all employees with two copies of their job description and contract of employment. One of each of these documents is to be signed and dated by the employee and placed in their staff file. The contract / job description should detail: employment commencement date, number of hours employed, duties and responsibilities, skills/attributes required, training or qualification that is a pre-requisite of employment or expected post-employment with the Provider.
9. Keep a record of all employees that will include: date of birth, home address and telephone number, details of the DBS checks, copies of passport and/or photo driving licence. Photo identification must be seen (only a valid passport or valid photo driving licence is acceptable), copy of birth certificate, copy of marriage certificate where relevant, proof of residence in the form of a utility bill or tax letter (dated within the last 3 months), certified copies of relevant qualifications and relevant training certificates, a completed application form for the role
10. Undertake robust employment processes including interviews with two members of staff assessing the suitability of a candidate
    1. ***Section 11***
       1. The Provider shall complete a Section 11 Safeguarding self-audit on an annual basis for submission to the Council’s Local Safeguarding Children’s Board and the Commissioning Team. The format of this will be provided by the Council.
    2. ***Policies required*** 
       1. The Provider will maintain the policies below (this is not an exhaustive list). These policies will be subject to review by the Council to ensure that they are to a high standard. Every policy will be reviewed every 3 years or sooner if legislation/guidance changes and necessitates a review.

|  |  |
| --- | --- |
| Safeguarding Children  Safe recruitment  Child Sexual Exploitation (CSE)  Event and Notifications  Equality and Diversity  Staff Supervision  Missing episodes  Anti-radicalisation | Out of hours  Health and Safety  Complaints  Medications  Internet use  Staff conduct  Whistleblowing  Business Continuity Plan |

1. **REPORTABLE EVENTS/INCIDENTS**
   1. The Provider will notify the Council immediately in the event of an incident of any event that occurs as detailed in the list below.

* Death or serious injury
* The illness or medical condition of a Child or Young Person (other than a common cold)
* Markings / bruising on a Child or Young Person
* Safeguarding concerns in respect of a Child or Young Person
* Non or inappropriate feeding
* Any significant change of mood of a Child or Young Person
* “Unauthorised” absence or “Missing” status
* Any disturbance, threatening behaviour, violence, a Child or Young Person placing themselves or others at risk, or any criminal offence being committed, regardless of whether the police are called
* The suspension of any member of staff for conduct reasons
* Any disciplinary action that is taken in respect of any member of staff
* The receipt of any formal complaint from a Child or Young Person, whether this be received verbally or in written format
  1. The Provider shall report the incident to the Allocated Social Worker during normal office hours or to the emergency duty team (EDT) outside of office hours, during the evenings (after 5.30pm) and weekends.
  2. Initial notification will be made via telephone. Email notification will serve only as confirmation and should not be relied upon to replace a telephone conversation. Details of the name of the social worker or EDT contact, dates and times should be recorded by the Provider.
  3. Following a reportable incident the Provider will complete a full report with details of the event, dates and times. This should be stored electronically within the Provider’s system and emailed to the Allocated Social Worker within 24 hours after the initial telephone notification took place.

1. **STAFF AND VOLUNTEERS**
   1. ***General*** 
      1. The Provider must ensure staff / volunteers working with Disabled Children and Families have the necessary qualifications, skills, knowledge and competencies to meet their needs. Staff / volunteers working with Disabled Children who have specialist healthcare requirements must be trained and signed off as competent by the Specialist Healthcare Task Training Team or healthcare professionals.
      2. The Provider will ensure all employees are kept abreast of changes in legislation that relate to their roles.
      3. Where staff / volunteers are working in the Child’s own home they will carry identification which includes a photograph.
   2. ***Recruitment***
      1. The Provider will be responsible for recruiting sufficient numbers of appropriately qualified, supervised, trained and medically fit staff and volunteers to ensure service delivery to the standards set out in this specification.
      2. All staff and volunteers must be recruited using robust practices in line with the policy of the Council. At least one member of the recruitment panel must be trained in Safe Recruiting Practices.
   3. ***Training***
      1. The Provider will support the delivery of training programmes for all staff / volunteers. This means ensuring there is effective, ongoing training and a staff development programme that will maintain the required level of skills and knowledge to carry out the service.
      2. Training programmes will be linked to the assessment of staff needs in relation to the tasks assigned to them and in accordance with required standards.
      3. The Provider will ensure staff / volunteers have received training on the following prior to commencement of the service delivery:

* Child Protection and Safeguarding Procedures
* Child Sexual Exploitation
* Missing persons
* Gang activity awareness
* Radicalisation awareness
* Abuse
* Health and Safety
  + 1. Managers and supervisors must receive training in supervision skills and undertaking performance appraisal.
    2. The Provider will ensure that staff and volunteers are trained to manage Disabled Children’s challenging behaviours, conflict situations and healthcare needs.
    3. The Council requires that all staff and volunteers receive training in how to deal with abusive and intimidating behaviour using non-physical methods (such as Breakaway Techniques). The following is a list of acceptable qualifications / techniques. Alternative qualifications will be required to be referred to the Council for approval.
* Business and Technology Education Council or Qualifications and Credit Framework (BTEC /QCF) Level 2 Intermediate Award in Physical Restraint (Care and Control) Children and Young People
* Strategies for Crisis Intervention and Prevention (SCIP)
* Safer Support Aligned for Education (SAFE)
* Team Teach
* Crisis and Aggression Limitation Management (Calm)
* Other recognised and certified qualifications will be considered by the Council whose decision on their acceptability will be final
  + 1. Qualifications are required to be renewed in accordance to the requirements of the awarding bodies. Where no validation term is set then they should be renewed every three years.
    2. The Provider will evidence and make training records available, if requested by the Council.
  1. ***Inductions*** 
     1. New staff and volunteers will be provided with an induction to Child Protection procedures, training in Safeguarding to at least Level 2, and training in health and safety.
     2. Where staff work on a temporary basis or as part of an agency agreement, risk assessments must be completed, in conjunction with having an enhanced DBS and all other checks relevant to permanent staff.
  2. ***Supervision***
     1. The Provider must ensure that all staff and volunteers receive regular supervision and have their standard of practice appraised annually.
     2. At least one of the supervision sessions must be a direct observation of the care worker providing care to the Child / Young Person, with whom they regularly work, either at the home of the Child / Young Person, in the community or at the residential location. Permission is to be obtained from the parent / carer for this observation.
     3. The Provider must ensure that all staff and volunteers meet formally with their line manager on a one to one basis to discuss their work at least 3 monthly, preferably monthly. Written records must be kept on the content and outcome of each meeting.
     4. The Provider will ensure that, wherever possible, the views of Families are included in the annual appraisal.
  3. ***Lone Working***
     1. Care Workers who work unaccompanied for large periods of time are classed as lone workers. For guidance on Lone Working and Lone Working Policies please see below or other such guidance:

<http://www.suzylamplugh.org/wpcms/wp-content/uploads/GUIDANCE-ON-CHOOSING-A-LONE-WORKER-SYSTEM.pdf>

* 1. ***Vehicles***
     1. Where a member of staff is required to drive as part of the role the Provider will ensure they have, and keep a copy of, their driving licence, insurance cover that includes business use, proof of vehicle tax and MOT certificate and will ensure the vehicle is appropriately serviced and well maintained.
     2. All vehicles used under the Contract will have appropriate child safety equipment, such as child seats, booster cushions and, where required, additional seatbelts such as multi point harnesses.
  2. ***Payments to Volunteers***
     1. The Provider may compensate volunteers limited to their travel costs and other agreed out of pocket expenses, such as their own food and entrance fees. Food and entrance fees for the Child / Young Person are the responsibility of their parent / carer.
     2. The Provider will ensure that volunteers are not made aware of any fixed sums or expenses that may be payable at routine intervals since this could lead to creation of employment rights or claims of slave labour (no matter how large or small the payment is).
  3. ***TUPE***
     1. The Provider will, where possible, not allocate individual employees to specific tasks for a long duration and should rotate service delivery by such employees thus building in as much fragmentation as possible in the service delivery by individual employees to avoid or mitigate possibility of TUPE in a future service provision change and takeover by another provider.

1. **PARTNERSHIP WORKING AND DATA**
   1. ***Sharing information***
      1. The Provider will practice effective information sharing with partners within the guidelines set out in the local safeguarding procedures and within the remit of the Data Protection Act.
      2. The Provider will supply information about the performance of the service it provides and the terms and conditions of contract.
      3. The Provider will make available other information about its service, which the Council may from time to time require, provided that the information requested is relevant to the operation of the contract.
   2. ***Data Sharing***
      1. The Provider will sign up to the Thurrock Council Data Sharing Protocol.
      2. The Provider shall supply all information/data required by the Council within the timescales set out at the time, which will not exceed 45 calendar days, but may be required more urgently if there are legal or other constitutional requirements. There will be no charge made by the Provider for the provision of such information.
      3. At the end of the contract, or upon termination, whichever comes sooner the Provider will transfer all data / records, whether in paper or electronic format, back to the Council.
   3. ***Data Protection and Processing***
      1. The UK government has introduced the Data Protection Bill (replaces the Data Protection Act 1998) which enables the UK to continue as is once the UK exits the EU. The new Bill includes all the EU standards as set in the General Data Protection Regulations (GDPR) as well as some UK specific elements relating to Law Enforcement and National Security.
      2. The Provider will comply with all legislation and best practice regarding Data Protection, including the Data Protection Act 1998 (DPA), GDPR and Council Policies as set out in Appendix 5, and any updates to these that come into force during the term of the contract.
      3. The Provider will act as a ‘Data processor’ on behalf of the Council. Whilst Providers currently have certain responsibilities under the Data Protection Act, the new GDPR will bring increased responsibility and accountability for data processors, with the Information Commissioners Office (ICO) being given new powers to issue financial penalties against data processors that do not adhere to the guidelines.
      4. The Provider will ensure that it only sends confidential personally identifiable information to the Council and third party agencies via two specific methods of communication:

* By hand to the receiver of the information if this is paper based – documents should not be posted and should be passed directly to a member of staff and not left at any reception desk
* By utilising the ‘Leapfile’ programme that the Council uses for secure data transfer (or any future applications the Council may utilise in its place)
  + 1. Under no circumstances shall the Provider send personal and sensitive information to the Council or any other agency or Service via standard email. In cases where Council staff are not registered with this system the Provider must request that they gain access before sending information. Where the request is urgent and cannot wait for this to be put in place information must be provided verbally.
    2. Information can be sent to the Council via the website below:

[http://thurrock.leapfile.net](http://thurrock.leapfile.net/)

Any deviation from this process will be viewed as a serious breach of this Contract.

* + 1. The Provider will collect and hold only relevant data under the ethos of ‘appropriate collection’.
    2. Records for Children on a Child protection plan have to be retained until the 75th anniversary of the Child’s birth. Ordinarily all data and case notes whether they be electronic or paper based will be transferred back to the Council (or at the Council’s discretion, to a replacement Provider) at the end of the contract. However, in the event of any long standing ongoing contract the Provider will ensure that records are held for these periods of time.
    3. Where the Provider is collecting data in its own right i.e. not under the responsibility that the Council gives the Provider to act as data processors, it will register with the UK Information Commissioners Office (ICO) as a data controller.
  1. ***Consent and Confidentiality***
     1. The Provider will ensure:
* Information shared with other agencies is on a need to know basis or when required to do so under the law or for the purposes of the protection of the Child/Young Person or of the public
* Information is only shared when it is in the best interests of the individual
* Provider staff follow information sharing guidance in accordance with the principles of the Data Protection Act 1998, the GDPR Regulations (EU/2016/679) and/or subsequent legislation which may come into force
* Service user information is kept confidential except where there is a perceived or actual risk of harm which precludes this and/or it is required by law
* Records are kept up to date and secure and there is a records management policy in place
* Staff receive appropriate data protection training on a regular basis

1. **ENGAGEMENT AND FEEDBACK**
   1. ***Complaints and whistleblowing procedure***
      1. The Provider will maintain a documented complaints process. This will be readily available and publicised in a range of accessible ‘user friendly’ formats and displayed on the Provider’s premises. The process will cover both adults and Children.
      2. As an outline, the procedure will be established on the basis of a three stage process. Stage 1 will be an informal discussion with a manager of the Service. Stage 2 will be a formal written complaint to the Provider, dealt with by another manager (other than the one that dealt with the stage 1 complaint) and stage 3 will be escalated to the most senior person within the organisation.
      3. The Council will inspect the Provider’s Complaints policy to ensure it is robust, and the Provider will supply regular summary reporting on complaints to the Council.
      4. The Provider will immediately report to the Council any complaints that reach a final stage of the process (stage 3).

* + 1. The Provider will establish a whistleblowing policy to allow staff to anonymously and confidentially report any concerns via an independent method, i.e. not through the management of the Service.
  1. ***Complaints and concerns via Care Quality Commission (CQC) and/or Ofsted***
     1. CQC / Ofsted may receive complaints or concerns directly about the Provider. When considering complaints, it does not act as a complaints adjudicator, but investigates concerns to make sure that the Provider continues to meet regulations, the associated national minimum standards, and remains suitable for registration. Where they do not CQC / Ofsted may take compliance action.
     2. CQC / Ofsted will investigate all instances that suggest the Provider does not meet legal requirements. Where there is non-compliance CQC / Ofsted take action to ensure Service users’ safety and compliance with the law via a range of powers that including issuing a compliance notice, restricting accommodation, cancelling a Provider’s registration or prosecuting for an offence  .
     3. The Council will review the detail of complaints and investigations that involve CQC / Ofsted and will put into place appropriate action plans with the Provider where these are required. Should the issue be assessed as sufficiently serious to place Children and parents at risk the Council may suspend the Provider and consider termination of the contract.
     4. The Provider shall provide detailed information about how it deals with complaints about the Provider and / or other Service users.

1. **REFERRALS**
   1. ***Referral Criteria***
      1. The Council will determine eligibility and make referrals to the appropriate provider.
   2. ***Referral Process***
      1. Referrals will be arranged between the Council, the Provider and the Family. The current process is set out below; however it should be noted that this may change at some point during the term of the Contract and the Provider will need to adjust their arrangements accordingly.

***Current Process***

* + 1. For access to the Service, Families contact the Council and the Council (Social Work Team) will assess and agree the required level of support for the Child or Young Person.
    2. The Council will choose the most appropriate Provider to deliver the services for the Child or Young Person. The Provider will be selected on the basis of their score and rank achieved at Tender (and price review) stage(s), and their ability to meet the needs of the Child.
    3. One of the Council’s Social Workers / Family Support Workers will contact the Provider to confirm the services to be provided for the Child and will also contact the Family to supply the relevant Provider’s contact details. A template letter used for this purpose is provided in Appendix 2G.
    4. The Provider is to advise the Council should the family request any changes to the agreed service. No changes can be accepted without the Council’s approval.

* 1. ***Response Times***
     1. The Provider should respond within the following timescales:

|  |  |
| --- | --- |
| Acknowledgement of the service request | Within 2 hours |
| Indication if package is within capabilities | Within 12 hours |
| Confirmation of package of service | Within 24 hours |

* + 1. Emergency care support packages for existing packages:

|  |  |
| --- | --- |
| Indication if package is within capabilities | Within 2 hours |
| Confirmation of package service | Within 4 hours |

* + 1. Emergency care support for new packages:

|  |  |
| --- | --- |
| Indication if package is within capabilities | Within 12 hours |
| Confirmation of package service | Within 24 hours |

1. **SERVICE DETAILS**
   1. ***Service Overview***
      1. Services will be designed and provided in partnership with Disabled Children and their Families, using clear, mutually understood communication to determine the nature and detail of the service to be given and received. They will build on the strengths of Disabled Children as well as identify and address challenges.
      2. Services will be developed from a good understanding of:

* Child development
* the impact of disability on the Child and their family
* the importance of enabling Disabled Children to participate in ordinary, community based activities
* person centred planning
  + 1. The Provider will:
* demonstrate knowledge and understanding of working with Disabled Children, their Families and Families in crisis
* provide non-stigmatised, safe, stable, caring, attractive activities, well-maintained equipment and facilities and / or environments
* ensure that any specialist activities or arranged for the Disabled Child are supervised and instructed by persons holding the relevant qualification for that specific activity
* safeguard and promote the Disabled Child’s physical, mental and emotional wellbeing and development
* ensure the service is Child centred, enjoyable and proactive in offering age, and ability, appropriate opportunities
* be attentive to the Disabled Child’s needs and rights in relation to age, gender, race, sexuality, ability and disability, and meets specific cultural and / or religious needs
* work from the Social Model of Disability and promote inclusion
* ensure that staff / volunteers effectively communicate with and understand the Disabled Child where disability precludes the usual forms of communication
* ensure staff / volunteers / Care Workers are able to effectively communicate with Families and practitioners
* ensure, where possible, that the Short Break activities promote good health in Children and a healthy lifestyle through healthy diet promotion (and healthy food choices) and engaging in healthy (physical, where appropriate) activity, according to recommended national guidelines for Children and Disabled Children
* facilitate the Disabled Child in exercising their right to representation and complaint
* ensure that the service offered assists in the delivery of meeting or exceeding the minimum requirements of all relevant legislation and guidance
* liaise effectively with all practitioners, professionals and agencies offering preventive, supportive and statutory services for Families
* develop knowledge of community, voluntary and other support services available within the local area
* ensure Short Breaks and support are an integral part of Child centred, family focused holistic planning and the continuum of care and support
* focus on the overall experience for the Disabled Child and their family and work to ensure that services are coordinated around the Disabled Child and their Families
  + 1. The Provider will, as far as possible, resource the Service to allow for increased offers (hours) of support during key stress times for Families such as the summer school holidays and Christmas school holidays.
  1. ***Lot 1 – Individual Support Services***
     1. This Lot covers Short Breaks that are provided in the family home or in the community with the aim of giving disabled Children and Young People the opportunity to develop independence and have positive experiences. Services included within this lot are outlined in this section.
     2. This service cannot be used to provide domestic services for the disabled Child’s family or to provide Child care for non-disabled Children.

***Sitting and Befriending Services***

* + 1. Sitting services allow new opportunities and experiences for Children and Young People, in addition to giving parents or carers regular planned breaks.
    2. Service Users will be allocated a specific number of hours per week within a minimum of a six month period to be used for the service. The banking or saving of unused hours is not permitted.
    3. Sessions may last for up to 8 hours; depending on the activity and care needs. In exceptional circumstances longer periods may be agreed from time to time.
    4. This provision will be offered on an ongoing and regular basis (usually weekly) and will be available at a range of times to suit the Child and family, including daytimes, evenings and weekends. The actual dates and times will be agreed between the family and the Provider.
    5. Where required, the Provider should be able to respond to emergency requests (e.g. carer sickness or family crisis) for supporting Families.
    6. Examples of sitting and befriending activities included are listed below:
* Care Workers taking Children / Young People to leisure and universal recreational activities in their community. In exceptional circumstances (determined and agreed by the Council) the inclusion of non-disabled siblings in these activities may be considered. This would usually only be agreed where exclusion would cause distress to the Disabled Child or Young Person.
* Supporting Families to carry out a range of care needs within the home. Note that this specifically excludes general support with household duties or Child minding of non-disabled siblings.

***Overnight Sitting Services***

* + 1. This Service enables Families to stay away from the family home overnight while the Disabled Child is looked after in their own home by an experienced and professional Care Worker.
    2. The Children and Young People supported under this service will be aged 3 to 17 years, and have Medium or High Level Needs.
    3. In certain circumstances, where the Disabled Child has High Level Needs, there will be a requirement for the carer to remain awake during the night and to monitor the Child / Young Person.
    4. The Council will advise the Provider to supply Care Staff who will either be awake or asleep during the night (known as Awake Nights and Sleep Nights). If the Sleep Nights option is chosen, the Provider shall expect that the Care Worker will be woken up to three times during the night. On the fourth such disturbance the care package will be converted to Awake Nights for that night only. Should this be a regular occurrence the Provider may discuss altering the care package to include Awake Nights. The Council will make the final decision as to whether a care package should be Awake Nights or Sleep Nights..
    5. The Provider will be highly competent within the speciality healthcare area required, providing Care Workers that are specifically trained to look after Disabled Children with the highest level of complex healthcare and/or palliative care needs.
    6. Both an Awake Night and a Sleeping Night shall be provided for a period of between 8 and 10 hours subject to the needs of the individual Child.
    7. To accustom Children and Young People, and their parents / carers to the idea of an overnight sitting service, a series of shorter packages could be arranged to help build confidence and acceptance.

***Participation in Universal and Chosen Leisure Activities***

* + 1. For this Service, the Provider will support individual Disabled Children and Young People with complex needs to access a range of mainstream leisure and other activities within the community to develop a new range of skills which will enable Young People, particularly those in transition to adult services, to maximise their potential for independence and live fulfilling lives.
    2. Mainstream leisure activities could be accessed across Thurrock and surrounding areas, enabling Children and Young People to continue something they enjoy or try something new, such as:
* swimming, bowling, horse riding or other sporting activity
* going to the cinema, theatre or concerts
* enjoying computer games or watching DVD’s
* arts and crafts - to include painting and drawing
* music - drums and guitar sessions; all musical instruments
* cooking and food appreciation
* going to a club or community group
* meeting up with friends
* shopping
* going to a disco or foam party
* just having a chat
  + 1. This is a time limited intervention service with the length of service being set at the time of referral. The Provider and the Council will undertake regular reviews of the intervention to discuss its success / continuing need and effectiveness. In order for these reviews to take place, the Provider will provide reports every month, or immediately should there be any concerns about the Child or the service, on the progress towards the outcomes set for the intervention.
    2. Any extension to the Short Break time-limit will be subject to a review, the Provider’s ability to satisfy the needs of the Child, setting a clear exit strategy and the needs of other Disabled Children and Young People that could benefit from the service.
  1. ***Lot 2 – Residential Short Breaks***
     1. This lot is for Short Break services provided at a specific location outside of the Child’s home. The aim of this Lot is to provide positive experiences to disabled Children and Young People. Services included within this Lot are outlined in this section.

***Overnight Stays***

* + 1. This is available for Children and Young People that require substantial care at night because of the intensity and complexity of their needs. It also gives the Families respite so they can continue to care for their Child at home.
    2. The Service assists Children and Young People with the highest level of need to socialise safely with others and to develop some independence from their Families.
    3. The amount of overnight care allocated will depend on the individual family's level of assessed need.
    4. An Overnight Stay Service shall be provided 3:00pm to 11:00am

***Daytime Activities***

* + 1. This provision will offer Children and Young People a positive experience away from home; a chance to have fun, learn, make friends and develop and enjoy independence from their Families.
    2. The Provider will ensure delivery solutions are centred on the family / Child and their outcomes. Activities will improve quality and accessibility with enhanced capacity.
    3. The activities will be flexible and available during the day as a drop in service between 8am and 6pm. These Short Breaks will fit around the needs of the Child / Young Person, balancing them with the wider support needs of the family.

***Premises***

* + 1. The Overnight Stays services will be delivered in the Provider’s premises which shall be located in reasonable travel distance. Preference would be given to premises being no more than 20 miles by road of the boundary of Thurrock.
    2. The Provider’s facility should look as much like an ordinary home as possible, with specialist equipment available if required, but stored discreetly, in order that independence can be maximised.
    3. It is the responsibility of the Provider to ensure their premises, facilities, and equipment is thoroughly clean, tidy and properly secured.
    4. The Provider will maintain the fabric of the premises including redecoration and will agree reasonable arrangements for such work to be carried out where this affects services under the Contract
    5. Premises and equipment, including computer hard and software, must be fit for purpose and maintained to a good standard of repair at all times. All buildings, approaches, equipment, games and toys must be safe, complete, and age appropriate.
  1. ***Ofsted / CQC Regulation***
     1. The Provider and managers must meet a range of legal requirements including a requirement to make a registration with Ofsted, as appropriate.
     2. At any point during the term of the contract the Provider shall notify the Council immediately if CQC / Ofsted raise any regulatory concern in respect of such registration or if their grading falls below “good”. The Council will always seek to place Children and Young People with Providers who have a grading of “good” or “outstanding”.
  2. ***Core Needs Groups***
     1. Services will be available to Disabled Children aged between 0 and 18 years who live within the borough of Thurrock, or who are Looked After Children and in the care of the Council.
     2. The Council prioritises Children and Young People who have severe learning disabilities or behaviour which is challenging, and Children and Young People who have complex healthcare needs or require palliative care or specialist equipment.
  3. ***Levels of Support***
     1. The Provider shall supply services to meet Children and Young People with three levels of need required under the Service:
* High Level Needs
* Medium Level Needs
* Low Level Needs
  + 1. The approximate percentage split between the levels are expected to be:

High Needs: 48%

Medium Needs: 22.5%

Low Needs: 29%

The definition for the three levels of need can be found in Appendix 2H.

* 1. ***Activities, Food and Subsistence and Transport***
     1. Familes are responsible to ensure that they provide sufficient money to enable their Children to partake in activities, to provide their food and substance requirements and the cost of transporting the Children.
     2. Care Workers should have access to the necessary transportation required to facilitate taking Children/Young People to planned recreational activities.
     3. Where parents state that they are unable to assist in the cost or provision of transport etc., the Provider will advise the Council who will undertake a financial assessment in order to ascertain the level, if any, financial assistance that can be given.
     4. Should financial assistance be granted, the Provider can invoice the Council for the cost of transport at the rate of 23 pence per mile. The claimable distance would be from the family home to the activity and return to the family home. The Provider will supply the Council with the rationale for the claim and evidence of the mileage travelled. Any other financial assistance will be by exception only.
     5. Where relevant to residential care, the Provider must make practical arrangements to ease the potential stress of Families accessing the service. For example, making parking available.
  2. ***Healthcare***
     1. The Provider must ensure that medication is only administered where specified in the health care plan and only administered by suitably qualified and trained staff.
     2. Medication must be:
* in the Child’s name
* in date
* in the original packaging
  + 1. Where Children have specific nutritional needs or individual care plans (e.g. Individually or medically prescribed diets) the Provider must ensure these are followed even if they do not comply with national healthy diet and nutrition standards.
  1. ***Positive Behaviour Management / Control and Restraint***
     1. The Provider’s policies and procedures should underline the importance of employing de-escalation strategies as a first-line strategy whenever there is a threat of violence or aggression towards an individual or property.
     2. As a general rule, the Provider shall not use physical methods of restraint but instead practice non-physical methods (such as Breakaway Techniques) to de-escalate the situation. However, the Council does recognise that in exceptional circumstances physical restraint may be required.
     3. Physical restraint should only be used in exceptional circumstances, and only:
* when less intrusive strategies have been tried and found to be unsuccessful
* when absolutely necessary by those people who have been trained in specific methods of delivering restraint and who hold a current qualification listed in the Training section
* where the person restraining reasonably believes it is necessary to prevent harm to the Child, themselves or another person; and it is proportionate to both:
  + the likelihood of harm and
  + the seriousness of the harm
    1. Any and all incidents involving physical restraint must be fully recorded and records open to inspection by the Council. The circumstances and justification for using physical restraint must be recorded immediately, the care worker’s line manager should discuss the incident with them within 24 hours, and a full report of every incident should be prepared within 48hours and submitted by the service to their line manager / supervising officer and the Council. Senior managers are required to monitor every such incident and take any action indicated.
    2. After any such incident the Child will be counselled and the Child’s parents and the Council will be informed on why it was necessary to restrain them. The Child should also be given the opportunity to explain their side of the story.

1. **PERFORMANCE MANAGEMENT**
   1. ***Contract Management and Monitoring***
      1. The Council will monitor the Contract by a variety of methods including but not limited to:

* Provider Self-Assessment, and verification of information submitted
* Provider /Council meetings
* Feedback from the Council and other involved parties (including Social Workers, Independent reviewing Officers, health and education Staff).
  + 1. The Provider will register with the CCRAG (Children’s Cross Regional Arrangements Group) in order for the Council to share monitoring reports for providers with other Local Authorities.

##### Provider Reviews

* + 1. The Council will carry out reviews of the Provider’s performance, including, but not limited to:
* Visits to the Provider (to evidence progress against outcomes and ensure compliance through reading files, records, documents and Staff personnel/recruitment/training files)
* Reviews of monthly reports
* Spot audit of policies, procedures, case recordings
* Discussion with Staff, parents, Children and Young People
* Reviews of internal quality assurance, audit reporting and self-assessment reporting from the Provider’s own QA systems, and, where such systems are externally accredited, review of accreditation reports and external audits.
* Requests for additional monitoring information from the Provider.
* Collation of external information (including from regulators, and from feedback throughout the Measurement Period from the normal regular interaction between the Council and Provider.
* Site visits and observations to review record keeping evidence

14.1.4 Should the Provider fail to meet the standards required at any point during the term of the contract, the Council will implement the performance management measures set out in Section: Performance Issues, Suspension and Termination.

* 1. ***Financial Viability***
     1. The Provider shall report to the Council any significant adverse changes in their financial position should be reported within 7 working days, and in the case of imminent insolvency or administration, this must be reported immediately
     2. Should there be any county court judgements (CCJ’s) against a Provider or its directors/partners or sole traders, or if a director is disqualified the Council shall be notified immediately.
     3. Should the Provider’s directors register as a director of a new company at any point during the term of the contract, the Provider shall declare these directorships to the Council within 14 working days.
     4. The Provider must implement and maintain minimum levels of insurance cover as follows:

| **Insurance Type** | **Value** |
| --- | --- |
| Public Liability | £ 5 million |
| Employers Liability | £ 5 million |
| Professional Indemnity | £ 2 million |
| Where medical assistance is provided, the Provider is required to have Medical Malpractice insurance. | £ 5 million |

* + 1. The Provider will supply copies of certificates to the Council. The Council will not accept any liability for insurance claims.
  1. ***Key Performance Indicators***
     1. The Provider shall provide data to evidence their performance against the Key Performance Indicators set out in Appendix 1. These KPIs are set for the first year of the contract and will be used by the Council in monitoring the Provider’s performance. KPI data shall be submitted to the Council to the schedule as set out in the “Reporting Frequency” column.
     2. The list of KPIs is not exhaustive but is intended to give a good indicator to the Provider as to what will be measured going forwards. Some targets will be confirmed prior to contract commencement and some are new; therefore needing a baseline figure before targets can be set. At any time during the contract term the Council and the Provider may work together to incorporate suggest additional or amended KPIs and targets to better demonstrate performance against the Council’s objectives for the Service, as necessary.
     3. As standard, the Council will review both the performance against and the relevance of, the Key Performance Indicators on an annual basis and agree with the Provider any revisions of these in advance of the next contract year.
     4. If a Key Performance Indicator is not met during the period of the assessment then the Council may require the Provider to put together an action plan to address the issues within a timescale to be defined by the Council.
     5. If the Key Performance Indicator is still not met at the next Reporting Period, the Council reserves the right to terminate the contract in line with the contractual terms.
  2. ***Management Information***
     1. Additionally, the Provider shall supply data as requested by the Council’s Commissioner which will evidence further performance of service delivery. This data may not initially have a target figure, but may form part of the discussions and amendments to the list of Key Performance Indicators. Data required from the contract outset is listed at Appendix 2B: Management Information.

14.4.2 In addition the Provider will complete and update Quarterly Individual Outcomes Tracker templates (to be completed at Placement Review Meetings). The Provider will email completed templates to the Council.

14.4.3 The Provider shall provide evidence to the Council, to demonstrate they have appropriate quality assurance procedures in place to enable them to provide evidence of compliance with the outcomes and indicators detailed in this specification.

* 1. ***Performance Issues, Suspension and Termination of the Contract***
     1. The Council will raise performance issues with the Provider verbally in the first instance. Unless the matter is immediately urgent (i.e. placing a Child or Young Person at risk) the Council will then follow up with detail in writing within 7 working days.
     2. The Council will advise the Provider of the timescale for resolution of the performance issue.
     3. In the event that the identified issues are not rectified within the timescale, the Council may exercise its right to suspend the Provider from receiving new placements until the identified issues are rectified.
     4. During this time the Council will provide a final deadline for resolution of issues and increase checks on the Provider. Failure to comply with the final request for resolution may result in the Council terminating the Provider’s contract.

1. **QUALITY ASSURANCE AND GOVERNANCE**
   1. ***Provider’s Quality Assurance***
      1. The Provider should develop a quality assurance process that sets out how issues and complaints are raised and resolved and how lessons can be learnt from them, and the process of self-audit on a regular basis to identify areas of strength and those that need to be improved.
      2. One self-audit exercise will be carried out every 2 months. The results should be recorded and provided to the Council as part of its monitoring arrangements. Any significant development areas and complaints that are identified should be reported to the Council within 7 days.
   2. ***Electronic Record Systems*** 
      1. The Provider will maintain an electronic recording system “the System” that documents all of the information below as a minimum, including the ability to provide the data required against Appendix 2A: KPIs and Appendix 2B: Management Information. This information relates to staff and service users

|  |  |
| --- | --- |
| **Electronic Records** | |
| * Name * Gender * Date of birth * Nationality * Ethnicity * Religion * Social worker details and contact * Social worker visit dates | * Start and end date of package(s) * Risk Assessments (Council and Provider) * Support Plans * Case notes * Supervision and Assessment notes * Incident logs * Safeguarding alerts * Disability/impairment/other health issues |

* + 1. The System needs to meet the requirements of the Council and shall be capable of recording dates for every interaction and producing a report of key areas in a chronological format.
    2. Any other information that the Provider intends to collect in relation to this contract will be advised in writing to the Council and not collected until express written consent is obtained from the Council.
    3. The System used will be hosted in the United Kingdom (UK) or on a fixed server maintained by the Provider. Any systems that operate outside of the UK in a ‘cloud’ based environment or any other environment where servers are not within the UK, shall only be permitted where the express written authority of the Council is sought and obtained, following due diligence by the Council.
    4. The System and any associated hardware will follow these broad principles:
* Will only be accessible by authorised staff within the organisation
* Password protected where sensitive personal, identifiable information is held
* Passwords will not be shared
* Held on a fixed server (unless hosted elsewhere and not by the Provider) that is maintained in a room or building that can be locked when there is not a member of staff presence
* Fixed desktop PCs and laptops will be maintained in lockable room or building
* Portable media – eg. Laptops/netbooks/tablets will not be removed from the Centre unless security can be reasonably guaranteed
* The Provider must implement secure Wi-Fi and not permit portable media to be used on any unsecured or public network within or outside of the office
  + 1. The Provider shall not use CDs or DVDs or Memory Sticks to store sensitive, personal, identifiable information which will leave the office

##### Paper Records

* + 1. Paper records should not be used as a method of storage due to their vulnerabilities, unless there is no reasonable secure alternative.
    2. Where it is necessary to store paper records, the Provider will ensure they will be secured in locked cupboards (with key control) and not left unattended
    3. Paper documents should not be removed from the Provider’s premises unless absolutely critical, and in any case will not be left unattended anywhere in a vehicle.
  1. ***Required Records***
     1. The Provider will maintain files for each member of staff / volunteer with the following documentation:

|  |  |
| --- | --- |
| **Staff Files** | |
| * Application form * Details of interview process and scoring with any relevant tests that were set * Copies of identification * Copies of educational / professional body certification * Copies of training certificates * DBS reference number, level, notifications and date last undertaken | * Contract of employment * Details of induction undertaken * Details of training undertaken / planned with the Provider with dates, levels and accrediting bodies * Supervision notes * Annual appraisals * Records of sickness, leave and disciplinary issues |

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1. **SOCIAL VALUE**
   1. The Council has considered the implications of the Social Value Act 2012 within the remit of this Service. The Social Value Act requires public authorities to have due regard for economic, social and environmental wellbeing in connection with public service contracts.
   2. The Council’s Social Value framework is set out here:

[https://www.thurrock.gov.uk/Council-procedures-and-thresholds/social-values](https://www.thurrock.gov.uk/council-procedures-and-thresholds/social-values).

* 1. In line with the above framework, the Council is currently seeking Industry Champions willing to speak about their sector to students in local schools and colleges. They are also seeking professional services companies to take part in consultations and surveys to develop skills and services in the South East Local Education Partnership.
  2. Tenderers will propose Social Value initiatives as part of their tender submission and once agreed by the Council, will become a contractual obligation for the Provider.

### APPENDIX 2A - KEY PERFORMACE INDICATORS

Key performance indicators will be reviewed annually.

| **Outcome** | **Description** | **Calculation** | **KPI Target** | **Reporting Frequency** |
| --- | --- | --- | --- | --- |
|
| Timeliness | % packages confirmed within referral response times | No. packages confirmed within referral response times divided total no. referrals | 90% | Quarterly |
| % packages confirmed within emergency referral response times | No. packages confirmed within emergency referral response times divided total no. emergency referrals | 100% | Quarterly |
| Parents / carers have improved relationships with their families. | % parents / carers found to have improved relationships with their families based on outcome reports, case notes and progress reports | No. parents / carers found to have improved relationships with their families divided total no. parents / carers | 100% | Quarterly plus annual report |
| Disabled Children able to do things they could not before. | % disabled children able to do things they could not before, based on discussion with parents / carers, outcome reports, case notes and progress reports | No. disabled children able to do things they could not before divided total no. disabled children | 100% | Quarterly plus annual report |
| Children joining and continuing membership of clubs or other social groups. | % children found to be joining and continuing membership of clubs or other social groups based on outcome reports, daily activity notes and progress reports | No. disabled children able to do things they could not before divided total no. disabled children | 100% | Quarterly plus annual report |
| Positive outcomes and high Service User satisfaction | % Service Users reporting high satisfaction and positive outcomes | No. Service Users reporting high satisfaction and positive outcomes divided total no. surveyed | 100% | Annual for long term Service Users. On exit for Service Users of less than one year. |

### APPENDIX 2B - MANAGEMENT INFORMATION

The Provider will report quarterly on the following Management Information items. This list will be reviewed by the Council from time to time and may be changed with notice to the Provider.

----------------------------------------------------------

* number of Children and Young People receiving service during period
* number of sessions:
* in the home
* in the community
* that are day time activities
* number of overnight stays:
* in the home
* residential
* number of appointments cancelled by parents / carers
* number of appointments cancelled by the Provider:
* with advanced notice (minimum 48 hours)
* without advanced notice / missed

### APPENDIX 2C - RELEVANT LEGISLATION

The legislation that is relevant to this contract is set out below. The Provider will adhere to all relevant legislation listed below, will ensure that its practices conform to this legislation, ensure that family assessors are familiar with the principles of each piece of legislation and will ensure that it keeps up-to-date with changes and revisions of this legislation:

* The Children Act 2004 (repealing and amending previous legislation), notably the Children Act 1989
* The Fostering Services (England) Regulations 2011made under the Children Act 1989 and the Care Standards Act 2000.
* The Carers and Disabled Children’s Act 2000
* The Children (Leaving Care) Act 2000
* Adoption and Child Care Act 2002
* Fostering Services Regulations 2002
* Health and Social Care Act 2008
* The Care Leavers (England) Regulations 2010
* The Care Planning, Placement and Case Review (England) Regulations 2010
* Children and Families Act 2014
* Safeguarding Vulnerable Groups Act 2006
* Health and Safety at Work Act 1974
* Equalities Act 2010
* General Protection Data Regulations 2018
* Data Protection Act 1998
* The UN convention on the rights of the Child

### APPENDIX 2D - APPLICABLE STRATEGIES AND POLICIES

1. **Violence against Women and Girls (VAWG) Strategy:**

Violence Against Women and Girls (VAWG) undermines confidence, opportunity and ambition for victim-survivors, especially where it takes place during Childhood or adolescence. It is not only implicated in ongoing gender inequality, meaning women and girls do not reach their potential, but also results in mistrust and isolation that undermines communities.

The Provider shall both understand and ensure their Service acts appropriately against any act of VAWG, defined as follows:

**Home Office Definition:** any act of gender based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private.

**UN Definition:** Violence that is directed against a woman because she is a woman or that affects women disproportionately... The term “women” is used to cover females of all ages, including girls under the age of 18… manifested in a continuum of multiple, interrelated and sometimes recurring forms… physical, sexual and psychological/emotional violence and economic abuse and exploitation, experienced in a range of settings, from private to public, and in today’s globalised world, transcending national boundaries.

Female Genital Mutilation (FGM) should be reported to the appropriate services and staff trained in looking at the signs of FGM and reporting procedures in place. The reporting of FGM is now mandatory for health and social care professionals as detailed within the following guidance.

Provider staff shall be trained to understand and act on the signs of potential sexual abuse or domestic violence, both towards women and towards men. The following link has useful information:

<http://www.nhs.uk/Livewell/abuse/Pages/signs-domestic-violence.aspx>

1. **Child Sexual Exploitation (CSE) Core Principles**

The Provider will be conversant with CSE, its complexities, the warning signs and Children’s vulnerabilities toward CSE. It is critical to both victim and public confidence that the response of partners is reflected accurately through operational activity, communications material and channels, and the media.

CSE is a form of abuse which involves Children (male and female, of different ethnic origins and of different ages) receiving something in exchange for sexual activity. Perpetrators of CSE are found in all parts of the country, rural and urban areas and are not restricted to particular ethnic groups.

This definition is supported by a set of national key messages:

* CSE (aged 18 and under) involves situations, contexts and relationships where the Young Person receives ‘something’ (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts and/or money) as a result of them performing, and/or others performing on them, sexual activities.
* CSE can occur through the use of technology without the Child’s immediate recognition; for example, being persuaded to post images on the internet / mobile phones without immediate payment or gain.

Further information and advice on CSE can be obtained from the Local Safeguarding Children Board (LSCB) <http://www.thurrocklscb.org.uk/>.

The NSPCC website gives a basic awareness around Child sexual abuse and exploitation. All staff should be versed in order to have a reasonable level of understanding if not already obtained.

[http://www.nspcc.org.uk/preventing-abuse/Child-abuse-and-neglect/Child-sexual-abuse/what-is-csa/#tab-3a4631c0-8b39f8d0](http://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/what-is-csa/#tab-3a4631c0-8b39f8d0)

All staff should be versed on teenage relationship abuse at a basic level in order to gain a reasonable level of understanding. <http://thisisabuse.direct.gov.uk/>

All Providers, when working with Young People, parents and schools will as part of their service delivery, raise awareness on the hidden harms and exploitation within all forms of social media, social networking, mobiles, sexual bullying and the dangers of sharing both images and personal information.

1. **PREVENT**

The Provider is expected to have an appropriate level of training regarding the Prevent agenda which is part of the government’s counter-terrorism strategy, CONTEST. Its aim is to stop people becoming terrorists or supporting terrorism.

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf>

Concerns should be reported where appropriate and engagement with the LSCB and organisation and local authority leads for PREVENT as necessary.

The exposure of Young People (and adults) to extreme messages is a form of Child exploitation.

The Providers of Services for Children play an important role in helping Young People to become more resilient to messages of violent extremists, and in tackling the sorts of grievances extremists seek to exploit, through creating an environment where all Young People learn to understand others, value and appreciate diversity and develop skills to debate and analyse.

Staff training

The Provider should ensure that their staff are trained and equipped to identify Young People or adults at risk of being drawn into extremist actions, as well as challenge extremist ideas. All staff should know how to refer Young People or adults at risk of being radicalised. All staff should be aware of the Government’s PREVENT strategy. The Council will make checks on the training of staff in this area.

For more information on the Prevent / Anti-radicalisation strategy please see the following websites:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263181/ETFFINAL.pdf>

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf>

1. **HATE CRIME**

Hate crime or prejudice-based incident, whether a crime or not, is an incident which is perceived by the victim or any other person as being motivated by prejudice or hostility because of a person’s:

* Race
* Religion or belief
* Gender Identity
* Sexual orientation
* Disability

Hate crime, by individuals or groups, can take many forms such as:

* Assault
* Damage to property
* Offensive graffiti
* Neighbour disputes
* Arson
* Threat of attack and other intimidating behaviour
* Verbal abuse
* Offensive leaflets and posters
* Dumping of rubbish outside homes or through letterboxes
* Unfounded and malicious complaints
* Bullying

TheProviderwill ensure that families within the centre as well as staff are protected from these crimes. Should they be perpetrated towards families or members of staff within the *centre* or outside of it, this will be reported to the police on 101 if this is not an emergency or 999 if it is an emergency. Following any incidences of hate crime families / staff will be supported to understand and process the emotions that go with these crimes and will support the family or member of staff to report this to the police.

1. **CHILDHOOD SEXUAL ABUSE (CSA)**

Childhood sexual abuse can be disclosed as a Child or remain undisclosed by adults who were abused as Children for significant periods of time and often well into adulthood. The Provider will ensure that staff are able to recognise disclosures of CSA and make appropriate referrals to other providers, where the victim wishes to. Where safeguarding responsibilities override the duty of confidentiality the Allocated Social Worker will be informed.

1. **GANGS**

The definition of a gang is as follows:

* A relatively durable, predominantly street-based group of Young People who:
* See themselves (and are seen by others) as a discernible group
* Engage in a range of criminal activity and violence
* Identify with or lay claim over territory
* Have some form of identifying structural feature
* Are in conflict with other, similar, gangs

Vulnerable Young People are increasingly at risk of being exploited into gangs to ‘run’ drugs and commit crime. The video clip and report linked below should be familiar to all staff.

The Provider will ensure that staff are trained to identify these risks and identifying behaviours that could alert to a Young Person being involved in gangs. Where engagement or risk of engagement of a Young Person with a gang is identified, the Provider will ensure that they work with the relevant authorities to raise an alert. In the first instance contact will be made with the Thurrock Youth Offending Team. Where a Child/Young Person is deemed to be in immediate danger the Provider will notify the police.

<https://www.youtube.com/watch?v=AKRCWbif-x4>

<http://www.nationalcrimeagency.gov.uk/publications/620-NCA-Intelligence-Assessment-County-Lines-Gangs-and-Safeguarding/file>

### APPENDIX 2F - DATA PROTECTION, GDPR AND RELATED POLICIES

The Provider must familiarise itself with the requirements of the following policies:

1. General Data Protection Regulation Policy
2. Thurrock Council Corporate Data Protection Policy
3. Thurrock Council Records Management Policy

The General Data Protection Regulation Policy is set out in the following guidance from the Information Commissioner’s Office

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

The Council’s Corporate Data Protection Policy is available via the link below:

<https://www.thurrock.gov.uk/sites/default/files/assets/documents/policy-dp-201210-v04.pdf>

The Council’s Records Management Policy is set out on the following pages.

**THURROCK COUNCIL**

**Records Management**

**Policy**

INFORMATION MANAGEMENT TEAM

**Introduction**

Thurrock Council recognises that its records are a vital business resource and are key to the effective functioning and accountability of the Council. Efficient management of records is essential in order to:

• Support the Council’s core business activities

• Comply with legal and regulatory obligations

• Provide a high quality service to our customers

This policy provides a framework for the management of Thurrock Council’s records.

**Scope**

This policy applies to all records created, received and maintained by the staff of Thurrock Council, or those acting as its agents, in the course of Council business.

A record is defined as a document held in any format including (but not limited to)

paper documents, audio recordings, electronic data or visual representations. The policy is applicable to all employees of Thurrock Council.

**Legislative Framework**

The records of Thurrock Council are subject to the Data Protection Act 1998 and the Freedom of Information Act 2000, and will be managed in accordance with this legislation.

**Policy Statement**

**Best Practice**

Records should be managed in accordance with the Lord Chancellor’s code of practice on the management of records under section 46 of the Freedom of Information Act.

The guidelines produced by the Records Management Society and National

Archives should be used as an aid to assist with best practice.

**Record creation and record keeping**

All records must be authentic and reliable. An authentic record is one that can be proven:

• to be what it purports to be,

• to have been created or sent by the person purported to have created or sent it, and

• to have been created or sent at the time purported

A reliable record is one whose contents can be trusted as a full and accurate representation of the transactions, activities or facts to which they attest and can be depended upon in the course of subsequent transactions or activities.

Each Service must have in place a record keeping system which documents its activities and allows for quick and easy retrieval of information. This must include:

• Classification of records into a logical and consistent hierarchy

• Allocation of appropriate metadata consistent with the Government Metadata Framework

• Consistent version control procedures

• Consistent and appropriate security classification of records

• Clearly documented authorship and ownership of records

**Usability and integrity of records**

Usability implies that a record can be ‘located, retrieved, presented and interpreted’.

Integrity refers to a record being complete and unaltered. Records must be protected against unauthorised alterations by means of good security practice (e.g. access permissions) and authorised alterations to records must be traceable, as well as being explicitly indicated through version control (see below).

**Freedom of Information Act 2000**

Records which are to be made available via the Council’s Freedom of Information Publication Scheme should be clearly marked as such. As part of the general move towards transparent government and accountability to the public, it is vital that all records are made as easily retrievable as possible, ensuring that responses to Freedom of Information access requests are processed within the statutory timescales.

The Council’s goal is to provide as much information as possible via the Publication Scheme in order to facilitate ease of access for the public and minimize time spent on responding to individual FOI requests.

**Data Protection Act 1998**

The Council’s aim is that personal information is managed in accordance with the eight data protection principles and is available for subject access requests within the required time frame.

**Auditing**

Records management processes and procedures must support the Council’s Audit Services requirements. All record keeping systems must be able to display a clear audit trail.

In accordance with their audit plan, Audit Services undertake a program of work each year to test the completeness, validity and accuracy of records held within Departments.

**Retention and disposal**

All record-keeping procedures must support the corporate document retention policy.

Confidential or sensitive documents must be disposed of securely, in accordance with the corporate document retention policy.

**Security**

All staff must ensure that all records are held securely and accessed on a need to know basis. This includes any records that are held in the office environment but also includes records that are removed from the office or the normal place of work.

Records must not be left in locations that could result in unauthorised access or could result in a risk to the record being stolen (examples of this are records left in vehicles).

**Vital Records / Emergency Planning**

Vital records management and emergency planning within the Council is an important aspect of records management. They are part of the Council’s wider business continuity and risk management regime. All individuals have a responsibility to ensure that:

* Records (whatever their medium or format) that are vital to the Council in the event of an emergency or essential to its continuation of business are identified and sufficiently protected.
* Measures are in place to prevent disasters compromising the records and record keeping systems.

**Version control**

Effective version control is essential to good records management practice. It is particularly vital where electronic documents are stored in a shared area where they may be updated by a number of different users. Whenever any alteration is made to a record, it must be allocated a new version number. These should use consecutive numbering in a standard format (i.e. Draft records V0.1, V0.2 and for final records V1.0, V2.0)

**Metadata**

Metadata is data *about* data, and therefore provides basic information such as the author of a work, the date of creation, links to any related works, *etc*. One recognisable form of metadata is a card (hard or soft copy) index catalogue in a library; the information on that card is metadata *about* a book. Metadata exists for almost every conceivable object or group of objects, whether stored in electronic form or not.

Any metadata used in electronic documents must conform to the e-Government Metadata Standard (e-GMS). The use of metadata is particularly important in documents published on the Internet, in order to facilitate retrieval via search engines.

**Roles and Responsibilities**

**Ownership of the Policy**

The owner of the Records Management Policy is the Information Manager, who is responsible for the development and implementation of a Records Management programme and strategy. Individual Directorates should only develop procedures and practices in line with this policy.

Individual members of Council staff are responsible for creating and maintaining records in accordance with best practice, legal requirements and for ensuring that records are held securely.

**Training and awareness**

All line managers must ensure that members of staff responsible for managing records are appropriately trained, and that all staff are aware of the need for and significance of records management.

**Monitoring compliance**

The Information Management Team will **(subject to resources)** monitor compliance with the policy and performance with regard to the storage, retrieval and retention of records.

**References/Supporting Documents**

* Corporate Document Retention Policy
* Thurrock Councils Publication Scheme
* ISO 15489 International Standard for Records Management
* Lord Chancellors code of practice on the management of records under secti46 of the Freedom of Information Act

### APPENDIX 2G - SHORT BREAKS DECISION TEMPLATE

**Date**

Dear Parent/ Carer of **[Name of Child/Young Person]**

**Re: Outcome of Access to Resource Panel**

The support package for **[Name of Child/Young Person]** was reviewed and presented at panel today by **[Name of Social Worker]**. The decision of the panel is that **[Name of Child/Young Person]** has been allocated / will continue to receive **[Number of hours]** per week to provide personal care, Short Break and Outreach Service. The support package can also be used to participate in social and leisure activities at home or in the community. This decision is due to be reviewed in 6 months’ time.

Please note that the support provided to you is only for use by **[Name of Child/Young Person]**. In no circumstance should the support be used for anything other than the purpose for which it was intended, and based on the assessed needs of the family. The support cannot be used as Child care for other Children in the home or to provide domestic services.

Care hours cannot be accumulated or ‘rolled over’ but must be used in the timeframe for which they are allocated, unless prior agreed by the Team Manager.

**[Name of Provider]** has been appointed to provide this support and will be contacting you shortly to arrange suitable times and dates. Should the day(s) and time(s) requested not be available the Provider will offer alternatives.

Contact details as follows:

Telephone No.:

Email address:

If you wish to appeal the decision of the panel, please inform **[Name of Social Worker]** in writing within 10 working days from the date of this letter with any additional information you would like the Panel to consider at the next Panel meeting.

Yours sincerely

**[Name], Resource Panel Chair**

**Strategic Lead - Youth Offending Service and Prevention, Children and Family Services**

### APPENDIX 2H - DEFINITIONS

|  |  |
| --- | --- |
| Awake Nights | Where a Care Worker is awake during the night when providing a night sitting services. |
| Breakaway Techniques | Those manoeuvres used to break away from a violent Service User without causing harm and without the use of control or restraint. Breakaway skills require training, practice and regular refreshers. |
| Carer | A Carer is anyone who cares, unpaid, for a friend or family member who cannot cope without their support |
| Care Worker | A person working for the Provider to support and provide the care needs of the Service User |
| CQC | Care Quality Commission |
| Disabled Child | A Child or Young Person who has substantial difficulty, either permanent or temporary, in achieving his or her full potential in areas of personal or social development, emotional or physical health, family life, education or employment due to:   * Sensory impairments * Learning disabilities * Communication difficulties * Physical impairment * Chronic or life limiting health condition * Complex health care needs |
| Emergency Duty Service | The Emergency Duty Service (EDS) works outside of normal office hours, including nights, weekends and public holidays to respond to emergency situations that cannot wait until the Social Work Teams are able to respond during normal hours. Thurrock EDS operates:  Monday to Thursday: 4:30pm to 9:00am  Friday: 4:30pm through the weekend until 9:00am on Monday  Public Holidays  Telephone No.: 01375 372 468 |
| Family Support Worker | A person working for the Council to support families. |
| High Level Needs | Overnights / complex care and joint funded |
| Lone Worker | Those who work by themselves without close or direct supervision |
| Looked After Child | A Child is looked after by the Council if a court has granted a care order to place a Child in care, or the Council's Children's services department has cared for the Child for more than 24 hours. |
| Low Level Needs | 5 hours per week or under |
| Medium Level Needs | 6 hours per week excluding overnights |
| Ofsted | Office for Standards in Education, Children’s Services and Skills |
| Package | The services and / or support agreed between the Council and the Parents / carers |
| Personal Budget | A statement of the amount of money needed to meet eligible **social care** needs. It allows parents / carers to control the financial resources for social care support and the way the support is provided. |
| Provider | The organisation providing the services to the Council |
| Service | The Short Beaks Service |
| Registration | Ofsted registration is required for any service for Young People aged between 0 and 18 years old where personal care is provided. CQC registration is required for any service that provides personal care for Children and Young People over 16 years old. |
| Service User | Means a person to whom the Provider will provide the services |
| Sleep Nights | Where a Care Worker is asleep during the night when providing a night sitting services. |
| Volunteer | An individual undertaking activity that involves spending time, unpaid (except for travelling and other approved out of pocket expenses) something that aims to benefit the environment or individuals or groups other than or in addition to close relatives. |

**SCHEDULE 5 DATA PROCESSOR AGREEMENT**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following words and phrases used in this Agreement and the Schedules shall have the following meanings except where the context otherwise requires:

**“Party”**  a Party to this Agreement

**“Agreement”**  this contract;

**“Law”** means any law, subordinated legislation within the meaning of Section 21 (1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

**“Contractor Personnel”** means all directors, officers, employees, agents, consultants, contractors and all affiliates of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.

**“Data Protection Legislation”** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;

(ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing Personal Data and privacy;

(iii) all applicable Law about 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.

**“Data Loss Event”** any event that results in unauthorized access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**“Data Subject Access Request (SAR)”** 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)

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

**“Protective Measures”** appropriate technical and organizational 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 such measures adopted by it.

**“Sub Processor”** any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

**“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”** shall take the meaning given in the GDPR.

* 1. This Agreement shall continue in full force and effect for the same period as the Master Contract, unless terminated for breach by either party.
  2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Contractor is the Data Processor. The only processing that the Contractor is authorized to do is listed in Schedule 1 by the Customer and may not be determined by the Contractor.

1. **OBLIGATIONS OF THE CUSTOMER**
   1. The Customer shall provide the Personal Data to the Contractor together with such other information as the Contractor may reasonably require in order for the Contractor to provide the Services.
   2. The instructions given by the Customer to the Contractor in respect of the Personal Data shall at all times be in accordance with the laws of the United Kingdom.

**3. OBLIGATIONS OF THE CONTRACTOR**

* 1. The Contractor shall notify the Customer immediately if it considers that any of the Customer’s instructions listed in Schedule 1 infringe the Data Protection Legislation.
  2. The· Contractor will treat the Personal Data, and any other information provided by the Customer as confidential, and will ensure that access to the Personal Data is limited to only those Contractor Personnel who require access to it for the purpose of the Contractor carrying out the permitted processing and complying with its obligations under this Agreement.
  3. The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
     1. A systematic description of the envisaged processing operations and the purpose of the processing;
     2. An assessment of the necessity and proportionality of the processing operations in relation to the Services;
     3. An assessment of the risks to the rights and freedoms of Data Subjects; and
     4. The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
  4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

1. Process that Personal Data only in accordance with Schedule 1, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
2. Ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
3. Nature of the data to be protected;
4. Harm that might result from a Data Loss Event;
5. State of technological development; and
6. Cost of implementing any measures;
7. Ensure that:
8. The Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);
9. It takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

* are aware of and comply with the Contractor’s duties under this clause;
* are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
* do not keep the Personal Data on any laptop or other removable drive or device unless that device is protected by being fully encrypted, and the use of the device or laptop is necessary for the provision of the services under this agreement. Where this is necessary, the Contractor will keep an audit trail of which laptops/drives/devices the Personal Data are held on.
* 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 Customer or as otherwise permitted by this Agreement; and
* Have undergone adequate training in the use, care, protection and handling of Personal Data.

1. Not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
2. The Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
3. The Data Subject has enforceable rights and effective legal remedies;
4. The Contractor 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 endeavors to assist the Customer in meeting its obligations); and
5. The Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
6. On satisfactory completion of the service or on termination of this agreement, the Contractor will ensure that the Personal Data is securely returned and/or removed from their systems and any printed copies securely destroyed unless the Contractor is required by Law to retain the Personal Data.
7. In complying with the clause (e), electronic copies of the Personal Data shall be securely destroyed by either physical destruction of the storage media or secure deletion using appropriate electronic shredding software that meets HM Government standards. Any hard copy will be destroyed by cross-cut shredding and secure re-cycling of the resulting paper waste.
   1. Subject to clause 3.6, the Contractor shall notify the Customer immediately if it;
      1. receives a SAR (or purported SAR);
      2. receives a request to rectify, block or erase any Personal Data;
      3. receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;
      4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement.
      5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
      6. becomes aware of a Data Loss Event.
   2. The Contractor’s obligation to notify under clause 3.5 shall include the provision of further information to the Customer in phases, as details become available.
   3. Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party’s obligations under Data Protection Legislation and any complaint, communication or request made under clause 3.5 (and insofar as possible within the timescales reasonably required by the Customer and/or set by the relevant Law) including by promptly providing:
      1. the Customer with full details and copies of the complaint, communication or request;
      2. such assistance as is reasonably requested by the Customer to enable the Customer to comply with SARs within the relevant timescales set out in the Data Protection Legislation;
      3. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
      4. assistance as requested by the Customer following any Data Loss Event;
      5. assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with the Information Commissioner’s Office.
   4. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
      1. The Customer determines that the processing is not occasional;
      2. The Customer 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
      3. The Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
   5. The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer’s designated auditor.
   6. The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
   7. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must;
      1. Notify the Customer in writing of the intention to subcontract to a Sub-processor and the nature of the intended processing;
      2. Obtain the written consent of the Customer;
      3. Enter into a written agreement with the Sub-processor which give effect to the terms set out in this agreement such that they apply to the Sub-processor; and
      4. Provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
   8. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
   9. If the Contactor or Sub-processor does not follow the written instructions of the Customer in processing its Personal Data and determines the processing purpose or means of processing themselves, the Contractor or Sub-processor will be considered to be a Controller in respect of that processing and be liable for any subsequent breaches accordingly.
   10. The Customer may, at any time on not less than 30 Working Days’ notice, revise this Agreement by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
   11. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Contractor, amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
8. **INDEMNITIES**

Each party shall indemnify the other against all costs, expenses, including legal expenses, damages, loss, including loss of business or loss of profits, liabilities, demands, claims, actions or proceedings which a party may incur arising out of any breach of this Agreement howsoever arising for which the other party may be liable.

1. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English courts.

**Schedule 6 Processing, Personal Data and Data Subjects**

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

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | The delivery of an integrated young person’s substance misuse treatment service. |
| Duration of the processing | Four years from 1st April 2019 with the option to extend for a further two years (in one year increments) |
| Nature and purposes of the processing | The processing is required so the provider can take referrals and give service users advice based on their personal situation. Interventions range from education and prevention through to structured treatment to young people. |
| Type of Personal Data | Name, Address, Gender, Ethnicity, Age, primary reason for referral, disability, medical conditions, offending behaviour, next of kin, emergency contact details, school/college/employer |
| Categories of Data Subject | Users of the service and the Provider’s staff and volunteers. |
| 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 | Destroy - 8 years after provision of support ended |