

Dated

2021

PETERBOROUGH CITY COUNCIL

AND

[INSERT CONTRACTOR]

**SERVICES AGREEMENT FOR THE PROVISION OF
ADULT SOCIAL CARE TRAINING SERVICES**

Director of Law Governance
Sand Martin House
Bittern Way
Fletton Quays
PE2 8TY

This Agreement is made the day of 2021

BETWEEN:

- (1) **Peterborough City Council** of Sand Martin House, Bittern Way, Fletton Quays, Peterborough PE2 8TY (**the “Council”**); and
- (2) [], (Company No.) whose registered office is at
(the “Provider”).
- (together “the Parties” and each a “Party”).

BACKGROUND

The Parties have agreed that the Provider shall provide the Services and the Council shall pay to the Provider the Price in respect of those Services, on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms and expressions shall have the following meanings:

“Agreement”	means these terms and conditions and any Schedules and Annexes, as amended or varied from time to time (and for the avoidance of doubt the Schedules and Annexes shall form part of the Agreement as if set out in the main body).
“Authorised Officer”	the person duly appointed by the Council and notified in writing to the Provider to act as the representative of the Council for the purpose of the Agreement from time to time.
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgment of a relevant court of law which changes binding precedent in England in each case after the date of this Agreement.
“Commencement Date”	[XXXXXX].
“Confidential Information”	any information (in whatever form, including written, oral, visual or electronic form, or on any magnetic or optical disk or memory, and wherever located) which has been designated as confidential in writing or which ought to be considered confidential in all the circumstances, including information relating to the business, products, affairs, properties, assets, trading practices, developments, Intellectual Property Rights, trade secrets (including know-how and technical data), personnel, customers or suppliers of the Council for the time being confidential to the Council, and including the Services, relating to or arising from this Agreement.

“Contract Manager”	the person duly appointed by the Provider and notified in writing to the Council to act as the representative of the Provider for the purpose of the Agreement from time to time.
“Control”	as defined by section 450 of the Corporation Taxes Act 2010.
““Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer” “process” “processing”	shall each take the meaning given in the Data Protection Legislation
“Coronavirus”	means Coronavirus disease (COVID-19) (and includes any restrictions or changes - including to licencing, processes, procedures or otherwise - impacting on the business of the Provider as a result of the Coronavirus disease)
“Council”	Peterborough City Council, and where the context so admits, includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“Council Property”	all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of the Council, or of its customers or suppliers, and any equipment, keys, hardware or software provided for the Provider’s use by the Council during or arising from the Agreement, and any data or documents (including copies) produced, maintained or stored by the Provider on the Council’s or the Provider’s computer systems or other electronic equipment, during the Agreement.
“Council System”	means any information technology system or systems owned or operated by the Council from or to which data is sent, transmitted or received in accordance with this Agreement.
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Provider under the Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of the Agreement, including any Personal Data Breach
“Data Protection Legislation”	means the(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; (iii) all applicable Law about the processing of protection of Personal Data and privacy.
“DPA 2018”	Data Protection Act 2018
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation”	shall mean all applicable data protection and privacy Law (including the GDPR, the LED and the DPA 2018) and any relevant national implementing Laws and regulatory requirements, as amended from time to time, to which the Council and the Provider are subject, and any related guidance or codes of practice issued by the relevant supervisory authorities
“Data Subject Request”	a request made by, or on behalf of, a Data Subject to exercise the Data Subject’s rights under the Data Protection Legislation
“Employee(s)”	any persons employed or engaged by the Provider to perform its obligations under the Agreement which will also include the Provider's (and any sub-contractor's) servants, agents, voluntary and unpaid workers, sub-contractors and representatives in the performance of the Services.
“Employment Checks”	means full and proper checks in accordance with the Law, Good Industry Practice and the policies of the Council, for the vetting of Employees and proposed Employees for: <ul style="list-style-type: none"> (a) eligibility to work in the UK; (b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure; and (c) (if the Services concern Regulated Activity) the carrying out of Regulated Activity.
“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	subject always to clause 33A, any cause materially affecting the performance by a Party of its obligations under this Agreement arising from a reasonably unforeseeable act or circumstance beyond its reasonable control and affecting either Party, including: acts of God, war, industrial action (subject to clause 33.3), 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 supplier or contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Agreement.
“HRA”	The Human Rights Act 1998.
“Intellectual Property Rights”	patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Law”	means any law, subordinate 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 Provider is bound to comply
“LED”	Law Enforcement Directive (Directive (EU) 2016/680
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“Materials”	any and all works of authorship and materials developed, written or prepared on whatever media for the purposes of or in connection with the Services including, without limitation, any and all reports, studies, data, databases, diagrams, charts, specifications, software, pre-contractual and contractual documents and all drafts thereof and working papers relating thereto.
“Personal Data Instructions”	the Council’s Personal Data Instructions in Schedule [1] [b].
“Price”	the price of the Services as set out in Schedule 2. Unless otherwise stated, any figures shall be regarded as being stated exclusive of properly chargeable VAT which shall be separately accounted for provided that a full and proper VAT invoice has been provided.
“Prohibited Act”	<p>each of the following constitute a Prohibited Act:</p> <ul style="list-style-type: none"> (a) directly or indirectly offering, giving or agreeing to give to any servant of the Council or person working for or engaged by the Council, any gift, reward, advantage or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council; or (ii) for showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Council; or (iii) for the improper performance of a relevant function or activity; (b) committing any offence under the Bribery Act 2010; or under s117(3) of the Local Government Act 1972; or under legislation creating offences in respect of fraudulent acts; or at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Council; or defrauding or attempting to defraud or conspiring to defraud the Council; or breach of or failure to carry out the Employment Checks.

“Protective Measures”	appropriate technical and organizational measures, which may include: pseudonymising and encrypting Personal Data, and which shall (i) ensure confidentiality, integrity, availability and resilience of systems and services; (ii) ensure that availability of and access to Personal Data can be restored in a timely manner after an incident; and (iii) include the requirement regularly to test, assess, re-evaluate and update the effectiveness of appropriate technical and organizational measures for the security of processing (provided that it shall notify the Council of such updates and changes)..
“Provider”	[Learning Pool Limited] named above as a Party, and where applicable this shall include the Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members.
“Provider Personnel”	Any and all employees, directors, officers, agents, consultants, Processors, servants, voluntary or unpaid workers and representatives of the Provider or any Sub-contractor engaged in the performance of the Provider’s obligations under this Agreement.
“Regulated Activity”	in relation to children, shall have the meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults shall have the meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
“Replacement Provider”	any company, organisation or person who replaces the Provider following termination or expiry of all or part of this Agreement.
“Schedules”	any schedules attached to this Agreement.
“Services”	the services, duties and responsibilities to be provided, performed and observed by the Provider pursuant to this Agreement and as specified in the Specification.
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Provider pursuant to the Agreement
“Specification”	as contained in Schedule 1 (including the Appendices and Annexes to Schedule 1) which the Provider shall comply with.
“Term”	the period from the Commencement Date to [XXXXXX] (inclusive) unless terminated earlier in accordance with the terms of this Agreement, or extended pursuant to clause 5.2.
“Transparency Requirements”	the Local Government Transparency Code 2015 issued by the Secretary of State for Communities and Local Government (February 2015), the Local Government (Transparency Requirements) (England) Regulations 2015, the Openness of Local Government Bodies Regulations 2014, the Public Contracts Regulations 2015 and all other Laws which oblige the Council to publish and/or disclose information or documentation.

1.2 Reference in this Agreement to:

- 1.2.1 any statute, statutory instrument, order, regulation or other similar instrument ("legislation") shall be construed as a reference to the legislation as amended

or re-enacted from time to time and shall include any subordinate legislation for the time being in force made under it;

1.2.2 (except where the context otherwise requires) words denoting the singular include the plural and vice-versa, words denoting any gender include all genders and words denoting persons include the Provider, 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 vice-versa;

1.2.3 writing or written, does not include email; and

1.2.4 any Clause, sub-clause or Schedule shall mean a clause or a sub-clause of or schedule to this Agreement.

1.3 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.4 Any obligation in this Agreement placed upon the Provider:-

1.4.1 shall be construed so as to include an obligation upon the Provider to ensure that the Employees comply with that obligation;

1.4.2 shall be construed as being without prejudice to any other obligation contained within the Agreement, unless expressly stated to the contrary; and

1.4.3 shall be deemed to require the obligation to be complied with and/or carried out at the Provider's own expense, unless expressly stated to the contrary.

1.5 In this Agreement, any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 HEADINGS

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

3 NOTICES

3.1 Any notice required by this Agreement to be given by either Party to the other shall be in writing and shall be served personally, or by sending it by registered post or recorded delivery to the address detailed for that Party at the beginning of this Agreement. Either Party may change their address to which notices are to be sent by giving written notice to the other Party.

3.2 Any notice shall be deemed to have been duly received, when sent in accordance with clause 3.1:

(i) if served personally on a Business Day before 4.30p.m., on that day, or in any other case of personal service, at 9.00a.m. on the next Business Day after that day;

(ii) if sent by post, at 9.00a.m. on the second Business Day after posting, or if the date and time recorded by the delivery service is earlier, at that time.

4 ENTIRE AGREEMENT

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

5 TERM

- 5.1 This Agreement shall commence on the Commencement Date and, subject to clause 5.2, shall continue for the Term unless terminated earlier in accordance with this Agreement.

6 PERFORMANCE

- 6.1 The Provider shall perform the Services in accordance with the Specification and the terms and conditions set out in the Agreement and shall comply and co-operate with any reasonable instructions given by the Authorised Officer.
- 6.2 The Council will have the right to observe the Provider's performance of the Services at any time, if the Services are not being performed on the Council's premises.
- 6.3 The Provider shall provide the Services, or procure that they are provided with reasonable skill and care, in accordance with Good Industry Practice and in accordance with all applicable Laws.
- 6.4 Subject as hereinafter provided the Provider shall devote such time, attention, skill, knowledge and experience as may be necessary for the proper discharge of its duties and obligations under this Agreement.
- 6.5 The Provider will not, during the Term, undertake any additional activities or accept other engagements which would directly interfere with or preclude the performance of the duties required from time to time under this Agreement or which might lead to any conflict of interest between the Provider and the best interests of the Council.
- 6.6 The Provider is deemed to have satisfied himself as to the scope, extent and location of work to be carried out under the Agreement.
- 6.7 The Provider will be responsible at its own cost and expense for the provision of all necessary staff, materials and equipment for the management and execution of all obligations under the Agreement.
- 6.8 If the Provider at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Provider from performing the Services in accordance with the Agreement, the Provider shall inform the Council immediately and the Council may, at its absolute discretion, extend the Term accordingly.
- 6.9 If the Provider at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Agreement, the Provider shall inform the Council immediately.
- 6.10 If the Provider has a change in Control, the Provider shall inform the Council as soon as reasonably practicable.
- 6.11 The Council retains the Provider for the performance of the Services on a non-exclusive basis and the Provider accepts such appointment to provide the Services on the terms of this Agreement.

7 CONTRACT MANAGER

- 7.1 The Provider shall appoint a competent and authorised Contract Manager empowered to act on behalf of the Provider for all purposes connected with the Agreement and shall ensure that the Council is aware who the Contract Manager is and who, in their absence, is suitable and authorised to act.
- 7.2 The Provider 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 Provider shall give maximum possible notice to the Council before changing its Contract Manager.

8 WARRANTIES

- 8.1 The Provider warrants and represents to the Council that:
- 8.1.1 it has the authority to enter into this Agreement and to perform the Services;
 - 8.1.2 it has and will continue to have all necessary rights in and to any software or Intellectual Property Rights or any other Materials made available by the Provider to the Council necessary to perform the Services and its obligations under this Agreement;
 - 8.1.3 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document required by Law which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform the Services or its obligations under this Agreement;
 - 8.1.4 neither the Provider nor any of Employees (or other persons associated with it):
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 8.2 The Provider warrants and represents to the Council that the Services will be provided:
- 8.2.1 in a proper, skillful and workmanlike manner;
 - 8.2.2 by a sufficient number of appropriately qualified, trained and experienced Employees with a high standard of skill, care and due diligence, in accordance with Good Industry Practice and who have been subject to the Employment Checks (and any breaches – or potential breaches - of safeguarding are notified to the Council immediately);
 - 8.2.3 in accordance in all respects with the requirements of any applicable Law from time to time in force and that the Provider has and will continue to hold all necessary (if any) regulatory approvals from any regulatory body necessary to perform the Provider's obligations under the Agreement;
 - 8.2.4 in accordance with the Agreement and any descriptions provided by the Provider;
 - 8.2.5 to the reasonable satisfaction of the Council; and
 - 8.2.6 in a way that the Provider takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Provider.
- 8.3 The Provider warrants to the Council that, to the extent that any goods, equipment or consumables are provided as part of the Services they will:
- 8.3.1 be free from defects in design, material and workmanship;
 - 8.3.2 be of satisfactory quality and fit for any purpose held out by the Provider or made known to the Provider by the Council (expressly or by implication).
- 8.4 Not Used.
- 8.5 Without prejudice to the Council's rights to terminate under clause 12 (Termination), if any of the Services supplied are not in accordance with the Agreement, the Council shall be entitled to require the Provider to provide replacement Services in accordance with the Agreement as soon as reasonably practicable and in any event within 14 days of a request to do so.

9 PROVIDER'S EMPLOYEES

- 9.1 The Council reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council, any of the Employees whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- 9.2 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.
- 9.3 The Provider shall train and ensure that all Employees are trained to an appropriate standard for the purposes of performing the Services and shall carry out the Employment Checks for all Employees.
- 9.4 The Provider shall replace any of the Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any such Employees for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 9.5 Without prejudice to the generality of clause 6.7, the Provider shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

10 PRICE AND PAYMENT

- 10.1 Subject to the terms of this Agreement, the Council shall pay to the Provider the Price for the Services (provided to the satisfaction of the Council and in accordance with the terms of this Agreement), which shall be inclusive of all costs and expenses incurred by the Provider in providing the Services and complying with its obligations under this Agreement.
- 10.2 The Provider shall submit invoices to the Council monthly in arrears (within 15 calendar days of the end of each month, as detailed within Schedule 2, which shall contain details of the Services provided for the preceding quarter together with documentary evidence as may be required by the Authorised Officer. Each invoice must quote the correct purchase order number and failure to do so will result in the invoice being returned unpaid. The Provider shall send all invoices via email as a PDF attachment to payments@peterborough.gov.uk and the Council's Authorised Officer until advised otherwise by the Council.
- 10.3 Payment of any undisputed invoice will be made no later than thirty (30) calendar days following the date of receipt and agreement of the invoice by the Council for Services completed to the satisfaction of the Council.
- 10.4 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Provider has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- 10.5 The Council will be entitled (but not obliged) at any time or times, without notice to the Provider, to set off any liability of the Council to the Provider against any liability of the Provider to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Provider into any other currency or currencies in which the obligations of the Council are payable under this Agreement. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Agreement or otherwise.
- 10.6 The Council may from time to time propose an increase, decrease or change in the scope, frequency or performance of the Services. Any such proposed variation must be discussed with the Provider and the Parties shall cooperate to seek to agree any fair and proportionate consequential change in the Price. Where such proposed variation is

agreed between the Parties, this shall be confirmed in writing and signed by both Parties and the Provider shall be bound to carry out the Services as so varied.

11 RECOVERY OF SUMS

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

12 TERMINATION

- 12.1 The Council shall be entitled to terminate this Agreement and the Provider's engagement by written notice to take effect forthwith (without any payment in lieu of notice, compensation or damages) upon the Council becoming aware of the following:
- 12.1.1 if the Provider shall be in material or persistent breach of any of its obligations in this Agreement or shall willfully neglect or refuse to carry out any of the Services or to comply with any reasonable instructions of the Council; or
 - 12.1.2 if the Provider or anyone providing Services as part of or on behalf of the Provider shall act in any way which may, in the opinion of the Council, bring the Council into disrepute or be materially adverse to the interests of the Council; or
 - 12.1.3 if the Provider or Employees or anyone acting on the Provider's behalf (whether with or without the knowledge of the Provider) commits a Prohibited Act or breaches clause 34;
 - 12.1.4 the Contractor commits an offence under the Modern Slavery Act 2015 or breaches any of the warranties contained in clause 19.2 or 27.5 hereof
- and the Council shall be entitled to recover from the Provider all sums which the Council incurs, losses or suffers arising from or connected to the termination, including all costs incurred by the Council in making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Term.
- 12.2 The Council may terminate the Agreement by notice in writing with immediate effect with no liability to make any further payment to the Provider (other than in respect of any amounts accrued in accordance with clause 13.1) where the Provider:
- 12.2.1 undergoes a change of Control, which, in the opinion of the Council, impacts adversely and materially on the performance of the Agreement; or
 - 12.2.2 becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, has an administrator appointed for it on behalf of a creditor, is subject to an application for the appointment of an administrator, is subject to a notice to appoint an administrator, is in circumstances which entitle a Court or a creditor to appoint a receiver, manager or administrator or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation; or
 - 12.2.3 suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Provider ceases to trade; or
 - 12.2.4 commits any serious or repeated breach or non-observance of any of the provisions of the Agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council or the Authorised Officer.

- 12.3 Either Party may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the other Party with immediate effect if that other Party commits a material breach and if:
- 12.3.1 the material breach is not remedied within 30 calendar days, or such other period as may be agreed between the Parties, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - 12.3.2 the material breach is not capable of remedy.
- 12.4 For the purposes of clause 12.3 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Party would otherwise derive from a substantial portion of this Agreement, and in deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

13 CONSEQUENCES OF TERMINATION

- 13.1 On termination of the Agreement pursuant to clause 12.2.1, 12.2.2, 12.2.3, 12.5 or 33.5 the Council shall pay to the Provider sums due in respect of Services provided to the Council up to the date of termination, provided that any such sum payable in accordance with this clause shall only be payable by the Council if it would have been payable in accordance with this Agreement if it had not been terminated.
- 13.2 If the Agreement is terminated early (for any reason), the Provider shall, immediately upon request, refund an appropriate proportion of the Price paid in advance to the Provider for Services not yet provided, on a pro-rata basis.

14 DISPUTE RESOLUTION PROCEDURE

- 14.1 If a dispute arises between the Parties in connection with the Agreement, the Parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level within 10 Business Days of written notice of dispute being served by one on the other, without recourse to legal proceedings.
- 14.2 If a dispute is not resolved within 10 Business Days of referral under clause 14.1 then either Party may refer it to senior representatives of each Party for resolution who shall meet for discussion within 10 Business Days or such longer period as the Parties may agree.
- 14.3 Provided that both Parties consent, a dispute not resolved in accordance with clauses 14.1 and 14.2, shall first be referred to mediation or other alternative dispute resolution procedure as agreed between the Parties, each acting in good faith. If the Parties are unable to agree a procedure or any aspect of a procedure they will seek assistance from the Centre of Dispute Resolution at Exchange Tower, 1 Harbour Exchange Square, London, E14 9GB. Unless otherwise agreed, the Parties will share equally the costs of mediation and the use of mediation will be without prejudice to the rights of the Parties in all respects if the mediation does not achieve an agreed resolution of the dispute within 60 calendar days (or such longer period as the parties may agree) of the notice of dispute being served.
- 14.4 Unless the Agreement shall have already been terminated or abandoned the Provider shall in every case continue to proceed with the Services in accordance with this Agreement.

15 SURVIVAL

- 15.1 The following clauses will survive termination or expiry of the Agreement: Clause 13 (Consequences of Termination), Clause 17 (Liability And Insurance) Clause 19 (Intellectual Property), Clause 20 (Confidentiality), Clause 22 (Data Protection), Clause 23

(Freedom of Information), Clause 24 (Record Keeping and Monitoring), Clause 31 (Severance), Clause 35 (TUPE), and Clause 40 (Law & Jurisdiction).

16 EXIT ARRANGEMENTS

- 16.1 The Provider shall support and assist the Council in managing the smooth and timely transition of the Services in respect of the expiry or termination of the Agreement, by providing all necessary reasonable resources, records and information relating to the Services and/or handing over the Services to the Council or any Replacement Provider. The Provider shall also provide a detailed exit plan to the Council at least three months prior to the expiry of the Agreement, for the Council's approval.

17 LIABILITY AND INSURANCE

- 17.1 The Provider shall maintain insurance necessary to cover any liability arising under the Agreement and in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement, with reputable insurers or underwriters.
- 17.2 The terms of any insurance or the amount of cover shall not relieve or limit the Provider of any liabilities under the Agreement.
- 17.3 The Provider shall, prior to the Commencement Date and on each anniversary of the Commencement Date and at such other times as the Council requests, provide certified copies of a statement of its insurance cover, copies of insurance policies, endorsements, cover notes, premium receipts and any other documents which the Council requests, evidencing that insurance is maintained as required under this Agreement, and all premiums paid.
- 17.4 Neither Party excludes or limits liability to the other for death or personal injury caused by its negligence or for any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or any such liability which it is not permissible to exclude by Law.
- 17.5 The Provider shall indemnify and keep indemnified the Council fully against all Liabilities whatsoever arising out of, in respect of, or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property (including damage caused by service users to property, fixtures, fittings and any other damage within and associated with property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by an act or omission of the Provider. This clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Employees or by any circumstances within its or their control.
- 17.6 The Provider shall notify the Council as soon as possible and in any event within 48 hours of any incident that may lead to any claim, demand or proceedings and shall supply such particulars or details thereof as the Council shall reasonably require.
- 17.7 The Provider shall fully and promptly indemnify the Council in respect of any damage whatsoever caused by any Employees (whether such damage be caused by negligence or in any other way whatsoever) to any land, building or chattel in the ownership, occupation or possession of the Council arising out of or in consequence of the performance of this Agreement or the performance of the Services.
- 17.8 The provisions of this Clause shall survive the expiry or termination of this Agreement for whatever reason.

18 LIMITATION OF LIABILITY

- 18.1 Subject to clause 17.4, the Council's total liability arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:

- 18.1.1 for non-payment of invoices for Services purchased, to the amount unpaid; or
- 18.1.2 for any other type of liability, to the amount paid for the Services under the Agreement.
- 18.2 Subject to clause 17.4, the Provider's total liability to the Council arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to one hundred and twenty five percent (125%) of the total Price.
- 18.3 Subject to clause 17.4, neither Party will be liable to the other Party for:
 - 18.3.1 any indirect, special or consequential loss or damage; or
 - 18.3.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 18.4 Subject to clause 18.2 the Council may, amongst other things, recover as a direct loss:
 - 18.4.1 any additional operational and/or administrative costs and expenses arising from the Provider's default;
 - 18.4.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's default;
 - 18.4.3 the additional cost of procuring replacement Services for the remainder of the Term; and
 - 18.4.4 any anticipated savings
- 18.5 Notwithstanding any other provisions in this Agreement limiting the Contractor's liability (whether in tort (including negligence or breach of statutory duty), contract or otherwise), the Contractor shall be liable for the full amount of any fine or fines levied against the parties and/or the Council as a result of the Contractors breach of any legislation or regulations (including the Data Protection Legislation)

19 INTELLECTUAL PROPERTY

- 19.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
 - 19.1.1 provided to the Provider by the Council shall remain the property of the Council;
- 19.2 The Council shall be entitled to use, arrange and, copyright and all other Intellectual Property Rights (including but without limitation the database rights in any database) in the Materials developed, originated, written or prepared by the Provider (whether individually or jointly with the Council) for the purposes of this Agreement (the "Intellectual Property"), and the Provider hereby licences the Council the right to use the Intellectual Property Rights as part of the Materials for the term of the Agreement.
- 19.3 The Provider hereby grants the Council a non-exclusive, royalty free licence to use any pre-existing Intellectual Property Rights and, during the Term, to use the Provider's System, in order to make use of the Services.
- 19.4 At the request of the Council the Provider shall do all such things and sign all documents or instruments reasonably necessary in the Council's opinion to enable the Council to obtain, defend and enforce its Intellectual Property and Intellectual Property Rights in such Materials.
- 19.5 The Provider warrants that the Materials will (so far as they do not comprise Material originating from the Council) be original works of authorship and the use or possession by the Council will not subject the Council to any claim for infringement of any proprietary rights of any third party.
- 19.6 The Provider agrees to notify the Council in writing of any breach or claim of breach of any intellectual property in use for the purposes of this Agreement and shall indemnify the

Council against any and all Liabilities which the Council may incur or suffer as a result of a breach by the Provider of the obligations and/or warranties set out in this clause.

- 19.7 The Provider agrees that the Council is entitled to all property, copyright and other Intellectual Property Rights in all Materials developed, originated, written, prepared or contributed to by the Council whether or not changed or developed by the Provider.
- 19.8 Upon the termination or expiry of the Agreement, the Provider shall, at the request of the Council, immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

20 CONFIDENTIALITY

- 20.1 Subject to the remainder of this clause 7, the Company shall keep confidential all Confidential Information obtained under or in connection with this Agreement or the Services, and shall not disclose (directly or indirectly) the same to any third party and shall only use the same for the purposes of this Agreement.
- 20.2 The provisions of clause 20.1 shall not apply if and to the extent that:
- 20.2.1 the disclosure is of information already in the public domain (otherwise than by breach of this Agreement, and through no default of the Provider):
 - 20.2.2 the information is disclosed on a "need to know" basis to the Provider's professional advisers or Employees who are directly involved in the Services or this Agreement, provided that the Provider must ensure that such persons are aware of and comply with the Provider's obligations in this clause (and for the avoidance of doubt, the Provider shall remain responsible for any breach by this clause by any such persons);
 - 20.2.3 any information required to be disclosed by Law, provided always that the Provider shall notify the Council in writing prior to making any such disclosure and shall provide such information relating to its circumstances as the Council shall reasonably require and shall take such steps as the Council may reasonably require; or
 - 20.2.4 the Council has given its prior written consent to the disclosure.
- 20.3 To the extent that the Confidential Information consists of Personal Data, this clause 20 shall be subject to the provisions of clause 22.
- 20.4 Any breach of this clause 20 by the Provider shall be deemed to be a material breach for the purposes of clause 12.1.
- 20.5 The provisions of this clause 20 shall continue in perpetuity.

21 PUBLICITY AND STATEMENTS

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

22 DATA PROTECTION AND SECURITY

- 22.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the

Council is the Controller and the Provider is the Processor. The only processing of Personal Data that the Provider is authorised to do in connection with the performance of this Contract is listed in the Personal Data Instructions and may not be determined by the Provider.

- 22.2 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 22.3 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment that arises in connection with the Contract. Such assistance may, at the discretion of the Council, include:
 - 22.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 22.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 22.3.3 an assessment of the risks to the rights and freedoms of Data Subjects (including the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed); and
 - 22.3.4 the measures (including Protective Measures) envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 22.4 The Provider shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:
 - 22.4.1 process that Personal Data only in accordance with the Personal Data Instructions and other reasonable written instructions notified to it in advance by the Council Controller, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited from doing so by Law;
 - 22.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures) having taken account of the:
 - 22.4.2.1 nature of the data to be protected;
 - 22.4.2.2 harm that might result from a Data Loss Event;
 - 22.4.2.3 state of technological development; and
 - 22.4.2.4 cost of implementing any measures;
 - 22.4.3 ensure that:
 - 22.4.3.1 the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Personal Data Instructions) and (i) are limited to such persons only as are required to access the Personal Data for the purposes of its processing in accordance with the Agreement; and (ii) have access only to such part or parts of the Personal Data as is/are necessary for the Provider Personnel to perform their duties;
 - 22.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
 - a) are aware of and comply with the Provider's duties under this clause 22;

- b) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor
 - c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted hereunder ; and
 - d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 22.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions have been fulfilled:
 - 22.4.4.1 the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Articles 46 -49 or LED Article 37) as determined by the Council;
 - 22.4.4.2 the Provider 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 Council in meeting its obligations); and
 - 22.4.4.3 the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to any such proposed transfer of the Personal Data;
- 22.4.5 return all Personal Data to the Council, and securely destroy or wipe all copies of it held by the Provider, within two (2) months of the termination of the Agreement, or earlier if requested to do so in writing by the Council, unless the Provider is required by Law to retain the Personal Data. The Provider shall send a written notice to the Council (marked for the attention of the Data Protection Officer, with a copy marked for the attention of the Director of Law and Governance, confirming that Personal Data has been returned (with all copies securely destroyed or wiped) within such two (2) month period or earlier return period as the Council may have required under this clause 22.4.5, or that the Provider is required by Law to retain the Personal Data, in which case the Provider shall provide exact details of the Personal Details which the Processor is required to retain by law and the legal basis (i.e. statute, regulation or other law) for such retention
- 22.5 Subject to clause 22.6, the Provider shall notify the Council immediately if it:
 - 22.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 22.5.2 receives a FOI Request in relation to either Party's obligations hereunder and/or under the Data Protection Legislation
 - 22.5.3 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Agreement;
 - 22.5.4 receives a request from any third party for disclosure of Personal Data; or
 - 22.5.5 becomes aware of a Data Loss Event.
- 22.6 The Provider's obligation to notify under clause 22.5 shall include the provision of further information to the Council in phases, as soon as details become available.
- 22.7 Taking into account the nature of the processing, the Provider shall provide the Council with prompt and full assistance in relation to either Party's obligations under Data Protection Legislation and the matters referred to under clause 22.5 including any complaint, communication or request or Data Loss Event (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- 22.7.1 the Council with full details and copies of the complaint, communication or request;
 - 22.7.2 such assistance as is reasonably requested by the Council (including in relation to appropriate technical and organizational measures) to enable the Council to comply with a Data Subject Request, within the relevant timescales set out in the Data Protection Legislation;
 - 22.7.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 22.7.4 assistance as requested by the Council following any Data Loss Event;
 - 22.7.5 assistance as requested by the Council with respect to any request from the Information Commissioner's Office or other supervisory authority, or any consultation by the Council with the Information Commissioner's Office or other supervisory authority.
- 22.8 The Provider shall maintain complete and accurate written or electronic records and information in relation to all the processing it carries out hereunder in accordance with the Data Protection Legislation and to demonstrate its compliance with the provisions of this clause 22 and shall immediately make the same available for inspection upon request by the Council or a supervisory authority in relation to any of the matters referred to in clause 22.5 hereof, and in all other cases, no later than 10 (ten) Working Days after being requested by the Council to do so. This requirement (to maintain accurate written or electronic records) does not apply where the Provider employs fewer than 250 staff,, unless:
- 22.8.1 the processing of the Personal Data it carries out is likely to result in a risk to the rights and freedoms of data subjects
 - 22.8.2 the processing is not occasional;
 - 22.8.3 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.
- 22.9 The Provider shall allow for audits of its Data processing activities by the Council or the Council's designated auditor upon reasonable notice by the Council and (without prejudice to the provisions for earlier access referred to in clause 22.8 hereof in relation to the matters referred to in clause 22.5 hereof) in any event no later than 10 (ten) Business Days after being requested by the Council to do so.
- 22.10 The Provider shall designate a data protection officer if required by the Data Protection Legislation. If no data protection officer is required by the Data Protection Legislation, the Provider shall, upon signature hereof by the parties, provide the name, office, contract address, email address and telephone number of a duly authorized officer, who shall act as the Providers representative and contact in relation to all Data Protection Legislation matters arising in relation to the Agreement.
- 22.11 The Provider shall not engage a Sub-processor to process any Personal Data related to the Agreement, without first obtaining the prior written authorisation of the Council. If the Provider wishes to engage such Sub-processor it must first:
- 22.11.1 notify the Council in writing of the intended Sub-processor and processing; and
 - 22.11.2 provide the Council with such information regarding the Sub-processor as the Council may reasonably require; and
 - 22.11.3 obtain the prior written consent of the Council.

If and subject to the Council giving it's prior written authorisation to the appointment of such Sub-processor, the Provider shall enter into a binding written agreement with the Sub-processor which gives effect to the terms set out in this Agreement this clause 22 (and the related Definitions) and the Personal Data Instructions such that they apply to the

Sub-processor (as a Processor) and will not allow the Sub-processor to process any Personal Data related to this Agreement before it has done so.

- 22.12 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 22.13 The Council may elect, at any time (on not less than 30 (thirty) Business Days' notice), to revise the provisions of this clause 22 (and relevant related Definitions) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme, referred to in the Data Protection Legislation the Agreement and upon receiving any such notice, the Provider agrees that it shall accept and be bound by the same.
- 22.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 (thirty) Business Days' notice to the Provider amend the Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office or applicable replacement or alternative supervisory authority (as defined in the GDPR).
- 22.15 The Council shall ensure that it has all necessary notices and consents in place to enable the lawful transfer of the Personal Data to the Provider in order that it can be processed by the Provider in accordance with the terms hereof
- 22.16 The provisions of this clause 22 shall apply notwithstanding any other terms of this Contract in relation to the processing of Personal Data and in the event of any conflict between the terms of this clause 22 and the remaining terms of this Contract in relation to the processing of Personal Data, the terms of this clause 22 shall prevail.

23 FREEDOM OF INFORMATION

- 23.1 Notwithstanding anything to the contrary contained or implied in any documents, negotiations leading to the formation of this Agreement, the Provider acknowledges that the Council is subject to the requirements of the FOIA, Transparency Requirements and the EIR and that:
 - 23.1.1 the Council shall be entitled to publish and/or release any and all terms or conditions of this Agreement, the contents of any documents and/or information relating to the formation of this Agreement or any other documentation and/or information, under the provisions of the FOIA, Transparency Requirements or the EIR as it sees fit; and
 - 23.1.2 nothing contained in this Agreement shall prevent the Council from disclosing and/or publishing under the FOIA, Transparency Requirements or the EIR any term or condition or information contained in or relating to the formation of this Agreement.
- 23.2 The Provider shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with its information disclosure requirements and shall:
 - 23.2.1 transfer any request for information it receives to the Council as soon as practicable after receipt, and in any event within 2 Business Days of receiving it;
 - 23.2.2 provide the Council with a copy of all information, documentation and data in its possession or power in the form that the Council requires within 5 Business Days (or such other period as the Council may specify) of the Council's request; and
 - 23.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in the FOIA, Transparency Requirements and EIR.
- 23.3 The Council shall be responsible for determining at its absolute discretion whether any information is commercially sensitive and/or any whether it is exempt from disclosure in

accordance with the FOIA, Transparency Requirements or EIR or whether it is to be disclosed.

23.4 In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Council.

23.5 The Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (the "Code"), be obliged under the FOIA, Transparency Requirements or the EIR to disclose Information:

23.5.1 without consulting the Provider; or

23.5.2 following consultation with the Provider and having taken its views into account, provided always that where the Code applies, the Council shall take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure, in accordance with any recommendations of the Code.

23.6 Without prejudice to the generality of the above provisions, the Provider in particular acknowledges that the Council is required under the Transparency Requirements to publish details of this Agreement (and its award).

23.7 The Provider shall ensure that all information produced in the course of or relating to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

24 RECORD KEEPING AND MONITORING

24.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Provider shall keep and maintain for six years (or such longer time period required in accordance with any specific legislation) after the end of the Term, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall, upon 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 this Agreement.

24.2 The Provider will, at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Agreement and shall comply with any monitoring and reporting arrangements and obligations detailed within the Specification or as otherwise requested by the Council from time to time.

24.3 In the event that the Provider fails, at any time, to achieve any of the acceptable minimum levels of service in respect of any Key Performance Indicators (KPIs) detailed within the Specification, the Council may (at its option, upon giving written notice to the Provider) require a meeting of the Parties, as soon as reasonably possible, to discuss and explore the matter fully and the Provider shall provide the Council with such information and documentation as the Council requests, in advance of the meeting. The Provider shall comply with all reasonable requests of the Council in respect of actions required to remedy the failures.

25 HEALTH AND SAFETY

25.1 The Provider and all Employees shall comply fully with the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, all health and safety policies of the Council and any Laws relating to the health and safety of employees and others who may be affected by the Provider's work activities.

26 CORPORATE REQUIREMENTS

- 26.1 The Provider shall comply with all terms of the HRA as if it were a public body and was subject to its terms and shall undertake, or refrain from undertaking such acts as the Council requests, so as to enable the Council to comply with its obligations under the HRA.
- 26.2 In performing its obligations under this Agreement, the Provider shall:
- 26.2.1 comply with all applicable anti-slavery and human trafficking Laws, including the Modern Slavery Act 2015;
 - 26.2.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 26.2.3 include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 26.2 and ensure that each of its subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking Laws, including the Modern Slavery Act 2015; and
 - 26.2.4 implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 26.3 The Provider shall comply with all Council policies and rules, such as, but not limited to:
- 26.3.1 equality and diversity policies;
 - 26.3.2 sustainability;
 - 26.3.3 Data protection and information security rules;
 - 26.3.4 anti-slavery policy;
 - 26.3.5 whistleblowing and/or confidential reporting policies; and
 - 26.3.6 all site rules relevant to the fulfilment of the Provider's obligations in the performance of the Services.
- 26.4 The Provider shall (and shall procure that the Employees shall) at all times comply with the Equality Act 2010 and shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment. The Provider shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Equality Act 2010 and to seek to eliminate unlawful discrimination and promote equality of opportunity.
- 26.5 The Provider shall comply with all relevant Laws relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.
- 26.6 If the Provider has a finding against it, is subject to any investigation or has any proceedings brought against it, relating to its obligations under clause 26.2, 26.4 or 26.5 it shall:
- 26.6.1 Provide any information requested by the investigating body, court or tribunal in the timescale allotted;
 - 26.6.2 Attend (and shall permit a representative from the Council to attend) any associated meetings;
 - 26.6.3 promptly allow access to any relevant documents and information; and
 - 26.6.4 co-operate fully and promptly with the investigatory body, court or tribunal.
- 26.7 The Provider shall include in the conditions of contract for any sub-contractors obligations substantially similar to those set out in this clause 26.

27 CHANGE IN LAW

- 27.1 On the occurrence of a Change in Law which has a direct effect upon the Price the Parties shall meet within 10 Business Days of the Provider notifying the Council of the Change in Law, to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Provider. If the Parties, within 10 Business Days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either Party may refer the matter to dispute resolution in accordance with clause 14.
- 27.2 Any agreed change in the Price as a result of the operation of clause 27.1 shall be confirmed in writing and signed by both Parties. For the avoidance of doubt nothing in this Contract is intended to allow the Provider double recovery of any increase in costs.

28 CONTRACT VARIATION

- 28.1 No variation or modification to the Agreement is valid unless it is in writing and signed by the Council and the Provider.

29 THIRD PARTY RIGHTS

- 29.1 Any Replacement Provider may enforce any rights given under the Contracts (Rights of Third Parties) Act 1999 but otherwise nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation of this Agreement and no supplemental or ancillary agreement to this Agreement shall create any such rights unless expressly so stated in any such agreement by the Parties. This does not affect any right or remedy of a third party which exists or is available otherwise than from the Contracts (Rights of Third Parties) Act 1999.

30 NO WAIVER

- 30.1 Failure by either Party at any time to enforce any one or more of the provisions of this Agreement 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 Agreement nor affect the validity of the Agreement or any part of it or the right of the Parties to enforce any provision in accordance with its terms.
- 30.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 3 (Notices).

31 SEVERANCE

- 31.1 If any provision of the Agreement 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.

32 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

- 32.1 Neither the Council nor the Provider shall assign or sub-contract this Agreement or any part thereof without the prior written consent of the other Party. Sub-contracting any part of the Agreement shall not relieve the Provider of any obligation or duty attributable to the Provider under the Agreement.
- 32.2 The Provider shall remain responsible and liable for the acts and omissions of any other

members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

- 32.3 In the event that the Council novates, assigns, transfers, charges, mortgages, sub-contracts, delegates or deals in any other manner with all or any of its rights under the Agreement the Provider shall continue to provide the Services as agreed under this Agreement, at no additional cost in so far as no additional obligations are placed upon the Provider in performing the Services.

33 FORCE MAJEURE

- 33.1 Neither party shall be liable for failure or delay to perform its obligations under this Agreement if such failure or delay results from Force Majeure. Notwithstanding the foregoing, in the event of Force Majeure, each Party shall use all reasonable endeavours to continue to perform its obligations under this Agreement and to mitigate the effect of the Force Majeure event on the performance of its obligations.
- 33.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Provider against the Council nor entitle the Provider to terminate this Agreement.
- 33.3 Industrial action by, or illness or shortage of the Employees, failure or delay by any of the Provider's suppliers to supply goods, components, services or materials and breach of the Provider's warranties under this Agreement shall not be regarded as an event of Force Majeure.
- 33.4 If either Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall notify the other Party in writing as soon as reasonably possible (and in any event within 3 Business Days of the commencement of the Force Majeure event) and shall estimate the period such failure or delay shall continue.
- 33.5 If the event of Force Majeure prevents the Council and/or the Provider from performing its obligations under this Agreement for more than 2 consecutive calendar months either Party may give written notice to the other to terminate this Agreement immediately or on a set termination date.
- 33.6 As soon as is reasonably practicable (and in any event within 5 Business Days) after the cessation of the Force Majeure event, the affected Party shall notify the other Party in writing of the cessation of the Force Majeure event and shall resume performance of the effected obligations under this Agreement.
- 33.7 If this Agreement is terminated in accordance with clause 33.5 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

33A CORONAVIRUS

- 33A.1 The Provider acknowledges and agrees that Coronavirus is in existence on the date of this Agreement and/or the Commencement Date, that it has satisfied itself that it can provide the Services and comply with its obligations under this Agreement notwithstanding Coronavirus, and that the occurrence or continuation of Coronavirus shall not be deemed to be a Force Majeure event for the purposes of this Agreement and shall not be subject to the provisions of clause 33.

- 33A.2 If a Change in Law occurs as a result of or in connection Coronavirus, then the provisions of clause 27 shall apply.
- 33A.3 Without prejudice to clause 33A.4, the Provider must notify the Council in writing immediately in the event that it becomes aware that Coronavirus may prevent or hinder the Provider from complying with its obligations under this Agreement or may affect the performance of the Services.
- 33A.4 The occurrence (or continuation) of Coronavirus shall not terminate or alter (or give any Party a right to terminate or alter) this Agreement, or invalidate any of its terms or discharge or excuse performance under it, or give rise to a change in Price, or relief from the Provider's obligations, and any change to this Agreement shall only be implemented and binding upon the Parties if agreed and documented in accordance with clause 28 (and until such change has been documented in accordance with clause 28, the existing provisions of this Agreement shall continue to apply).
- 33A.5 If there is an inconsistency between the provisions of this clause 33A and any other provision of this Agreement, the provisions of this clause 33A shall prevail.

34 PREVENTION OF BRIBERY

- 34.1 The Provider:
- 34.1.1 shall not, and shall procure that any Employees shall not, in connection with this Agreement, commit a Prohibited Act;
- 34.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 34.2 The Provider shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.
- 34.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any sub-contractor or Employees from committing a Prohibited Act and shall enforce it where appropriate.
- 34.4 If any breach of clause 34 is suspected or known, the Provider must notify the Council immediately. If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 34, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 34.5 The Council may terminate this Agreement in accordance with clause 12.1.3 if the Provider or any Employees (in all cases whether or not acting with the Provider's knowledge) breach any obligations contained in this clause 34.
- 34.6 Despite clause 14 (Dispute Resolution), any dispute relating to:
- 34.6.1 the interpretation of clause 34; or
- 34.6.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 34.7 Any termination under clause 34.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

35 TUPE

- 35.1 The Council makes no assurances or representations as to the effect of TUPE in relation to this Agreement or any subsequent transfer of the provision of the Services (or any part of them) from the Provider to a Replacement Provider or to the Council.
- 35.2 The Provider acknowledges that it has formed its own view as to whether TUPE applies in respect of the commencement of the Services and this Agreement, and shall form its own view as to whether TUPE applies in respect of any future transfer of the provision of the Services (or any part of them).
- 35.3 It is agreed between the Council and the Provider that the Price will not be varied on the grounds that TUPE does or does not apply, irrespective of the belief of either Party prior to the Commencement Date.
- 35.4 The Provider shall immediately upon request by the Council provide the Council with details of any measures which the Provider (or any Sub-contractor) envisages it or they will take in relation to any Employees who are or will be subject to any TUPE transfer from the Provider (or any Sub-contractor) and shall indemnify the Council and each Replacement Provider against all Liabilities resulting from any failure to comply with this obligation.
- 35.5 In the event of any future transfer to the Council or any Replacement Provider on the expiry or termination of this Agreement or as a consequence of part of this Agreement and/or Services not being provided by the Provider (or at any other time as the Council requests), the Provider will (and procure that any Sub-contractors will) immediately upon request by the Council (time being of the essence), provide to the Council a list containing details of all Employees eligible to transfer under TUPE and such other appropriate information reasonably required by the Council to enable it to disclose to third parties invited to tender or to submit a quotation for any subsequent contract(s) covering the Services (or any part of them), including the following:-
- nature of job/job description;
 - current salary;
 - length of service;
 - contracted hours and percentage of those contracted hours spent on this Agreement;
 - retirement age;
 - arrangements for overtime and whether this is contractual;
 - any factors that may affect redundancy entitlement;
 - any outstanding industrial injury claims or other claims or actions;
 - whether any probationary period is current;
 - period of notice to terminate employment;
 - current pay agreement and any agreed settlement yet to come into effect;
 - age;
 - annual leave entitlement;
 - sick leave entitlement;
 - maternity and paternity leave arrangements;
 - special leave entitlement;
 - other benefits eg. season tickets, loans, car provision;
 - whether they are a member of a company pension scheme;
 - location and contractual provisions relating to this;
 - terms and conditions of employment;
 - details of company pension scheme; and
 - any other information reasonably requested by the Council.
- 35.6 The Provider warrants and undertakes that:
- 35.6.1 the information under clause 35.5 or under TUPE, when provided to the Council, will be accurate and complete in all respects;

- 35.6.2 it will immediately inform the Council in writing of any changes to that information between the date provided and the date of any replacement contract;
- 35.6.3 it will promptly discharge all known liabilities relating to the Employees; and
- 35.6.4 in disclosing to the Council (and the Council's partners and all potential bidders of any contract/services to replace this Agreement) the information under clause 35.5 and/or under TUPE, it will perform its obligations under the Data Protection Legislation (including without limitation its obligations to its employees as Data Subjects under Article 13 of the GDPR), and the Provider shall indemnify the Council and each Replacement Provider against all direct and indirect Liabilities resulting from any failure to comply with clause 35.5 or this clause 35.6.
- 35.7 If the Provider fails to provide the required information under clause 35.5 or does not provide it within the required timescales, accurately and completely, updated as necessary, the Council reserves the right to exclude the Provider from being invited to tender or submit a quotation for any subsequent contract(s) (if the Provider would otherwise have qualified for invitation) or to disqualify the Provider from submitting a bid for any subsequent contract(s) or to reject a bid from the Provider for any subsequent contract(s).
- 35.8 The Provider shall immediately upon request by the Council provide the Council with details of any measures which the Provider (or any Sub-contractor) envisages it or they will take in relation to any Employees who are or will be subject to any TUPE transfer from the Provider (or any Sub-contractor) and shall indemnify the Council and each Replacement Provider against all Liabilities resulting from any failure to comply with this obligation.
- 35.9 The Provider warrants to the Council and each Replacement Provider that it shall take all reasonable steps to ensure that, otherwise than in the bona fide course of business, it (or any Sub-contractors) will not without the consent of the Council in any period between the date on which the information is provided under clause 35.5 and any expiry or termination of this Agreement:-
- 35.9.1 vary or purport to vary the terms and conditions of employment of Employees eligible for TUPE transfer;
- 35.9.2 increase the number of Employees eligible for TUPE transfer; or
- 35.9.3 assign or redeploy any Employee eligible to TUPE transfer to other duties unconnected to this Agreement to avoid a transfer under TUPE.
- 35.10 The Provider shall use all reasonable endeavours (and likewise procure that all Sub-contractors use all reasonable endeavours) to procure that any Employee eligible for TUPE transfer is not dismissed for a reason connected to the transfer and shall indemnify and keep indemnified the Council and each Replacement Provider against all direct or indirect Liabilities suffered or incurred by the Council and/or any Replacement Provider:-
- 35.10.1 in relation to the employment or termination of employment of any Employee during the period leading up to a TUPE transfer;
- 35.10.2 in relation to a breach or non-observance by the Provider (or by any Sub-contractor) of any collective agreement, custom, practice or arrangement (whether legally binding or not) with a trade union or staff association in respect of Employees eligible to TUPE transfer;
- 35.10.3 in relation to any failure by the Provider (or by any Sub-contractor) to comply with obligations under TUPE in respect of Employees eligible for TUPE transfer; and
- 35.10.4 in relation to vicarious liability owed to third parties arising or connected with any Employees' contracts of employment, which arises from any act or omission on the part of the Employee transferring under TUPE in the period prior to the TUPE transfer.

- 35.11 On the occasion of any relevant transfer under TUPE, the Provider shall comply (and shall procure that any Sub-contractors comply) with its/their obligations under TUPE.
- 35.12 The Provider shall indemnify and keep indemnified the Council and each Replacement Provider from and against all Liabilities in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Provider) in respect of all or any Employees eligible to TUPE transfer from the Provider (or any Sub-contractor) to the Council or a Replacement Provider, arising from or connected with any failure by the Provider (or any Sub-contractor) to comply with any legal obligation to such trade union, staff association or other employee representative under TUPE, whether any such claim arises or has its origin before, on or after the relevant transfer under TUPE.
- 35.13 The Provider shall indemnify and keep indemnified the Council and each Replacement Provider from and against all Liabilities in connection with or as a result of any breach of any of the Provider's obligations under this Clause 35.
- 35.14 The provisions of this Clause 35 (more particularly clauses 35.4, 35.6, 35.8, 35.9, 35.10, 35.12 and 35.13) shall be directly enforceable by any Replacement Provider, against the Provider and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Replacement Provider shall have the right to enforce any obligation owed to them by the Provider under this Clause 35 in its own right under the Contracts (Rights of Third Parties) Act 1999.

36 SAFEGUARDING

- 36.1 To the extent that the Services concern Regulated Activity, the Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 36.2 The Provider shall:
- 36.2.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;
 - 36.2.2 monitor the level and validity of the checks under this clause 36.2 for each Employee;
 - 36.2.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to users of the Services.
- 36.3 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any Employee is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.
- 36.4 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 36 have been met.
- 36.5 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to users of the Services, children or vulnerable adults.

37 COSTS AND EXPENSES

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

38 NO AGENCY OR PARTNERSHIP

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

39 INSPECTION OF PROVIDER'S PREMISES

- 39.1 The Provider shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Provider's premises in relation to this Agreement.

40 LAW AND JURISDICTION

- 40.1 This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

SCHEDULE 1
(Part A)
SPECIFICATION

SCHEDULE 1
(Part B)
Personal Data Instructions

Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.
3. The contact details of the Controller's Data Protection Officer are: **Ben Stevenson, Peterborough City Council, Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY** Email: ben.stevenson@peterborough.gov.uk.
4. The contact details of the Processor's Data Protection Officer (or duly authorized officer in accordance with clause 1.10 are): []

Description	Details
Controller/Processor	The Council is the Controller and the Provider is the Processor in accordance with clause 1.1.
Subject matter of the processing	<i>Provision of training</i>
Duration of the processing	<i>Term of Contract</i>
Nature and purposes of the processing	To provide Adult Social Care training in accordance with Schedule 1 Part A of this Agreement.
Type of Personal Data	<i>Name and email address</i>
Categories of Data Subject	<i>Staff, receivers of training</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The Provider shall return all Personal Data to the Council within two (2) months of the termination of the Agreement, or earlier if requested to do so in writing by the Council, unless the Provider is required by Law to retain the Personal Data The Provider shall send a written notice to the Council (marked for the attention of the Data Protection Officer, with a copy marked for the attention of the Director of Governance, confirming that the data has been returned (with all copies deleted) within such two (2) month period or earlier return period as the Council may have required or that the Provider is required by Law to retain the Personal Data, providing details).

SCHEDULE 2
PRICE

This document has been entered into and takes effect on the date stated at the beginning of it

EXECUTED under the Common Seal of

PETERBOROUGH CITY COUNCIL

In the presence of:

.....

Duly Authorised Officer

Signed for and on behalf of

[]

by two directors OR one director and one company secretary
in the presence of their respective witnesses

.....
Director

.....
Name of Director

Signature of Witness

Name of Witness.....

Address

.....

.....

Occupation.....

.....
Company Secretary

.....
Name of Company Secretary

Signature of Witness

Name of Witness.....

Address

.....

.....

Occupation.....