

**Request for Quotation**

**Online Stop Smoking Medication service**

**For the period 9th December 2024 until 8th December 2026**

**(with the option to extend up to 12 months)**

**Version Control**

|  |  |  |  |
| --- | --- | --- | --- |
| **Version Ref:** | V002 | | |
| **Owner’s Name:** | Farrell Symonds  *To whom all feedback and comments should be sent.* | | |
| **Info Source(s):** | Click to enter text. | | |
| **Review Process:** | Click to enter text. | | |
| **Adopted On:** | Click to enter date. | | |
| **Date Amended:** | 5-Oct-2022 | **Date Circulated:** | 5-Oct-2022 |
| **Amended By:** | Farrell Symonds | **Circulated By:** | Farrell Symonds |

**Contents**

[**SECTION 1: INTRODUCTION** 3](#_Toc114823507)

[**1.** **General Requirements** 3](#_Toc114823508)

[**2.** **Procurement Timetable** 4](#_Toc114823509)

[**3.** **Clarification Questions** 4](#_Toc114823510)

[**4.** **Evaluation of Quotations –** 5](#_Toc114823511)

[**SECTION 2: SPECIFICATION** 6](#_Toc114823512)

[**SECTION 3: SUPPORTING INFORMATION** 8](#_Toc114823513)

[**5.** **Organisation and Contact Details** 8](#_Toc114823514)

[**6.** **Questions** 9](#_Toc114823515)

[**SECTION 4: PRICING SHEET** 14](#_Toc114823516)

[**7.** **Pricing and Costs** 14](#_Toc114823517)

[**SECTION 5: FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIRS) - PASS/FAIL** 16](#_Toc114823518)

[**SECTION 6: DECLARATIONS - PASS/FAIL** 17](#_Toc114823519)

[**Appendix 1: Conditions of Contract** 18](#_Toc114823520)

# **SECTION 1: INTRODUCTION**

## **General Requirements**

* 1. West Northamptonshire Council invites quotations for the provision of prescribed medications for the West Northamptonshire stop smoking service. The Provider will work on the delivery of consultation, assessment and supply of the prescribed medications for smoking cessation, Cytisine and Varenicline. The aim of the service is to increase the access to treatment options for smokers who wish to quit smoking.
  2. The Authority’s detailed requirements are defined in Section 2: Specification.
  3. Please take care in reading this document, in particular the Specification. In the event of any questions or queries in relation to this Request for Quotation (RFQ), please contact the Officer detailed in Table B.
  4. The Authority will not be liable for any expenses incurred by Bidders in the preparation of their responses.
  5. The contents of this RFQ, and of any other documentation sent to you in respect of this Quote process, are provided on the basis that they remain the property of the Authority and must be treated as confidential. If you are unable or unwilling to comply with this requirement you are required to destroy this RFQ and all associated documents immediately and not to retain any electronic or paper copies.
  6. No supplier will undertake any publicity activities with any part of the media in relation to the Contract or this RFQ process without the prior written agreement of the Authority, including agreement on the format and content of any publicity.
  7. This RFQ is made available in good faith. No warranty is given as to the accuracy or completeness of the information contained in it and any liability or any inaccuracy or incompleteness is therefore expressly disclaimed by the Authority and its advisers.
  8. Please only provide separate appendices when asked to provide specific evidence
  9. The Authority reserves the right to:
     1. carry out due diligence checks on the awarded Bidder;
     2. amend the Conditions of Contract included at Appendix 1;
     3. abandon the procurement process at any stage without any liability to the Authority; and/or
     4. require the Bidder to clarify its quotation in writing and if the Bidder fails to respond satisfactorily, this may result in the Bidder being rejected from the process;
     5. reject any qualified or conditional bid;
     6. reject returns that are not submitted in an accessible format;
     7. reject any return which is incomplete or does not comply with the tender documents, or address the evaluation criteria below;
     8. reject a return at any stage in the process if it becomes aware of any omission or misrepresentation in a Provider’s response to any question;
     9. reject a return received after the closing date and time; and
     10. reject a return based on a change in budget or environmental reasons

## **Procurement Timetable**

* 1. This RFQ follows a clear, structured and transparent process to ensure a fair and level playing field is maintained at all times, and that all Bidders are treated equally.
  2. The RFQ process is intended to follow the timetable set out in Table A, below.

**Table A**

| Activity | | Time and Date  (as applicable) |
| --- | --- | --- |
|  | Request for Quotation Documents issued | Monday, 30 September 2024 |
|  | Deadline for Questions from Bidders | 12:00 noon on Monday, 14 October 2024 |
|  | Deadline to Provide Answers to Questions from Bidders | Monday, 21 October 2024 |
|  | Deadline for Submission of Quotations | 12:00 noon on Friday, 25 October 2024 |
|  | Evaluation of Bids Received (from) | Monday, 28 October 2024 |
|  | Contract Award | Monday, 11 November 2024 |
|  | Contract Start | Monday, 9 December 2024 |
|  | Contract End (EXCLUDING Extension Periods) | Tuesday, 8 December 2026 |
|  | Contract End (INCLUDING Extension Periods) | Wednesday, 8 December 2027 |

* 1. The Authority reserves the right to amend this timetable.
  2. **No return will be considered if it is not received at the email address in Table B by the date and time specified in the timetable above. Quotations shall be sent to the same email address and are not be sent by fax or as hard copy.**

## **Clarification Questions**

* 1. Any queries about this document, the procurement process, the proposed contract itself, or notification of your intent to participate, should be referred via Linda O’Connell to the Officer detailed in Table B, below, no later than the Deadline for Questions from Bidders date in Table A.

**Table B**

|  |  |
| --- | --- |
| Name | Linda O’Connell |
| Job Title | Commissioning Officer |
| Telephone number | Linda.OConnell@westnorthants.gov.uk |
| E-Mail address | 07827286829 |

## **Evaluation of Quotations –**

* 1. **THOSE BIDDERS WHO FAIL ANY PASS/FAIL, MANDATORY, COMPULSORY AND/OR ESSENTIAL QUESTIONS WILL be rejected from the RfQ PROCESS.**
  2. Any bids which are not compliant or not completed fully will be rejected. Based on the information provided by Bidders, each compliant RFQ Response will be evaluated based on the following criteria:
     1. Your submission in relation to the requirements for this RFQ will be evaluated based on the Most Economically Advantageous Tender (MEAT) to the Authority with 40% of marks awarded for bidders providing a competitive price (35% on the price of the consultation and 5% on the price of the postage) and 50% of marks for competency and quality and 10% for Social Value.
     2. A score will be given in relation to the total of the prices offered for all scored bids where the lowest cost receives 40% and other bids receive a score based on the following calculation:

Lowest price / price being evaluated x 40%

*i.e. If lowest price was A at £100 and price being reviewed was B at £120 the formula applied would be: £100 / £120 x 40 = 33%*

4.3 Quality Scoring

Bidders’ responses to the quality questions above will be evaluated against the specification on a scale of 0 to 3 points, using the scoring system detailed below:

|  |  |
| --- | --- |
| **Score** | **Criteria to Award Score** |
| 0 | Irrelevant or no response provided. |
| 1 | Response partially meets requirements. |
| 2 | Response meets requirements but lacks clear and detailed evidence. |
| 3 | Response meets requirements with clear and detailed evidence. |

# **SECTION 2: SPECIFICATION**

|  |  |
| --- | --- |
| Service | **Provision of prescribed medications for the West Northamptonshire Council’s stop smoking service** |
|  | |
| 1. **Purpose** | |
| This specification is part of the contractual relationship between West Northamptonshire Council (the Council) and the Service Provider for the delivery of consultation, assessment and supply of prescribed medications for smoking cessation, Cytisine and Varenicline.  The aim of the service is to increase the access to treatment options for smokers who wish to quit smoking. | |
| 1. **Background** | |
| NICE guidance[[1]](#footnote-2) recommends two licensed prescription only medicines (POM) as defined by the Medicines Act 1968 and Prescription Only Medicines (Human Use) Order 1997. These are Varenicline and Cytisine. They are both subject to standard monitoring arrangements for adverse events via the Yellow Card Scheme. | |
| 1. **Scope** | |
| * 1. **Scope**   This contract relates solely to the provision of Varenicline or Cytisine, via online pharmacy under a Patient Group Directions (PGD) or through an online GP service, for those patients who have been referred by West Northamptonshire’s Stop Smoking Service.   * 1. **Aims and objectives of service**   The purpose of this service is to enable easy and equitable access to Varenicline (Champix) and Cytisine. The aim is that through ease of access to appropriate stop smoking treatments the service will contribute towards a reduction in smoking prevalence across West Northamptonshire by supporting high quality stop smoking service provision.  The objectives of the service are to:   * improve access to and choice of Stop Smoking services, specifically access to pharmacological smoking cessation aids; * assist in the delivery of local smoking cessation targets; * reduce smoking related illnesses and deaths by helping people to give up smoking; * improve the health of the population by reducing passive exposure to smoke.     **3.3 Population covered**  Clients accessing the West Northamptonshire Stop Smoking Service, who are fulfilling the criteria set out in the West Northamptonshire Stop Smoking Service protocol, and who are referred to the Service by their Stop Smoking advisor.   * 1. **Any acceptance and exclusion criteria and thresholds**   This Service will provide access to Varenicline (Champix), as it is available, and Cytisine. This will be through an online pharmacy through a Patient Group Direction or via an online GP service.  Those eligible for the service are:  Smokers aged 18 and over who are attending West Northamptonshire’s stop smoking service and have been assessed as sufficiently motivated to quit and have been referred to the service for Varenicline or Cytisine.  Overall clinical responsibility for the supply of Varenicline and Cytisine lies with the clinician at the time of supply. As the legal responsibility for issuing the product rests with the pharmacist the final choice of formulation is at the discretion of the pharmacist. Prescribing guidelines must be followed for the provision of Varenicline and Cytisine.   * 1. **Interdependencies with other services**   The West Northamptonshire Stop Smoking Service will provide one to one or group support for clients who wish to stop smoking. This includes setting a target quit date and providing NRT products and/or e-cigarettes. This contract will enable the service to also include Cytisine or Varenicline via a referral to an online service provision.   * 1. **Any activity planning assumptions**   This Service will work in conjunction with the West Northamptonshire Stop Smoking Service as detailed in this specification.  The Provider will have in place robust systems for the identification, mitigation and management of clinical and non-clinical risk. | |
| 1. **Service Provision** | |
| * 1. **Stop Smoking Advisors**   The customer will have seen a stop smoking advisor, who will assess the Service User's motivation to quit and provide ongoing one to one motivational support throughout the quit attempt. If the Service User expresses a preference for Varenicline or Cytisine the Stop Smoking Adviser will conduct an initial assessment for suitability and, if there are no contra-indications, refer the Service User to the service provider via Quit Manager or an online form.  The Stop Smoking Adviser must explain to the Service User that it will be the clinician’s decision whether or not Varenicline or Cytisine is suitable option.  **4.2 The Service Provider**  Following referral, the Service Provider will contact the service user and provide an online appointment (via phone, Zoom, Microsoft Teams, or similar application) with a suitably qualified member of staff to assess the service user’s eligibility for Varenicline or Cytisine within 2 working days. The appointment must take place within 5 working days.  If eligible, the Service Provider will post the medicine to the service user, following guidance on posting licensed medications.  The Service Provider must ensure that all clinician’s involved in the provision of the service operate within clinical guidelines. If a pharmacist is dispensing the medicine this will be undertaken under a Patient Group Directive based on the Specialist Pharmacist Service framework.  The Service Provider must assess the Service User for suitability for treatment and record the outcome in an agreed format with the Stop Smoking Service’s Quit Manager portal.  In every case the Service Provider must inform the Service User's General Practitioner of the supply within two working days using an agreed template.  If the outcome of the initial assessment is to not supply Varenicline or Cytisine the Service Provider must inform the Stop Smoking Service so that an alternative treatment may be offered.  If Varenicline or Cytisine is withdrawn at any stage the Service Provider must inform the Service User's Stop Smoking Service within 2 working days so that an alternative treatment may be offered.  The Service Provider shall maintain a record of supply using an agreed recording system, which is currently Quit Manager. The Service Provider should update this at each appointment to provide an ongoing information about the client's most recent appointment.  The pharmacist must supply medicines in an appropriately labelled pack, including the Patient Information Leaflet. | |
| 1. **Applicable Service Standards** | |
| * 1. **Applicable national standards (e.g. NICE)**   The service is evidence based and must be delivered in accordance with the following:  • [Surveillance decision | Evidence | Tobacco: preventing uptake, promoting quitting and treating dependence | Guidance | NICE](https://www.nice.org.uk/guidance/ng209/resources/2024-exceptional-surveillance-of-tobacco-preventing-uptake-promoting-quitting-and-treating-dependence-nice-guideline-ng209-13312648045/chapter/Surveillance-decision?tab=evidence#:~:text=7%2C%201.12.,as%20a%20stop%2Dsmoking%20intervention.)  NICE Guidance - PH10 “Smoking cessation services in primary care, pharmacies, local authorities and workplaces, particularly for manual working groups, pregnant women and hard to reach communities.”  • NICE Technology Appraisal - TA123 “Varenicline for smoking cessation”  • NICE Guidance - PH1 “Brief Interventions and Referral for smoking cessation in primary care and other settings”   * Care Quality Commission’s Essential standards of quality and safety <http://www.cqc.org.uk/sites/default/files/documents/gac_-_dec_2011_update.pdf>   The service provider must also comply with Standards for registered pharmacies as set out by the General Pharmaceutical Council/ General Medical Council as well as qualities set out by NHS England.  The service provider must comply with the requirements of the Equality Act 2010, and will not treat one group of people less favourably than others because of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion and belief, sex or sexual orientation.   * 1. **Applicable local standards and terms of service**   The service provider will operate and provide the service in accordance with this specification unless altered/changed by agreement with the Council.  A contract agreement will be signed by the service provider and will be subject to operational and performance review by the Council.   * 1. **Service standards and principles**   The Service Provider will ensure that Standard Operating Procedures (SOPs) are in place for the service and ensure that all clinican’s and members of staff involved in delivering the service are aware of them and work in accordance with them. The Service Provider shall keep and retain a record of all training activity and make it available to the Council for inspection when required to do so.  Service Users will be seen as individuals, and the Service will be personalised to the needs of the individual and dedicated to promoting the independence, well-being and dignity of every Service User who engages with the Service.  The Service will be accessible to all and will take account of culture, religion, race, gender, age, disability and sexuality. The Service Provider will ensure that it meets legal obligations with regards to all relevant equality and human rights legislation.  The Service Provider will ensure that information acquired during the course of providing the Service is only shared and disclosed with the consent of the Service User as outlined in the NHS code of confidentiality and other associated documents.  The Service Provider will ensure that there are necessary safeguards for, and appropriate use of, Service User and personal information to ensure that such information is dealt with legally, securely, efficiently and effectively, in order to deliver the best possible high quality care. This will be in accordance with relevant legislation and best practice guidelines such GDPR (2018) and the Caldicott Principles.  The Service Provider will not make any changes to the Service, without prior written approval from the Council.  Training and Competency  For pharmacists:  In order to deliver the service on behalf of the Council pharmacists must:   * be registered with the General Pharmaceutical Council (GPhC); * be working in a pharmacy contracted to NHS England; * Have completed relevant training, which includes:   + Attending the Varenicline Accreditation Event   + Attended a Cytisine Accreditation Event   + Knowledge of NICE Competency Framework for Health Professional using Patient Group Directions http://publications.nice.org.uk/patient-group-directionsmpg2/recommendations#using-patient-group-directions   + Completed the CPPE PGD Certificate   + Attended training in using Quit Manager * Have adequate indemnity insurance to cover the tasks they are undertaking. * Undertake Continuing Professional Development and to make this information available on request; * The pharmacist should be aware of any change to the recommendations for the medicine listed. It is the responsibility of the individual pharmacist to keep up to date with continued professional development and to work within the limitations of the individual practice. * Make themselves familiar with the content of the Patient Group Direction for the supply of Varenicline and cytisine tablets.   For GPs:  In order to deliver the service on behalf of the Council GPs must:   * Hold a General Medical Service/PMS or APMS contract * Have adequate indemnity insurance to cover the tasks they are undertaking. * Complete training in how to use Quit Manger * The clinician should be aware of any change to the recommendations for the medicine listed. It is the responsibility of the individual clinician to keep up to date with continued professional development and to work within the limitations of the individual practice. | |
| **6.0 Service Description** | |
| * The Service Provider has a duty to ensure that all staff involved in the provision of this service have the relevant knowledge, skills and are appropriately trained in the provision of this service. * The Service Provider has a duty to ensure that all staff involved in the provision of this service are aware of and act in accordance with local protocols and national guidance. * Should the Service Provider have any concerns about the appropriateness of the recommended therapy they will discuss this with the the stop smoking advisor or service manager before making a supply and agree a course of action. * The clinician should identify treatment options that have proven effectiveness and maximise commitment to the target quit date ensuring the client understands the ongoing support and monitoring arrangements and is provided with appropriate information and advice. * The Service Provider should maintain appropriate records using Quit Manager to ensure ongoing service delivery and audit. * The product(s) supplied must be labelled in accordance with the requirements of the Medicines, Ethics and Practice published by GPhC.   **6.1 Obligations of the service provider**  The service provider must dispense Cytisine or Varenicline in accordance with timescales described in the Stop Smoking Service protocol.  The service provider will record all information relating to the dispensing in the service users personal medical record and in Quit Manager.  Staff responsible for the service must participate in any on-going training, review and competency assessment related to the service.  The service provider will review its standard operating procedures (SOPs) and referral pathways for the service on an annual basis.  The service provider will be able to demonstrate that all staff involved in the provision of the service have undertaken Continuing Professional Development (CPD) relevant to this service.  The service provider will co-operate with any locally agreed audits and assessments of service user experience.  The service provider will report any complaints to the Council.  The service provider will co-operate with any audit of the service where there is reasonable evidence to suggest non-compliance with the terms of service.  The Service Provider will have robust risk management process in place, including:   * + Incident reporting and investigation processes   + Complaints processes.   The Service Provider will report all serious untoward incidents to the Council and provide details of recommendations and actions taken as a result.  The Service Provider shall only charge the consulation and postage charges set out in their quote. The medication charges will initially be £115 and be varied in line with the British National Formualry (BNF) as agreed with the Council.  **6.2 Obligations of West Northamptonshire Council’s (WNC) Stop Smoking Service**  The Council will provide a framework for recording relevant service information for the purposes of audit and claiming payment.  The Council will be responsible for the promotion of the service locally including the development of publicity materials.  The Council will provide details of allied services which staff can use to signpost clients who require further assistance.  The Council will periodically review the service.  The Council reserve the right to vary this contract if circumstances change. Variations will be made in writing. | |
| **7.0 Access** | |
| The Service will be available at a minimum Monday to Friday, 7am until 7pm.  The Service will only be available to Service Users referred by Stop Smoking Advisers with the appropriate authority of the Council delivered or contracted Stop Smoking Service provider.  The Service Provider will assess the suitability for a Service User to receive Varenicline or Cytisine to ensure they meet the clinical criteria.  The service will be available to Service Users over 18 years of age who meet the inclusion criteria. | |
| **8.0 Data Requirements and Record Keeping** | |
| The service provider will be responsible for maintaining records for the period of time required by data protection legislation.  Personal data must be protected in accordance with the provisions and principles of GDPR 2018.  The service provider will maintain training records and self-declarations of competency in accordance with this specification and will show evidence of this to The Council as and when requested.  The service provider must keep all records for a minimum period of 7 years.  Electronic records must also be kept and available for this period.  Records will be kept by the service provider in a secure and confidential manner. Records must be destroyed in a confidential manner.  The consultation and its outcome should be recorded in Quit Manager. A brief outline of the Quit Manager system is provided in Appendix 1.  Records maintained in association with this service must be made available to the Council on request for audit and verification purposes subject to prevailing data legislation provisions. | |
| **Service Provision and Continuity**  1 month before the service is to commence the Provider shall provide a mobilisation plan detailing as a minimum,   * Arrangements for how you will deliver all elements of the service; * A workforce plan including any training; * The arrangements for suitable times and locations for service delivery or the details of how you will access appropriate populations; * Clinical Governance arrangements, including management, clinical and safeguarding supervision and quality assurance; * Safeguarding policies and procedures in line with National and Local Guidance; * A Business Continuity Plan; and * Proof of insurance.   It is the responsibility of the service provider to have a process in place which ensures that all new staff and locums are aware of all services provided by the pharmacy and commissioned by the Council and must maintain continuity of service during and after staff changes. The Service provider shall develop and maintain a business continuity plan that sets how it will maintain the service.  **Monitoring and reporting**  The Service Provider will be expected to report quarterly on the KPIs, set out below. The Service Provider shall provide a service narrative report to accompany the KPI report detailing key service highlights and achievements, challenges within the service and the associated mitigation, plus the key learning covering the content set out as a minimum the information detailed in Appendix 2. Quarterly meetings will be held with the Council to review the service.  A quality and assurance document will be required quarterly to ensure the Council can be assured about the Service Provision as detailed in Appendix 2.  Each year the Service Provider shall provide, in an agreed format, to the Council with an annual report setting out the last year’s activity. This report shall be provided by April 30th each year covering the previous April 1st to March 31st.  **KPI’s**   |  | | --- | | **Performance indicator** | | Number of people referred for Cytisine | | Number of people given Cytisine | | Number of people referred for Varenicline | | Number of people given Varenicline | | Average time taken to make contact with referrals | | Average time taken to see referrals | | Number of complaints (and copies of complaints and responses) | | Number of people where the Service was declined | | The reasons for the Service to be declined | | |

1. **Appendixes and/or Annexes**

| **No.** | **Document Name** |
| --- | --- |
|  | Appendix 1: Quit Manager |
|  | Appendix 2: Reporting requirement |

**Appendix 1: Quit Manager**

Quit Manager is a client/ patient management and reporting solution for stop smoking services. The Council has purchased Quit Manager and will give the Service Prover access to the system free of charge.

Quit Manager allows the storage of information about a clients stop smoking support and the treatment offered.

Special categories of data can be collected which includes health data like medical history and smoking history. It also includes information about a clients previous attempts to stop smoking, the current stop smoking plan and any treatment provided. Special categories of data also include ethnicity, gender, age and employment status. This helps the Council know which groups are using its services and whether some of them need extra help or support.

Quit Manager is also used as a picking and dispensing platform for treatment offered to clients. We are able to see what products have been requested and posted out to clients.

The Service Provider will be given access to Quit Manager to record the contact with a referred client, the result of the consultation(s) and the prescription of medication.

The Council shall provide training on Quit Manager to the Service Provider’s staff and provide the associated manuals and documentation for the system’s use for free.

**Appendix 2: Reporting requirement**

**Service provider report** **content requirement**

Service:

Provider:

Monitoring period:

Person completing the report:

Provider lead signed off:

**Report**

Overview covering:

|  |
| --- |
| **Aims and Objectives** |
| **Key service highlights and positive achievements**  *i.e. what has gone well and resulted in positive outcomes for the service, what improvements have been implemented?* |
| **Challenges within service affecting delivery and any mitigation**  *I.e. What is causing challenges within the service?*  *Is this affecting service delivery?*  *Are there associated/identified risks around these challenges?*  *What has been implemented to mitigate these risks/challenges?*  *How will this be reviewed and what is the timeline for this?* |
| **Key Learning:**  Effectively highlight and record key learning points and incorporate them into improvement strategies during the project cycle and for future endeavours. |
| **Focus for the next quarter:**  What are the key focus areas for the next quarter? |

**Progress against mobilisation/delivery/service development plan (operational report):**

* Actions set against timeline and progress against the actions

**Coms and marketing:**

* Show coms and marketing plan and provide a short narrative on progress, any areas of additional management and any implications the Council needs to be aware of.

**Finance:**

* Report on spend to date against profiled and total spend from agreement.
* Short narrative, any areas of additional management and any implications the Council needs to be aware of.

**Data:**

**Quantitative data**

* Progress against KPI’s set out in the agreement or otherwise agreed with the Council.
* Other quantitative data about the activity
* Short narrative, any areas of additional management and any implications the Council needs to be aware of.

**Qualitative data**

* Customer feedback
* Customer survey results
* Case studies
* Other engagement
* Complaints/Compliments
* Short narrative, any areas of additional management and any implications the Council needs to be aware of.

**Impact/outcome**

**Other operational information (workbook information as set out in the contract)**

Provide details of any,

* Incidents
* Policies and procedures where explicitly referenced, i.e. insurance
* Risk register
* Safeguarding etc.

**Quality and assurance report**

The Service Provider shall provide quality and assurance data each quarter in a format set out by the Council covering, but not be limited to,

* Insurance
* Business continuity
* Staffing and staff training
* Safeguarding, whistleblowing, complaints, incidents, accidents, information governance data, associated management and actions.
* Policies and procedures of the Service Provider relevant to the Service provision.

**Data Management / General Data Protection Regulation (GDPR)**

The Authority takes the processing of data seriously and applies security and privacy policies and procedures to ensure that all personal data within, or passing through the Authority, will be handled in accordance with the provisions of the appropriate UK GDPR, the Data Protection Act 2018, or any other legislation, regulation or other statutory instrument (the Data Protection Legislation).

Any Bidder who wishes to enter into a contract for the provision of goods, works or services with the Authority in which the processing of personal data is involved, must be able to demonstrate that they are fully compliant with the provisions of the Data Protection Legislation.

Any Bidder required to comply with the provisions of the Data Protection Legislation may incur costs in doing so, especially where new systems or processes are required to be adopted. Bidders are reminded these costs are attributable to conducting business in the EU, and not supplying the UK public sector, and all Bidders are accordingly required to manage their own costs in relation to compliance.

The Authority will not accept any liability clause in any Contract that seeks to indemnify the Bidder, as data processor, against fines under the provisions of the Data Protection Legislation. The legal penalty regime under the Data Protection Legislation has been extended directly to data processors to ensure better performance and enhanced protection for personal data, and any indemnification of Bidders as data processors for any Data Protection Legislation breaches resulting in fines or court claims undermines these principles.

# **SECTION 3: SUPPORTING INFORMATION**

Please complete all parts of Section 3 below.

## **Organisation and Contact Details**

| **General Information** | | | | |
| --- | --- | --- | --- | --- |
| **Question 1:** | | **Scoring Methodology:** | Question Answered? Yes/No | |
| 1.1. (a) | Full name of the potential Bidder completing Information | | | Click to enter text. |
| 1.1. (b) | Registered office address | | | Click to enter text. |
| 1.1. (c) (i) | Trading Status | | | Choose an item. |
| 1.1. (c) (ii) | \*If you selected ‘**Other\***’, please specify | | | Click to enter text. |
| 1.1. (d) (i) | Company registration number | | | Click to enter text. |
| 1.1. (d) (ii) | Charity registration number | | | Click to enter text. |
| 1.1. (e) | Are you a Small, Medium or Micro Enterprise (SME)? | | | Choose an item. |

**Please Note:** To avoid any unnecessary duplication for the Bidder, by signing the Declaration at Question 2, you are also signing to confirm the following, as included in this RFQ Response, and all associated subsections therein contained:

1. Section 5: Freedom of Information; and
2. Section 6: Declaration.

| **Contact Details and Declaration** | | | | |
| --- | --- | --- | --- | --- |
| **Question 2:** | | **Scoring Methodology:** | Question Answered? Yes/No | |
| *Bidder contact details for enquiries about this RFQ Response* | | | | |
| 2.1. (a) | Contact name | | | Click to enter text. |
| 2.1. (b) | Name of organisation | | | Click to enter text. |
| 2.1. (c) | Role in organisation | | | Click to enter text. |
| 2.1. (d) | Phone number | | | Click to enter text. |
| 2.1. (e) | E-mail address | | | Click to enter text. |
| 2.1. (f) | Postal address  *including postcode* | | | Click to enter text. |
| 2.1. (g) | Signature  *electronic is acceptable* | | | Click to enter text. |
| 2.1. (h) | Date | | | Click to enter date. |

## **Questions**

| **Insurance** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Question 3:** | | **Scoring Methodology:** | Pass/Fail |  | |  |
| *Please confirm that your organisation already has or is prepared to obtain the level of insurance cover prior to award of the contract? The levels of insurance cover are indicated below.* | | | | | | |
| 3.1. | Employer’s (Compulsory) Liability Insurance at no less than £5,000,000  *It is a legal requirement that all companies hold Employer’s (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders.* | | | | Choose an item. | |
| 3.2. | Public Liability Insurance at no less than £5,000,000 | | | | Choose an item. | |
| 3.3. | Medical negligence insurance to a minimum limit of £2,000,000.00 for any one occurrence where the Services require the Provider to undertake clinical procedures £2,000,000 | | | | Choose an item. | |
| 3.4. | Property and contents insurance as the Provider deems appropriate to its own premises and commensurate to the Service being delivered | | | | Choose an item. | |

| **Requirements under Modern Slavery Act 2015** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Question 4:** | | **Scoring Methodology:** | Pass/Fail |  | |  |
| 4.1. (a) | The Authority wants to ensure that within your business and its supply chain, there is no servitude or forced labour, slavery human trafficking, arranging or facilitating the travel of another person with a view that a person is being exploited or conducting any activities that contain violation of human rights.  Please confirm that your supply chain with regards to this quotation response complies with the Modern Slavery Act 2015? | | | | Choose an item. | |

| **UK General Data Protection Regulation (UK GDPR)** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Question 5:** | | **Scoring Methodology:** | Pass/Fail |  | |  |
| 5.1. | The Authority wants to ensure that within your business and/or in its supply chain, the processing of personal data and processes in relation to this contract are compliant with the requirements of the UK General Data Protection Regulations (UK GDPR) and Data Protection Act.  Please confirm, and provide evidence (Policy) that you, and your supply chain with regards to this RFQ response, comply with all applicable data protection legislation including but not limited to the UK General Data Protection Regulations (UK GDPR) and Data Protection Act.  Please confirm and provide evidence that you have in place appropriate technical and organisational measures (as defined in the Data Protection Legislation) to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to personal data  Those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it. (Policy evidence, such as breach management policies, security policies, staff data protection and IT security training policies etc) | | | | Choose an item. | |

QUALITY QUESTIONS

| **Quality assurance** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Question 6:** | **Max Score Available:** | 15% | **Word Limit:** | 0 words | |
| **Please describe your approach for assuring service quality and clinical governance?** | | | | | | |
| **Answer:** | | | | | | |
| Click to enter text. | | | | | | |
| **Word Count:** | | | | | Enter no. | |

| **Staff knowledge, skills and training** | | | | |
| --- | --- | --- | --- | --- |
| **Question 7:** | **Max Score Available:** | 15% | **Word Limit:** | 0 words |
| **How will you ensure that all staff involved in the provision of this service have the relevant knowledge, skills and are appropriately trained?** | | | | |
| **Answer:** | | | | |
| Click to enter text. | | | | |
| **Word Count:** | | | | Enter no. |

| **Consultation, assessment and issuing of the medication** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Question 8:** | **Max Score Available:** | 15% | **Word Limit:** | 0 words | |
| **Please describe your approach to the consultation, assessment and issuing of the medication?** | | | | | | |
| **Answer:** | | | | | | |
| Click to enter text. | | | | | | |
| **Word Count:** | | | | | Enter no. | |

| **Equality and accessibility** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Question 9:** | **Max Score Available:** | 15% | **Word Limit:** | 0 words | |
| **Please describe how you ensure your service will be accessible to all and will take account of culture, religion, race, gender, age, disability and sexuality?** | | | | | | |
| **Answer:** | | | | | | |
| Click to enter text. | | | | | | |
| **Word Count:** | | | | | Enter no. | |

| **GDPR and data management** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Question 10:** | **Max Score Available:** | 10% | **Word Limit:** | 0 words | |
| **Please describe your approach to GDPR and data management?** | | | | | | |
| **Answer:** | | | | | | |
| Click to enter text. | | | | | | |
| **Word Count:** | | | | | Enter no. | |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | |  | |  | | |
| **Service mobilisation** | | | | | | |
| **Question** | 11: | **Max score available:** | 10 % | **Word Limit:** | 0 words | |
| **Please describe your overall approach to ensuring a smooth mobilisation period, how your organisation will have the appropriate resources available with the capacity to deliver the services in the required timescale and the approach to the recruitment of staff where necessary?** | | | | | | |
| **Answer:**  Click to enter text. | | | | | | |
| **Word Count:** | | | | | | Enter no. |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Complaints** | | | | | | |
| **Question** | 12: | **Max score available:** | 10 % | **Word Limit:** | 0 words | |
| **How will you deal with service complaints and queries associated with side effects?** | | | | | | |
| **Answer:**  Click to enter text. | | | | | | |
| **Word Count:** | | | | | | Enter no. |

**SOCIAL VALUE QUESTION**

|  |
| --- |
| **Social Value**  Max Score Available 10% |
| The bidder will score 10% for the quantitative offer provided.  Bidder instructions:  For the Social value priority:   1. Click the drop-down menu in column 2 and select which offer you wish to fulfil as part of this contract; 2. Complete column 3 with the relevant detail relating to the offer that you have selected.   Once you have completed the offer table:   1. Tick the check box to declare that you will keep an accurate record of your social value outcomes for each offer throughout the life of the contract.  |  |  |  |  |  | | --- | --- | --- | --- | --- | | **1** | **2** | | **3** | **4** | | **WNC Social Value Priority** |  | | **Enter Quantitative number** | **Weighting** | | Environment |  | Choose an item. |  | 10% | |  |  |  | **Enter details** |  |   **Please read the below statement and tick the check box to confirm that you agree:**   |  |  | | --- | --- | | “I confirm that I will keep an accurate record on a quarterly basis showing the quantitative value for the relative offer selected and qualitative additional information (if applicable) to support this. I am aware that I may be asked to show this data by West Northamptonshire Council at any point and failure to do this, or failure to keep an accurate record as per what I have committed to above will be in breach of my contract.”  I agree | Pass/Fail |   **Supplier Guidance:** Key points to consider when thinking about Social Value that you may offer as part of the contract are:   * Understand what our WNC’s priorities. Imbibe in answers what Social Value you intend to deliver, without any major costs; * Think about how your offer is specific to this contract and service. Generic statements and subjective studies will not score as well as something that is RELEVANT and MEASURABLE; * Please note that if you are successful, you will be contractually obliged to deliver the offers that you have presented, so make sure they are realistic and achievable. |

# **SECTION 4: PRICING SHEET**

## **Pricing and Costs**

* 1. Cytisine and Varenicline should be cost according to the National Drug Tariff. Currently Cytisine is £115 for 100 tablets (one course) and Varenicline is £23.21 for 28 tablets – 0.5mg and 1mg. A Bidder’s RFQ Response will be rejected if it exceeds the capped budget for the medication. These capped costs for medication will be reviewed in line with the national Drug Tarriff.
  2. For the none fixed elements, please complete the Pricing Schedule at Table C, below, ensuring that you have provided a fixed and firm cost in each of the relevant boxes.
  3. All prices quoted must exclude VAT.
  4. Should you be successful, your fixed cost for the contract must be included in your RFQ Response and any costs which are not included will not be met by the Authority either before or during the contract.
  5. Where the Authority considers a price to be abnormally low, or high, it may seek clarification and/or an explanation from the Bidder, and the Authority may reject any RFQ Response, at its absolute discretion, if it appears to be unreliable.

**TablE C**

| **Pricing Schedule** | | |
| --- | --- | --- |
|  | Schedule of Rates | |
| Cytisine: Cost per patient | Cost for Cytisine delivery/postage | £Click to enter text. |
| Cytisine prescription consultation cost (inclusive of appointment set up, consultation, information logging, associated administrative work, picking and preparation for postage, packaging) |
| Cytisine prescription service management cost |
| Varenicline: Cost per patient | Cost for Varenicline delivery/postage | £Click to enter text. |
| Varenicline prescription consultation cost (inclusive of appointment set up, consultation, information logging, associated administrative work, picking and preparation for postage, packaging) |
| Varenicline prescription service management cost |

# **SECTION 5: FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIRS) - PASS/FAIL**

1. By signing Section 3, Question 2.1. (g) I hereby declare that:
   1. The Bidder acknowledges that the Authority is subject to the requirements of the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIRs).
   2. This means that all information held by the Authority has the potential to be disclosed to a member of the public requesting it. In order to limit disclosure, it is necessary to categorise information as exempt information under Part II of the FOIA.
   3. Typical exemptions that might apply are as follows: -

(1) Information that constitutes a trade secret.

(2) Information the disclosure of which would or would be likely to prejudice the commercial interests of any person, including the Authority.

(3) Commercial information, which can be kept confidential for an agreed period following which, you acknowledge it will be released if a request for it is received under FOIA or EIRs. FOIA defines commercial information as a trade secret, or information, the disclosure of which would prejudice the commercial interests of either party.

* 1. Therefore, in submitting your quotation to the Authority, you are asked to clearly identify which of the information you have provided you desire to be kept confidential as exempt information. Please also specify the period of confidentiality, which you reasonably consider should be applicable to that information. The Authority may or may not be able to comply with this request, as information, in relation to this RQ, may be made available on demand in accordance with the requirements of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and your organisation details will be disclosed and/or published where the expenditure is over £500, as per the Government Transparency agenda.
  2. You should also be aware, that any information you consider to be commercially confidential, may at a later date, cease to constitute exempt information, or it may subsequently prove to be in the public interest to disclose such information. Also, please note that any decision on non-disclosure of information could later be overridden by the Authority’s obligations to disclose under FOIA and EIRs.

|  |
| --- |
| Please list any information you wish to be kept as confidential: |

# 

# **SECTION 6: DECLARATIONS - PASS/FAIL**

1. By signing Section 3, Question 2.1. (g) I hereby declare that:
   1. I am signing on behalf of the Company named at Section 3, Question 1.1 (a) and am duly authorised to do so;
   2. to the best of my knowledge, the information provided is complete and accurate;
   3. the price in Section 4 is our best offer;
   4. no collusion with other organisations has taken place in order to fix the price;
   5. that there is no conflict of interest in relation to the Authority’s requirement;
   6. the requirement be subjected to the terms and conditions set out in Conditions of Contract identified at Appendix 1;
   7. that no goods, supplies, services and/or works will be delivered or undertaken until the Authority is satisfied that the appropriate levels of insurances are in place;
   8. that no goods, supplies, services and/or works will be delivered or undertaken until both parties have executed the formal contract documentation as identified at Appendix 1 and an instruction to proceed has been given by the Authority in writing; and
   9. I understand that the Authority may reject my submission if there is a failure to answer all relevant questions fully or if I provide false and/or misleading information.

# **Appendix 1: Conditions of Contract**

**DATED**

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

**ONLINE STOP SMOKING MEDICATION SERVICE**

between

West Northamptonshire Council

and

[NAME OF SUPPLIER]

West Northamptonshire Council

[ADDRESS]

IKEN REF:

CONTENTS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CLAUSE

[1. Definitions and Interpretation 3](#_Toc66710177)

[2. Term 10](#_Toc66710178)

[3. Extending the initial term 10](#_Toc66710179)

[4. Due diligence and Supplier's warranty 11](#_Toc66710180)

[5. Supply of services 12](#_Toc66710181)

[6. Service standards 12](#_Toc66710182)

[7. Compliance 12](#_Toc66710183)

[8. Payment 14](#_Toc66710184)

[9. Interest 16](#_Toc66710185)

[10. Personnel used to provide the services 16](#_Toc66710186)

[11. Reporting and meetings 17](#_Toc66710187)

[12. Monitoring 17](#_Toc66710188)

[13. Change control and continuous improvement 17](#_Toc66710189)

[14. Dispute resolution 18](#_Toc66710190)

[15. Sub-Contracting and assignment 19](#_Toc66710191)

[16. Indemnities 20](#_Toc66710192)

[17. Limitation of liability 20](#_Toc66710193)

[18. Insurance 21](#_Toc66710194)

[19. Freedom of information 22](#_Toc66710195)

[20. Data processing 23](#_Toc66710196)

[21. Confidentiality 26](#_Toc66710197)

[22. Audit 27](#_Toc66710198)

[23. Intellectual property 29](#_Toc66710199)

[24. Termination for breach 29](#_Toc66710200)

[25. Termination on notice 30](#_Toc66710201)

[26. Force majeure 30](#_Toc66710202)

[27. Prevention of bribery 31](#_Toc66710203)

[28. Consequences of termination or expiry 32](#_Toc66710204)

[29. Waiver 33](#_Toc66710205)

[30. Rights and remedies 33](#_Toc66710206)

[31. Severability 33](#_Toc66710207)

[32. Partnership or agency 33](#_Toc66710208)

[33. Third party rights 33](#_Toc66710209)

[34. Publicity 34](#_Toc66710210)

[35. Notices 34](#_Toc66710211)

[36. Entire agreement 34](#_Toc66710212)

[37. Governing law 35](#_Toc66710213)

[38. Jurisdiction 35](#_Toc66710214)

SCHEDULE

[Schedule 1 Specification 37](#_Toc66710215)

[Schedule 2 Supplier's Tender 38](#_Toc66710216)

[Schedule 3 Change control 39](#_Toc66710217)

[1. General principles 39](#_Toc66710218)

[2. Procedure 39](#_Toc66710219)

[Schedule 4 Data processing 42](#_Toc66710220)

This agreement is dated [DATE]

Parties

1. West Northamptonshire Council of [ADDRESS] (Authority)
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Supplier)

BACKGROUND

1. The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this agreement.

Agreed terms

1. Definitions and Interpretation
   1. The following definitions and rules of interpretation in this clause apply in this agreement.
2. Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier.
3. Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.
4. Bribery Act: the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
5. Catastrophic Failure: any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority;
6. Change: any change to this agreement including to any of the Services.
7. Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.
8. Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 3.
9. Charges: the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in the Supplier’s Tender.
10. Commencement Date: the date of this agreement.
11. Commercially Sensitive Information: the information listed in the Suppliers Tender comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.
12. Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:
    1. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
    2. any information developed by the parties in the course of carrying out this agreement;
    3. Personal Data;
    4. any Commercially Sensitive Information.
13. Contracts Finder: the government's publishing portal for public sector procurement opportunities.
14. Contract Year: any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.
15. Controller: as defined in the Data Protection Legislation.
16. Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
17. Data Subject: as defined in the Data Protection Legislation.
18. Default**:** any breach of the obligations of the relevant party (including abandonment of this agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence of statement:
    1. in the case of the Authority, of its employees, servants, agents;
    2. in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,
19. in connection with or in relation to this agreement and in respect of which such party is liable to the other.
20. Default Notice: is defined in clause 5.2.
21. Dispute Resolution Procedure: the procedure set out in clause 14.
22. Domestic Law: the law of the United Kingdom or a part of the United Kingdom.
23. EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
24. Extension period: shall have the meaning given to it in clause 3.1.
25. FOIA: the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
26. Force Majeure: any circumstance not within a party's reasonable control including, without limitation:
    1. acts of God, flood, drought, earthquake or other natural disaster;
    2. epidemic or pandemic;
    3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
    4. nuclear, chemical or biological contamination or sonic boom;
    5. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
    6. collapse of buildings, fire, explosion or accident; and
    7. any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).
27. Health and Safety Policy: the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.
28. Information: has the meaning given under section 84 of FOIA.
29. Initial Term: the period commencing on the Commencement Date and ending on the [NUMBER] anniversary of the Commencement Date.
30. Insolvency Event: where:
    1. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];
    2. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
    3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership);
    4. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);
    5. the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
    6. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
    7. [the Supplier (being an individual) is the subject of a bankruptcy petition or order;]
    8. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
    9. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
    10. the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
    11. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
31. Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
32. Law: the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier must comply.
33. Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.
34. Personal Data: as defined in the Data Protection Legislation.
35. Processor: as defined in the Data Protection Legislation.
36. Prohibited Act: the following constitute Prohibited Acts:
    1. to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
    2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
    3. committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;
    4. any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.
37. Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
38. Remediation Notice: a notice served by the Authority in accordance with clause 24.1(a).
39. Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.
40. Replacement Supplier: any third party supplier of Replacement Services appointed by the Authority from time to time.
41. Representatives: means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors.
42. Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
43. Services: the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1.
44. Supplier Party: the Supplier's agents and contractors, including each Sub-Contractor.
45. Supplier Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.
46. Supplier's Tender: the tender submitted by the Supplier and other associated documentation set out in Schedule 2.
47. Sub-Contract: any contract or agreement, or proposed contract or agreement, between the Supplier and a third party pursuant to which that third party agrees to provide to the Supplier the Services or any part of the Services.
48. Sub-Contractor: the third parties that enter into a Sub-Contract with the Supplier.
49. Term: the period of the Initial Term as may be varied by:
    1. any Extension Period; or
    2. the earlier termination of this agreement in accordance with its terms.
50. Termination Date: the date of expiry or termination of this agreement.
51. UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
52. **Working** Day: Monday to Friday, excluding any public holidays in England and Wales.
    1. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
    2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
    3. The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
    4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
    5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
    6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
    7. Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
    8. A reference to **writing** or **written** includes fax and e-mail.
    9. 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.
    10. A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
    11. References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
    12. Any words following the terms including, include, in particular 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.
    13. If there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
        1. the clauses of the agreement;

* + 1. Schedule 1 to this agreement;
    2. the remaining schedules to this agreement other than Schedule 2;

* + 1. Schedule 2 to this agreement.
* Commencement and duration

1. Term
   1. This agreement shall take effect on the Commencement Date and shall continue for the Term.
2. Extending the initial term
   1. The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to [NUMBER] years (each such extension together with any such extensions, being the "**Extension Period**"). If the Authority wishes to extend this agreement, it shall give the Supplier at least [NUMBER] months' written notice of such intention before the expiry of the Initial Term or Extension Period.
   2. If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
   3. If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 28 shall apply.
3. Due diligence and Supplier's warranty
   1. The Supplier acknowledges and confirms that:
      1. the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;
      2. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority pursuant to clause 4.1(a);
      3. it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and
      4. it has entered into this agreement in reliance on its own due diligence.
   2. Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
   3. The Supplier:
      1. warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
      2. shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services.
   4. The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 4.3(b), save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
   5. Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

* The services

1. Supply of services
   1. The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation Schedule 1 and Schedule 2.
   2. In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a Default Notice).
2. Service standards
   1. The Supplier shall provide the Services, or procure that they are provided:
      1. with reasonable skill and care and in accordance with Best Industry Practice;
      2. in all respects in accordance with the Authority's policies set out in Schedule 1; and
      3. in accordance with all applicable Law.
3. Compliance
   1. The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
   2. Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Authority in writing.
   3. The Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
      1. all applicable Law regarding health and safety; and
      2. the Health and Safety Policy whilst at the Authority Premises.
   4. Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority’s premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
   5. Without limiting the general obligation set out in clause 6, the Supplier shall (and shall procure that the Supplier Personnel shall):
      1. perform its obligations under this agreement (including those in relation to the Services) in accordance with:
         1. all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
         2. the Authority's equality and diversity policy as provided to the Supplier from time to time;
         3. any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law;
      2. take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
      3. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.
4. Payment
   1. In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Supplier.
   2. The Charges:
      1. shall remain fixed during the Term; and
      2. are the entire price payable by the Authority to the Supplier in respect of the Services and include, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.
   3. The Supplier shall invoice the Authority for payment of the Charges. All invoices shall be directed to the Authority's Authorised Representative and shall contain such information as the Authority may inform the Supplier from time to time.
   4. The Authority shall accept and process for payment an electronic invoice submitted by the Supplier, where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
   5. Where the Supplier submits an invoice to the Authority in accordance with clause 8.3, the Authority will consider and verify that invoice in a timely fashion.
   6. The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
   7. Where the Authority fails to comply with clause 8.5, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 8.6 after a reasonable time has passed from the date on which it is received by the Authority.
   8. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
      1. terms having the same effect as clauses 8.5 to 8.7 of this agreement; and
      2. a term requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards terms having the same effect as clauses 8.5 to 8.7 of this agreement.

In this clause 8.8, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

* 1. Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 14. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 7 days after resolution of the dispute between the parties.
  2. Subject to clause 8.9, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with clause 9. The Supplier shall not suspend the supply of the Services if any payment is overdue.
  3. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
  4. The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for 6 years from the end of the Contract Year to which the records relate.
  5. The Authority may at any time, set off any liability of the Supplier to the Authority against any liability of the Authority to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Authority of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
  6. All amounts due under this agreement from the Supplier to the Authority shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).

1. Interest
   1. Each party shall pay interest on any sum due under this agreement, calculated as follows:
      1. Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
      2. Period. From when the overdue sum became due, until it is paid.

* Staff

1. Personnel used to provide the services
   1. At all times, the Supplier shall ensure that:
      1. each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
      2. there is an adequate number of Supplier Personnel to provide the Services properly;
      3. only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
      4. all of the Supplier Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.
   2. The Authority may refuse to grant access to, and remove, any of the Supplier Personnel who do not comply with any such policies, or if they otherwise present a security threat.
   3. The Supplier shall replace any of the Supplier Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
   4. The Supplier shall maintain up-to-date personnel records on the Supplier Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
   5. The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

* Contract management

1. Reporting and meetings
   1. The Authorised Representatives shall meet on a quarterly basis to discuss the requirements of the Service.
2. Monitoring
   1. The Authority may monitor the performance of the Services by the Supplier.
   2. The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 12.1 at no additional charge to the Authority.
3. Change control and continuous improvement
   1. Any requirement for a Change shall be subject to the Change Control Procedure.
   2. The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
      1. the emergence of new and evolving relevant technologies which could improve the Services;
      2. new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
      3. new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
      4. changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.
   3. Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 13.2 shall be addressed by the parties using the Change Control Procedure.
4. Dispute resolution
   1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
      1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
      2. if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Assistant Director and the Supplier's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and
      3. if the Authority's Assistant Director and the Supplier's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. The mediation will start not later than [NUMBER] days after the date of the ADR notice.
   2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 37 which clause shall apply at all times.
5. Sub-Contracting and assignment
   1. Subject to clause 15.3, neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.
   2. In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
      1. remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
      2. impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
      3. provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
   3. The Authority shall be entitled to novate (and the Supplier shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
   4. Without prejudice to the generality of this clause 22, the Supplier shall:
      1. subject to clause 22.6, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Term;
      2. within 90 days of awarding a Subcontract, update the notice on Contracts Finder with details of the Subcontractor;
      3. promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
   5. Each advert referred to at clause 22.4(a) shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
   6. The obligation at clause 22.4 shall only apply in respect of subcontract opportunities arising after the Commencement Date.
   7. Notwithstanding clause 22.4, the Authority may by giving its prior written approval agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

* Liability

1. Indemnities
   1. The Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:
      1. the Supplier's breach or negligent performance or non-performance of this agreement;
      2. any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;
      3. the enforcement of this agreement.
   2. The indemnity under clause 16.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Representatives.
2. Limitation of liability
   1. Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.
   2. The Supplier assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:
      1. sums paid by the Authority to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the agreement;
      2. wasted expenditure;
      3. additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
      4. losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier; and
      5. any anticipated savings.
   3. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.
   4. Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
      1. fraud or fraudulent misrepresentation;
      2. death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
      3. breach of any obligation as to title implied by statute; or
      4. any other liability for which may not be limited under any applicable law.
3. Insurance
   1. The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
      1. Public liability insurance cover shall be in the minimum sum of £5,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited and should be adequate to cover all risks in the performance of the Services;
      2. Employers liability shall be in the minimum sum of £5,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;
      3. Medical negligence insurance to a minimum limit of £2,000,000.00 for any one occurrence where the Services require the Provider to undertake clinical procedures;
      4. Property and contents insurance as the Provider deems appropriate to its own premises and commensurate to the Service being delivered;

(the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

* 1. The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
  2. If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
  3. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
  4. The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.
* Information

1. Freedom of information
   1. The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
      2. transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
      3. provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
      4. not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
   2. The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
   3. Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
   4. The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.
2. Data processing
   1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 20 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
   2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. Schedule 4 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
   3. Without prejudice to the generality of clause 20.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
   4. Without prejudice to the generality of clause 20.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
      1. process that Personal Data only on the documented written instructions of the Authority which are set out in Schedule 4, unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
      2. ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
      3. not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
         1. the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
         2. the Data Subject has enforceable rights and effective remedies;
         3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
         4. the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
      4. notify the Authority immediately if it receives:
         1. a request from a Data Subject to have access to that person's Personal Data;
         2. 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 (including any communication from the Information Commissioner);
      5. assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
      6. notify the Authority without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
      7. at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Law to store the Personal Data;
      8. maintain complete and accurate records and information to demonstrate its compliance with this clause 20 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 22 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
   5. The Supplier shall indemnify the Authority against any losses, damages, cost or expenses incurred by the Authority arising from, or in connection with, any breach of the Supplier's obligations under this clause 20.
   6. Where the Supplier intends to engage a Sub-Contractor pursuant to clause 15 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
      1. notify the Authority in writing of the intended processing by the Sub-Contractor;
      2. obtain prior written consent from the Authority to the processing;
      3. enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 20.
   7. Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 20 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 replaced by attachment to this agreement).
   8. The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.
3. Confidentiality
   1. Subject to clause 21.2, each party shall keep the other party's Confidential Information confidential and shall not:
      1. use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
      2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 21.
   2. The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:
      1. which the other party confirms in writing is not required to be treated as Confidential Information;
      2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
      3. which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including the FOIA or the EIRs;
      4. which is in or enters the public domain other than through any disclosure prohibited by this agreement;
      5. which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
      6. which is disclosed by the Authority on a confidential basis to any central government or regulatory body.
   3. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:
      1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
      2. it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
      3. and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 21.3*.*
   4. The provisions of this clause 21 shall survive for a period of 6 years from the Termination Date.
4. Audit
   1. During the Term and for a period of 6 years after the Termination Date, the Authority (acting by itself or through its Representatives) may conduct an audit of the Supplier, including for the following purposes:
      1. to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
      2. to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
      3. to review the Supplier's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 20 (Data Protection) and clause 19 (Freedom of Information) and any other legislation applicable to the Services;
      4. to review any records created during the provision of the Services;
      5. to review any books of account kept by the Supplier in connection with the provision of the Services;
      6. to carry out the audit and certification of the Authority's accounts;
      7. to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
      8. to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
   2. Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this agreement, the Authority may not conduct an audit under this clause 22 more than twice in any calendar year.
   3. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
   4. Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
      1. all information requested by the above persons within the permitted scope of the audit;
      2. reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
      3. access to the Supplier Personnel.
   5. The Authority shall endeavour to (but is not obliged to) provide at least 14 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
   6. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
   7. If an audit identifies that:
      1. the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
      2. the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
      3. the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 days.
5. Intellectual property
   1. In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or Supplier Personnel:
      1. in the course of performing the Services; or
      2. exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

* 1. The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.
* Termination

1. Termination for breach
   1. The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:
      1. if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 24.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a Remediation Notice) to do so;
      2. if a Catastrophic Failure has occurred;
      3. if there is an Insolvency Event.
      4. if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.
      5. the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.
   2. The Authority may terminate this agreement in accordance with the provisions of clause 26 and clause 27.
   3. If this agreement is terminated by the Authority pursuant to this clause 24, such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination.
2. Termination on notice

* Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving 3 months' written notice to the Supplier.

1. Force majeure
   1. Provided it has complied with the remaining provisions of this Clause 26, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.
   2. The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.
   3. The Affected Party shall:
      1. as soon as reasonably practicable after the start of the Force Majeure Event but not later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
      2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
   4. An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Supplier cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Supplier should have foreseen and provided for the cause in question.
   5. The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
   6. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 1 weeks' notice to the Affected Party.
2. Prevention of bribery
   1. The Supplier represents and warrants that neither it, nor any Supplier Personnel:
      1. has committed a Prohibited Act;
      2. to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
      3. has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
   2. The Supplier shall promptly notify the Authority if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 27.1 at the relevant time.
   3. The Suppler shall (and shall procure that its Supplier Personnel shall) during the Term:
      1. not commit a Prohibited Act; and/or
      2. not do or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
      3. have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
      4. notify the Authority (in writing) if it becomes aware of any breach of clause 27.3(a) or clause 27.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this agreement.
   4. The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this agreement and the steps taken to comply with its obligations under clause 27.3.
   5. The Supplier shall allow the Authority and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with clause 22.
   6. If the Supplier is in Default under this clause 27 the Authority may by notice:
      1. require the Supplier to remove from performance of this agreement any Supplier Personnel whose acts or omissions have caused the Default; or
      2. immediately terminate this agreement.
   7. Any notice served by the Authority under clause 27.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).
3. Consequences of termination or expiry
   1. On termination or expiry of this agreement the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier Authorised Representative shall certify full compliance with this clause.
   2. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 16 (Indemnities), clause 17 (Limitation of Liability), clause 18 (Insurance), clause 19 (Freedom of Information), clause 20 (Data Processing), clause 21 (Confidentiality), clause 22 (Audit), clause 24 (Termination for Breach) and this clause 28 (Consequences of termination), shall remain in full force and effect.
   3. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

* General provisions

1. Waiver

* No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

1. Rights and remedies

* The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

1. Severability
   1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
   2. If any provision or part-provision of this agreement is deemed deleted under clause 31.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
2. Partnership or agency
   1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
   2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
3. Third party rights
   1. This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
4. Publicity

* The Supplier shall not:
  + 1. make any press announcements or publicise this agreement or its contents in any way; or
    2. use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

1. Notices
   1. Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
   2. Any notice shall be deemed to have been received:
      1. if delivered by hand, at the time the notice is left at the proper address;
      2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
   3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
   4. A notice given under this agreement is not valid if sent by email.
2. Entire agreement
   1. This agreement and the documents referred to in it constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
   2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
3. Governing law

* This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

1. Jurisdiction

* Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

|  |  |  |
| --- | --- | --- |
| Signed by [NAME OF CHIEF OFFICER] for and on behalf of WEST NORTHAMPTONSHIRE COUNCIL |  | ....................  Chief Officer |
|  |
|  | | |
| Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF SUPPLIER] |  | ....................  Director |
|  |
|  | | |

1. Specification [see above]
2. Supplier's Tender [to be inserted]
3. Change control
4. General principles
   1. Where the Authority or the Supplier sees a need to change this agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2of this Schedule 3.
   2. Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
   3. Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
   4. Any work undertaken by the Supplier and the Supplier Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 3, shall be undertaken entirely at the expense and liability of the Supplier.
5. Procedure
   1. Discussion between the Authority and the Supplier concerning a Change shall result in any one of the following:
      1. no further action being taken; or
      2. a request to change this agreement by the Authority; or
      3. a recommendation to change this agreement by the Supplier.
   2. Where a written request for a Change is received from the Authority, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Authority within three weeks of the date of the request.
   3. A recommendation to amend this agreement by the Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
   4. Each Change Control Note shall contain:
      1. the title of the Change;
      2. the originator and date of the request or recommendation for the Change;
      3. the reason for the Change;
      4. full details of the Change, including any specifications;
      5. the price, if any, of the Change;
      6. a timetable for implementation, together with any proposals for acceptance of the Change;
      7. a schedule of payments if appropriate;
      8. details of the likely impact, if any, of the Change on other aspects of this agreement including:
         1. the timetable for the provision of the Change;
         2. the personnel to be provided;
         3. the Charges;
         4. the Documentation to be provided;
         5. the training to be provided;
         6. working arrangements;
         7. other contractual issues;
      9. the date of expiry of validity of the Change Control Note;
      10. provision for signature by the Authority and the Supplier; and
      11. if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement under clause 24.1(e) will be apportioned.
   5. For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:
      1. allocate a sequential number to the Change Control Note; and
      2. evaluate the Change Control Note and, as appropriate:
         1. request further information;
         2. accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or
         3. notify the Supplier of the rejection of the Change Control Note.
   6. A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this agreement.
6. Data processing

**Definitions**

* 1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **“Processor Personnel”** | all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under a Contract; |

**Status of the Controller**

* 1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:
     1. “Controller” in respect of the other Party who is “Processor”;
     2. “Processor” in respect of the other Party who is “Controller”;
     3. “Joint Controller” with the other Party;
     4. “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 *(Processing Personal Data)* which scenario they think shall apply in each situation.

**Where one Party is Controller and the other Party its Processor**

* 1. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 *(Processing Personal Data*) by the Controller.
  2. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
  3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
     1. a systematic description of the envisaged Processing and the purpose of the Processing;
     2. an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;
     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 Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
     1. Process that Personal Data only in accordance with Annex 1 *(Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
     2. ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms*,* which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
        1. nature of the data to be protected;
        2. harm that might result from a Personal Data Breach;
        3. state of technological development; and
        4. cost of implementing any measures;
     3. ensure that :
        1. the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 *(Processing Personal Data*));
        2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
           1. are aware of and comply with the Processor’s duties under this Schedule 4, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*) of the Core Terms;
           2. are subject to appropriate confidentiality undertakings with the Processor 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 Controller or as otherwise permitted by the Contract; and
           4. have undergone adequate training in the use, care, protection and handling of Personal Data;
     4. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
        1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;
        2. the Data Subject has enforceable rights and effective legal remedies;
        3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
        4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
     5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
  5. Subject to paragraph 8 of this Schedule 4, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract 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 the Contract;
     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 Personal Data Breach.
  6. The Processor’s obligation to notify under paragraph 7 of this Schedule 4 shall include the provision of further information to the Controller, as details become available.
  7. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7 of this Schedule 4 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
     1. the Controller with full details and copies of the complaint, communication or request;
     2. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
     3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
     4. assistance as requested by the Controller following any Personal Data Breach; and/or
     5. assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.
  8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 4. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
     1. the Controller determines that the Processing is not occasional;
     2. the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
     3. the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
  9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.
  10. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
  11. Before allowing any Sub-processor to Process any Personal Data related to the Contract, the Processor must:
      1. notify the Controller in writing of the intended Sub-processor and Processing;
      2. obtain the written consent of the Controller;
      3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 4 such that they apply to the Sub-processor; and
      4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
  12. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
  13. The Relevant Authority may, at any time on not less than thirty (30) Working Days’ notice, revise this Schedule 4 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 the Contract).
  14. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Relevant Authority may on not less than thirty (30) Working Days’ notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**Where the Parties are Joint Controllers of Personal Data**

* 1. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 to this Schedule 4.

**Independent Controllers of Personal Data**

* 1. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
  2. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
  3. Where a Party has provided Personal Data to the other Party in accordance with paragraph 18 of this Schedule 4 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
  4. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
  5. The Parties shall only provide Personal Data to each other:
     1. to the extent necessary to perform their respective obligations under the Contract;
     2. in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
     3. where it has recorded it in Annex 1 *(Processing Personal Data).*
  6. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
  7. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
  8. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract **(“Request Recipient”)**:
     1. the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
     2. where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
        1. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
        2. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
  9. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
     1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
     2. implement any measures necessary to restore the security of any compromised Personal Data;
     3. work with the other Party to make any required notifications to the Information Commissioner’s Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
     4. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
  10. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 *(Processing Personal Data).*
  11. Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s respective obligations under the Contract which is specified in Annex 1 *(Processing Personal Data)*.
  12. Notwithstanding the general application of paragraphs 2 to 16 of this Schedule 4 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 18 to 28 of this Schedule 4.

**Shedule 4 – Annex 1: Processing Personal Data**

**A) Introduction**

This annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

* + - 1. The contact details of the Relevant Authority’s Data Protection Officer is:

**Bellinda Cotton**

[***dataprotection@westnorthants.gov.uk***](mailto:dataprotection@westnorthants.gov.uk)

* + - 1. The contact details of the Supplier’s Data Protection Officer are: **[Insert** Contact details]
      2. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
      3. Any such further instructions shall be incorporated into this schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of Controller for each Category of Personal Data | **West Northamptonshire Council is Controller and the Supplier is Processor**  The Parties acknowledge that in accordance with paragraph 3 to paragraph 16 and for the purposes of the Data Protection Legislation, the Relevant Authority (West Northamptonshire Council), is the Controller and the Supplier is the Processor of the following Personal Data:   * The purpose of the personal data held by the Controller is to fulfil the statutory duties in the provision of the UK GDPR Article 9, 2, *“(h) processing is necessary for the purposes of preventive or occupational medicine, ……., medical diagnosis, the provision of health or social care or treatment….”* * The Data held will cover all persons accessing West Northamptonshire Council’s online stop smoking medication service. It includes personal information (such as name, address and date of birth) as well as more sensitive personal information about someone’s racial or ethnic group, health or social care status and sexual life and / or sexual orientation and Information about someone’s sexual orientation, religion, family and sex life. |
| Duration of the Processing | The contract will run from the Contract Commencement Date and will cease upon completion of the Contract Term. |
| Nature and purposes of the Processing | For residents we’re supporting to stop smoking it may be appropriate to have a drug prescribed to support this behaviour change. We want to commission a provider who is able to prescript the appropriate drugs to and individual referred to them by the Council’s in house stop smoking service.  The provider will be given access and be required to use the Council’s client management system and the associated client data. The client will be asked for consent before the referral is made and for their data to be shared.  This is necessary to be able to support the individual to get the right support, stop smoking products and where necessary a referral to the provider who will be able to prescribe the stop smoking medication.  Smoking creates a serios risk to a person’s health. The Council seeks to support individuals to change their behaviour and quit smoking. This is a voluntary service, people opt into to accessing the service.  Therefore, the agreed purpose of this data processing is to support individuals to stop smoking.  Each party considers this data processing initiative necessary to achieve the agreed purpose.  The aim of the data processing is to:  • Work with adults to assist them to stop smoking  • To assess referrals from the Council’s Stop Smoking Service for the prescription of the designated medication to aid them to stop smoking.  • Enter the data associated with the patient engagement on the Council’s case management system.  It will serve to benefit society by preventing or reducing the prevalence of smoking. |
| Purpose Limitation | Personal data will be processed only on the data controller’s documented instructions and not be, shared, disclosed, or used in any way except:   * in accordance with this Schedule; or * as required by law.   As long as in keeping with this schedule and UK data protection legislation, the data processor may make its own day-to-day operational decisions, unless it is required to do otherwise by law.  Any data processing is undertaken in accordance with UK GDPR and the Data Protection Act 2018. Further details can be found in the [TBC – Insert link to Providers Privacy Notice].  In conducting the service the provider shall use the Council’s case management system to manage the referrals and record in the outcome of the patient engagement. Where reporting and monitoring information is required to be provided to the data controller, all personal data should be anonymised, including information that if combined, would identify any living individual.  Subsequent instructions can also be given by the data controller throughout the duration of the processing of personal data, but such instructions shall always be documented and kept in writing, including electronically.  Under Article 28(3)(d) the data processor should not engage another data processor (a sub-processor) without the data controller’s prior specific or general written authorisation.  Where the data processor intends to engage a sub-contractor pursuant to clause 4.6 above and intends for that sub-contractor to process any personal data relating to this agreement, it shall:   * notify the data controller in writing of the intended processing by the sub-contractor; * obtain prior written consent from the data controller to the processing; * enter into a written agreement incorporating terms which are substantially similar to those set out in this schedule. Where applicable the data processor is liable to the data controller for a sub-processor’s compliance with its data protection obligations.   The data recipient shall:   * not transfer or otherwise process the personal/special category data outside the UK without obtaining the data controller’s prior written consent, which will include the transfer instructions and obligations under Article 45, 46 & 49 UK GDPR. * not share the shared personal data with any third party without the consent of the data discloser in accordance with the data controllers transfer instructions. |
| Lawful Basis | The UK GDPR Article 6 lawful basis for processing personal data is:  Consent, the individual will be asked to give clear consent to be referred to the service provider and that the service provider will have access to the patients stop smoking service record.  In respect of special categories of personal data, the UK GDPR Article 9 ground is:  The data subject has given consent to the processing of his or her personal data for one or more specific purposes: and  The processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of public health in so far as it is authorised by domestic law or a collective agreement pursuant to domestic law providing for appropriate safeguards for the fundamental rights and the interests of the data subject.  The lawful basis for processing requesting anonymised data for reporting and monitoring purposes, is to evidence the party’s compliance with the Stop Smoking medication provisions contract to the WNC.  In respect of special categories of personal data and personal data relating to criminal convictions and offences, Data Protection Act 2018 Schedule 1 Condition, Part 1 Employment, social security and social protection.  For information shared or provided for fraud, law enforcement and prevention and detection of crime purposes, the lawful basis will be legal obligation. Requests will be actioned in accordance with Data Protection Act 2018 Schedule 2, Part 1.  For fraud, law enforcement and prevention and detection of crime purposes, the special categories data, UK GDPR Article 9 ground is:  The UK GDPR Article 6 lawful basis for processing personal data is:  Consent, the individual will be asked to give clear consent to be referred to the service provider and that the service provider will have access to the patients stop smoking service record.  In respect of special categories of personal data, the UK GDPR Article 9 ground is:  The data subject has given consent to the processing of his or her personal data for one or more specific purposes: and  The processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of public health in so far as it is authorised by domestic law or a collective agreement pursuant to domestic law providing for appropriate safeguards for the fundamental rights and the interests of the data subject.  The lawful basis for processing requesting anonymised data for reporting and monitoring purposes, is to evidence the party’s compliance with the Stop Smoking medication provisions contract to the WNC.  In respect of special categories of personal data and personal data relating to criminal convictions and offences, Data Protection Act 2018 Schedule 1 Condition, Part 1 Employment, social security and social protection.  For information shared or provided for fraud, law enforcement and prevention and detection of crime purposes, the lawful basis will be legal obligation. Requests will be actioned in accordance with Data Protection Act 2018 Schedule 2, Part 1.  For fraud, law enforcement and prevention and detection of crime purposes, the special categories data, UK GDPR Article 9 ground is:  2 (f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity.  In respect of special categories of personal data, Data Protection Act 2018 Schedule 1, Part 2, (10) Preventing or detecting unlawful acts; (11) Protecting the public against dishonesty etc; (12) Regulatory requirements relating to unlawful acts and dishonesty etc; and/or (14) Preventing fraud. |
| Data Use Provisions and Data Quality | The Provider will work with the local authority help residents stop smoking by assessing the suitability of those referred for the prescription of the designated stop smoking medication on behalf of the Council.  The data processor will be required to work with:   * WNC Public Health team and particularly the Stop Smoking Team * Service users who live in WNC   The data controller will;   * Collect data that will be captured by the Stop Smoking case management system. This data will be personal identifiable data which includes user, name, address, date of birth, gender, ethnicity, health status and sexual orientation. * Case notes will be made on each service user about their smoking, health conditions and medication.   The requirement for the Service Provider to provide personal data to WNC is:   * Via the Council Stop Smoking Service case management system to ensure a full case record is maintained and the Stop Smoking Advisor working with the patient can supporting them to quit. * To comply with law enforcement and/or safeguarding legislation or other authorities have requested in accordance with applicable law.   The disclosing party is responsible for the quality of the data they are sharing.  Before sharing data, the disclosing party will check that the data being shared is accurate valid, reliable, timely, relevant, complete and up to date to the best of their knowledge. If sensitive data is being shared, which could harm the data subject if it was inaccurate, then particular care must be taken.  The parties shall ensure that the shared personal data remains confidential and that no one, including any member of any party's personnel, has access to the shared personal data other than those directly involved in, or connected with, the agreed purposes.  The data processor shall at the request of the data controller demonstrate that the concerned persons under the data processor’s authority are subject to the abovementioned confidentiality. |
| Type of Personal Data | The data processor will be required to process the following data on the data controller’s behalf, for the agreed purpose:   * Forename * Surname * Date of Birth * Age * Gender * Address * Postcode * Health data * Race or ethnic origin * Health or Social Care Status * Sexual life and/or Sexual orientation   Only anonymised and aggregated data for monitoring and reporting purposes. |
| Special Categories of Personal Data | The data processor will be required to process the following special category data on the data controller’s behalf, for the agreed purpose:   * Monitoring equality of opportunity or treatment * Support for individuals with a particular disability or medical condition   None for monitoring and reporting purposes.  For fraud, law enforcement and prevention and detection of crime purposes, the parties will specify as part of the request. |
| Categories of Data Subject | * Members of the public wishing to use the service:   1. UK GDPR Article 6   2. UK GDPR Article 9: Special Category Data |
| Monitoring and Reporting Data | The contract includes the following Key Performance Indicators (KPI’s). (The following KPI’s may be subject to change and a delivery plan will be agreed at the commencement of the contract). WNC will work with the successful bidder to confirm outputs based on KPI’s and a reporting schedule to monitor contract):   |  | | --- | | Number of people referred for Cytisine | | Number of people given Cytisine | | Number of people referred for Varenicline | | Number of people given Varenicline | | Average time taken to make contact with referrals | | Average time taken to see referrals | | Number of complaints (and copies of complaints and responses) | | Number of people where the Service was declined | | The reasons for the Service to be declined |     The Provider will support WNC’s Stop Smoking Service to assist residents to stop smoking through the assessment of suitability to have stop smoking medication prescribed and record this process in the Council’s case management system. |
| Security Measures | Data controllers and data processors are obliged under Article 32 to put in place appropriate technical and organisational measures to ensure the security of any personal data they process which may include, as appropriate:   * Encryption and pseudonymisation; * The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; * The ability to restore access to personal data in the event of an incident; and * processes for regularly testing and assessing the effectiveness of the measures.   All shared personal data shall be entered on to the Council’s stop smoking case management system.  It is the responsibility of each party to ensure that its staff members are appropriately trained to handle and process the shared personal data in accordance with the technical and organisational security measures set out in this schedule, together with any other applicable laws and guidance.  Reporting and monitoring data can be sent via email.  Personal or special category data for law enforcement, prevention and detection of crime or fraud should be sent via secure file transfer portal. In this event the data controller will arrange for the data processor to access the portal. Once the information has been downloaded by the recipient, the discloser will delete the data from the portal. |
| Data Transfer and Access Requirements | Access to personal data will be limited to the data controller's personnel and permitted recipients.  The parties may share personal data with permitted recipients where applicable by law or by virtue of this schedule. Permitted recipients are:   * Agreed – sub processors * Law enforcement * Fraud agencies * Safeguarding Agencies   Access to personal data can be withdrawn, if access is no longer necessary, and personal data shall consequently not be accessible anymore to those persons. |
| 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 | For the purposes of data held within the West Northamptonshire Council’s systems West Northamptonshire Council shall be Controller, and the provider will be Processor.  The data will be retained and destroyed as per the Controller’s data retention policy. This will be configured in the Controllers system.  The council recognises that the provider will be required to keep records in its own right outside of the Council’s systems, e.g. regarding medical records and / or the prescription of drugs etc. This data will be held by the provider as Controller and the Council holds no role under Data protection regulation. |

**Reminder to Bidders** [OPTIONAL]

|  |  |
| --- | --- |
| Reminder to Bidders | |
| Answered all questions | Yes ☐ |
| Signed the Freedom of Information and Declaration | Yes ☐ |
| Enclosed all relevant documents and clearly marked and numbered these? | Yes ☐ |

1. [Surveillance decision | Evidence | Tobacco: preventing uptake, promoting quitting and treating dependence | Guidance | NICE](https://www.nice.org.uk/guidance/ng209/resources/2024-exceptional-surveillance-of-tobacco-preventing-uptake-promoting-quitting-and-treating-dependence-nice-guideline-ng209-13312648045/chapter/Surveillance-decision?tab=evidence#:~:text=7%2C%201.12.,as%20a%20stop%2Dsmoking%20intervention.) [↑](#footnote-ref-2)