SERVICES AGREEMENT

These documents provide a starting point for mutuals and commissioners working on a spin-out. They have been drafted according to a series of assumptions, to be adapted on a case by case basis by professional advisors.

If the mutual is to carry out the services as a contractor for the Local Authority, the mutual will be funded under a Services Agreement.

The Services Agreement protects the Local Authority as the contracting authority by setting out the terms of the funding and the services to be provided, and providing remedies to the contracting authority if the terms are breached. The Agreement protects the mutual as the contractor by legally binding the contracting authority to pay the fee for the services on time.

This template Services Agreement provides these protections and contains standard terms covering (amongst others): the contract period; the obligations of the parties; monitoring and reporting requirements; intellectual property and publicity; and provisions for termination of the funding arrangement by either party.

This template has been prepared to provide general guidance and information to organisations considering or undertaking mutualisation. It is intended to be a starting pointonly and should not be considered a finalised legal document or as constituting legal advice. It is the responsibility of your organisation to seek legal advice and to ensure that the document is reviewed and signed off by your legal team.

The template contains a breakdown of drafting assumptions which highlight areas where additional drafting and legal advice may be required. Additional drafting is not limited to these areas and you should seek further legal guidance where you deem necessary.

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DRAFTING ASSUMPTIONS

In preparing this Agreement we have made a number of assumptions regarding the circumstances within which this Agreement will be used and these are set out in detail below. Please be aware that where the circumstances between the Council and the Mutual differ from our assumptions, or differ from the approach taken in any provisions of this Agreement, this Agreement may not be appropriate for use in its current form and additional drafting may be required. In such circumstances the Parties should seek additional legal advice. The capitalised terms used in these drafting assumptions are the same as in the Services Agreement (unless the context requires otherwise).

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| **Category** | **Assumption** | **Additional Drafting** |
| CONTRACT YEAR | We have defined the Contract Year as each calendar year following the Commencement Date, or anniversary of the Commencement Date. This does not necessarily correlate with the Council’s financial year. | If the Contract Year is to correlate to the Council’s/Mutual’s financial year, this can easily be amended but will require bespoke drafting. |
| ASSETS/EQUIPEMENT | We have assumed that the Services do not require the use of significant assets or equipment. Where any such assets/equipment are required we have assumed that these will be transferred from the Council to the Mutual under the Transfer Agreement, and transferred back to the Council, or to a Future Provider, on termination of this Services Agreement in accordance with the Exit Plan. We have also assumed that any replacement assets purchased with the Fee by the Mutual during the Term will also transfer to the Council upon the expiry or earlier termination of this Agreement. | If more complex arrangements around equipment are required, (e.g. if equipment will remain the property of the Council and a lease or licence of equipment from the Council to the Mutual is required) then bespoke provisions will need to be included to provide for this. |
| INSURANCE | We have assumed that liabilities associated with the Services will be insured by the Mutual for the duration of the Services Agreement, and that the cost of such insurance will be reflected in the Fee. | If the insurance arrangements will differ from the assumed position (i.e. the Council will insure some or all aspects of the Services) this will require bespoke provisions. |
| DATA PROTECTION | We have assumed that all Personal Data needed to provide the Services will be transferred from the Council to the Mutual under the Transfer Agreement and that the Mutual will become the controller for that Personal Data during the Contract Term and for any new Personal Data collected in its delivery of the Services.  We have assumed that there will be no sharing of Personal Data from the Mutual to the Council during the Term (and that any reporting information will therefore be anonymised). We have also assumed that at the end of the Contract Term or upon earlier termination the Personal Data that relates to the Services will be transferred back to the Council, unless it is decided that the Services will continue to be provided by the Mutual, and that the Mutual will not need to retain any of this Personal Data. The transfer of Personal Data back to the Council will be subject to compliance with applicable Data Protection Legislation (which will in particular require the Parties to ensure the transfers are made transparent to data subjects (the individuals whom the Personal Data identifies), and that the Mutual has a lawful basis for the transfer). | If there will be routine sharing of non-anonymised Personal Data during the Contract Term, then alternative provisions will be required.  We have assumed that the Mutual will remain a controller, and will not be a processor for the Council, during the Contract Term. However there is no specific guidance from data protection regulators on how the roles of controller and processor apply to these particular circumstances and the position should be reviewed in the event any such guidance is published.  The Parties will separately need to consider how they will comply with Data Protection Legislation in transferring Personal Data at the end of the Contract Term, if this is the preferred approach, and should cooperate in particular to ensure that any required notices are made to individuals. |
| EMPLOYEES | We have assumed that all staff engaged in the delivery of the Services (before the Commencement Date) are employees and will transfer to the Mutual from the Council under the Transfer Agreement; and that on termination of this Agreement all assigned employees will transfer back to the Council or to a Future Provider. We have assumed that on transfer to and from the Mutual there will be no changes to the number, terms or functions of employees.  We have assumed that all those engaged in providing the Services by the Mutual are employees and that no other workers, volunteers or others are engaged.  We have also assumed that at the end of the Agreement the parties will work to ensure that as many employees as are delivering the Services transfer to back to the Council or a Future Provider and also that, if relevant employees do not transfer as a matter of law the Council or the Future Provider is to offer them employment.  The drafting of this Agreement assumes that the Mutual is entirely replaced by the Council or a Future Provider in relation to the Services at the end of the Term, unless the Parties determine that the Services will continue to be delivered by the Mutual.  Under TUPE only employees assigned to the Services at the point of transfer (of the Services to the Council or a Future Provider) would transfer back to the Council or a Future Provider. The staffing part of the Exit Plan however commits the parties to do all they can to ensure affected employees are covered by TUPE and that the Council will offer employment to those employees who are not (although this will depend on the specifics of each case and it is likely that legal advice will be needed).  The drafting assumes that any recommissioning on termination of the Agreement would be a recommissioning of the Services as specifically defined by the Agreement as opposed to any variation of the Services. | If any workers, volunteers or others (other than employees) are involved in providing the Services then bespoke staffing provisions will be required.  If any employees will be retained by the Council during the Contract Term or are only partly engaged in the Services and it is therefore unclear whether they will transfer to the Mutual then bespoke provisions will be required to reflect this.  Please note that we have not provided for specific key personnel to be engaged in the delivery of the Services or required the Mutual to hire staff to fulfil specific roles during the Contract Term for the delivery of the Services. If named key personnel are required this will require bespoke drafting. |
| IP | We have prepared this Agreement on the basis that each Party will continue to own its own intellectual property (the Council Background IPR and Mutual Background IPR) and trade marks (the Council Trade Marks and the Mutual Trade Marks), and that any IP created as a result of the Mutual’s delivery of the Services, including any new trade marks created (the Foreground IPR) will be owned by the Mutual. We have provided for a licence from the Council to the Mutual of the Council Background IPR for the purposes of delivering the Services.  We have also provided for a licence from the Council to the Mutual of the Council’s name and logo for the duration of the Contract Term, for the purpose of publicising the Services. We have not provided for a licence from the Mutual to the Council of the Mutual Trade Marks.  Upon the expiry or earlier termination of this Agreement, the Mutual will grant a licence to the Council to allow it to use the Foreground IPR generated during the Contract Term to allow the Council to deliver the Services and of any of the Mutual Background IPR which the Council will require to make use of the Foreground IPR. The Mutual will allow the Council to sublicense the use of this IP to a Future Provider of the Services with the Mutual’s prior written consent. | If the IP position will differ from the assumed position then bespoke drafting will be required to provide for this. |
| PUBLICITY OF THE SERVICES | We have provided that both Parties must seek the consent of the other before publishing materials about the other Party. We have provided that it is the Agreement Manager for each Party that will have the power to grant or refuse such consent. | If the governance of either the Council or the Mutual means that requests for consent to publish materials about the other Party ought to be made to an individual who is not the Agreement Manager for that Party (e.g. the Head of Marketing) then bespoke drafting will be required at clause 14 to provide for this. |
| INDEMNITIES | We have provided for all indemnities given by the Council to be capped at the value of the Fee and for all indemnities provided by the Mutual to be capped at the value of the insurance that the Mutual is required to maintain in accordance with clause 21 of this Agreement. | If any additional indemnities need to be included in this Agreement or any of the indemnities included ought to be subject to a different cap or ought to be uncapped, this will require bespoke drafting. |
| CHANGES TO THE SERVICES | We have provided for a simple Change Procedure whereby the Agreement Manager for either Party may submit a Change Request to be considered by and agreed between the Chief Executives of the Parties. We have not provided for a further level of review for a Change that cannot be agreed between the Chief Executives of the Parties.  In preparing the final form Services Agreement the Parties will need to agree a threshold value for what constitutes a Material Change to be inserted at paragraph 1 of Schedule 3 Part 3. | In the event that that governance structures of the Council and/or Mutual are such that it is not appropriate that requests for Changes be escalated to the Chief Executive of the Council and/or Mutual, or if the Parties would like to provide for the Change to be considered further if it cannot be agreed (for example, by the board of the Mutual or by a joint board consisting of officers of the Council and the Mutual, then additional drafting will be required to provide for a more complex procedure. |
| SUB-CONTRACTORS | We have provided that the Mutual shall be permitted to sub-contract provision of the Services to a third party without the need to obtain prior consent from the Council in circumstances where the portion of the Services to be sub-contracted represents no more than 10% of the total value of the Fee. | Where the position in relation to sub-contracting to third parties will differ from the assumed position then bespoke drafting will be required. |
| TERMINATION | We have assumed that the Services to be delivered by the Mutual represent a single service, rather than a series of different services. We have therefore not provided for aspects of the Services to be terminated while others continue in the event of a breach by the Mutual.  The model Lease and/or Licence to Occupy prepared as part of this series of model documents has not been drafted to terminated automatically on the termination of this Agreement, but both documents have been prepared to include a right for either party to terminate the Lease and/or Licence to Occupy in the event that this Agreement is terminated (unless the Parties have agreed to amend the terms of the model Lease and/or Licence to Occupy to amend this provision). | Where a series of Services are being provided (for example, all of the Council’s leisure services across a number of different sites), the Parties may wish to include bespoke drafting at clause 23 (Termination) to provide for some Services to be terminated while others continue to be delivered by the Mutual. |
| PENSIONS | On the basis that the Mutual’s pension obligations and the related pensions cost and risk sharing provisions between the Council and the Mutual are dealt with in the Transfer Agreement the pensions provisions in this Agreement are light touch. We have included a general obligation on the Mutual to co-operate with the Council on the pensions aspects of any onwards transfer of employees, either back to the Council or to a Future Provider, on the expiry or earlier termination of this Agreement. |  |
| NOTICES | We have provided that notices from one Party to the other may not be validly served by e-mail. The Parties will also need to populate clause 29 with the details of the relevant Council and Mutual contact for the service of notices under this Agreement. | **I**f the Parties would like the Agreement to provide for notices to be validly served by e-mail then this will require bespoke drafting. |
| EXIT PROVISIONS | We have assumed that at the expiry of the Contract Term, the Council and the Mutual will give consideration to the future provision of the Services, and consider whether it would be in the interest of the Service Users for the Services to transfer back to the Council and/or to a Future Provider, or for the transfer of the services to be a more permanent arrangement and for the Parties to enter into further agreement(s) to govern the future provision of the Services without funding from the Council (e.g. a Collaboration Agreement setting out the obligations of each Party and the principles for the future delivery of the Services). The Parties will also need to give consideration to the changes that will need to be made to the Lease and/or Licence in such circumstances.  We have included some standard exit provisions for circumstances in which the Services will transfer back to the Council, and have left any alternative arrangements to be agreed between the Parties upon the expiry of the Contract Term. As drafted, the exit provisions we have included provide for the employees, equipment and data needed to deliver the Services to transfer back to the Council or to a Future Provider and for a licence for the Council to use any IP created by the Mutual that is needed to deliver the Services to be granted. In return for this the Council will take back responsibility for employees and pensions liabilities. | If it is envisioned at the Commencement Date that this will be a permanent transfer or, due to the nature of the Services, the exit provisions that we have provided for will not be appropriate, bespoke drafting will need to be included in the Agreement to cater for this. |
| TAX | As this document sets out the terms for payment of a Fee in return for provision of Services, it is likely the Mutual will be required to charge additional VAT (unless exemptions apply). However, whether all or some of the Fee could be treated as a grant (which would require bespoke drafting) depends on the specifics of each case. The Council and Mutual should take their own tax advice. |  |
| STATE AID AND PROCUREMENT | This document does not cover any provisions relating to the state aid or procurement position of the Council’s entry into a contract for services, which we assume will be considered separately, if required. The Council and Mutual should take their own advice on such issues. | Additional drafting or consideration of the legal structure may be required depending on the state aid and procurement position of the proposed contract. |

**DATED [insert date]**

**SERVICES AGREEMENT**

**[THE COUNCIL      ]**

**and**

**[THE MUTUAL      ]**

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**DATE:**

**BETWEEN:**

1. [**LOCAL AUTHORITY**] of [Address] (“**the Council**”); and
2. [**MUTUAL**] of [Address (Company Number: [ ]) (“**the Mutual**”),

each a **“Party”** and together the **“Parties”**.

**BACKGROUND:**

1. The Council has agreed to transfer the Undertaking to the Mutual for the duration of the Contract Term, as detailed in the Transfer Agreement entered into between the Parties.
2. The Council has agreed to pay the Fee to the Mutual in consideration for the delivery of the Services by the Mutual throughout the Contract Term and this Agreement sets out the Terms upon which the Services will be provided by the Mutual.
3. **Definitions**

The provisions of Schedule 1 shall apply.

1. **Duration**
   1. This Agreement will commence on the Commencement Date and continue in full force and effect for the Contract Term unless terminated in accordance with clause 23 (Termination) (the “**Initial Contract Period**”).
   2. The Contract Term may be extended by written agreement of the Parties, for a period of up to five (5) years (the “**Extended Contract Period**”) at the end of the Initial Contract Period, provided either Party gives written notice to the other of an intention to extend no later than twelve (12) months before the end of the Initial Contract Period.
2. **Principles**

The Parties agree to adopt the following principles when carrying out this Agreement:

* 1. collaborate and co-operate in the delivery of the Services to ensure that the commissioning objectives of the Council and the social objectives of the Mutual are met;
  2. be accountable to the other Party for performance of their respective roles and responsibilities set out in this Agreement;
  3. communicate openly about major concerns, issues or opportunities relating to the Agreement;
  4. seek to achieve the full potential of the Parties to deliver the Services successfully by sharing information, experience, materials and skills in order to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
  5. adopt a positive outlook and behave in a positive, proactive manner;
  6. act in a timely manner, recognising the time-critical nature of the delivery of the Services and respond accordingly to requests for support from the other Party;
  7. manage stakeholders effectively;
  8. act in good faith to support achievement of the Key Indicators and Outcomes and compliance with the principles set out in this clause 3; and
  9. provide coherent, timely and efficient decision-making.

1. **Fee**
   1. In consideration of the provision of the Services by the Mutual, the Council shall pay the Fee.
   2. The Fee payable from the Council to the Mutual in each Contract Year will be calculated as set out in Schedule 3 and may only be varied using the mechanism set out in Schedule 3 Part 3.
   3. Subject to any Change made in accordance with Schedule 3 Part 3, Schedule 4 and clause 26, the Council shall pay the Fee to the Mutual in accordance with the Payment Schedule for each Contract Year set out in Schedule 3. All amounts payable by the Council to the Mutual under this Agreement, including the Fee, exclude amounts in respect of value added tax (VAT), which the Council shall additionally be liable to pay to the Mutual at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
   4. The amount of the Fee shall not be increased in the event of any overspend by the Mutual in its delivery of the Services without the Council’s prior written agreement.
   5. Any expenses incurred by the Mutual in its delivery of the Services shall be payable by the Mutual, unless agreed with the Council in writing.
   6. The Fee shall be paid into a bank account in the name of the Mutual specified at Schedule 3, or such other ordinary business bank account as is specified by the Mutual to the Council in writing.
   7. The Mutual shall not transfer any part of the Fee to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Council.
   8. The Mutual shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where an incorrect sum of money has been paid.
   9. In the event that the Fee, or any part of it, is not paid in accordance with this Agreement by the Council, the Mutual shall not be obligated to deliver any part of the Services to which the unpaid Fee relates.
   10. If the Council fails to make a payment due to the Mutual under this Agreement by the due date, then, without limiting the Mutual’s remedies under clause 23 (Termination), the Council shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 4.10 will accrue each day at 1% a year above the Bank of England's base rate from time to time, but at 1% a year for any period when that base rate is below 0%.
2. **Council’s Obligations**
   1. During the Contract Term the Council shall:
      1. co-operate with the Mutual in all matters relating to the Services;
      2. pay to the Mutual all sums payable pursuant to the provisions of this Agreement; and
      3. comply with the terms of this Agreement.
   2. Any liabilities arising as a result of employees employed or engaged by the Mutual to deliver the Services, including redundancy liabilities, pension liabilities and any costs associated with transferring employees back to the Council or to a Future Provider at the end of the Contract Term, will be met by the Council in accordance with the Exit Plan at Schedule 5 of this Agreement.
3. **Mutual’s Obligations**
   1. During the Contract Term the Mutual shall:
      1. deliver the Services in accordance with the Specification set out in Schedule 2 Part 1 and any Annual Services Plan agreed between the Council and the Mutual in accordance with clause 10;
      2. perform the Services using all reasonable care and skill and shall act in such a way as to ensure that the Key Indicators and Outcomes are achieved; and
      3. co-operate with the Council in all matters relating to the Services.
   2. The Mutual shall only make Changes to the Services in accordance with clause 26 (Change Procedure).
   3. With the exception of any redundancy liabilities for employees employed or engaged by the Mutual to deliver the Services, (which shall be dealt with in accordance with the Transfer Agreement), any liabilities arising at the end of the Contract Term must be managed and paid for by the Mutual and the Parties acknowledge that the Council will not be obligated to make any additional funding available for this purpose, unless agreed by the Parties in the Exit Plan.
   4. Should the Mutual be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Services or compliance with this Agreement it will notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council.
4. **Compliance with laws and policies**
   1. The Mutual shall deliver the Services in accordance with all relevant ethical and legal requirements, including:
      1. all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 in force (from time to time) in the United Kingdom respectively or in any other jurisdiction relating to this Agreement);
      2. all relevant health and safety legislation, rules and regulations;
      3. all relevant equalities rules and regulations, including the Equality Act 2010;
      4. the Data Protection Legislation, in accordance with clause 17 of this Agreement;
      5. the Freedom of Information Act 2000 in accordance with clause 18 of this Agreement;
      6. all appropriate child protection and safeguarding standards;
      7. good employment practice; and
      8. Good Industry Practice in relation to the Services.
   2. The Mutual shall have and comply with the following written policies relating to the Services:
      1. Safeguarding Policy;
      2. Data Protection Policy;
      3. Modern Slavery and Human Trafficking Policy;
      4. Ethics and Anti-Bribery Policy;
      5. Health and Safety Policy; and
      6. any additional policies agreed between the Parties in writing; and

the Mutual must ensure that all such policies are kept up to date and comply with Good Industry Practice and must provide copies of such policies to the Council on request the Mutual’s cost.

* 1. The Mutual must inform the Council promptly if it becomes aware of any material breach of this clause 7.
  2. The Mutual will use reasonable endeavours to meet such other compliance requirements as shall be reasonably requested by the Council in writing from time to time, but any additional cost to the Mutual of meeting such compliance requirements shall be payable by the Council to the Mutual as an additional expense and shall be deemed to be agreed by the Council in writing in accordance with clause 4.5 of this Agreement.

1. **Warranties**

The Mutual warrants, undertakes and agrees that:

* 1. it has all necessary resources and expertise to deliver the Services (assuming payment of the Fee);
  2. it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
  3. it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction; and
  4. it is not subject to any contractual or other restriction imposed by its own or any other rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations under this Agreement.

1. **Staffing and Pensions**
   1. The Parties shall comply with the obligations of Schedule 6 (Staffing and Pensions).
   2. The Mutual shall procure that any of its employees engaged in the delivery of the Services:
      1. are suitably qualified with regard to the provision of the Services;
      2. are sufficiently instructed and supervised with regard to the provision of the Services; and
      3. have been subject to all appropriate legal checks.
2. **Annual Services Plan**
   1. For each Contract Year, the Mutual shall prepare a draft activity plan (“the **Annual Services Plan**”) which shall set out:
      1. a detailed account of how the Services will be performed in the next Contract Year in order to deliver the Specification at Schedule 2 Part 1 of this Agreement and achieve the Key Indicators and Outcomes at Schedule 2 Part 2 of this Agreement, including identifying any proposed changes to the Specification or Key Indicators and Outcomes;
      2. any Changes that could be made to maximise the scope and standard of Services that could be delivered by the Mutual; and
      3. any Changes necessary to reflect changes to the legal, financial or operational environment of the Services.
   2. The draft Annual Services Plan for the next Contract Year shall be submitted to the Council with the Annual Report, no later than two (2) months before the expiry of the current Contract Year and shall be discussed by the Parties at the Annual Review Meeting.
   3. The Council shall be able to make suggestions to the Mutual on the draft Annual Services Plan and the Parties shall work together in good faith to agree the Annual Services Plan following the Annual Review Meeting, which shall be no later than one month prior to the commencement of the Contract Year in which that Annual Services Plan shall be followed, or by such other date as may be agreed by the Parties in writing.
   4. The Parties shall review the Specification and the Key Indicators and Outcomes on an annual basis as part of the process of agreeing the Annual Services Plan.
   5. An Annual Services Plan shall only be effective once agreed by both Parties.
   6. In the event that any Material Change needs to be made to the Annual Services Plan throughout the year, the Change Procedure set out at clause 26 of this Agreement shall be used.
3. **Complaints**
   1. The Mutual shall establish and maintain records of Service User feedback including any material positive feedback and material complaints (as defined in clause 11.5).
   2. The Mutual shall put in place a comprehensive complaints management procedure which shall be shared with and approved by the Council prior to the Commencement Date, and which shall be updated at any time if reasonably required by the Council.
   3. Without prejudice to the above, the Mutual shall proactively deal with any complaints received (whether orally or in writing and whether from Service Users or the general public and whether directly relating to the Services or otherwise) in a courteous and efficient manner and shall take all necessary steps to address complaints in relation to the Services.
   4. The Mutual shall monitor and record the actions to address and resolve material complaints and provide a report on such complaints if reasonably requested by the Council.
   5. For the avoidance of doubt, a material complaint shall be any serious complaint or repeated complaints received by the Mutual relating to the Services. Any complaint regarding safeguarding will constitute a material complaint.
   6. The Mutual shall notify the Council promptly of any and all incidents in which any Service Users are harmed and shall provide such details as the Council shall require regarding any such incidents, subject to compliance with the Data Protection Legislation.
   7. The Mutual shall fully cooperate with the Council in relation any investigations the Council wishes to undertake in respect of the Mutual’s management of any material complaints.
   8. Where a complaint is subject to investigation by the Local Government Ombudsman the Mutual shall fully cooperate with the Local Government Ombudsman and if necessary the Council in respect of any investigations relating to such complaints. The Mutual shall comply with any decisions made by the Local Government Ombudsman insofar as they are relevant to the operation or delivery of the Services.
   9. Where the Council receives any material positive feedback or complaints in relation to the Services (whether orally or in writing and whether from Service Users or the general public) it shall provide such feedback to the Mutual’s Agreement Manager as soon as reasonably practicable, and the Mutual shall deal with any complaint in accordance with this clause 11.
4. **Performance Management**
   1. Each Party shall nominate a named Agreement Manager specifying the information set out in Schedule 7, which may be changed from time to time and notified in writing to the other Party, to act as contact point for the management of this Agreement. Subject to clause 26 (Change Procedure), the Agreement Manager for each Party will have full authority to represent that Party in all matters pertaining to this Agreement.
   2. The Mutual and the Council shall closely monitor the delivery and success of the Services throughout the Contract Term in accordance with the Key Indicators and Outcomes set out in Schedule 2 Part 2 to ensure that this Agreement is being adhered to and that the Services are being successfully delivered.
   3. The Agreement Managers shall meet throughout the Contract Term in order to monitor the delivery and success of the Services and such meetings shall take place at such intervals as the Agreement Managers shall reasonably determine is necessary.
   4. The Mutual shall produce an annual report on its delivery of the Services in each Contract Year against the Specification and Key Indicators and Outcomes set out in Schedule 1 and the Annual Services Plan for that Contract Year along with a schedule of Operational Changes for that Contract Year (“**Annual Report**”). The Annual Report must be provided to the Council by the Mutual within four calendar months before the end of each Contract Year, or by such other deadline as may be agreed by the Parties in writing, and will be reviewed by the Council and the Mutual at an Annual Review Meeting.
   5. The Agreement Managers shall meet no less than once in each Contract Year at an Annual Review Meeting to review the Mutual’s performance of the terms under this Agreement, discuss the Annual Report submitted to the Council by the Mutual pursuant to clause 12.4, discuss the draft Annual Services Plan for the next Contract Year to be provided by the Mutual in accordance with clause 10.2, ensure the smooth running of the Agreement, and identify concerns in the provision of the Services early enough to prevent disputes arising. The Parties will also discuss the Fee for the next Contract Year and consider an appropriate Payment Schedule for the Fee. Either Party may also submit additional matters for discussion at the Annual Review Meeting.
   6. The Annual Review Meeting shall take place no less than three calendar months before the end of each Contract Year, or by such other date as may be agreed by the Parties in writing, in order to allow the Parties time to agree the final Annual Services Plan, and the Fee for the next Contract Year.
   7. A written record of the Annual Review Meeting shall be agreed and circulated to the Agreement Managers of both Parties as soon as reasonably practicable following the Annual Review Meeting.
   8. The Mutual shall also provide such additional written Progress Reports to the Council as the Council requests on reasonable written notice to the Mutual. Progress Reports shall be prepared by the Mutual in such formats as the Council may reasonably require and shall be submitted to the Council’s Agreement Manager.
   9. The Council will assess each Progress Report against the Specification and Key Indicators and Outcomes set out in Schedule 2 and the Annual Services Plan for that Contract Year. Where it deems it necessary, the Council may request a meeting with the Mutual to discuss any Progress Report, at a time mutually convenient to the Parties.
   10. When producing the Annual Report and other written Progress Reports, the Mutual shall include any such additional information as the Council reasonably requests on reasonable notice of such requests, subject to compliance with the Data Protection Legislation.
   11. The Mutual shall take reasonable steps to manage risk in delivering the Services, (for example by means of a risk register) and these shall be reported to the Council in the Annual Report and in any other Progress Report where the Council gives reasonable notice to the Mutual.
   12. The Mutual shall provide the Council with a final report upon the expiry of the Contract Term or earlier termination of this Agreement in accordance with clause 23, or on such other date agreed between the Parties in writing. This final report shall confirm whether the Services have been successfully and properly delivered.
5. **Accounts and Records**
   1. The Mutual shall provide the Council with a copy of its annual accounts within six months (or such lesser period as the Council may reasonably require) of the end of the relevant financial year in respect of each Contract Year. The Council may require that the Mutual shall have its annual accounts audited, at the Council’s cost.
   2. The Mutual shall comply with all applicable statutory requirements as regards accounts, audit or examination of accounts, annual reports, confirmation statements and annual returns.
   3. Where the Mutual has obtained funding from a third party for its delivery of part of the Services, the Mutual shall include the amount of such funding in its Annual Report together with details of what that funding has been used for.
   4. The Mutual shall on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to ensure the Mutual’s compliance this Agreement. The Council shall have the right to audit the Mutual’s compliance with this Agreement and the Mutual shall permit any person authorised by the Council reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Mutual’s fulfilment of the Terms and shall, if so required, provide appropriate oral or written explanations from them. Such access shall be arranged for a time mutually convenient to the Parties and any cost to the Mutual of facilitating an audit in accordance with this clause shall be met by the Council.
6. **Acknowledgment and Publicity**
   1. The Mutual shall acknowledge the Fee in its annual report and accounts, which may include an acknowledgement of the Council as payer of the Fee.
   2. Subject to clause 14.4, the Mutual may acknowledge the support of the Council in any materials that refer to the Services and in any written or spoken public presentations about the Services. Such acknowledgements may include the Council Trade Marks, to be used in accordance with the licence at clause 15.3.
   3. In using the Council Trade Marks, the Mutual shall comply with all reasonable branding guidelines issued by the Council to the Mutual from time to time.
   4. Neither Party may publish any materials referring to the Services or to the other Party without first requesting the written consent of the other Party’s Agreement Manager (not to be unreasonably withheld or delayed). The reviewing Party’s Agreement Manager shall respond to the publishing Party confirming whether such consent has been granted or refused, and where consent is refused detailing its reasons for such refusal, with 48 hours of receiving a written request from the publishing Party for such consent or within such other period as the Parties may agree in writing, failing which the publishing Party shall be entitled to assume that the reviewing Party has no objection to the proposed publication.
7. **Intellectual Property**
   1. The Council and its licensors shall retain ownership of all Council Background IPR and the Council Trade Marks. The Mutual and its licensors shall retain ownership of all Mutual Background IPR and the Mutual Trade Marks and the Mutual shall own all Foreground IPR.
   2. The Council grants to the Mutual, or shall procure the direct grant to the Mutual of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Contract Term to use, copy and modify the Council Background IPR for the purpose of delivering the Services in accordance with the Terms.
   3. The Council grants to the Mutual a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Contract Term to use the Council Trade Marks for the purposes of promoting the Services and the Council’s funding of the Services. Subject to clause 15.4, the Mutual must not sub-license its right to use the Council Trade Marks without the Council’s prior written consent.
      1. The Mutual must not sub-license its right to use the Council Background IPR without the prior consent of the Council, save for as permitted by clause 15.4 below.
   4. The Mutual may sub-license use of the Council Background IPR to any Permitted Sub-Contractor, provided that:
      1. any sub-licence must be on the same terms as the licence at clause 15.2 of this Agreement; and
      2. that any such sub-licence shall terminate:
         1. at the expiry of the Contract Term or earlier termination of this Agreement in accordance with clause 23 (Termination);
         2. or in the event of the earlier expiry or termination of the Mutual’s agreement with the Permitted Sub-Contractor for the provision of the Services, on such expiry of termination.
   5. All goodwill generated by the Mutual through the delivery of the Services during the Contract Term will accrue to the Mutual and shall remain the property of the Mutual on the expiry of the Contract Term or earlier termination of this Agreement.
   6. The Council warrants that it has used best endeavours to ensure that the Mutual’s use of the Council Background IPR does not infringe the rights, including any Intellectual Property Rights, of any third party.
   7. The Council shall keep the Mutual indemnified in full against all Direct Losses of the Mutual as a result of or in connection with any claim brought against the Mutual for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, its use of the Council Background IPR or its use of the Council Trade Marks to deliver or promote the Services. This clause 15.7 shall survive termination of this Agreement.
8. **Confidential Information**
   1. Each Party shall during the Contract Term and thereafter keep secret and confidential all Confidential Information disclosed to it as a result of this Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other Party.
   2. Each Party may disclose the other Party's Confidential Information:
      1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 16;
      2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or
      3. in accordance with clause 18.4 of this Agreement (Freedom of Information).
   3. Neither Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
   4. The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Confidential Information which:
      1. at the time of its disclosure by the disclosing Party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving Party;
      2. is already known to the receiving Party as evidenced by written records at the time of its disclosure by the disclosing Party and was not otherwise acquired by the receiving Party from the disclosing Party under any obligations of confidence; or
      3. is at any time after the date of this Agreement acquired by the receiving Party from a third party having the right to disclose the same to the receiving Party without breach of the obligations owed by that Party to the disclosing Party.
9. **Data Protection**
   1. Both Parties will comply with all applicable requirements of the Data Protection Legislation, to the extent that they Process Personal Data in connection with this Agreement.
   2. Neither Party will perform its obligations under this Agreement in such a way as to cause the other Party to breach any of its obligations under the Data Protection Legislation. The Parties agree to co-operate with each other to ensure that that each Party is able to perform its obligations under the Data Protection Legislation.
   3. The Mutual shall (and the Council acknowledges and understands that the Mutual shall) use reasonable endeavours to ensure that all data relating to individuals (including in particular Service Users) which it provides to the Council in accordance with this Agreement (and in particular its reporting obligations in clauses 11 and 12) is appropriately anonymised so as not to constitute Personal Data (unless the Council specifically instructs that it not be anonymised). Should it come to the attention of either Party that any such data is not appropriately anonymised, that Party shall inform the other Party as soon as reasonably practicable and the Parties shall work together in good faith to mitigate any negative impact and ensure that future data sharing shall be appropriately anonymised.
   4. The Parties acknowledge and agree that the relationship between them pursuant to this Agreement is not intended to constitute that between a controller and a processor (as those terms are defined in the Data Protection Legislation), and that each Party shall be an independent controller with respect to the Personal Data it Processes in connection with this Agreement.
10. **Freedom of Information**
    1. The Mutual shall cooperate with the Council as required (including but not exclusively assistance in retrieving information held) to enable the Council to comply with its duties under the Freedom of Information Act 2000 (“**FoIA**”).
    2. The Council shall not be in breach of clause 16 (Confidential Information) of this Agreement if it makes disclosures of information in accordance with the requirements of FoIA.
    3. If the Mutual receives a request for information under FoIA it shall not deal with it but shall pass it to the Council that shall respond and deal with it, unless otherwise agreed in writing by the Council.
    4. Notwithstanding any other provision of this Agreement, the Mutual hereby gives consent for the Council to publish this Agreement in its entirety (subject to the redaction of any information which is exempt from disclosure in accordance with the provisions of FoIA), including from time to time any agreed changes to the Agreement, to the general public in compliance with its statutory duty under the Transparency Requirements provided that no information that is commercially sensitive to the Mutual shall be published and that in publishing the information the Council shall comply with the Data Protection Legislation. For the avoidance of doubt, the value of the Fee will be considered to be commercially sensitive information unless published by the Mutual.
11. **Indemnities**
    1. Subject to clause 1.8 of the Transfer Agreement, nothing in this Agreement shall pass or be deemed to pass to the Mutual, or shall be construed as acceptance by the Mutual of, any liability, debt or other obligation of the Council (whether accrued, absolute, contingent, known or unknown) for anything done or omitted to be done before close of business on the Commencement Date in the course of or in connection with the Services (or those activities similar to the Services performed by the Council prior to the Commencement Date) and the Council shall indemnify and hold the Mutual harmless against any Direct Losses arising therefrom.
    2. The Council shall indemnify and hold harmless the Mutual in respect of all Direct Losses arising out of or in relation to any non-payment of the Fee by the Council on any due date.
    3. Subject to clause 19.4, the Mutual shall indemnify and hold harmless the Council, in respect of any Direct Losses arising out of or in relation to any delivery of the Services by the Mutual.
    4. If the Mutual’s performance of the Terms is prevented or delayed by any act or omission of the Council, its agents, subcontractors, consultants or employees including in relation to the Council’s performance of its obligations under the Back Office Services Agreement, the Mutual shall not be liable for any costs, charges or losses sustained or incurred by the Council that arise directly or indirectly from such prevention or delay.
    5. The Parties shall at all times take all reasonable steps to minimise and mitigate any loss for which the other Party is entitled to bring a claim against them pursuant to this Agreement including pursuant to the indemnities.
12. **Limitation of Liability**
    1. Nothing in this Agreement shall limit or exclude either Party’s liability for:
       1. death or personal injury caused by its negligence, or the negligence of its personnel, agents, subcontractors or Permitted Sub-Contractors;
       2. fraud or fraudulent misrepresentation; or
       3. any other liability which cannot be limited or excluded by applicable law.
    2. Subject to clause 20.1:
       1. neither Party to this Agreement shall have any liability 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 liability of the Council under this Agreement shall be limited to the total of the Fee paid throughout the Contract Term (including any increase in the amount of the Fee agreed in accordance with clauses 4.1 and 4.5); and
       3. the liability of the Mutual under this Agreement shall be limited to the level of insurance taken out by the Mutual in relation to the Services under clause 21 of this Agreement or the total of the Fee paid throughout the Contract Term, whichever is lower.
13. **Insurance**
    1. During the Contract Term the Mutual shall maintain in force a full and comprehensive insurance policy of an appropriate level in respect of its activities in delivering the Services.
    2. The Mutual shall ensure that such an insurance policy is taken out with reputable insurers acceptable to the Council and that the level of cover and other terms of insurance are acceptable to and agreed by the Council.
    3. The Mutual shall (on request) supply to the Council a copy of such an insurance policy and evidence that the relevant premiums have been paid.
14. **Default Rectification Procedure**
    1. Without prejudice to any other rights under the Agreement, if the Council finds, in its reasonable opinion, the Mutual has:
       1. failed to comply with any of the Terms;
       2. failed to deliver all or any part of the Services in accordance with clause 6.1 of this Agreement; or
       3. failed to comply with any reasonable instruction or notice issued by the Council;

the Council may take the steps set out below.

***Service of Default*** ***Notice***

* 1. The Council shall serve notice on the Agreement Manager for the Mutual in the event of any default detailed above in accordance with this clause 22. The procedure set out in this clause shall be without prejudice to any other rights or remedies available to the Council.
  2. Any notice may be given verbally where immediate action is required but shall be confirmed in writing by the Council within 72 hours. Failure to do so shall mean such notice has not been served for the purposes of this clause.
  3. All notices served by the Council shall state the nature of the default, the remedy required and any time limit imposed for compliance with the notice together with the date of issue and whether the notice is in respect of a Minor Default or a Major Default. The nature of the default (whether a Minor Default or Major Default) shall be determined by the Council, acting reasonably and taking into account the circumstances of the default.
  4. The Mutual may notify the Council in writing within four Business Days of receipt of a Default Notice that the Default Notice is unjustified including grounds for its opinion. If the Council, acting reasonably, is satisfied the Mutual’s grounds are reasonable, it may cancel or amend the Default Notice. The Council shall inform the Mutual’s Agreement Manager of its decision as to whether the Default Notice is justified within four (4) Business Days of receipt of the Mutual’s notice. Where the Council considers the Default Notice is justified, the time period for the Mutual to remedy the default shall run from the date on which the Council notifies the Mutual that it considers the Default Notice to be justified notwithstanding the Mutual’s representations.
  5. In the event that there is a dispute as to the Council’s decision under clause 22.5, such dispute shall be determined in accordance with the procedure in clause 30 (Dispute Resolution) below.
     1. Where remedial action is required the Mutual must return a copy of the Default Notice to the Council certifying that the default or breach has been remedied within any specified time period.

***Major Default*** ***Notices***

* 1. In addition to the Council’s right to serve a Default Notice for a Major Default on the Mutual, in the event the Mutual commits a Major Default in relation to any of matters listed at clause 22.1 above, the Council may also decide to serve the Mutual with a Default Notice for a Major Default in the event that:
     1. the Mutual has failed to comply with any Default Notice(s) for a Minor Default ; and/or
     2. the number of Default Notices for Minor Defaults served in any single Contract Year constitutes evidence of persistent breaches of the Agreement by the Mutual, such that the Mutual’s continued failure to meet terms of this Agreement constitutes a Major Default .
  2. The Mutual will be required to remedy the default in accordance with the Council’s instructions in the Default Notice at its own expense.
  3. Where a Default Notice for a Major Default is served the Council may require the Mutual to submit for the Council’s approval an action plan detailing the steps to be taken by the Mutual to ensure the Services will be delivered in accordance with clause 6.1 of this Agreement (an “**Action Plan**”) within such time periods as the Council shall specify in the Major Default Notice or such other period as shall be agreed with the Council in writing. The Council, acting reasonably and in consultation with the Mutual, may require the Mutual to make changes to the Action Plan if it is not satisfied that the plan will ensure that the Services are delivered in accordance with clause 6.1 above.
  4. If the Mutual fails to submit an Action Plan to the reasonable satisfaction of the Council then the Council may find that the Mutual has failed to comply with the Default Notice for a Major Default.
  5. Where a Default Notice for a Major Default has been served and not remedied within the agreed timeframe, the Council :
     1. shall not be required to pay for the part of the Services not provided in accordance with clause 6.1 of this Agreement; and/or
     2. may terminate the Agreement in accordance with clause 23.3.1(e).
  6. The Council may appoint an Alternative Provider for all or part of the Services identified in a Default Notice for a Major Default (“**Alternative Provider**”) until the breach has been rectified and the Mutual shall provide all reasonable cooperation to the Council and to the Alternative Provider to enable the Services identified in the Default Notice for the Major Default to be successfully delivered by the Alternative Provider until the Mutual’s breach has been rectified.
  7. The Mutual may be liable for any other costs reasonably incurred by the Council as a result of the Mutual’s failure to deliver all or any part of the Services identified in a Default Notice for a Major Default, pursuant to clause 19.3 of this Agreement or subject to clauses 19 and 20 of this Agreement.
     1. Where any amount due under this clause exceeds any sum due to the Mutual the difference shall be payable by Mutual within 30 days of the Council giving notice in writing of the amount due.

1. **Termination** 
   1. This Agreement shall terminate automatically at the end of the Contract Term unless it is terminated earlier in accordance with the provisions of this Clause 23.
   2. **Termination for Breach by Either Party**
      1. Without limiting its other rights or remedies, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party if:
         1. the other Party suspends or ceases to operate all, or a substantial part, of its business;
         2. either Party becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due and any required repayment of funds would be in accordance with and pursuant to any dissolution or liquidation proceeding;
         3. the other Party makes an assignment of this Agreement in breach of clause 27 (Assignment and Sub-contracting); and/or
         4. the right for either Party to terminate this Agreement as a result of a Force Majeure Event arises pursuant to clause 25 (Force Majeure) of this Agreement.
   3. **Termination by Council**
      1. In addition to the grounds for termination by either Party set out at clause 23.2 above, the Council may terminate this Agreement with immediate effect by giving written notice to the Mutual if:
         1. the Mutual deliberately provides the Council with any materially misleading or inaccurate information;
         2. the Mutual makes any Material Changes to the Services without the prior approval of the Council;
         3. the Mutual acts illegally or negligently;
         4. the Mutual commits a material breach of clause 7 of this Agreement (Compliance with Laws and Policies); and/or
         5. the Mutual fails to remedy a Major Default following the application of the Default Notice procedure as set out in clause 22.7 (Default Rectification Procedure).
   4. **Termination by Mutual**
      1. In addition to the grounds for termination by either Party set out at clause 23.2 above, the Mutual may terminate this Agreement with immediate effect by giving written notice to the Council if the Council fails to pay any sums due to the Mutual in accordance with clause 4 of this Agreement and by the due dates set out in the Payment Schedule.
2. **Consequences of Expiry or Termination**
   1. Prior to the expiry of the Contract Term, the Parties shall give consideration to the future delivery of the Services and to the suitability of the Exit Plan at Schedule 5 (Exit Plan). The Council shall, with the support of the Mutual, consider whether delivery of the Services ought to be transferred back to the Council or to a Future Provider upon the expiry of the Contract Term or whether the Mutual ought to be asked to continue to provide the Services on a more permanent basis following the expiry of the Council’s payment of the final portion of the Fee. In deciding whether the delivery of the Services will transfer back to the Council, the Council shall consider either Party or a third party will be best placed to deliver the Services successfully and in the best interests of the Service Users.
   2. If, after following the process described at clause 24.1, the Council determines that the Services shall be delivered by the Council or a Future Provider following the expiry of the Contract Term or the Agreement is terminated pursuant to clause 23, then, at the end of the Contract Term or upon the earlier termination of this Agreement:
      1. the Mutual shall cease to deliver the Services;
      2. the provisions of the Exit Plan shall come into effect and the Parties shall co-operate fully to ensure an orderly transfer of the Services to the Council or to any Future Provider;
      3. the Intellectual Property licences at clause 15 of this Agreement shall terminate and those set out in Schedule 5 (Exit Plan) shall be granted (unless otherwise agreed in writing between the Parties);
      4. either Party may elect to serve notice on the other Party to terminate any Lease and/or Licence to Occupy granted from the Council to the Mutual in respect of the Premises, subject to the provisions of such Lease and/or Licence to Occupy;
      5. subject to the requirements of clause 24.2.6, the Council shall be under no obligation to make any further payment of the Fee to the Mutual; and
      6. the Parties shall apportion the Fee payable from the Council to the Mutual for the current Contract Year up to and including the date of termination (“the **Apportioned Fee**”) and:
         1. where the actual sum that has been paid to the Mutual by the Council at the date of termination is less than the Apportioned Fee owed to the Mutual, the Council shall pay any outstanding portion of the Fee to the Mutual; or
         2. where the actual sum that has been paid to the Mutual by the Council at the date of termination exceeds the Apportioned Fee owed to the Mutual, the Mutual shall repay any overpayment of the Fee to the Council; and

any payments required by this clause shall be made within thirty (30) Business Days of the date that this Agreement is terminated, or within any other period agreed by the Parties in writing.

* 1. If, after following the process described at clause 24.1, the Council determines that the Services shall continue to be delivered by the Mutual following the expiry of the Contract Term (subject to compliance with procurement law and regulation), then, provided the Mutual agrees to continue to deliver the Services, the provisions in clause 24.2 and Schedule 5 (Exit Plan) shall not apply and the Parties shall negotiate in good faith to put in place appropriate arrangements to govern the delivery of the Services following the expiry of the Contract Term.
  2. Subject to ensuring compliance with the Data Protection Legislation, and insofar as the law allows, during the twelve (12) months preceding the expiry of the Contract Term or the period following service of notice to terminate this Agreement by either Party in accordance with clause 23 of this Agreement, or at any other time as directed by the Council in writing, and within fifteen (15) Business Days of the Mutual receiving a written request from the Council to do so, the Mutual shall fully and accurately disclose to the Council any and all information in relation to all personnel engaged in providing the Services including all Returning Employees who are to transfer as a consequence of the transfer of the Services to the Council or to a Future Provider. The Council may request, in particular but not necessarily restricted to any of the following:
     1. a list of employees employed by the Mutual in delivering the Services;
     2. a list of agency workers, agents and independent contractors engaged by the Mutual in delivering the Services;
     3. the total payroll bill (i.e. total taxable pay and allowances including employer’s contributions to pension schemes) of those personnel in clauses 24.4.1 and 24.4.2;
     4. the terms and conditions of employment of the Returning Employees, their age, salary, date continuous employment commenced and (if different) the Commencement Date, enhancement rates, any other factors affecting their redundancy entitlement;
     5. details of any disciplinary procedure taken against any of the Returning Employees and any grievance procedure taken by any Returning Employee within the previous two years in circumstances where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 which relates exclusively or primarily to the resolution of disputes applies;
     6. details of any court or tribunal case, claim or action brought by any Returning Employee against the Mutual within the previous two years and any court or tribunal case, claim or action that the Mutual has reasonable grounds to believe that a Returning Employee may bring against the Council or any Future Provider arising out of that employee’s employment with the Mutual; and
     7. details of any collective agreement which will have effect after the transfer, in its application in relation to any Returning Employees, pursuant to Regulation 5 (a).

Clauses 24.4.1- 24.4.7 do not apply to unpaid volunteers.

* 1. The Mutual shall notify the Council as soon as reasonably practicable of any variation in the information provided under clause 24.4 and shall provide the Council with the revised and accurate information. The Mutual shall warrant the accuracy and completeness of all the information provided to the Council pursuant to clause 24.4, and shall indemnify the Council for all or any Direct Losses resulting from the provision of inadequate, incomplete or inaccurate information. Furthermore the Mutual authorises the Council to use any and all of such information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).
  2. Insofar as the law allows, during the twelve (12) months preceding the expiry of this Agreement or where notice to terminate this Agreement for whatever reason has been given, the Mutual shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet the Returning Employees and their trade union or employee representatives as the Council may reasonably request, providing always that the Council agrees to indemnify the Mutual, subject to clauses 19 and 20, in respect of any and all claims and liabilities arising out of any act or omission of the Council in doing this or such other persons as may be authorised by the Council in doing this.
  3. Insofar as the law allows, during the twelve months preceding the expiry of this Agreement or where notice to terminate this Agreement for whatever reason has been given, the Mutual shall not without the prior written consent of the Council save where it is as a result of a decision by the Exit Group or where it is bona fide in the ordinary course of business:
     1. vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
     2. materially increase or decrease the number of employees employed in connection with the Services; or
     3. assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services or assign or re-deploy any employee employed to carry out duties unconnected with the Services to duties connected with the Services.
  4. The provisions of clause 1 (Definitions), clause 9 (Staffing and Pensions), clause 13 (Accounts and Records), clause 15 (Intellectual Property), clause 16 (Confidential Information), clause 17 (Data Protection) clause 19 (Indemnities), clause 20 (Limitation of Liability), clause 23 (Consequences of Termination), clause 36 (Governing Law) and Schedule 5 (Exit Plan) shall survive expiry or earlier termination of the Agreement.

1. **Force Majeure**
   1. Neither Party (provided that it has complied with this clause 25) shall be deemed to be in breach of this Agreement, or otherwise liable to the other by reason of any delay in performance or non-performance of any of its obligations hereunder to the extent that such delay or non-performance is due to a Force Majeure Event (“**the Affected Party**”).
   2. The Affected Party shall:
      1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
      2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
   3. The obligations of both Parties under this Agreement shall be suspended for the duration of the Force Majeure Event.
   4. If the Force Majeure Event prevents, hinders or delays the Parties’ performance of their obligations for a continuous period of more than 5 days, then either Party may terminate this Agreement immediately by giving written notice to the Affected Party.
2. **Change Procedure**

Any Change (including any amendments to the Services) shall be agreed in accordance with the Change Procedure set out in Schedule 4 (Change Procedure).

1. **Assignment**
   1. Subject to clause 27.2 and 27.3, neither Party may assign, or otherwise deal in any manner with its obligations under this Agreement, or transfer or pay to any other person any part of the Fee, without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
   2. The Mutual may not, without the prior written consent of the Council, sub-contract to any third party the delivery of the Services, unless the value of the Services that are to be sub-contracted equate to no more than ten (10) percent of the value of the Fee. Where the Council’s prior consent is required, such consent shall not be unreasonably withheld or delayed.
   3. In the event that the Mutual undergoes a Change of Control it shall be entitled to assign the benefit and/or the burden of this Agreement to the body to which Control of the Mutual is transferred with the prior written consent of the Council, not to be unreasonably withheld or delayed. For the avoidance of doubt, a Change of Control of the Mutual during the Contract Term shall not give rise to termination by either Party in accordance with clause 23 of this Agreement.
2. **Waiver**

No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

1. **Notices**
   1. A notice given under this Agreement will be sent for the attention of the person, and to the address given in this clause (or such other address as the relevant Party may have notified to the other Party in accordance with this clause) and will be:
      1. delivered personally; or
      2. delivered by commercial courier; or
      3. sent by pre-paid first-class post, registered post or recorded delivery.
   2. The addresses for service of notice are:
      1. **Council**

Address: [*Insert address*]

For the attention of: *[Insert name and/or position*]

* + 1. **Mutual**

Address: [I*nsert address*]

For the attention of: [*Insert name and/or position*]

* 1. A notice is deemed to have been received:
     1. if delivered personally, at the time of delivery; or
     2. if delivered by commercial courier, at the time of signature of the courier's receipt; or
     3. if sent by pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
     4. if deemed receipt under the previous paragraphs of this clause is not within business hours (meaning any time other than 9.00 am to 5.30 pm Monday to Friday on a Business Day), when business next starts in the place of receipt.
  2. It is sufficient, to prove service by post, that the envelope containing the notice was properly addressed and posted.
  3. A notice under this Agreement will not be valid if sent by e-mail.

1. **Dispute Resolution**
   1. In the event of any complaint or dispute (which does not relate to the Council’s right to withhold funds or terminate) arising between the Parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Council’s Agreement Manager or any other individual nominated by the Council from time to time.
   2. Should the complaint or dispute remain unresolved within fourteen (14) days of the matter first being referred to the Agreement Managers for the Parties or other nominated individual, as the case may be, either Party may refer the matter to the Chief Executive of the Council and the Chief Executive of the Mutual with an instruction to attempt to resolve the dispute by agreement within twenty eight (28) days, or such other period as may be mutually agreed by the Council and the Mutual.
   3. In the absence of agreement under clause 30.2, the Parties shall seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both Parties). Unless otherwise agreed the Parties shall bear the costs and expenses of the mediation equally, excluding the cost and expenses of their respective legal and professional advice.
2. **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties in relation to the delivery of the Services, as described in this Agreement.

1. **Severance**
   1. If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
   2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the Parties where this is possible.
   3. Without prejudice to Clause 32.1, if, in the reasonable opinion of either of the Parties, the effect of such a deletion is to undermine the purpose of this Agreement or materially prejudice the position of either Party, the Parties shall negotiate in good faith in order to agree suitable alternative provisions to replace the deleted provisions or a suitable amendment to this Agreement.
2. **No Partnership or Agency**

This Agreement shall not create any partnership or joint venture between the Council and the Mutual, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

1. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

1. **Contracts (Rights of Third Parties) Act 1999**

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

1. **Governing Law**

This Agreement shall be governed by and construed in accordance with the law of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

|  |  |  |
| --- | --- | --- |
| Signed by [*insert name in bold and upper case*]  for and on behalf of the Council: | )  )  ) |  |

|  |  |  |
| --- | --- | --- |
| Signed by [*insert name in bold and upper case*]  for and on behalf of [the Mutual]: | )  )  ) |  |

**Schedule 1– Definitions and Interpretation**

1. In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the meanings given to them below:

|  |  |
| --- | --- |
| **“Agreement Manager”** | means the named individuals for each Party appointed in accordance with clause 12.1 or such other person as is notified to the other in writing; |
| **“Alternative Provider”** | means an alternative provider appointed by the Council in accordance with clause 22 (Default Rectification Procedure); |
| **“Annual Report”** | means the report to be provided from the Mutual to the Council in accordance with clause 12.4 of this Agreement; |
| **“Annual Review Meeting”** | means the annual meeting between the Parties to assess the Mutual’s delivery of the Services in accordance with this Agreement, and to agree the Annual Services Plan for the following Contract Year, in accordance with clause 12; |
| **“Annual Services Plan”** | means the Mutual’s plan, as agreed in accordance with clause 10, setting out the plan for delivery of the Services for the next Contract Year in return for the Fee, as amended during the Contract Year in accordance with the Change Procedure in Schedule 4; |
| **“Back Office Services Agreement”** | has the meaning given to it in the Transfer Agreement; |
| **“Business Day”** | means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; |
| **“Change" or “Changes”** | means any change or changes to the Agreement which is/are either a Material Change/Material Changes or an Operational Change/Operational Changes; |
| **“Change Procedure”** | means the procedure for dealing with any Change as set out in clause 26; |
| **“Change Request”** | means a request for a Material Change made in accordance with Part 2 of Schedule 4 (Change Procedure); |
| **“Change Request Impact Assessment”** | means the assessment made in accordance with the procedure at with Part 2 of Schedule 4 (Change Procedure); |
| **“Commencement Date”** | [*Insert start date*]; |
| **“Confidential Information”** | means any information which ought reasonably to be considered confidential however conveyed or presented:   * that relates to the Fee or to the business, affairs, operations, customers, beneficiaries, processes, budgets, pricing, policies, product information, strategies, developments, trade secrets, Know-How, personnel and suppliers of the disclosing Party, including the disclosing Party’s Intellectual Property Rights; and * all information derived by the receiving Party from any such information,   and any other information clearly designated by the providing Party as being confidential to it (whether or not it is marked “confidential”); |
| **“Contract Term”** | means a period of ten (10) years from the Commencement Date, plus any Extended Contract Period under clause 2.2; |
| **“Contract Year”** | means the period of twelve months starting with the Commencement Date or any anniversary of the Commencement Date during the Contract Term; |
| **“Control”** | has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression “**Change of Control**” shall be construed accordingly; |
| **“Council Background IPR”** | means all Intellectual Property Rights supplied by the Council to the Mutual for the purposes of this 22121121211212112132121212122133321Agreement excluding, for the avoidance of doubt, those rights associated with the Council Trade Marks or such Intellectual Property Rights owned by the Mutual or that the Mutual has the benefit of as a result of the Transfer Agreement or separately from this Agreement; |
| **“Council Trade Marks”** | means the name and logo of the Council and including any name or names and logo or logos used for the Services (excluding those already owned by the Mutual or licensed to the Mutual separately from this Agreement); |
| **“Data Protection Legislation”** | means, as applicable, (a) the General Data Protection Regulation (EU) 2016/679 (“**GDPR**”); (b) the Data Protection Act 2018; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (d) all other applicable laws and regulations relating to the processing of Personal Data and privacy, including statutory instruments (and in each case any re-enactment or amendment); |
| **“Default Notice”** | means any notice served on the Mutual by the Council notifying the Mutual of either a Minor Default or Major Default, in accordance with clause 22 of this Agreement; |
| **“Direct Losses”** | means all losses, liabilities, claims, demands, actions, costs, expenses and damages, proceedings, demands and charges whether arising under statute, contracts or at common law; |
| **“Eligible Employees”** | as defined in the Transfer Agreement; |
| **“Exit Group”** | means the group established in accordance with paragraph 1 of Schedule 6 Part 1 (Staffing and Pensions); |
| **“Exit Period”** | means any period of notice to terminate this Agreement which has been given under clause 23 or , where such notice has not been given before twelve (12) months prior to the expiry of the Contract Term (or, if applicable, the Extended Contract Period), the twelve (12) month period prior to the expiry of the Contract Term or Extended Contract Period (as applicable); |
| **“Exit Plan”** | means the plan to be prepared for the purposes of clause 24 and a template of which is set out in Schedule 5 (Exit Plan); |
| **“Fee”** | means the sum for the Services to be paid by the Council to the Mutual in accordance with this Agreement as detailed in Schedule 3 of this Agreement (subject to the Terms of this Agreement), which is exclusive of any applicable VAT payable; |
| **“Force Majeure Event”** | means and includes war, natural flood, exceptionally adverse weather, strike or lockout (other than strike or lockout which is limited to the Mutual’s staff or any staff of any Permitted Sub-Contractor), civil disorder, act of God, power cuts or delays or other event or occurrence which is outside the reasonable control of the Party concerned (and which is not attributable to any act or omission by the Party concerned including failure to take preventative action). For the Mutual only, any failure of the Council to perform its obligations under the Back Office Services Agreement will also be a Force Majeure Event where such failure prevents the Mutual from performing its obligations under this Agreement; |
| **“Foreground IPR”** | means all Intellectual Property Rights created by the Mutual in its delivery of the Services, or otherwise in its performance of this Agreement, including any Mutual Trade Marks developed by the Mutual exclusively in the performance of the Services but excluding all other Mutual Trade Marks, and the Mutual Background IPR and any goodwill developed by the Mutual in its delivery of the Services; |
| **“Future Provider”** | means any future provider appointed by the Council to deliver the Services or any part of them following the expiry of the Contract Term or the earlier termination of this Agreement in accordance with clause 23; |
| **“Good Industry Practice”** | means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from the Mutual with its level of experience in the Services; |
| **“Intellectual Property Rights”** | means all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions; |
| **“Key Indicators and Outcomes”** | means the key indicators and outcomes set out in Schedule 2 Part 2 to this Agreement; |
| **“Know-How”** | means information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale; |
| **“Lease”** | has the meaning given to it in the Transfer Agreement; |
| **“Licence to Occupy”** | has the meaning given to it in the Transfer Agreement; |
| **“Major Default”** | means a failure by the Mutual in accordance with clause 22 that is of a serious nature and which has, or is likely to have a significant impact on the delivery of the Services to the Service Users; |
| **“Material Change”** | means a change to the Agreement which may result in variation to the amount of the Fee equal to or greater than the threshold amount at Schedule 3 Part 3 and is therefore subject to the Change Procedure set out in Schedule 4 (Change Procedure); |
| **“Minor Default”** | means a failure by the Mutual in accordance with clause 22 that is of a relatively minor nature with minimum disruption in the delivery of the Services to the Service Users; |
| **“Mutual Background IPR”** | means all Intellectual Property Rights that are owned by or licensed to the Mutual and which are or have been developed independently of this Agreement that are necessary to deliver the Services (which may include Intellectual Property Rights transferred to the Mutual under the Transfer Agreement), excluding, for the avoidance of doubt, these rights associated with the Mutual Trade Marks; |
| **“Mutual Trade Marks”** | means all names and any logos of the Mutual, including any names and logos owned by the Mutual prior to the Commencement Date or developed during the Contract Term, whether or not these have been developed in connection with its delivery of the Services; |
| **“Operational Change”** | means a minor change to the Agreement relating to the manner in which the Services are delivered and which is below any threshold agreed pursuant to Schedule 4 and is therefore not subject to the Change Procedure; |
| **“Payment Schedule”** | means, for the first Contract Year, the schedule for payment of the Fee for the first Contract Year at Schedule 3 Part 1 Schedule 3 and, for each subsequent Contract Year, the schedule for payment of the Fee as is agreed by the Parties in writing in accordance with Schedule 3 Part 2; |
| **“Permitted Sub-Contractor”** | means a sub-contractor that the Mutual is permitted to sub-contract delivery of any part of the Services to, in accordance with clause 27.2 (which shall include any sub-contractor that the Council has consented to in writing); |
| **“Personal Data”** | shall have the meaning given to it in the relevant Data Protection Legislation; |
| **“Potential Returning Employees”** | means the employees engaged by the Mutual as detailed at paragraph 3 of Schedule 6 Part 1 (Staffing and Pensions); |
| **“Premises”** | means any premises to which any lease, licence or other right to occupy is to be granted by the Council to the Mutual, as set out in the Transfer Agreement; |
| **“Process/Processing”** | has the meaning given to it in the relevant Data Protection Legislation; |
| **“Progress Reports”** | means such additional reports as are provided by the Mutual to the Council during the Contract Term regarding the delivery of the Services at the Council’s request in accordance with clause 12.8; |
| **“Regulations”** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time); |
| **“Returning Employees”** | means those employees wholly or mainly engaged in the provision of the Services (or the relevant part of the Services) as the case may be immediately before the end of the Contract Term or any earlier date on which this Agreement is terminated who are to transfer back to the Council or to a Future Provider, as detailed in Schedule 6 (Staffing and Pensions); |
| **“Service User”** | means any person to whom any of the Services are provided under this Agreement; |
| **“Services”** | means the activities described in Schedule 2; |
| **“Specification”** | means the Specification set out in Schedule 2 Part 1 to this Agreement as amended during the Contract Term in accordance with the Change Procedure in Schedule 4; |
| **“Terms”** | means the terms and conditions of this Agreement; |
| **“Transfer Agreement”** | means the transfer agreement entered into by the Parties on or before the date of this Agreement to transfer the Undertaking from the Council to the Mutual; |
| **“Transparency Requirements”** | means the Local Government (Transparency Requirements) (England) Regulation 2015 as detailed in section 2 of The Local Government Transparency Code 2015, as amended from time to time; |
| **“Undertaking”** | means the business activities transferring/transferred to the Mutual from the Council under the Transfer Agreement. |

1. In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any Terms attaching thereto.
2. In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, body corporate, government, governmental body, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
3. In this Agreement, words importing the singular only shall include the plural and vice versa.
4. In this Agreement, and word importing a particular gender shall be interpreted to include a reference to all genders.
5. Except where an express provision of this Agreement states the contrary, each and every obligation of a Party under this Agreement is to be performed at that Party's cost.
6. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

**Schedule 2 – The Services**

* + 1. **Specification**

*[Details of the Services and Service Users]*

* + 1. **Key Indicators and Outcomes**

1. **Key Indicators**
   1. [E.g. numbers of Service Users or any social value requirements specified as part of the tender process]
2. **Outcomes reporting**
   1. The Mutual will be expected to report on the Key Indicators set out above on a quarterly basis and have regular review meetings (also quarterly) to monitor performance and maximise outcomes for the Council.

**Schedule 3 - The Fee**

**Part 1 - First Contract Year**

1. The Fee for the first Contract Year shall be [*insert Fee amount*] and shall be paid by the Council to the Mutual in accordance with the following Payment Schedule:

|  |  |
| --- | --- |
| Date of Payment | Amount due |
|  |  |
|  |  |

1. The Fee amount at paragraph 1 above shall be increased by the amount of any additional funding agreed in accordance with the Change Procedure, including the payment of any expenses of the Mutual payable by the Council in accordance with clause 4.5, and where necessary the Payment Schedule above will be varied as set out in Part 3 to this Schedule 3.
2. All Fee payments shall be paid into the following bank account of the Mutual, unless the Mutual provides alternative bank details in accordance with clause 4.6 of this Agreement:

|  |  |
| --- | --- |
| Account name: |  |
| Account number: |  |
| Sort code: |  |
| Bank name and address: |  |
| Reference for payment: |  |

**Part 2 - Subsequent Contract Years**

1. The Fee for the second Contract Year and subsequent Contract Years during the Contract Term will be determined by:
   1. The cost of any Changes to the Specification of the Services as a result of the Annual Review Meeting as set out in Clause 12 (Performance Management) of the Agreement; and
   2. Any other additional cost or reduction in cost agreed between the Parties to reflect the funding requirements of the Mutual to provide the Services and the resources available to the Council to meet those funding requirements.
2. Notwithstanding paragraph 1 of Part 2 of this Schedule 3, the Fee agreed between the Parties for each Contract Year will not be below an amount 5% lower than the Fee for the previous Contract Year unless otherwise agreed between the Parties in writing. In calculating the percentage reduction in the Fee the Parties will take into account any increases in the cost to the Mutual of delivering the Services.
3. In determining the Fee for the second Contract Year and subsequent Contract Years during the Contract Term the Parties will agree in writing a Payment Schedule for the payment of the Fee for the relevant Contract Year.
4. The Council will agree a timetable with the Mutual each year to consider the impact of their respective financial plans, the government funding available to the Council and the Services being provided by the Mutual. This may include other matters that may impact on the cost and funding of the Services in accordance with the Agreement in order to ensure that the Mutual can prepare a detailed budget for the next financial year which will enable agreement by the Parties as to the amount of the Fee for the next Contract Year by no later than 3 calendar months prior to the commencement of the next Contract Year, or by such other deadline as may be agreed by the Parties in writing.
   * 1. **– Variations to the Fee using the Change Procedure**
5. Within each Contract Year a variation to the Fee (being a Material Change to the Agreement) will only be agreed in accordance with the Change Procedure. The threshold for a variation to the Fee being a Material Change shall be [£ ], or such other sum as the Parties shall agree in writing.
6. Where a Material Change is approved which includes either an increase or decrease in the cost to the Mutual of providing the Services, the Fee for that Contract Year will be changed to reflect the increase or decrease from the date specified in the Change approval.
7. Following the approval of a Change, the Mutual shall subsequently invoice the Council for one twelfth of the new Fee for each full month in the Contract Year that follows the Change approval. The Mutual shall calculate the amount, if any, of the change in the Fee that relates to any period between the date of approval of that Change and the first invoice for the new Fee, and any such amount shall be reflected in that first invoice.
8. The Annual Review Meeting process will consider all Change approvals made in the relevant Contract Year and determine which will require an amendment to the Specification for the following Contract Year.

**Schedule 4** **– Change Procedure**

1. **Introduction**
   1. Where the Council or the Mutual identifies a need to vary the Agreement, the Council may at any time request, and the Mutual may at any time recommend, such Change only in accordance with the Change Procedure.
   2. Until such time as a Change is made in accordance with the Change Procedure, the Council and the Mutual shall, unless otherwise agreed in writing, continue to perform the Agreement in compliance with its terms prior to such Change.
   3. Any discussions which may take place between the Council and the Mutual in connection with a request or recommendation before the authorisation of a Change shall be without prejudice to the rights of the Parties.
   4. Any work undertaken by the Mutual and its staff 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, shall be undertaken entirely at the expense and liability of the Mutual.
   5. The Change Procedure applies only to Changes, which require a variation to this Agreement and which are Material Changes.
   6. Operational Changes which may require a variation to the way in which the Services are delivered, but which do not require a variation to the Agreement are intended to be undertaken through the normal operation of the Services by the Mutual. The Mutual will be expected to provide a schedule of Operational Changes as part of the Performance Management process set out in clause 12 of this Agreement.
   7. Where a Change is a Material Change, the Council and the Mutual will meet to discuss and agree to implement these Changes as part of the Change Procedure.
   8. Neither the Council nor the Mutual shall unreasonably withhold or delay its agreement to any Change.
2. **Requesting a Change**
   1. At any time during the Contract Term, the Agreement Managers may request a Change by formally logging a Change Request to the Council’s Chief Executive and Mutual’s Board. Any such Change Request will be submitted in the form substantially as set out in this Schedule and shall provide full details of the requested Change.
   2. A copy of the Change Request shall be submitted by the requesting Party to the other Party no less than twenty (20) Business Days (or such other period as may be agreed between the Parties) prior to the requested date for the start of implementation of the Material Change.
   3. The Change Request should contain (where applicable):
      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 or Changes to the Specification;
      5. the cost, if any, of the Change;
      6. a timetable for implementation, together with any proposals for acceptance of the Change;
      7. schedule of payments if appropriate;
      8. details of the likely impact, if any, of the Change on other aspects of the Agreement including:
         1. the timetable for the provision of the Change;
         2. the personnel to be provided;
         3. the date of expiry of validity of the Change Request; and
         4. provision for signature by the Council and the Mutual.
   4. For each Change Request submitted the Councils shall, within the period of the validity of the Change Request:
      1. allocate a sequential number to the Change Request; and
      2. evaluate the Change Request and, as appropriate.
   5. From time to time, urgent Material Changes may need to be requested and the Council or the Mutual may agree to request a Change through an extra-ordinary meeting or via other means of communication.
3. **Change Request Impact Assessments**
   1. Following the services of a Change Request by either Party, the Parties shall cooperate to investigate the likely impact of the requested Change on this Agreement (if any) and the scope, content or manner of provision of the Services.
   2. The Parties shall complete the Change Request Impact Assessment, taking account of the business priority of the Change Request and the type of service to which it relates within ten (10) Business Days.
   3. Where the Parties do not reasonably believe that they will be able to provide the Change Request Impact Assessment within ten (10) Business Days, they may agree such other timeframe within which the Change Request Impact Assessment shall be completed.
4. **Change approval**
   1. For all Material Changes subject to this Schedule the Chief Executive of the Council and the Mutual should review the Change and recommend authorisation to the Agreement Managers of the Council and the Mutual as appropriate. Where the Chief Executives are unable to agree that the Change be recommended as required by this paragraph 4.1, such a Change may be dealt with in accordance with clause 30 (Dispute Resolution). Approval and sign off for any Change shall include authorisation by the Council of any costs or expenses associated with the implementation of the Change to be paid by the Council to the Mutual on completion of the Change or in accordance with the updated Payment Schedule included within the Change Request.
   2. Material Changes shall only be valid and enforceable if they are signed by the Agreement Managers or such other authorised individuals as either Party shall authorise for the purpose and notify to the other Party from time to time.

**Schedule 5 - Exit Plan**

1. **General obligations**
   1. If, after following the process described at clause 24.1, the Council determines that the Services shall be delivered by the Council or a Future Provider following the expiry of the Contract Term or on the termination of this Agreement for any reason, the Mutual will provide all reasonable assistance to the Council to facilitate the orderly transfer of the Services back to the Council or to enable any Future Provider to take over the provision of all or part of the Services. Such assistance shall be provided by the Mutual as part of the Services in accordance with the Exit Plan.
   2. This Schedule is a template Exit Plan and sets out the principles of the exit and Service transfer arrangements which are intended to achieve these principles, and upon which the final Exit Plan shall be based. For the avoidance of doubt the Mutual is responsible for the overall management of the exit and service transfer arrangements.
   3. The Mutual shall regularly review and amend this template Exit Plan, if appropriate to reflect changes in the Services and no less than once in year five and once in year ten of the Contract Term. Following each update, Mutual shall submit the revised Exit Plan to the Council for review. The Parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the contents of the revised Exit Plan within 15 (fifteen) Business Days, the previous version shall continue to apply and either Party may refer the dispute for resolution in accordance with the procedure in clause 30 of the Agreement (Dispute Resolution).
2. **Duty to document the Services**

The Mutual shall promptly and fully answer all reasonable questions about the Services which may be asked by the Council for the purpose of adequately understanding the manner in which the Services have been provided or for the purpose of allowing any Future Provider (or potential Future Provider) to conduct ‘due diligence’. For the avoidance of doubt the Mutual shall be required to provide such information fully, honestly and in good time.

1. **Assets**

[On termination or expiry of this Agreement the Council shall be entitled to the return of any assets transferred to the Mutual under the Transfer Agreement, and any replacement assets that have been purchased with the Fee during the Contract Term.] Any such assets shall be delivered to the Council in a reasonable condition subject to the occurrence of fair wear and tear as soon as reasonably practicable after the expiry or earlier termination of the Contract Term.

1. **Intellectual Property**
   1. On the expiry of the Contract Term or earlier termination of this Agreement in accordance with clause 23, the Mutual grants to the Council a fully paid-up, worldwide, non-exclusive, royalty-free licence to use, copy and modify the Foreground IPR for the purpose of delivering the Services.
   2. The Mutual grants the Council, or shall procure the direct grant to the Council of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to use such of the Mutual Background IPR as the Council needs to make use of the licence of the Foreground IPR for the purpose of delivering the Services.
   3. The Council must not sub-license its right to use the Foreground IPR licensed under paragraph 4.1 of this Schedule 5 or the Mutual Background IPR licensed under clause 4.2 of this Schedule 5 without the prior written consent of the Mutual.
   4. Where the Council requests the Mutual’s consent pursuant to paragraph 4.3 of this Schedule 5 to grant such a sublicense to a Future Provider, the Mutual shall not unreasonably delay or withhold its consent provided that any such sub-licence must be on the same terms as the licences at paragraphs 4.1 or 4.2 of this Schedule 5 and that any such sub-licence shall terminate at the expiry or earlier termination of the Council’s Agreement with the Future Provider to provide the Services.
   5. The Mutual warrants that it has used best endeavours to ensure that use by the Council of the Mutual Background IPR and Foreground IPR does not infringe the rights, including any Intellectual Property Rights, of any third party.
   6. The Mutual shall keep the Council indemnified in full against all Direct Losses of the Council as a result of or in connection with any claim brought against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, its use of the Foreground IPR to deliver the Services.
   7. The Council shall keep the Mutual indemnified in full against all Direct Losses of the Mutual as a result of or in connection with breach by the Council of the licences granted at paragraphs 4.1 or 4.2 of this Schedule 5 and as a result of or in connection with any breach by any sub-licensee of any sub-licence granted by the Council in accordance with paragraph 4.3 of this Schedule 5.
2. **Data**

Subject to the Parties working together to ensure compliance with Data Protection Legislation in respect of any Personal Data, on the expiry of the Contract Term or earlier termination of this Agreement in accordance with clause 23, the Mutual shall transfer all data held by the Mutual in relation to the Services, including all Service User data and any database within which such data is held.

1. **Contracts, software, and Know-How**
   1. Where contracts have been entered into by the Mutual for the sole purpose of delivering the Services, the Council may require the Mutual to use all reasonable endeavours to procure that those contracts are assigned to the Council or a Future Provider.
   2. The Mutual shall, to the extent that it is not done prior to termination, fully comply with the provisions of this Agreement as to the licensing of Intellectual Property Rights and the delivery of source code and any relevant documentation.
2. **Premises**

All rights of access and occupation granted by the Council to the Mutual in respect of Premises owned or occupied by the Councils will cease when the delivery of the Services ceases in accordance with this Agreement.

1. **Employees**

The provisions of clauses 5.2 and 9 and Schedule 6 shall apply in relation to employees.

1. **Costs**

The Exit Plan shall specify any additional costs which the Mutual reasonably believe that it will incur as a result of the transfer back of the Services and which will be agreed by the Council as part of the process for agreeing the Exit Plan as set out in paragraph 1.3 of this Schedule 5.

1. **Council's Responsibilities**

In relation to the transfer of the Services back to the respective Council or to a Future Provider, the Council shall:

* 1. act responsibly and promptly at all times; and
  2. in relation to any amendments to the Exit Plan, not unreasonably withhold or delay approval.

**Schedule 6** **– Staffing and Pensions**

* + 1. **Staffing**

1. The Parties will during the Exit Period jointly establish an exit group comprising staff of both Parties to manage transition of the Services, and to implement the provisions of the Exit Plan (the “**Exit Group**”). Each Party will make available sufficient resources to meet the requirements of the Exit Group. The Exit Group will manage all the activities needed for the transfer of the Services from the Mutual to the Council or any Future Provider so that the transition is carried out as seamlessly as possible.
2. On expiry or earlier termination of this Agreement, as part of the Exit Plan the Parties agree that it is their intention that the Regulations shall apply in respect of the provision thereafter of any service equivalent to the Services by the Council or any Future Provider but the position shall be determined in accordance with the Regulations during the Exit Period and this paragraph is without prejudice to such determination.
3. The Parties agree that during the Exit Period, the Exit Group shall work to identify those staff engaged by the Mutual who would:
   1. if they remained employed by the Mutual at the end of the Exit Period, be the subject of a relevant transfer (as defined by the Regulations) (a “**Relevant Transfer**”) to the Council or any Future Provider in respect of the Services for which the Council or any Future Provider shall become responsible at the end of the Exit Period, or
   2. be offered employment pursuant to the provisions of paragraph 8 below,

(together the “**Potential Returning Employees**”).

1. During the Exit Period, to the extent that any Potential Returning Employees resign or their employment is terminated by the Mutual, the Exit Group will agree that in the event that this creates any vacancies within the workforce delivering the Services during the Exit Period, such vacancy shall to the extent possible in light of service delivery requirements in relation to the Services and the Mutual’s obligation to its other staff either:
   1. not be filled by the Mutual during the Exit Period; or
   2. be filled by the engagement by the Mutual of agency staff or employees engaged on fixed term contracts of employment; or
   3. the Council shall instead recruit a suitable individual in relation to that vacancy and then second such individual to the Mutual for the remainder of the Exit Period to deliver the Services with such secondment to end at the end of the Exit Period; or
   4. where the Mutual recruits any suitable individuals in relation to that vacancy, such recruitment shall be on the basis that the individual will only be engaged in the delivery of the Services and it shall be made clear as part of such recruitment that the individual will be subject to a Relevant Transfer to the Council or any Future Provider at the end of the Exit Period.
2. At the start of the Exit Period, to the extent possible under the Regulations and/or any other applicable law applicable at the relevant time, the Exit Group shall use all reasonable endeavours to consult upon and agree a reorganisation process with the Potential Returning Employees and/or their appointed employee representatives or trade unions, to confirm who will be the subject of a Relevant Transfer to the Council or any Future Provider at the end of the Exit Period.
3. The Exit Group shall use all reasonable endeavours to agree and implement any other steps, measures, processes and/or procedures in order to minimise the potential for any Potential Returning Employees not being the subject of a Relevant Transfer to the Councils or any Future Provider at the end of the Exit Period.
4. Where, despite the requirements of paragraphs 4 – 6 having been complied with, there remain any Potential Returning Employees who may not be the subject of a Relevant Transfer, the provisions of paragraphs 8 to 11 below shall apply.
5. If the Regulations do not apply on the expiry or termination of this Agreement to any Potential Returning Employees, the Council shall or shall procure that the Future Provider shall as far as possible offer employment to the Potential Returning Employees employed by the Mutual in the provision of the Services immediately before the end of the Exit Period.
6. If an offer of employment is made in accordance with paragraph 8, the employment shall be on the same terms and conditions as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment.
7. Where the Council or any Future Provider does not make any such offer or any such offer as referred to in paragraph 1.8 is not accepted and the Regulations do not apply to any Potential Returning Employee, the provisions below shall apply regarding any redundancy or reorganisation costs incurred by the Mutual:
   1. The Mutual shall be entitled to dismiss any or all of the Potential Returning Employees by reason of redundancy or for some other substantial reason provided that the Mutual shall carry out in the required manner any obligation to consult with the Potential Returning Employees or any of them, or their respective representatives, and shall use reasonable endeavours to mitigate the amount of any costs payable in respect of the Potential Returning Employees or their dismissal; and
   2. The Council shall indemnify the Mutual against all Direct Losses relating to the dismissals referred to in paragraph 10.1 above reasonably incurred by the Mutual (including any additional costs incurred in relation to the Local Government Pension Scheme).
8. The Parties will seek to agree as between themselves an equitable exit protocol in respect of pension arrangements for the Potential Returning Employees.
   * 1. **Pensions**
9. The Mutual shall:
   1. maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Mutual in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
   2. promptly provide to the Council such documents and information mentioned in paragraph 1.1 which the Council may reasonably request in advance of the expiry or termination of this Agreement; and
   3. fully cooperate with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Mutual in the provision of the Services on expiry or termination of this Agreement.

**Schedule 7- Agreement Manager’s Details**

**The Council’s Agreement Manager**

|  |  |
| --- | --- |
| Name |  |
| Address |  |
| Telephone number |  |
| Email address |  |

**The Mutual’s Agreement Manager**

|  |  |
| --- | --- |
| Name |  |
| Address |  |
| Telephone number |  |
| Email address |  |