

CONTRACT NUMBER 09/01/[Legal Services to insert file number]

AGREEMENT

for

**for the provision of a Drug and Alcohol
Integrated Treatment Service (Southampton City)**

Contract 1

Young Peoples Early Support and Planning service (working with children and young people
aged 11- 24 years)

(1)

SOUTHAMPTON CITY COUNCIL

- and -

(2)

[NAME OF SERVICE PROVIDER]

Southampton City Council
Civic Centre
Civic Centre Road
Southampton
SO14 7LY

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THIS DEED is made the

day of

201[]

BETWEEN:

THE PARTIES:

- (1) **SOUTHAMPTON CITY COUNCIL** of Civic Centre, Southampton SO14 7LY (the "Council"); and
- (2) **[SERVICE PROVIDER]** of **[REGISTERED OFFICE ADDRESS OF SERVICE PROVIDER]** (the "Service Provider").

together the "**Parties**" and each a "**Party**"

BACKGROUND

(A) Being mindful of its duties and responsibilities to secure best value within the meaning of Section 3(1) of the Local Government Act 1999 and its statutory responsibilities under various social care/education legislation the Council has identified a requirement for the provision of a Drug and Alcohol Integrated Treatment Service (Southampton City) - Contract 1 Young Peoples Early Support and Planning service (working with children and young people aged 11- 24 years)

(B) The Council has now agreed to purchase, and the Service Provider has agreed to provide, the Services on the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION & DEFINITIONS

1.1 In this Agreement:

1.1.1 the masculine includes the feminine and the neuter;

1.1.2 the singular includes the plural and vice versa;

1.1.3 references to persons include firms, corporations, limited liability partnerships, charities and unincorporated associations;

1.1.4 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the same as amended by any subsequent statute, re-enactment, order, regulation or instrument;

1.1.5 headings are included in this Agreement for ease of reference only and shall not affect its interpretation or construction;

1.1.6 references to clauses and the Schedules are, unless otherwise provided, references to clauses of and the schedules to this Agreement.

1.2 In this Agreement the following terms shall have the meanings given below:

“Act of God”

means and shall include all uncontrollable natural forces and natural disasters (including flood, avalanche and storms), unforeseeable accidents and equipment failure which are not the fault of the Party relying upon such circumstances but shall specifically exclude acts of terrorism, war, industrial action and any acts or omissions of any consultants, employees, workers or volunteers in the course of their employment or other engagement or attachment to the Party in question;

"Agreement"

means this Agreement including the Schedules;

"Applicable Law"

means 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 from time to time;

"Commencement Date"

means **1st April 2014**

"Contract Period"

means a period of **5 years** subject to any extension granted pursuant to clause 2 of this Agreement;

“Default”

means any material breach of the obligations of either Party or any default, act, omission, negligence or statement of either Party, its employees, agents, workers (whether voluntary or paid) or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;

"Employment Regulations"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 together with the Directive 2001/23EC to the extent it is directly applicable in the United Kingdom;

“Financial Year”

means the period commencing on 1 April in any calendar year and ending on 31 March in the following calendar year save for i) the first Financial Year of the Contract Period which will commence on the Commencement Date and end on the 31 March next and ii) the last Financial Year of the Contract Period which will commence on the last 1 April in the Contract Period and end on the last 31 March in the Contract Period;

"Force Majeure Event"

means any cause affecting the performance by a Party of its respective obligations provided in this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure and/or other default in the Service Provider's supply chain (including without limitation any Sub-Contractor);

"Health and Safety Legislation"

means the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 and other Applicable Laws in relation to health and safety;

"Insolvency Event" means in respect of a person:

- (a) other than for the purposes of a bona fide reconstruction or amalgamation, that person passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that person being otherwise dissolved;
- (b) the appointment of an administrator of, or the making of an administration order in relation to that person, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking, assets, rights or revenue;
- (c) that person entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors;
- (d) that person being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or
- (e) that person entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors;

"Method Statements"

means the method statements provided by the Service Provider as part of its tender and included in schedule 2 but only to the extent they do not conflict with the Service Specification;

"Personnel"

mean the Service Provider's employees, agents, volunteers, agency staff and sub-contractors;

"Price"

means the sum payable by the Council to the Service Provider for the provision of the Services and is calculable by reference to the Pricing Document;

"Pricing Document"

means the document setting out the Price and attached at Schedule 3 of this Agreement;

"Quarter"

means each of the following periods in the Financial Year: 1st April to 30th June; 1st July to 30th September; 1st October to 31st December; and 1st January to 31st March; and **"Quarterly"** shall be construed accordingly;

"Representative"

means a representative appointed by either Party pursuant to clause 22.3 and as identified in clause 22.4 and 22.5;

"Relevant Transfer"

means a relevant transfer for the purposes of the Employment Regulations;

"Relevant Transfer Date"

means the date or dates on which an employee transfers to the Service Provider and/or one or more sub-contractors by virtue of a Relevant Transfer;

"Replacement Services"

means any services which are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Agreement;

"Replacement Service Provider"

means any third party service provider of Replacement Services appointed by the Council;

"Services" means the provision of a Drug and Alcohol Integrated Treatment Service (Southampton City) - Contract 1 - Young Peoples Early Support and Planning service (working with children and young people aged 11- 24 years) service to be provided by the Service Provider in accordance with the Service Specification and this Agreement generally;

"Service Specification"

means the service specification set out in Schedule 1;

"Service Users"

means any individual for whose benefit the Services are provided and or as notified to the Service Provider by the Council in writing from time to time;

"Sub-Contract"

means any agreement or arrangement between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party and any other agreement or arrangement entered

into in connection with the Service Provider's delivery of the Services in connection with this Agreement at whatever tier;

“Sub-Contractor”

means a third party who has entered into a Sub-Contract;

"Subsequent Transfer Date"

means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Service Provider and the Council and/or a Replacement Service Provider (as the case may be);

“Transferring Employees”

means that employee who is or those employees who are essentially dedicated to the provision of the Services by the Service Provider;

“Working Days”

means Monday to Friday, excluding Bank Holidays in England.

2. COMMENCEMENT AND DURATION OF THE AGREEMENT

2.1 This Agreement shall operate from the Commencement Date (being *1st April 2014*) and shall continue for the Contract Period (being *3 years*) unless earlier terminated in accordance with the terms of this Agreement.

2.2 The Council may extend the Contract Period by individual periods not exceeding a total period of [twenty-four (24) months]¹ upon giving a minimum of thirty (30) days' notice in writing to the Service Provider.

3. OBLIGATIONS OF THE PARTIES

3.1 The Service Provider shall provide the Services in accordance with the terms of this Agreement.

3.2 In consideration of the Service Provider providing the Services in accordance with the terms of this Agreement, the Council shall pay the Price.

4. EQUAL OPPORTUNITIES AND HEALTH AND SAFETY

4.1 The Service Provider shall, throughout the Contract Period ensure that the Services are provided in such a manner as to comply with the Equality Act 2010, the Human Rights Act 1998 and the Employment Equality (Age) Regulations 2006. Further the Service Provider shall seek to promote equality among its Personnel and generally.

4.2 The Service Provider shall set out its equal opportunities policy:

4.2.1 in instructions to those concerned with recruitment, training and promotion;

¹ DN: Amend as appropriate

- 4.2.2 in documents available to its Personnel, recognised trade unions or other representative groups of its Personnel; and
- 4.2.3 in advertisements and other literature.
- 4.3 The Service Provider shall, on request, provide the Council with examples of such instructions, documents, advertisements and literature as described in clause 4.2 above.
- 4.4 In the event of any finding of unlawful discrimination being made against the Service Provider by any court or tribunal, or of any adverse finding in any formal investigation, the Service Provider shall take appropriate steps to prevent repetition of the unlawful discrimination and shall, on request, provide the Council with details of any steps taken.
- 4.5 The Service Provider shall take all reasonable steps to ensure that Personnel engaged in the performance of the Agreement do not act towards either Council staff or members of the public in a manner that could amount to harassment or discrimination on any of the grounds described in clause 4.1.
- 4.6 The Service Provider shall have in place Equality Schemes which are comparable to the Council's Equality Schemes as updated from time-to-time and the Council shall provide copies of its Equality Schemes to the Service Provider upon request
- 4.7 The Service Provider shall provide, upon request by the Council, written evidence to support the implementation of its Equality Scheme in the provision of the Services and in accordance with any timescales agreed between the Parties.
- 4.8 The Service Provider shall comply with all relevant health and safety legislation, [and shall take all reasonable steps to ensure that the Services are provided in a safe, healthy and supportive environment, which meets the needs of the Service Users]²..

5. CONFIDENTIALITY AND OBLIGATIONS UNDER THE FREEDOM OF INFORMATION ACT 2000 AND OTHER LEGISLATION

- 5.1 For the purpose of this clause 5:

“Codes of Practice” means the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records issued pursuant to sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance issued in relation to the Council's FOIA obligations, as amended, updated and replaced from time to time;

² DN This may need to be adapted if not used for social services.

“Confidential Information” means, subject to condition 5.9, information, data and material of any nature, and held in any form or medium, which either Party may receive or obtain in the performance of or in connection with this Agreement;

“Discloser” means any party who discloses Confidential Information to the other party;

“DPA” means the Data Protection Act 1998, as amended from time to time;

“EIR” means the Environmental Information Regulations 2004 and any subsequent regulations issued from time to time;

“FOIA” means the Freedom of Information Act 2000, as amended from time to time;

“Personal Data” has the same meaning as prescribed under the DPA;

“Recipient” means any party that obtains or receives Confidential Information from the Discloser.

5.2 Subject to the remainder of clause 5, the Parties undertake to keep strictly confidential and shall not disclose any such Confidential Information to any third Party without the prior written consent of the other Party provided that:

5.2.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Agreement;

5.2.2 this clause 5.2 shall not apply to any Confidential Information which:

- (a) is in or enters the public domain other than by breach of this Agreement or any other act or omission by the Recipient;
- (b) is obtained by a third party who is lawfully authorised to disclose it;
- (c) is authorised for release by the prior written consent of the Discloser;
- (d) the disclosure of which is required to ensure the Council’s compliance with the FOIA and/or Codes of Practice; or
- (e) where disclosure of Confidential Information is required pursuant to judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

- 5.3 The Service Provider acknowledges that the Council is subject to obligations under the DPA, FOIA and EIR and, to the extent that they apply to the Service Provider's performance of its obligations under this Agreement, the Service Provider shall act in accordance with the DPA, FOIA, the Codes of Practice, the EIR and any other similar codes of practice or guidance notified to the Service Provider from time to time.
- 5.4 In addition to clause 5.3 above, the Service Provider will take appropriate security measures to protect against unauthorised or unlawful processing or accidental loss or destruction of Personal Data, and shall comply with any instructions issued by the Council to the Service Provider as to any appropriate standard for the management of Personal Data and information security management.
- 5.5 The Service Provider agrees:
- 5.5.1 and consents to the Council providing or disclosing Confidential Information where such disclosure is necessary in order for the Council to discharge its obligations under the FOIA;
 - 5.5.2 to the Council publishing information provided to the Council by the Service Provider in the Council's Publication Scheme as required by the FOIA;
 - 5.5.3 that the decision on whether or not any exemption applies to a request for disclosure made under the FOIA is a decision solely for the Council;
 - 5.5.4 where the Council is managing a request for disclosure of information pursuant to the FOIA, the Service Provider will cooperate with the Council and will respond to any request by the Council for assistance within five (5) Working Days; and
 - 5.5.5 that where the Service Provider wishes to engage a sub-contractor pursuant to the terms of this Agreement, the Service Provider shall procure from such sub-contractor an undertaking to comply with the obligations of this clause 5 in a form approved by the Council.
- 5.6 The Council will consult with the Service Provider prior to disclosing any of the Service Provider's Confidential Information pursuant to a request for such information under the FOIA.
- 5.7 The provisions of this clause 5 shall survive and remain in full force upon and following the termination of this Agreement.
- 5.8 The Service Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, losses, charges, and expenses whatsoever in respect of any breach by the Service Provider of this clause 5.

- 5.9 Notwithstanding any other provision of this Agreement the Parties acknowledge and agree that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA the content of this Agreement is not Confidential Information.
- 5.10 The Service Provider acknowledges that the Council may be subject to governmental codes of practice or guidance relating to a transparency agenda, including the policy of publishing contracts and all other documents relating to public procurement activity, such as for example the 29 September 2011 document "The Code of Recommended Practice for Local Authorities on Data Transparency". Accordingly and notwithstanding any other provision of this Agreement, the Service Provider hereby gives its consent for the Council to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Agreement. In relation thereto the Council may consult with the Service Provider to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion. The Service Provider shall assist and cooperate with the Council to enable the Council to publish this Agreement or any other documents relating to the public procurement activity from which this Agreement resulted in accordance with the aforementioned governmental transparency agenda.

6. PAYMENT

- 6.1 The Council shall pay the Price, Quarterly in arrears, to the Service Provider on the dates specified in the Pricing Document following receipt of a valid written invoice from the Service Provider. The invoice shall be submitted thirty (30) days in advance of the payment date specified in the Pricing Document.
- 6.2 The Price described in the Pricing Document is fixed for the duration of the Contract Period. The Council will not pay the Service Provider any additional increase in the Price in respect of or in relation to an inflationary uplift in line with any retail price indexation.
- 6.3 All payments made under clause 6.1 shall be reconciled with Services actually delivered on a regular but no less than an annual basis and any over payments shall be deducted by the Council from the next invoice delivered by the Service Provider. The timing and frequency of such reconciliation of the payments shall be at the sole discretion of the Council, and the Service Provider shall cooperate and provide assistance where required and pursuant to the Council's reasonable requests in relation to this clause.
- 6.4 The Council shall be entitled to recover, as a debt, any overpayments made to the Service Provider not recovered within the Contract Period.

7. PERFORMANCE OF THE SERVICE

7.1 The Service Provider shall provide the Services in accordance with the Service Specification, Method Statements and this Agreement generally.

7.2 In providing the Services, the Service Provider will comply with all codes of practice, guidelines and policy documents applicable to the Services.

7.3 Where there is any inconsistency between requirements set out in this Agreement, the following order of precedence shall be observed in respect of that inconsistency:-

- (1) the terms and conditions of this Agreement;
- (2) Schedule 1 (the Service Specification);
- (3) the other Schedules
- (4) any other document referred to in this Agreement

7.4³ Notwithstanding clauses 7.1 to 7.3 above, the Service Provider will provide the Services in accordance with the following documents as updated from time-to-time and available from the Council on request:

7.4.1 **4LSCB Policies and Procedures**

The policy and procedural requirements of Hampshire, Portsmouth and Southampton Local Safeguarding Children's Board 2007

7.4.2 **Council's Comprehensive Equality Policy.**

A copy is available from Southampton City Council's internet site.

7.4.3 **Southampton Children and Young People's Trust Information Sharing Protocol.**

A copy can be obtained from the Contracts Team, Commissioning, Children's Services and Learning Directorate, Southbrook Rise, 4 – 8 Millbrook Road East, Southampton, SO15 1YG.
Telephone: 023 8083 2105

8. WARRANTIES AND REPRESENTATIONS

8.1 The Service Provider warrants to the Council as follows:

8.1.1 the Service Provider has full capacity and authority and all necessary consents to enter into and to perform the Services and its obligations under this Agreement and that this Agreement is executed or signed (as appropriate) by duly authorised representatives of the Service Provider;

8.1.2 the Service Provider shall provide sufficient personnel, equipment, management and all other resources necessary to ensure that the

³ DN: policies applicable for CS and L. List of documents may need adapting for other service areas

Services are provided in accordance with the terms of this Agreement;

- 8.1.3 the Service Provider shall perform the Services and discharge its obligations under this Agreement with all due skill, care and diligence of a properly qualified and competent organisation providing services identical or similar to the Services and in accordance with the requirements of this Agreement;

9. SERVICE PROVIDER'S PERSONNEL

- 9.1 The Service Provider warrants to the Council that the Services shall be performed or provided by appropriately experienced, qualified and trained Personnel. The Service Provider shall ensure that its Personnel receive induction, supervision and training appropriate to their role and that the quality of their work will be continuously assessed and that they will receive further training as necessary to ensure that they meet the standards required to provide the Services in accordance with this Agreement.

- 9.2⁴ The Service Provider warrants that all its Personnel are suitable persons to be employed in the provision of the Services, noting that they are services of such a kind as require the Personnel to have access in the normal course of their duties to persons:

[under the age of 18/ suffering from serious illness or mental disorder / addicted to drink or drugs / who are blind, deaf or dumb / who are substantially and permanently disabled by illness, injury or congenital deformity.]

⁴ DN 9.2 to end of clause 9.9 may not be relevant for non-social services/childcare contracts.

9.3 The Service Provider shall ensure that it complies with the requirements of the Disclosure and Barring Service ("DBS") at all times with regards to its Personnel.

9.4 For the purposes of clauses 9.5 to 9.7 a "Current Check" means a Criminal Records Bureau ("CRB") or DBS (as the case may be) check commissioned by the Service Provider and completed before, but no more than 12 months before, the member of the Personnel to which the check relates is employed or engaged in or in connection with the Services.

9.5 The Service Provider shall ensure that, in so far as is consistent with the guidelines issued by the DBS, all Personnel employed or engaged in or in connection with the Services have a Current Check and shall ensure that such Current Check is at a level appropriate to the role in the provision of the Services to be undertaken by the subject of the check, and in any event at:

9.5.1 an enhanced level in respect of those Personnel where the position is included in both the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and in Police Act Regulations; and

9.5.2 an enhanced level with children and/or adults' barred list check(s) in respect of those Personnel who will be engaged or employed in or in connection with a Regulated Activity as defined in the Safeguarding Vulnerable Groups Act 2006 as amended; and

9.5.3 a standard level in respect of positions included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975;

but the obligation on the Service Provider to have Current Checks in place for its Personnel shall only apply in so far as relevant legislation permits the Service Provider to have CRB or DBS checks carried out on the relevant Personnel.

9.6 The Council may require the Service Provider to carry out and disclose the results of such further DBS checks, in addition to a Current Check, on any Personnel, that it considers, acting reasonably, are necessary to protect Service Users.

9.7 The Service Provider shall confirm to the Council in writing as soon as reasonably possible after a member of its Personnel has been engaged or employed in or in connection with the Services, that a Current Check is in place in relation to that member of its Personnel.

9.8 The Service Provider shall:

9.8.1 obtain the express written consent from each of its Personnel to pass on to the Council any disclosure information obtained in respect of that individual in accordance with clause 9.5 or clause 9.6 to the maximum extent permitted by law; and

9.8.2 ensure that no person who discloses any convictions, or who is discovered by the Service Provider to have any convictions following the results of a DBS enquiry, is employed or engaged in connection with the Services without the prior written consent of the Council.

9.9 The Service Provider shall procure that the Council is advised as soon as possible if any of its Personnel at any time:

9.9.1 receives an allegation that a member of staff may have or has committed a criminal offence against a child or vulnerable adult, has or may have harmed a child or vulnerable adult or has acted in a way that indicates that they may pose a risk of harm to work with children or vulnerable adults;

9.9.2 receives a conviction or whose previous convictions are discovered by the Service Provider; or

9.9.3 becomes barred by the DBS from undertaking regulated activities.

9.10 The Council may (but not unreasonably or vexatiously) require the Service Provider to remove a member of its Personnel from the provision of the Service, and if the Council gives notice that it requires such removal, then the Service Provider shall immediately remove that individual from the Service pending full investigation and provide a replacement of appropriate skill and competence, but the Council shall not be liable either to the individual or to the Service Provider for any claims or costs arising out of such removal under this clause 9.10.

9.11 Any notice given by the Council to the Service Provider under clause 9.10 shall set out the grounds or reasons for the Council exercising its rights under that clause.

10. RECORDS, AUDIT AND INSPECTION

10.1 The Service Provider shall, and shall procure that its sub-contractors shall, maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and all transactions entered into by the Service Provider for the purposes of this Agreement. The Service Provider shall and shall procure that its sub-contractors shall retain all such records for a period of no less than six (6) years (or such other period as may be required by law) following termination or expiry of this Agreement.

10.2 The Council shall have the right to audit any and all such records at any time during the performance of this Agreement and during the six (6) year period (or such other period as may be required by law) following termination or expiry of this Agreement.

10.3 The Service Provider shall allow the Council's authorised representatives, at any reasonable time, to undertake any inspection, audit or check of any aspect of the Service Provider's performance of the Services. The Council shall give the Service Provider reasonable notice, in writing or verbally, of its intention to undertake an inspection, audit or check under this clause 10.

- 10.4 The Service Provider shall provide the Council with all reasonable co-operation in relation to any inspection, audit or check including:
- 10.4.1 granting access to any premises or systems used in the Service Provider's performance of this Agreement, and where such premises or systems are not the Service Provider's own, using reasonable endeavours to procure such access;
 - 10.4.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit;
 - 10.4.3 making any information relating to the performance of the Agreement available for inspection and providing copies of such information if requested.

11. QUALITY ASSURANCE

- 11.1 The Service Provider shall use its reasonable endeavours to ensure that at all times adequate and effective quality assurance procedures are maintained to ensure that the standards set out in the Service Specification are met.
- 11.2 The Service Provider shall adhere to a recognised quality management process when providing the Services.
- 11.3 Without detracting from clauses 11.1 and 11.2, the Service Provider shall ensure that in complying with all its obligations under this Agreement, it delivers high quality, customer focused Services.
- 11.4 The Service Provider is required to demonstrate that it has in place a formal system of quality assurance that ensures that quality is designed and built into service delivery. The quality assurance system shall comprise:
- 11.4.1 a service plan which includes a written statement of the purpose, aims, objectives and priorities related to service delivery;
 - 11.4.2 relevant policies and procedures to inform and guide delivery of the Services;
 - 11.4.3 relevant and up to date written information which describes the availability and nature of the Services available to Service Users and potential Service Users;
 - 11.4.4 service and customer care standards which clearly describe what Service Users can expect from the Services. The latter must be published and made available to Service Users;
 - 11.4.5 regular monitoring and evaluation of performance against objectives, the requirements of the Service Specification and the Service Provider's own internal standards. Monitoring arrangements must include obtaining regular feedback from Service Users and from relevant third parties. The results of monitoring must be recorded and used in the future planning of the Services; and
 - 11.4.6 a complaints procedure that operates within specified timescales and methods of investigation. The procedure must be widely available to Service Users; and

11.5 Any development of, or alterations to, the quality assurance system shall be notified to the Council within a reasonable period of such alteration or development.

12. COMPLAINTS

12.1 The Service Provider shall deal with any complaints about the Services, received from whatever source, in a prompt, courteous and efficient manner in accordance with the Council's Stage 1 complaints procedure as updated from time-to-time

12.2 The Service Provider shall keep a written record of all complaints received and of the action taken in respect of such complaints resolved at Stage 1 of the Council's complaints procedure..

12.3 The Service Provide shall refer to the Council's Representative any complaint which remains unresolved or where the Service User or the member of public has requested the involvement of the Council in the resolution of the complaint.

12.4 The Service Provider shall inform the Council's Representative in writing of all complaints received and of all steps taken, and shall permit its record of complaints to be inspected at all reasonable times by the Council.

12.5 Complaints shall be discussed between the parties during any meetings held for the purposes of monitoring this Agreement, or in the alternative, such periods as may be prescribed in the Service Specification.

13. MONITORING AND REVIEW ARRANGEMENTS

13.1 The Council and the Service Provider shall meet once every month during the Contract Period to monitor the performance and delivery of the Services in accordance with the Service Specification.

13.2 Within a reasonable period following each anniversary of the Commencement Date, senior representatives of the Service Provider and the Council shall meet to review the Services and to explore whether the provision of the Services can be improved in accordance with the principles of best value, or successor initiatives which are designed to improve the quality and value of the Services. During the Contract Period, the Service Provider acknowledges that, in the event of a best value review being invoked by the Council, the Service Provider will assist in the process as reasonably requested and shall provide all such documentation as may be required and access to its premises at reasonable notice for the Council or their inspectors.

13.3 From time to time, the Council may require the Service Provider to provide reports to, or be involved in discussions with, elected Council members, in particular the Scrutiny Committee of the Council. The Service Provider shall, at its own cost, comply with the Council's reasonable requirements.

14. LEGAL REQUIREMENTS

14.1 In performing its obligations under this Agreement, the Service Provider shall at all times conduct its affairs in a reputable manner, and comply with all Applicable Laws including but not limited to Health and Safety Legislation.

15. INSURANCE AND INDEMNITY

15.1 INDEMNITY

15.1.1 Subject to the exclusions in clause 15.1.2, the Service Provider shall be liable for and shall indemnify the Council or its employees against any expense, liability, loss, claim or proceedings whatsoever (“**losses**”) in respect of the death of or injury to any person, loss of or damage to any property and in respect of any other losses which may arise out of or in the course of or by reason of any breach of contract, tort, breach of statutory duty, misrepresentation, misstatement, act, omission or default of the Service Provider or its personnel in the performance, non-performance or part-performance of the Agreement.

15.1.2 The Service Provider is not responsible for and shall not indemnify the Council for losses to the extent that such losses are caused by negligence of the Council or its employees.

15.2 INSURANCE

15.2.1 The Service Provider shall maintain in force at least the following insurance policies with reputable insurance companies to cover its relevant potential liabilities in connection with this Agreement:

15.2.1.1 employer's liability (up to £10,000,000 in respect of any one claim); and

15.2.1.2 public liability (up to £5,000,000 in respect of any one claim),

15.2.2 The Service Provider shall ensure that the insurances extend to indemnify the Council as principal.

15.2.3 At the request of Council, in each year of the Contract Period, the Service Provider shall prove to the Council's satisfaction that it meets the minimum insurance requirements set out in clause 15.1.

16. DEFAULT AND TERMINATION

- 16.1 If either Party considers the other Party to be in Default of its obligations under this Agreement, that Party shall notify the other Party in writing of the Default, and if appropriate the matter shall be considered by the Parties at a meeting. Both Parties shall make a reasonable effort to agree a joint plan of action to remedy the situation.
- 16.2 Where, after and despite any action taken in accordance with clause 16.1, a Party still considers the other Party to be in Default, that Party may give the other Party a Default Notice specifying the Default and giving a reasonable period of time in which the required remedial action is to be taken ("Default Notice").
- 16.3 Not used
- 16.4 If the Service Provider is in Default under the Agreement and fails to comply with the remedial action in a Default Notice, the Council may give notice in writing terminating this Agreement ("Termination Notice"). A Termination Notice shall take effect four weeks from its date except that where the Council serves a Termination Notice for a material breach not capable of remedy the Termination Notice shall have immediate effect..
- 16.5 The Council may terminate this Agreement with immediate effect if the Service Provider is subject to an Insolvency Event.
- 16.6 The Council may terminate this Agreement on giving the Service Provider a minimum of 6 months written notice. The Service Provider may terminate this Agreement on giving the Council a minimum of 6 months written notice.
- 16.7 Termination of this Agreement shall have no effect on the liability of either Party for the payment of any sums arising under this Agreement, or any rights or remedies of either Party already accrued, prior to the date upon which termination takes effect.
- 16.8 Notwithstanding clause 16.4 the Council may terminate this Agreement by notice having immediate effect and recover from the Service Provider the amount of any loss resulting from such termination if the Service Provider, its Personnel or any person acting on its behalf shall have:
- 16.8.1 offered, given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to this Agreement;
 - 16.8.2 committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010; or

- 16.8.3 given any fee or reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972.
- 16.9 Where the Council has been served with a notice of discontinuation of funding by the funder or its agents the Council may terminate this Agreement by giving written notice to the Service Provider. The period of notice given by the Council to the Service Provider shall be no more than 5 Working Days less than the period of notice given to the Council by the funder or three months whichever is less.
- 16.10 The Council may, during the continuance of any Force Majeure Event, terminate this Agreement immediately by written notice to the Service Provider if the Force Majeure Event affects all or a substantial part of the Services and has continued for more than 20 Working Days.
- 16.11 Where the Agreement is terminated pursuant to clauses 16.4, 16.5 or 16.8 the Council may:
- 16.11.1 procure others to carry out the Services for the remainder of the Contract Period; and
- 16.11.2 recover from the Service Provider the amount of any expenses properly incurred, including those incurred under sub-clause 16.11.1, and the amount of any direct loss and or damages caused to the Council whether arising as a result of the termination or otherwise.

17. DISPUTE RESOLUTION⁵

- 17.1 The Parties shall use their reasonable endeavours to resolve by agreement any dispute between them with respect to any matter relating to this Agreement.
- 17.2 In the event that a dispute cannot be resolved by agreement under clause 17.1 the Parties may either:
- 17.2.1 agree to refer the dispute to an independent person to be appointed by agreement between the Parties. Any charge made and expenses reasonably incurred by that independent person shall be paid by the Parties in equal shares, unless the independent person determines that a greater share should be borne by one of the Parties. The independent person shall be provided with all necessary information and given assistance by the Parties in resolving their dispute, and may, by agreement between the Parties, be given the right to recommend or approve terms of settlement of the dispute; or

⁵ DN Application of this clause to be discussed with clients on a case by case basis to conclude if decisions under 17.2 are to be binding or if any rights to go to court are to be reserved.

17.2.2 agree to refer the dispute for mediation arranged by the Centre for Dispute Resolution or another body established for the promotion of alternative dispute resolution.

18. ASSIGNMENT

18.1 The Service Provider shall not assign, novate, sub-contract or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the Council.

18.2 The Council may by written notice to the Service Provider assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under this Agreement at any time to any person having the legal capacity, power and authority to become a party to and to perform the obligations of the Council under this Agreement.

19. ENTIRE AGREEMENT

19.1 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referred to herein, supersedes all prior representations, writings, negotiations or understandings.

19.2 Each Party acknowledges that in entering into this Agreement it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement or where such statement, representation, assurance or warranty is made fraudulently.

20. WAIVER

20.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled under this Agreement, shall not constitute a waiver and shall not cause a diminution of the obligations established by this Agreement.

20.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

20.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 22.

21. AMENDMENT AND VARIATIONS

21.1 Any amendment or variation to this Agreement shall be recorded in writing and shall be signed by or on behalf of both Parties.

21.2 The Council may issue the Service Provider with written variations to the scope or specification of the Services, provided that a requirement to provide the Services to the Service Specification shall not be a variation.

21.3 Variations issued pursuant to clause 21.2 shall be valued by the Council at fair rates and prices, having regard to the rates and prices set out in this Agreement.

22. COMMUNICATION AND NOTICES

22.1 Not used

22.2 Any notice or other communication whatsoever which either Party is required or authorised by this Agreement to give or make to the other shall be given or made by recorded delivery post (or equivalent) or by facsimile transmission confirmed by recorded delivery post (or equivalent), addressed to the other Party and if that communication is not returned as being undelivered it shall be deemed for the purposes of this Agreement to have been given or made two days after the date of the receipt being stamped by the postal service (in the case of a communication sent by post) or four hours after the time of the transmission report (in the case of a communication by facsimile transmission).

22.3 Upon the commencement of this Agreement, the Council and Service Provider shall appoint a Representative who shall have full authority to act on behalf of that Party in connection with this Agreement.

22.4 For the purposes of this Agreement:

The Council's Representative is:

[Insert name and contact details of commissioning lead]

The Service Provider's Representative is:

[Insert name, title and contact details]

22.5 For the purposes of this Agreement

The postal address of the Council is:

Southampton City Council
Directorate of **[Insert name of Directorate]**

The facsimile transmission address of the Council is:

[Insert Head of Service Care Group] fax number]

The postal address of the Service Provider is:

[Insert address of Service Provider]

The facsimile transmission address of the Service Provider is:

[Insert Service Provider's Fax number]

The postal address of the Council is:

Southampton City Council
Directorate of **[Insert name of Directorate]**

The facsimile transmission address of the Council is:

[Insert Head of Service Care Group] fax number]

The postal address of the Service Provider is:

[Insert address of Service Provider]

The facsimile transmission address of the Service Provider is:

[Insert Service Provider's Fax number]

- 22.6 Either Party may change its Representative, during the Contract Period and shall provide the name, address and telephone number of the new Representative, to the other Party as soon as practicable.
- 22.7 Day to day management of this Agreement and communication between the Parties may be (unless otherwise notified by the Council) by email but for the avoidance of doubt any notice sent in accordance with this Agreement must be sent in accordance with clause 22.2.

23. SEVERABILITY

23.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been signed or executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Parties shall immediately commence good faith negotiations to remedy such invalidity.

24. FORCE MAJEURE

24.1 In the event that this Agreement cannot be performed or its obligations fulfilled as a result of a Force Majeure Event then such performance or failure to fulfil its obligations by any such Party shall be deemed not to be a breach of this Agreement.

25. GOVERNING LAW AND JURISDICTION

25.1 This Agreement shall be governed and construed according to the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the Courts of England and Wales.

25.2 This Agreement is binding on the Parties and their successors and assignees.

26. PUBLICITY

26.1 Either Party may make a press announcement or publicise this Agreement provided that the Party wishing to make the announcement shall obtain the consent of the other before releasing any press statement or carrying out any such publicity.

27. OPEN BOOK ACCOUNTANCY

27.1 The Service Provider shall, upon reasonable request and notice, give the Council open access to all accounts concerning the Services and if no such notice is received, then shall offer such access on an annual basis.

28. Not used.

29. ENVIRONMENTAL POLICIES

- 29.1 In providing the Services, the Service Provider shall exercise control to minimise noise pollution.
- 29.2 The Service Provider shall take all reasonable steps to prevent nuisance to members of the public from the provision of the Services.
- 29.3 The Service Provider shall adhere to the Council's environmental policies as amended from time to time.

30. FRAUD PREVENTION

- 30.1 The Council shall be entitled to use all information provided by the Service Provider or to which the Council has access to as a result of this Agreement for the purposes of preventing and detecting fraud and the Service Provider shall provide all assistance necessary in that prevention and detection.

31. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (TUPE)

- 31.1 The Parties acknowledge and agree that the Employment Regulations apply to this Agreement at its commencement and (unless the Employment Regulations have been revoked or otherwise withdrawn) on the expiry or early termination of this Agreement. The Service Provider shall at all times comply with the requirements of the Employment Regulations.
- 31.2 Where: (i) all or part of the Services cease to be provided by the Service Provider under this Agreement for any reason; and (ii) all or part of the Services continue to be provided by the Council and/or the Replacement Service Provider, there may be a relevant transfer of the Transferring Employees to the Council and/or the Replacement Service Provider for the purposes of the Employment Regulations. If there is such a transfer, the employment of the Transferring Employees shall transfer to the Council and/or the Replacement Service Provider in accordance with the Employment Regulations with effect from and including the Subsequent Transfer Date.

- 31.3 Save where the Parties reasonably believe that there will be no relevant transfer for the purposes of the Employment Regulations, the Parties shall co-operate in agreeing a list of Transferring Employees prior to the Subsequent Transfer Date and shall co-operate in seeking to ensure the orderly transfer of the Transferring Employees to the Council and/or the Replacement Service Provider.
- 31.4 The Service Provider shall not later than three (3) months prior to the expiry of this Agreement (or, if earlier, within thirty (30) days of notice being given of the early termination of this Agreement) to the extent lawfully permitted provide the Council with the following details:
- (a) a list of those personnel engaged in the Services (the "**Potential Transferring Employees**");
 - (b) the job title, age, length of continuous services, current remuneration, benefits and notice periods of each of the Potential Transferring Employees;
 - (c) the terms and conditions of employment of the Potential Transferring Employees, including any particulars that the Service Provider is obliged to give under section 1 of the Employment Rights Act 1996;
 - (d) any current disciplinary or grievance proceedings ongoing in respect of the Potential Transferring Employees and any such proceedings in the preceding three (3) years;
 - (e) any claims whether current or which the Service Provider has reasonable grounds to believe will be brought by the Potential Transferring Employees or their representatives or which have been brought in the preceding three (3) years;
 - (f) all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Transferring Employees; and
 - (g) information on any collective agreements which will have effect in relation to the Potential Transferring Employees after the Subsequent Transfer Date pursuant to the Employment Regulations.
- 31.5 The Service Provider shall provide updates of the details listed above at regular intervals to be specified by the Council.
- 31.6 The Service Provider shall indemnify the Council (both for itself and a Replacement Service Provider) against any or all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Council and/or a Replacement Service Provider in connection with or as a result of:

- (a) any claim or demand by any employee who transfers to the Council or the Replacement Service Provider (an “**Actual Transferring Employee**”) or a trade union or other body or person representing a Actual Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Service Provider on or before the Subsequent Transfer Date;
- (b) any failure by the Service Provider to comply with its obligations under regulations 13 and 14 of the Employment Regulations, or any award of compensation under regulation 15 of the Employment Regulations, save where such failure arises from the failure of the Council and/or Replacement Service Provider to comply with its or their duties under regulation 13 of the Employment Regulations; and/or
- (c) a claim by any person who transfers or alleges that they have transferred to the Council or the Replacement Service Provider, but whose name is not included in the list of Transferring Employees referred to in clause 31.3.

32. HUMAN RIGHTS

- 32.1 The Service Provider shall comply with the provisions of the Human Rights Act 1998 as if it were a public body as defined by the Human Rights Act 1998 as appropriate to the provision of the Services.

33. SURVIVAL OF THE AGREEMENT

- 33.1 Insofar as any of the rights and obligations of the Parties in this Agreement shall or may be exercised after expiry or termination of the Agreement, the provisions of the Agreement conferring such rights and obligations shall survive and remain in full force and effect, notwithstanding such expiry or termination.
- 33.2 For the avoidance of doubt the following clauses shall survive a termination of the Agreement:

clauses: 1, 5, 8, 10, 14, 15, 17, 27, 28, 30, 31, 32, 33 and 34 .

34. RIGHTS OF THIRD PARTIES

- 34.1 Any third party who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 (“the Third Party Act”) to enforce any term of this Agreement notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such third party. This does not affect any right or remedy of such third party which exists or is available apart from the Third Party Act.

IN WITNESS whereof the Parties have executed this Agreement as a Deed the day and year first above written

THE COMMON SEAL of the
SOUTHAMPTON CITY COUNCIL
was hereunto affixed in the presence of:

Authorised Signatory	Signature
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	Name IN CAPITALS
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EXECUTED AS A DEED by
 [SERVICE PROVIDER]
 acting by:

Director	Signature
	Name IN CAPITALS

Director/Company Secretary*	Signature
	Name IN CAPITALS

** Please delete as applicable*

SCHEDULE 1

SERVICE SPECIFICATION

SCHEDULE 2

Method Statements

SCHEDULE 3

PRICING