

Dated

2019

Delegation and Partnering Agreement

between

Peterborough City Council

And

Cambridgeshire County Council

Head of Legal Services
Sand Martin House
Bittern Way
Fletton Quays
Peterborough
PE2 8TY

This Agreement is made the day of 2019

BETWEEN:

- (1) **PETERBOROUGH CITY COUNCIL** of the Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY ("PCC")
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall, Castle Hill, Cambridge, CB3 0AP ("CCC")

WHEREAS:

- A. The Parties are local authorities for the purposes of the Local Government Act 1972 and best value authorities for the purposes of the Local Government Act 1999.
- B. PCC and CCC currently commission the Healthy Child Programme (HCP) separately. As part of a wider strategic drive to join up child health provision across Cambridgeshire and Peterborough, PCC and CCC shall commission a single HCP across both local authorities. PCC shall delegate its commissioning responsibility and delivery of the function for the HCP to CCC. PCC shall transfer HCP funding to CCC, enabling CCC to act as lead commissioner and enter into contractual arrangements on PCC's behalf. The commissioning of the HCP shall be undertaken by the Joint Commissioning Unit comprising of officers from both local authorities.
- C. PCC shall delegate the commissioning and delivery of its Healthy Child Programme to CCC as outlined in Schedule A.
- D. In accordance with PCC and CCC's Joint Working Agreement dated [insert date], which is attached at Schedule [insert schedule reference], CCC and PCC shall work together to ensure the HCP service is contract managed and monitored to develop and enhance service delivery, build resilience and achieve future efficiencies
- E. The Parties have entered into this agreement in reliance on their powers and the exclusive rights given to local authorities to undertake administrative arrangements of this nature in sections 101 and 113 of the Local Government Act 1972, and sections 19 and 20 of the Local Government Act 2000 and the regulations made under these Acts; together with the general power within section 2 of the Local Government Act 2000 and the supporting provisions within section 111 Local Government Act 1972.
- F. In reliance on the powers set out in Recital D above, PCC shall delegate the commissioning and delivery of its Healthy Child Programme to CCC on the terms set out in this agreement and CCC has agreed to undertake Delegated Activities on the basis set out herein.

IT IS AGREED as follows:

1 GENERAL PROVISIONS

1.1 Definitions:

In the agreement unless the context otherwise requires the following provisions shall have the meanings given to them below:

"Agreement"	means this written Delegation Agreement between PCC and CCC including the Schedules
"Approval"	means prior written consent such consent not to be

	unreasonably withheld or delayed
"Assets"	means the information and communications technology equipment including but not limited to routers, servers, computer lap tops, hand held devices, all computing accessories, PCC Software, PCC System and other assets used in the delivery of the Delegated Activities by PCC or its Contractors prior to the Commencement Date
"Auditor"	means the auditor appointed by CCC or CCC's internal or external auditor as the context requires.
"Delivery Continuity Plan"	A plan to ensure the Delegated Activities will continue to be provided by CCC in the event of disruption to CCC' operations and those of its Contractors (including disruption to information technology systems) howsoever caused
"Change in Law"	the coming into effect after the date of this Agreement of: (a) Law other than any Law which on the date of this Agreement has been published: (i) in a bill; (ii) in a draft statutory instrument; or (iii) as a proposal in the Official Journal of the European Union; (b) any guidance; or (c) any applicable judgment of a relevant court of law which changes a binding precedent;
"Code"	means the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000
"Commencement Date"	Means ;
"Commercially Sensitive Information"	means information of a commercially sensitive nature relating to CCC, its IPR or its business or which CCC has indicated to PCC that, if disclosed by PCC, would cause CCC significant commercial disadvantage or material financial loss;
"Confidential Information"	means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.
"Data Protection Legislation"	shall mean all applicable data protection and privacy Law (including the GDPR, the LED and the Data Protection Act 2018 and all applicable Laws about the processing of personal data and privacy) and any relevant national implementing Laws and regulatory requirements, as amended from time to time, to which the Council and the Contractor are subject, and any related guidance or codes

	of practice issued by the relevant supervisory authorities.
(Controller , Processor , Data Subject , Personal Data, Personal Data Breach, Data Protection Officer	shall each take the meaning given in the Data Protection Legislation.)
(Agreed Purposes	shall mean the delivery of [.....] as referred to within Schedule A.)
(Data Discloser	shall mean a party that discloses Shared Personal Data to the other party.)
(Permitted Recipients	means the parties to this agreement, the employees of each party, and any third parties engaged to perform obligations in connection with this agreement.)
(Shared Personal Data	shall mean the personal data to be shared between the parties under clause 20 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: [insert details]
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under the Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of the Agreement, including any Personal Data Breach
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Subject Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to exercise the Data Subjects rights under the Data Protection Legislation (or any of them).
"Default"	means any material breach of the obligations of the relevant Party (including but not limited to fundamental breach);
"Default Notice"	means a notice in writing served by one Party on the other in accordance with clause 27.3 setting out the details of any Default and the steps required to remedy the Default;
"Delegated Activities"	means the services to be supplied by CCC to PCC in accordance with the Specification for each part of the Delegated Activities as set out in Schedule A;
"Disrupting Party"	means either CCC or PCC causing a disruption to the performance of the other Party's obligations under this Agreement;
"Dispute"	means any dispute arising out of or in connection with this Agreement or the performance, validity or enforceability of it;
"Dispute Notice"	written notice of a Dispute setting out its nature and full particulars;
"Dispute Resolution Protocol"	means the dispute resolution protocol set out in clause 10
"Due Date"	means thirty (30) Working Days from the receipt of an

	undisputed invoice from CCC;
"Eligible Person"	means the person(s) for whom PCC are responsible by statute for providing the delegated activities
"EIR"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Equipment"	means any equipment supplied and used by CCC (but not hired, leased or loaned from PCC in the performance of its obligations under the Agreement;
"Exit Plan"	the plan set out in Schedule C
"Expiry Date"	
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Force Majeure"	means any event or occurrence which is outside the reasonable control of the Party concerned (which is not attributable to any act or failure to take preventative action by that Party) including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man made, but excluding: (a) any industrial action occurring within CCC' or any Contractor's organisation; and (b) the failure by any Contractor to perform its obligations under any Contract; (c) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or PCC
"ICT"	means information and communications technology;
"Information"	has the meaning given under section 84 of the FOIA;
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi conductor topography rights, domain names and website addresses, trade or business names, rights in Know How and Confidential Information, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
"Know How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in

	the nature of know how relating to the Delegated Activities but excluding know how already in CCC' or PCC's possession before the Commencement Date;
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body (which, in respect of the latter, the Parties are bound to comply with);
"CCC"	means Cambridgeshire County Council;
"CCC' Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know how, personnel and providers of CCC, including CCC's rates and pricing information and IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;
"CCC Software"	means software which is proprietary to CCC
"CCC System"	means the information and communications technology system used by CCC in performing the Delegated Activities including the Equipment and any communications links between the Equipment and PCC System.
"Mediator"	a neutral adviser or mediator
"Minimum Insurance Period"	means 6 years after the Expiry Date;
"Month"	means calendar month;
"PCC Data"	means: a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to CCC by or on behalf of PCC; and (ii) which CCC is required to generate, process, store or transmit pursuant to this Agreement; and b) any Personal Data for which PCC is the Data Controller;
PCC's Facilities	means any materials, plant or equipment owned or held by the PCC and provided by PCC (PCC's Premises and Facilities) to enable CCC to perform its obligations under this agreement and for the provision of services to CCC Partners
"PCC's Premises"	means the premises owned or leased by PCC from which CCC' Staff shall provide the Delegated Activities or any part of the Delegated Activities (PCC's Premises and Facilities)
"PCC Representative"	the representative appointed in accordance with clauses 15 and 10 to act as the main point of contact for CCC on all

	matters relating to this Agreement and for all matters relating day to day operational activities arising out of the Delegated Activities.
"PCC Software"	means software which is owned by or licensed to CCC
"PCC System"	the Customer's computing environment (consisting of the hardware and telecommunications networks) that is to be used by PCC in connection with its use of the Delegated Activities and which interfaces with the CCC System in order for PCC to receive the Delegated Activities, but excluding PCC Software
"Party"	means CCC or PCC and "Parties" shall be construed accordingly;
"Payment Default Notice"	written notice that any payment has become overdue for payment in accordance with the terms of this Agreement
"Personal Data"	shall have the same meaning as set out in the GDPR and Data Protection Act 2018
"Process"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of [PCC];
"Replacement Services"	means any activities which are identical or substantially similar to any of the Delegated Activities and which PCC receives in substitution for any of the Delegated Activities following the termination of this Agreement, whether those services are provided by PCC internally or by any Replacement Partner.
"Replacement Partner"	means any third party to whom CCC delegates responsibility for Delegated Activities from time to time;
"Request for Information"	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations (as the context requires);
"Requesting Party"	means the Party in receipt of Request for Information
"Delivery Failure"	A failure by CCC to deliver any part of the Delegated Activities in accordance with Schedule
"Sites"	means any premises from which the Delegated Activities are provided or from which CCC manages, organises or otherwise directs the provision or the use of the Delegated Activities or where any part of CCC System is situated or where any physical interface with PCC System takes place;
"Specification"	means the activities generally described and specified in Schedule A;
"Staff"	means all persons employed or engaged by CCC and/or any Contractor to perform CCC' obligations under the

	Agreement together with CCC's and/or any Contractor's servants, consultants, agents, providers and Contractors used in the performance of its obligations under the Agreement;
SVGA 2006	means the Safeguarding of Vulnerable Groups Act 2006
Service User	means any child, young person or parent or carer accessing or eligible to access the Services
Services	Provision of Healthy Child Programme 0-5, Healthy Child Programme 5-19 and Family Nurse Partnership
"Term"	means the period of 1 April 2019 to 31 March 2024.
"Third Party Materials"	means any materials, documentation, information, programs and codes, the IPR in which are: a) owned by a third Party; and b) used by CCC to provide the Delegated Activities;
"Transitional Assistance"	means such support and assistance as is reasonably necessary to implement the Exit Plan and in order to achieve a smooth transfer of the Delegated Activities to PCC or Replacement Partner
"Transparency Code"	Local Government Transparency Code 2015
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any amendment thereto;
"Variation"	Means any variation to this Agreement including to any of the Delegated Activities.
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England;

1.2 Interpretation

The interpretation and construction of the Agreement shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement;

- 1.2.7 the Schedules form part of this Agreement and shall have effect as if set out in the full body of this Agreement any reference to this Agreement includes the Schedules
- 1.2.8 references to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule.
- 1.2.9 a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.10 in the event of and only to the extent of any conflict between the clauses of the Agreement and any document referred to therein the conflict shall be resolved in accordance with the following order of precedence:
- 1.2.10.1 the clauses of the Agreement; and
- 1.2.10.2 the Schedules and
- 1.2.10.3 any other document referred to in the clauses of the Agreement.
- 1.2.11 any obligation not to do something includes an obligation not to allow that thing to be done;
- 1.2.12 any reference to costs in this Agreement shall be deemed to be a reference to costs reasonably incurred.

2 TERM

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue for the Term, unless terminated earlier in accordance with this Agreement.
- 2.2 The Term shall commence on 1st April 2019 and end on 31st March 2024.

3 AGREEMENT, REPRESENTATIONS AND WARRANTIES

- 3.1 Each of the Parties warrants and represents to the others that:
- 3.1.1 it has full capacity and authority and all necessary consents, complied with all internal procedural and constitutional requirements and taken all steps required by statute to enable it to enter into this Agreement and to perform its obligations under the Agreement;
- 3.1.2 the Agreement is executed by a duly authorised representative of the Party;
- 3.1.3 in entering into the Agreement it has not committed any Fraud; and
- 3.1.4 not in use
- 3.1.5 the Parties agree to act openly and transparently in relation to each other in carrying out their obligations under this Agreement and in particular where circumstances arise which may have a material impact upon delivery of the Delegated Activities.

4 DELEGATED ACTIVITIES

- 4.1 Subject to clause 4.2, PCC shall delegate to CCC the responsibility for delivering the Delegated Activities specified in Schedule A, pursuant to the terms and conditions of this Agreement.
- 4.2 PCC shall delegate its commissioning responsibility and delivery of the function for the HCP to CCC and CCC shall commission a single HCP across both local authorities. The commissioning of the HCP shall remain within the Joint Commissioning Unit comprising of officers from both local authorities. PCC shall transfer HCP funding to CCC, enabling CCC to act as lead commissioner and enter into contractual arrangements on PCC's behalf. Once the service has been commissioned by CCC, in accordance with PCC and CCC's Joint Working Agreement, which is attached at Schedule [insert schedule reference], CCC and PCC shall work together to ensure the HCP service is contract managed and monitored according to the Performance Framework set out in the Section 75 Agreement.

4.3 CCC agrees that PCC relies on the skills and judgement of CCC in the supply of the Delegated Activities and the performance of its obligations under this Agreement.

4.4 CCC shall ensure that:

- 4.4.1 All Staff involved in the delivery of the Delegated Activities shall do so with reasonable skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Delegated Activities;
- 4.4.2 The Delegated Activities are provided in accordance with the laws of England and Wales and the European Union and any other laws, regulations, policies;
- 4.4.3 The Delegated Activities are provided in accordance with the requirements set out in Schedule A;
- 4.4.4 Sufficient resources are allocated to the provision of the Delegated Activities in accordance with the terms of this Agreement; and
- 4.4.5 CCC and its Staff shall at all times comply with the provisions of the Human Rights Act 1998.

5 AUTHORITY'S PREMISES, FACILITIES AND THE ASSETS

- 5.1 PCC shall, subject to clauses 20 and 20A, provide CCC and its Staff access to such parts of PCC's Premises and use of PCC Facilities and of the Assets as CCC reasonably requires for the purpose of properly performing its obligations under this Agreement.
- 5.2 PCC's Premises shall be made available to CCC in accordance with clause 5.1 on the basis of a non-exclusive licence and free of charge for the duration of the Term or which is otherwise agreed by the Parties from time to time in writing.

6 STAFF AND TUPE (*section to be revised*)

The Employees

- 6.1 The Parties acknowledge and agree that CCC's Staff involved directly or indirectly in the provision of the Delegated Activities will remain employed by CCC, and that the provisions of the TUPE are not relevant and shall not apply to this Agreement.
- 6.2 It is agreed between the Parties that the Fee will not be varied after the commencement of this Agreement on the grounds that TUPE does or does not apply, irrespective of the belief of either Party prior to the time the Agreement commenced.
- 6.3 In the event of any future Transfer to PCC or any Replacement Provider or sub-contractor on the expiry or early termination of this Agreement or as a consequence of part of the Delegated Activities not being provided by CCC (or, in relation to 6.3.2, at such additional times during the Term as PCC requests) CCC will (and will use all reasonable endeavours to produce that any sub-contractor will):-
 - 6.3.1 comply with the obligations under TUPE; and
 - 6.3.2 upon request provide to the PCC, as soon as reasonably practicable, a list containing details of the transferring employees and such other appropriate information reasonably required by the PCC, to disclose as appropriate to third parties invited to tender/quote for any subsequent contract(s) relating to the provision of the Delegated Activities, or part thereof. This list and details to be provided to the PCC is to contain the following in respect of each transferring employee:-
 - nature of job/job description;
 - current salary;
 - length of service;
 - contracted hours and percentage of those contracted hours spent on the contract;
 - retirement age;
 - arrangements for overtime and whether this is contractual;
 - any factors that may affect redundancy entitlement;

- any outstanding industrial injury claims or other claims or actions;
- whether any probationary period is current;
- period of notice to terminate employment;
- current pay agreement and any agreed settlement or pay agreement yet to come into effect;
- age;
- annual leave entitlement;
- sick leave entitlement;
- maternity and paternity leave arrangements;
- special leave entitlement;
- other benefits eg. season tickets, loans, car provision;
- whether they are a member of a company pension scheme;
- location and contractual provisions relating to this;
- terms and conditions of employment;
- details of the company pension scheme; and
- any other information reasonably requested by the PCC.

- 6.4 CCC warrants and undertakes that the above information under clause 6.3.2, when provided to the PCC, will be accurate and complete in all respects as far as it is aware or should reasonably be aware, and that it will, as soon as reasonably practicable, inform the PCC in writing of any changes to that information between the date provided and the date of any relevant transfer under TUPE.
- 6.5 CCC warrants to the PCC and any Replacement Provider that it shall take all reasonable steps to ensure that, otherwise than in the bona fide course of business, it (and/or its sub-contractor) will not, without the consent of the PCC, during the twelve months prior to the expiry of the Term (or where notice to terminate this Agreement (or any part of it) for whatever reason has been given) or in any period between the date on which the information under clause 6.3.2 is provided and any expiry or termination of the Agreement.
- 6.6 CCC will use its reasonable endeavours to procure (and likewise that any sub-contractor procures) that no Transferring Employees are dismissed for a reason connected to any relevant transfer under TUPE, and will indemnify and keep indemnified the PCC and any Replacement Provider against direct or indirect loss, damages, claims, costs and expenses (included legal expenses) suffered or incurred by the PCC and/or any Replacement Provider:-
- 6.6.1 in relation to the employment or termination of employment of any employee prior to or upon a transfer under TUPE;
- 6.6.2 in relation to a breach or non-observance by the CCC of any collective agreement, custom, practice or arrangement (whether legally binding or not) with a trade union or staff association in respect of any Transferring Employees;
- 6.6.3 in relation to any failure by the CCC (or any sub-contractor) to comply with their obligations under TUPE in respect of transferring employees;
- 6.6.4 any claim by any person who transfers or alleges that they have transferred under TUPE to the PCC or a Replacement Provider whose details were not included in the details provided by the CCC under clause 6.3.2; and
- 6.6.5 in relation to vicarious liability owed to third parties arising or connected with any Transferring Employee's contract of employment which arises from any act or omission on the part of the Transferring Employee prior to the transfer under TUPE.
- 6.7 In the event of any future transfer under TUPE to the PCC or any Replacement Provider or sub-contractor on the expiry or early termination of this Agreement or as a consequence of part of the Services not being provided by the CCC the following shall

apply:-

- 6.7.1 CCC shall comply with its obligations under TUPE and the EC Acquired Rights Directive 2001/23/EC;
- 6.7.2 if, and to the extent that the relevant transfer under TUPE is to PCC, PCC shall comply with its obligations under TUPE and the EC Acquired Rights Directive 2001/23/EC;
- 6.7.3 the CCC shall indemnify and keep indemnified PCC and any Replacement Provider from and against all Liabilities in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the CCC) in respect of any of the transferring employees arising from or connected with any failure by the CCC to comply with any legal obligation to such trade union, staff association or other employee representative under TUPE and/or the EC Acquired Rights Directive 2001/23/EC;
- 6.7.4 if, and to the extent that the relevant transfer under TUPE is to PCC, PCC shall indemnify and keep indemnified CCC from and against all Liabilities in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by PCC) in respect of any of the Transferring Employees entitled to transfer under TUPE to PCC, arising from or connected with any failure by PCC to comply with any legal obligation to such trade union, staff association or other employee representative under TUPE and/or the EC Acquired Rights Directive 2001/23/EC;
- 6.7.5 CCC shall be responsible for (and shall pay in the ordinary course prior to the relevant transfer under TUPE), and shall indemnify and keep indemnified PCC and any Replacement Provider from and against all Liabilities in connection with or as a result of all emoluments and outgoings in respect of all Transferring Employees (including without limitation, all wages, remuneration, holiday pay, benefits, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions, provision of benefits and deductions and otherwise) for which it is responsible, which are attributable in whole or in part to the period prior to the relevant transfer under TUPE;
- 6.7.6 if, and to the extent that the relevant transfer under TUPE is to PCC, PCC shall be responsible for, and shall indemnify and keep indemnified the CCC from and against all liabilities in connection with or as a result of all emoluments and outgoings in respect of all transferring employees who transfer under TUPE to PCC (including without limitation, all wages, remuneration, holiday pay, benefits, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions, provision of benefits and deductions and otherwise) for which it is responsible, which are attributable in whole or in part to the period from the relevant transfer under TUPE to PCC;
- 6.7.7 CCC shall indemnify and keep indemnified PCC and any Replacement Provider from and against all liabilities in connection with or as a result of any Employment Claims by any transferring employee or former Staff member arising directly or indirectly from any act, fault or omission of CCC in respect of any transferring employee or former Staff member employed by CCC immediately prior to the relevant transfer under TUPE, relating to the period before the relevant transfer under TUPE (and for the avoidance of doubt, this indemnity shall not apply to the extent that the Liabilities in connection with or as a result of the Employment claim arise or are attributable to an act or omission of PCC or the Replacement Provider whether occurring or having its origin before, on or after the relevant transfer date including any Liabilities arising from PCC or Replacement Provider's failure to comply with its obligations under TUPE. and
- 6.7.8 if, and to the extent that the relevant transfer under TUPE is to PCC, PCC shall indemnify and keep indemnified the CCC from and against all Liabilities in connection with or as a result of any Employment Claims by any Transferring Employees who transfer to PCC under TUPE, arising directly or indirectly from any act, fault or omission of PCC in respect of any transferring employee who transfers to PCC under TUPE, relating to the period from the relevant transfer under TUPE to PCC.
- 6.7.9 If to the extent that the relevant transfer under TUPE is to a Replacement Provider, PCC shall procure that any Replacement Provider shall:

- (i) Indemnify and keep indemnified the CCC against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees including without limitations all wages, holiday pay, bonuses, commissions, payments of PAYE National Insurance contributions, pension contributions, termination costs and otherwise arising in relation to the Transferring Employees and from including the date of any transfer.
- (ii) Indemnify and keep indemnified the CCC against any direct or indirect loss damages cost and expenses (including legal expenses) suffered or incurred by the CCC in relation to the Transferring Employees and the Liabilities which arises out of any act or omission of the Replacement Provider from including the date of any transfer.
- (iii) Provide details on such request of any measures that any view Replacement Provider envisages it will take in relation to any Transferring Employees including but not limited to any proposed changes to terms and conditions of employment. If there are no such measures then procure that any Replacement Provider shall confirm that fact and shall indemnify CCC against all Liabilities resulting from any failure to comply with this obligation.”

6.8 CCC shall indemnify and keep indemnified PCC and any Replacement Provider from and against all liabilities in connection with, or as a result of, any breach by CCC of its obligations under this clause 6.

6.9 PCC shall indemnify and keep indemnified the CCC from and against all liabilities in connection with, or as a result of, any breach by PCC of its obligations under this clause 6.

6A. SAFEGUARDING

6A.1 CCC will comply with the requirements of the SVG Act 2006 in respect of their Staff.

6A.2 CCC acknowledges that where it provides Delegated Activities which are classed as Regulated Activities (because the nature of the Delegated Activities falls within the definition of a regulated activity relating to children and/or to vulnerable adults in Part 1 and/or Part 2 of Schedule 4 of the SVG Act (“Regulated Activities”)) CCC shall have ultimate responsibility for the management and control of the Regulated Activities provided under this Agreement and for the purposes of the SVG Act.

6A.3 CCC shall ensure that all individuals and Staff engaged in the provision of the Delegated Activities are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (“DBS”) (previously the Criminal Records Bureau) including a check against the Adults’ Barred List and the Children’s Barred List and CCC shall monitor the level and validity of the DBS checks under this clause for each member of Staff.

6A.4 CCC warrants that, at all times for the purposes of this Agreement, it will use best endeavours to ensure that members of Staff who are or will be employed or engaged in the provision of the Delegated Activities are not barred from any activity comprised in the Delegated Activities in accordance with the provisions of the SVG Act.

6A.5 CCC shall immediately notify PCC of any information required by PCC to satisfy itself that the obligations of this clause have been met. In addition, CCC shall:

6A.5.1 on the engagement of any person or Staff member who is or will be employed or engaged in the provision of the Services; and

6A.5.2 on the third anniversary of the previous disclosure in respect of any such person certify in writing to PCC that all necessary checks with the DBS have been made and that the result of each check is satisfactory.

6A.6 CCC shall refer information about any person or Staff member carrying out the Delegated Activities to the Independent Safeguarding Authority where it removes permission for such person to carry out the Delegated Activities (or would have, if such person had not otherwise

ceased to carry out the Delegated Activities) because, in its opinion, such person has harmed or poses a risk of harm to Services Users, children or vulnerable adults.

6A.7 Without prejudice to the above, CCC shall not employ or use the services of any person who:

6A.7.1 is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activities or who may otherwise present a risk to Eligible persons;

6A.7.2 is in the reasonable opinion of either Party, unsuitable to work with children or vulnerable adults; or

6A.7.3 does not have the right to work in the United Kingdom and CCC shall comply immediately with any instruction by PCC that such a person shall cease to be engaged in or associated directly or indirectly with the delivery of the Delegated Activities.

6A.8 CCC will comply with the Multi Agency Policy and Procedure as amended from time to time latest revised 2017) available from the following link:

<http://www.llradultsafeguarding.co.uk/contents/> and will have clear protocols and training for Staff so that they are aware of safeguarding issues and in particular CCC will:

6A.8.1 Ensure that all Staff are aware of the possibility of abuse, the possible signs and symptoms of abuse and know their responsibilities to respond to and report allegations of abuse;

6A.8.2 Ensure that all Staff have access to an up-to-date version of the Multi Agency Safeguarding Procedure;

6A.8.3 Include Safeguarding Adults and Safeguarding Children procedures in induction and training at a level appropriate to roles of Staff members in the protection process;

6A.8.4 Ensure that all Staff are aware of the actions that the Parties and their Staff must take when a safeguarding issue is suspected; and

6A.8.5 Ensure that all Staff know the requirements to make accurate and factual records at the time of safeguarding concerns arising and to date and sign all written records.

6A.9 CCC will monitor the training of its Staff and the details of any safeguarding actions, plans outcomes as part of the governance and quality monitoring of the Delegated Activities.

6B. SECURITY

6B.1 CCC shall ensure that its Staff, when engages within the boundaries of any of PCC's premises, shall comply with such rules, regulations and requirements (including maintaining the security of premises) as may be in force from time to time for the conduct of personnel when in, at or outside the premises. PCC's decision shall be final as to whether to refuse any of CCC's Staff access to its premises.

6B.2 CCC shall comply with the security regulations of PCC including any made for the purposes of the DPA.

7 PCC'S DATA

7.1 In accordance with the provisions of clause 7, CCC acknowledges that the PCC's Data is the property of PCC and PCC reserves all IPRs which may, at any time, subsist in the PCC Data.

7.2 CCC shall:

7.2.1 not delete or remove any proprietary notices or other notices contained within or relating to PCC Data;

7.2.2 not alter, store, copy, disclose or use the PCC Data, except as necessary for the performance

by CCC of its obligations under this Agreement or as otherwise expressed authorised by this Agreement in compliance with the provisions of this Agreement;

- 7.2.3 preserve so far as possible, the integrity of PCC's Data and prevent any loss, disclosure, theft, manipulation or inception of the PCC's Data;
 - 7.2.4 in handling PCC Data, take, all precautions necessary to preserve the security and integrity of PCC Data and to prevent any corruption or loss of PCC Data;
 - 7.2.5 make secure backup copies of PCC Data on such regular basis as is reasonable for the particular data concerned as required by the Business Continuity Plan or as otherwise instructed by PCC; and
 - 7.2.6 immediately notify PCC if any of the PCC Data is lost, becomes corrupted, is damaged or is deleted accidentally.
- 7.3 CCC shall not:
- 7.3.1 modify, amend, alter, remove, delete or enhance the PCC Data without the prior written consent of PCC; or
 - 7.3.2 make any copies of the PCC Data without the prior written permission of PCC.
- 7.4 To the extent that any of PCC's Data is held or processed by CCC, CCC shall supply such PCC Data to PCC as may be reasonably requested by PCC from time to time in such format as is agreed between the Parties.

8 FEE & PAYMENT PLAN

- 8.1 In consideration of CCC undertaking the Delegated Activities, PCC shall pay to CCC the fixed Fee of £ per annum in accordance with this clause 8 and the Payment Plan in Schedule B.
- 8.1A In the event that either PCC shall be required to reduce their Fee to CCC, or that CCC seeks to reduce their contribution to the HCP below the amount agreed in schedule B, this will require a 3 month notice period to the other Party and the provider with whom CCC shall have entered into contractual arrangements for the delivery of HCP. Where permitted, this shall trigger a variation of contractual arrangements and specification accordingly.
- 8.1B PCC shall be reimbursed, or have the equivalent sum reduced from the following year's Fee, any underspend in the current contract year associated with the delivery of the Delegated Activity by CCC or payments withheld by CCC in the current contract year due to underperformance by the provider with whom CCC have entered into contractual arrangements for the delivery of HCP.
- 8.2 CCC shall invoice PCC for payment of the Fee at the time the Fee is expressed to be payable in accordance with the Payment Plan. CCC shall send all invoices via email as a PDF attachment to payments@peterborough.gov.uk and PCC's Representative until advised otherwise by the Council.
- 8.3 PCC shall pay the Fee which has become payable in accordance with the Payment Plan on the Due Date.

Disputed Invoice

- 8.4 If PCC receives an invoice for the Fee which it reasonably believes includes a sum which is not valid and properly due:
 - 8.4.1 PCC shall notify CCC in writing as soon as reasonably practicable;
 - 8.4.2 PCC's failure to pay the disputed Fee shall not be deemed to be a breach of this Agreement;
 - 8.4.3 PCC shall pay the balance of the invoice which is not in dispute by the Due Date;
 - 8.4.4 to the extent that PCC is obliged, following resolution of the dispute, to pay an amount, then CCC may charge interest in accordance with clause 10 from the original Due Date until the

date of payment;

- 8.4.5 to the extent that CCC is obliged to refund an amount to PCC, interest shall be added to that amount in accordance with clause 10; and
- 8.4.6 once the dispute has been resolved, where either Party is required to make a balancing payment, it shall do so within thirty (30) Working Days and, where CCC is required to issue a credit note, it shall do so within thirty (30) Working Days.
- 8.5 CCC shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to PCC pursuant to this Agreement. Such records shall be retained for inspection by PCC for 7 years from the end of the contract year to which the records relate.

VAT

- 8.6 The Fee payments are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by PCC following delivery of a valid VAT invoice. CCC shall indemnify PCC against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on PCC at any time in respect of CCC's failure to account for, or to pay, any VAT relating to payments made to CCC under this Agreement.

9 CHANGE IN LAW

- 9.1 If a Change in Law occurs or is anticipated to occur, CCC shall notify PCC of its likely effects such notice should include:
 - 9.1.1 Any required changes to the Delegated Activities (including the cessation of any part of the Delegated Activities);
 - 9.1.2 Any required change to the terms of this Agreement to deal with any Change in Law; and
 - 9.1.3 Whether relief from compliance with either Party's duties is required whilst any change in Law is implemented.
- 9.2 For the avoidance of doubt, the Parties acknowledge that any Change in Law which affects the Fee shall be dealt with in accordance with clause 29 and Change Protocol.
- 9.3 As soon as practicable after receipt of any notice the CCC and PCC's Representatives (or such other representatives as the Parties may agree) shall meet to discuss and agree the best practicable means for dealing with the Changes in Law and any way in which the impact of such changes on the Delegated Activities can be mitigated.
- 9.4 If PCC becomes aware of a Change in Law but has not yet received a notice from CCC, PCC shall notify CCC of such a change.

10 DISPUTE RESOLUTION

- 10.1 If a dispute arises between the Parties in connection with the Agreement, the Parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level within 10 days of written notice of dispute being served by one or on the other without recourse to legal proceedings.
- 10.2 If a dispute is not resolved within fourteen (14) days of referral under clause 10.1 then either Party may refer it to senior representatives of each Party for resolution who shall meet for discussion within 14 days or longer period as the Parties may agree.
- 10.3 Provided that both Parties consent, a dispute not resolved in accordance with clauses 10.1 and 10.2, shall first be referred to mediation or other alternative dispute resolution procedure as agreed between the Parties, each acting in good faith. If the Parties are unable to agree a procedure or any aspect of a procedure they will seek assistance from the Centre of Dispute Resolution at Exchange Tower, 1 Harbour Exchange Square, London, E14 9GB. Unless otherwise agreed the Parties will share equally the costs of mediation and the use of mediation will be without prejudice to the rights of the Parties in all respects if the mediation does not achieve an agreed resolution of the dispute within 60 days (or such longer period as the parties may agree) of the notice of dispute being

served.

- 10.4 Unless the Agreement shall have already been determined or abandoned CCC shall in every case continue to proceed with the Delegated Activities accordance with this Agreement.

11 EXIT PLANNING

- 11.1 CCC shall no later than ten (10) calendar months after the Commencement Date produce the Exit Plan in accordance with the principles in Schedule C to achieve an orderly transition of the Delegated Activities from CCC to PCC and/or a Replacement Partner in the event of termination (for whatever reason) of the whole or any part of this Agreement.

12 CONTRACT MONITORING

Reporting

- 12.1 If there is a Delivery Failure, CCC shall:
- 12.1.1 notify PCC immediately of the Delivery Failure;
- 12.1.2 provide PCC with a plan detailing how the Delivery Failure is going to be rectified and shall carry out the actions identified in that plan; and
- 12.1.3 deploy reasonable resources and take all remedial action that is necessary to rectify or to prevent the Delivery Failure from recurring.
- 12.2 CCC and PCC's Representatives shall hold regular meetings at a time to be agreed by both Parties to monitor and review the performance of this Agreement, the achievement and the provision of the Delegated Activities. These meetings will be at least every six months.
- 12.3 CCC shall commit to PCC that during the Term of this Agreement that CCC shall comply with the principle of Open Book accounting and transparency in pricing in performing its obligations in accordance with this Agreement.

13 DISRUPTION

- 13.1 Both Parties shall take reasonable care to ensure that in the performance of its obligations under this Agreement it does not disrupt the operations of the other Party, its employees or any other contractor they engage.
- 13.2 If a Party becomes aware of an event which may affect the other Party's ability to perform its obligations under this Agreement it shall immediately notify the other Party in writing of the same.
- 13.3 If a Party is temporarily unable to fulfil the requirements of the Agreement owing to disruption of normal business caused by the Disrupting Party, an appropriate allowance by way of an extension of time shall be made by the Disrupting Party. In addition, the Disrupting Party shall reimburse any additional expense reasonably incurred by the other Party as a direct result of such disruption.

14 BUSINESS CONTINUITY

- 14.1 CCC shall maintain a robust Delivery Continuity Plan and shall ensure that it is able to implement the provisions of the Delivery Continuity Plan at any time in accordance with its terms.

15 LIMITATION OF LIABILITIES

- 15.1 Nothing in the Agreement shall be construed to limit or exclude a Party's liability for:
- 15.1.1 death or personal injury caused by its negligence or that of its Staff;
- 15.1.2 fraud or fraudulent misrepresentation by it or its Staff;

- 15.1.3 any breach of any obligations implied under section 2 Supply of Good and Services Act 1982;
 - 15.1.4 any claim under the indemnity in clause 6;
 - 15.1.5 any other matter which by Law may not be excluded or limited;
 - 15.1.6 any liability in respect of any and all enforcement costs and expenses associated with any action taken by the other Party; or
 - 15.1.7 any liability in relation to default interest payable in accordance with the terms of this Agreement.
- 15.2 Subject to clause 15.1, PCC's total liability arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:
- 15.2.1 for non-payment of invoices for the Fixed Fee , to the amount unpaid; or
 - 15.2.2 for any other type of liability, to the amount of Fee paid for the Delegated Activities under the Agreement.

16 INSURANCE

- 16.1 As a best value authority within the meaning of part 1 of the Local Government Act 1999, CCC warrants that it has the necessary consents, authority and insurances in place to be able to perform its obligations under this Agreement.
- 16.2 CCC shall ensure that all agents, professional consultants and Contractors involved in the supply of the Delegated Activities effect and maintain appropriate professional indemnity insurance during the Term.

17 HEALTH AND SAFETY

- 17.1 CCC and all persons engaged in providing the Delegated Activities shall comply fully with the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations, all health and safety policies of PCC and any other Acts, Regulations and Approved Codes of Practice relating to the health and safety of employees and others who may be affected by CCC's work activities.
- 17.2 While on PCC's Premises, CCC shall comply with any health and safety measures or policies implemented by PCC in respect of staff and other persons working on PCC's Premises and notified to CCC from time to time.
- 17.3 CCC shall notify PCC immediately in the event of any incident occurring in the performance of the Agreement on PCC's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.

18 FREEDOM OF INFORMATION

- 18.1 The Parties acknowledge that they are subject to the requirements of the FOIA, Transparency Order and EIR and shall assist and cooperate with each other to enable each other to comply with Information disclosure obligations.
- 18.2 Each Party shall:
 - 18.2.1 Advise the other Party of all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 18.2.2 Provide the Requesting Party with a copy of all Information in its possession, or control in the form that the Requesting Party may reasonably require within five (5) Working Days (or such other period as the Requesting Party may specify) of the Requesting Party's request; and
 - 18.2.3 Provide all necessary assistance as reasonably requested by the Requesting Party to enable the Requesting Party to respond to the Request for Information within the time for compliance set out in section 10 FOIA or regulation 5 EIR.
- 18.3 The Requesting Party shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other Agreement whether

the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, Transparency Code or the Environmental Information Regulations.

18.4 The Parties acknowledge that (notwithstanding the provisions of clause 18) they may, acting in accordance with the Code be obliged under the FOIA, or the EIR to disclose information concerning CCC, PCC or the Delegated Activities:

18.4.1 in certain circumstances without consulting any other Party;

18.4.2 or following consultation with the other Party and having taken its views into account, provided always that where clause 18.4 applies each Party shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the other Party advanced notice, or failing that, to draw the disclosure to the other Party's attention after any such disclosure.

18.4.3 the Parties shall ensure that all Information is retained for disclosure in accordance with the provisions of this Agreement and shall permit the other Party to inspect such records as requested from time to time.

19 CONFIDENTIALITY

19.1 Except to the extent set out in this clause 19, or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

19.1.1 treat the other Party's Confidential Information as confidential; and

19.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

19.1.3 Clause 19.1 shall not apply to the extent that:

19.1.4 such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure; or

19.1.5 such information was obtained from a third party without obligation of confidentiality; or

19.1.6 such information was already in the public domain at the time of disclosure otherwise than through a breach of this agreement; or

19.1.7 such information was independently developed without access to the other Party's Confidential Information.

19.2 CCC may only disclose PCC's Confidential Information to CCC's Staff who are directly involved in the provision of the Delegated Activities and who need to know the information. CCC shall ensure that such CCC's Staff are aware of, and comply with, these confidentiality obligations.

19.3 CCC shall not, and shall procure that CCC's Staff do not, use any of PCC's Confidential Information received otherwise than for the purposes of this Agreement.

19.4 Nothing in this Agreement shall prevent PCC from disclosing CCC's Confidential Information:

19.4.1 for the purpose of the examination and certification of PCC's accounts; or

19.4.2 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which PCC has used its resources.

19.5 PCC shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Contractor to whom CCC's Confidential Information is disclosed pursuant to clause 19 is made aware of PCC's obligations of confidentiality.

19.6 Nothing in this clause 19 shall prevent any Party from using any techniques, ideas or Know-How gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Party's Confidential Information or an infringement of IPR.

- 19.7 From the date of this Agreement CCC shall be liable for and shall indemnify PCC, its officers, employees and agents against any direct losses whatsoever incurred by PCC arising from the acts or omissions of CCC in respect of any breach of the Data Protection Legislation, duty of confidentiality or any other associated statutory or common law duty.
- 19.8 From the date of this Agreement PCC shall be liable for and shall indemnify CCC its officers, employees and agents against any direct losses whatsoever incurred by CCC arising from the acts or omissions of PCC in respect of any breach of the Data Protection Legislation, duty of confidentiality or any other associated statutory or common law duty.

20 DATA PROTECTION

- 20.1 Shared Personal Data. This clause sets out the framework for the sharing of personal data between the parties as Data Controllers.
- 20.2 Effect of non-compliance with Data Protection Legislation. Each party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 20.3 Particular obligations relating to data sharing. Each party shall:
- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - (b) give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - (c) process the Shared Personal Data only for the Agreed Purposes;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - (g) not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
 - (i) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
 - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 20.4 Mutual assistance. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;

- (b) promptly inform the other party about the receipt of any data subject access request;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 20 and allow for audits by the other party or the other party's designated auditor; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

20.5 Indemnity. Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

20A DATA SHARING

20A.1 The Parties shall enter into a Data Sharing Agreement setting out the framework for the sharing of personal data between them as Data Controllers for the Agreed Purposes.

21 ENVIRONMENTAL REQUIREMENTS

21.1 CCC shall consider, so far as is reasonably possible, sustainability issues when delivering the Delegated Activities. CCC shall also comply with PCC's sustainability and corporate social responsibility policies, standards, targets when delivering the Delegated Activities and may recover the costs of doing so from PCC.

22 PREVENTION OF CORRUPTION

22.1 No Party shall offer or give, or agree to give, to any employee, agent, servant or representative of any other Party or person employed by or on behalf of that other Party any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Agreement or any other contract with that other Party or any other public body or person employed by or on behalf of that other Party or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.

22.2 No Party shall commit an offence under the Bribery Act 2010.

22.3 Each Party warrants that it has not paid commission or agreed to pay commission to any other Party or any other public body or any person employed by or on behalf of any other Party or a public body in connection with the Agreement.

22.4 If any Party (the "Breaching Party"), its employees or any person acting on that Party's behalf, engages in conduct prohibited by clauses 22.1, 22.2, 22.3 above or any other contract with any other Party or person employed by or on behalf of any other Party, the other Party (the "Non-Breaching Party") may:

22.4.1 terminate the Agreement with immediate effect by giving notice in writing to the Breaching Party and recover from the Breaching Party the amount of any loss suffered by the Non-Breaching Party resulting from the termination; and/or

22.4.2 recover in full from the Breaching Party any other loss sustained by the Non-Breaching Party in consequence of any breach of those clauses.

23 PREVENTION OF FRAUD

23.1 All Parties shall take reasonable steps to prevent Fraud.

23.2 To the extent permitted by Law, each Party shall notify the others and/or any appropriate Regulatory Body immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

23.3 In the event of any Party establishing that an event of Fraud has been committed in relation to this Agreement the Parties shall discuss in good faith:

23.3.1 the steps to be taken in relation to ensuring the continued provision of the Delegated Activities:

23.3.1.1 agree any measures to be taken against the relevant member of Staff or if the individual responsible for the Fraud is an employee, agent or contractor of PCC, the measures to be taken against such individual; and

23.3.1.2 agree any remedial measures required to ensure that the circumstances which resulted in the Fraud are not repeated and a timescale for implementing such measures.

24 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

24.1 Neither CCC nor PCC shall do anything or permit to cause anything to be done, which may damage the reputation of the other or bring the other into disrepute.

25 EQUALITIES DUTY

25.1 The Parties shall not (and shall procure that its Staff do not) unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

26 AUDIT & RECORDS

26.1 CCC shall during the Term and for six (6) years after the Expiry Date:

26.1.1 keep and maintain full and accurate records and accounts of the operation of the Agreement including the Delegated Activities provided under it, and the amounts paid by PCC and for the avoidance of doubt records subject to a statutory minimum retention period shall be retained by CCC until CCC receives:

- 26.1.1.1 notice that such records have been transferred to PCC; or
- 26.1.1.2 Authority to destroy such records.
- 26.1.2 on reasonable request afford PCC, its representatives and/or its Auditor access to such records and accounts (which may include working papers if reasonably requested) as may be required from time to time.
- 26.2 Subject to PCC's rights in respect of Confidential Information as set out in clause 19, CCC shall on demand provide the Auditors with reasonable cooperation and assistance in relation to each audit, including:
 - 26.2.1 all information requested by PCC within the scope of the audit;
 - 26.2.2 reasonable access to Sites controlled by CCC and to Equipment used in the provision of the Delegated Activities; and
 - 26.2.3 access to the Staff.
- 26.3 Except where an audit is imposed on PCC by a regulatory body, PCC may not conduct an audit under this clause 26 more than twice in any calendar year.
- 26.4 PCC shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt CCC or delay the provision of the Delegated Activities.
- 26.5 If an audit identifies that:
 - 26.5.1 CCC has failed to perform its obligations under this agreement in any material manner, the Parties shall agree and implement a remedial plan.
- 26.6 CCC may commission, at their own cost, an internal audit review from a third party provider other than PCC. Copies of all such reviews and the responses provided by CCC shall be provided to PCC upon completion.
- 26.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26.

27 TERMINATION

Termination on notice

- 27.1 In accordance with clause 2, this Agreement shall continue until expiry.
- 27.2 Either Party may at any time terminate this Agreement or any part or parts of the Delegated Activities by serving at least twelve (12) months' written notice on the other Party such notice shall specify the date on which the Agreement shall terminate.

Termination on Default

- 27.3 In the event that either Party commits a Default, the non-defaulting Party may serve on the other Party a Default Notice.
- 27.4 Either Party may terminate the Agreement, or terminate the provision of any part of the Agreement or any part or parts of the Delegated Activities by written notice to the other party with immediate effect if that other Party commits a material breach and if:
 - 27.4.1 The material breach is not remedied within 30 days, or such other period as may be agreed between the Parties, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - 27.4.2 The material breach is not, in the opinion of the non-defaulting Party, capable of remedy.

28 CONSEQUENCES OF TERMINATION

- 28.1 On termination of this Agreement for any part of the Delegated Activities for any reason, the Exit Plan shall be implemented in accordance with Schedule C.
- 28.2 Save as otherwise expressly provided in the Agreement:
 - 28.2.1 termination or expiry of the Agreement shall be without prejudice to any rights, remedies or

obligations accrued under the Agreement prior to termination and nothing the Agreement shall prejudice the right of any Party to recover any amount outstanding at the time of such termination.

29 VARIATION

- 29.1 Except as otherwise expressly provided by this Agreement, any requirement for a Variation shall be agreed by Parties in writing.

30 FORCE MAJEURE

- 30.1 If an event of Force Majeure prevents any Party from performing its material obligations under the Agreement it shall immediately notify the other Party by the most expeditious method available and shall inform the other of the estimated duration of such failure or delay.
- 30.2 If any Party reasonably determines that the event of Force Majeure is likely to extend for any period beyond a week, the Parties shall discuss in good faith any action to be taken to resolve the impact of such event.
- 30.3 If the event of Force Majeure has a material impact on any Party and its ability to perform its obligations under this Agreement, the Parties shall discuss in good faith the termination of the Agreement and if terminated, neither Party will be liable to the other except that any rights and liabilities accrued prior to termination will continue to exist.

31 WAIVER

- 31.1 A waiver of any right or remedy under this Agreement or by Law is only effective if given in writing and communicated in accordance with clause 35 (Notices) and shall not be deemed a waiver of any subsequent breach or default.
- 31.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.

32 NO PARTNERSHIP OR AGENCY

- 32.1 Except as expressly set out in this Agreement, nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

33 CUMULATIVE REMEDIES

- 33.1 Except as expressly provided by this Agreement, all remedies available to any Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

34 CONFLICTS OF INTEREST

- 34.1 CCC shall take appropriate steps to ensure that neither CCC nor any Staff are placed in a position where (in the reasonable opinion of PCC), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of CCC or Staff and the duties owed to PCC under the provisions of the Agreement.
- 34.2 CCC shall promptly notify PCC and provide PCC with full particulars or as much detail as it is able to in circumstances where any conflict referred to in clause 34.1 above arises or is reasonably foreseeable.
- 34.3 This clause 34 shall apply during the Term and for 6 months following the Expiry Date.

35 NOTICE

- 35.1 Except as otherwise expressly provided within the Agreement, no notice or other

communication from one Party to another shall have any validity under the Agreement unless made in writing.

35.2 Any notice or other communication which is to be given by a Party to another shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or electronic mail. Provided that the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

35.3 Any Party may change its address for service by serving a notice in accordance with this clause.

36 ENTIRE AGREEMENT

36.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, except that this clause 36 shall not exclude liability in respect of any fraudulent misrepresentation.

36.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

37 THIRD PARTY RIGHTS

37.1 No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement. Nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of third Parties) Act 1999. No variation of this Agreement and no supplemental or ancillary agreement to this Agreement shall create any such rights unless expressly so stated in any such agreement by the parties.

38 GOVERNING LAW AND JURISDICTION

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

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

39 RECOVERY OF SUMS

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

40 SURVIVAL

40.1 The following clauses will survive termination or expiry of the Agreement: Clause 28 (Consequences of Termination), Clause 16 (Insurance), Clause 19 (Confidentiality), Clause 20 (Data Protection), Clause 18 (Freedom of Information), Clause 26 (Audit and Records), Clause 41 (Severance), Clause 38 (Governing Law and Jurisdiction).

41 SEVERANCE

41.1 If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not

impair or affect any other provision all of which shall remain in full force and effect.

42 COSTS AND EXPENSES

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

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SCHEDULE A

DELEGATED ACTIVITIES

CCC will act as lead commissioner in procuring 0-19 HCP service across Cambridgeshire and Peterborough, undertaking the specific delegated activities below on behalf of PCC:

Delegated activities

1. Secure 0-19 Healthy Child Programme provision (based on the commissioning approach and supply plan developed jointly by both PCC and CCC) via either
 - entering a Section 75 arrangement with appropriate provider(s) on behalf of PCC and CCC or
 - leading a competitive tender process and contracting directly with provider(s) on behalf of PCC and CCC
2. Responsibility for transferring PCC's contribution to the 0-19 HCP to the provider(s)
3. Comply with CCC internal governance and democratic processes of CCC in place of PCC's processes
4. Enact appropriate clauses from the terms and conditions agreed with the provider(s) during the term as jointly agreed by commissioners from both PCC and CCC

Non-delegated activities

The commissioning activities shown in the diagram below are not delegated activities and remain the responsibility of both PCC and CCC to be shared and undertaken together through a joint commissioning function:

Fig 1: Commissioning Cycle, Social Care Institute for Excellence



SCHEDULE B

FEE AND PAYMENT PLAN

The contributions of CCC and PCC towards the 0-19 Healthy Child Programme are set out below.

	CCC	PCC
0-5 HCP (Health Visiting provision)	£xxx pa	£xxx pa
5-19 HCP (School Nursing provision)	£xxx pa	£xxx pa
Family Nurse Partnership provision	£xxx pa	£xxx pa
Total 0-19 HCP	£xxx pa	£xxx pa
Grand total	£xxxx pa	

PCC will raise an annual PO during April of each year for CCC to invoice against, split against cost centres where appropriate.

CCC will make payment to the provider(s), clearly identifying PCC and CCC monies and invoice PCC in accordance with the payment schedule in the terms and conditions in the subsequent Section 75 agreement or contract award. CCC will first pay the provider(s) and then invoice PCC for its contribution to the HCP.

SCHEDULE C EXIT PLAN

EXIT STRATEGY

1. PRINCIPLES AND OBJECTIVES

- 1.1 This Schedule sets out the principles and objectives of the Exit Strategy to be agreed between CCC and PCC which will apply when the Delegated Activities or part of the Delegated Activities are terminated or at the Expiry Date (whichever is sooner).
- 1.2 For the purposes of this Schedule C, the period between the date when a valid termination notice is served by either party and the Expiry Date shall be known as the “**Termination Transfer Period**”.
- 1.3 If there is a partial termination, the provisions of this Schedule C shall apply only to those assets, information, rights and employees to the extent that they are no longer required by CCC for the provision of the Delegated Activities.
- 1.4 The objectives of the Exit Strategy (the “**Objectives**”) are to:
 - 1.4.1 ensure CCC stops supplying the Delegated Activities or such part of the Delegated Activities which are to be terminated;
 - 1.4.2 allow PCC to perform the Replacement Delegated Activities; and
 - 1.4.3 eliminate or minimise any disruption or deterioration of the Delegated Activities or failure to provide the Delegated Activities in accordance with the Specification as a result of the termination to include the Termination Transfer Period.
- 1.5 CCC shall take all such reasonable steps as shall be necessary or desirable for the orderly hand-over of the Delegated Activities to PCC to assist in achieving the Objectives.

2. PLANNING

- 2.1 CCC shall develop a generic plan for the transfer of the Delegated Activities and the steps to be taken upon termination of the Delegated Activities by CCC to assist in achieving the Objectives (the “**Exit Plan**”). This Exit Plan will be agreed between the PCC and CCC prior to the commencement of the contract.
- 2.2 The Exit Plan will be reviewed in accordance with paragraph 2.4.3. below.
- 2.3 The level of detail required by PCC shall be reasonable but should provide as a minimum the procedures and responsibilities necessary for an orderly and effective transfer of the Delegated Activities to PCC and the achievement of the Objectives.
- 2.4 In addition CCC shall:
 - 2.4.1 maintain the Exit Plan throughout the Term to ensure that it is updated to reflect any changes made to the Delegation Agreement, Specification or Changes in Law;
 - 2.4.2 provide all information and assistance reasonably necessary to effect the termination in accordance with the Exit Plan as efficiently and effectively as reasonably possible; and
 - 2.4.3 review and verify the Exit Plan with PCC at least once each year during the Term and following such review and verification by PCC. If PCC identify any aspect of the Exit Plan which each considers to be inadequate or out of date CCC shall promptly make improvements or changes and submit the revised Exit Plan to PCC for approval.

- 2.5 The Exit Plan shall include, amongst other things:
- 2.5.1 details of employees to include any original transferring employees, contracts, sub-contracts, licences, properties and any other resources which CCC will continue to provide during the Termination Transfer Period; and
 - 2.5.2 an outline timetable, process, outline schedule of responsibilities and other critical criteria for effecting the orderly hand-over of the Delegated Activities.
- 3. TRANSFER DELEGATED ACTIVITIES**
- 3.1 At the start of the Transfer Period, CCC shall comply with its obligations in the Exit Plan in order to provide the Delegated Activities during the Termination Transfer Period (the “**Transfer Delegated Activities**”).
 - 3.2 PCC shall identify which of the Transfer Delegated Activities CCC should continue to deliver during the Transfer Period and which if any may be discontinued.
 - 3.3 If PCC identifies any Transfer Delegated Activities which may be discontinued it shall specify when during the Transfer Period they may be discontinued, such changes to be agreed through the Variation process.
 - 3.4 CCC shall not reduce the resources which it has committed to the Transfer Delegated Activities without the prior written consent of PCC.
- 4. DATA AND KNOWLEDGE**
- 4.1 CCC shall, to the extent that it is entitled to do so, supply all Data to the PCC in such formats and by such methods as PCC may reasonably specify.
 - 4.2 CCC shall provide for the transfer of all necessary knowledge reasonably required for the provision of the Replacement Delegated Activities (“**Necessary Information**”) which may, as appropriate, include information, records and documents required pursuant to this Agreement and the provision of the Delegated Activities. To allow the transfer of knowledge from CCC to PCC CCC shall explain the relevant procedures and operation of the Delegated Activities to the employees and or other nominees of PCC.
 - 4.3 The Necessary Information during the Termination Transfer Period which CCC shall provide to PCC includes:
 - 4.3.1 a list of third party suppliers of Delegated Activities which are likely to be the subject of a Transfer setting out:
 - 4.3.1.1 key support contact details;
 - 4.3.1.2 contract termination provisions;
 - 4.3.1.3 key term dates; and
 - 4.3.1.4 contract values
 - 4.3.2 details of work in progress, including how any risks to successful completion of this work may be mitigated;
 - 4.3.3 details of any negotiations with Third Party suppliers;
 - 4.3.4 details of any litigation, disputes, arbitration, mediations or administrative or criminal proceedings to which CCC has been a party in connection with the Delegated Activities in the 3 years prior to the Expiry Date;
 - 4.3.5 details of any Customer Complaints received by CCC in the 3 years prior to the Expiry Date;
 - 4.3.6 details of any insurance claims made by CCC in connection with the Delegated Activities in the 3 years prior to the Expiry Date; and
 - 4.3.7 details of any proceedings which have been instigated in relation to any other matter which may adversely affect PCC’s ability to perform the Replacement Delegated Activities.

5 STAFF AND TUPE

5.1 CCC shall ensure that CCCs Personnel are available to assist PCC:

5.1.1 during the Transfer Period; and

5.1.2 for a minimum of 32 hours each month for the first six months after or before the Expiry Date at times reasonably required by PCC and at the cost of PCC as detailed in the Exit Plan to allow PCC to familiarise itself with the Delegated Activities, to the extent necessary to enable it to provide the Replacement Delegated Activities.

5.2 PCC shall be entitled to place with CCC such number of PCC employees and consultants as it reasonably requires ("**PCC Personnel**") during the Transfer Period to enable PCC to gain further information and knowledge in relation to the Delegated Activities. CCC shall provide all necessary co-operation and assistance to PCC Personnel to facilitate this. CCC shall not be entitled to use PCC Personnel in the actual performance of the Delegated Activities.

6 CCC UNDERTAKINGS

6.1 If PCC issues a notice of termination to CCC, CCC undertakes, during the period between the receipt of the termination notice and the Expiry Date, except with the prior written consent of PCC, such consent not to be unreasonably withheld or delayed, not to:

6.1.1 enter into any long-term, unusual or abnormal contracts or commitments;

6.1.2 other than in the ordinary course of business vary the terms of any contracts with the providers of Delegated Activities supplied in connection with the Delegated Activities;

6.1.3 other than in the ordinary course of business vary the terms of any contracts with CCC Sub-CCCs;

6.1.4 grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree to redeem any such securities or give or agree to give any guarantees or indemnities;

6.1.5 permit any of its insurance policies required under this Delegation Agreement to lapse or do anything which would make any such policy of insurance void or voidable;

6.1.6 in any way depart from the ordinary course of its day to day business either as regards the nature or scope or the manner of conducting the same;

6.1.7 release waive or modify any warranty or guarantee given by any supplier of Delegated Activities supplied in connection with the provision of the Delegated Activities;

6.1.8 cause or permit any item comprised in the records to be removed or destroyed or any programs or data on PCC's and CCC's computer systems relating to the Delegated Activities to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with data protection legislation or for the efficient running of the computer system after satisfactory back-up codes have been made and securely stored off-site;

6.1.9 take any action if the reasonably foreseeable consequence would be to materially and adversely affect the operation of the Delegated Activities;

6.1.10 other than in the ordinary course of business terminate the employment of any of CCC's employees employed in the provision of the Delegated Activities ("**Employees**");

6.1.11 relocate or assign to new duties any of the Employees;

6.1.12 make any other alterations to the structure or composition of the Employees which are intended to or which may preclude the application of TUPE upon the start of

the Replacement Delegated Activities; and

- 6.1.13 other than in the ordinary course of business make any additional payments to Employees outside of the terms and conditions set out in their employment contract, statute or any other contractual document.

7 COSTS

- 7.1 CCC shall provide the Termination Delegated Activities at its cost save where expressly stated in this Schedule. CCC has assumed that the Termination Delegated Activities shall be delivered by its staff normally allocated to service delivery. Where this is not reasonably possible CCC shall notify PCC and seek to agree appropriate provisions including agreeing a mechanism to provide relief from performance where relevant, provided that both parties in agreeing this mechanism act reasonably.

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Schedule D
Joint Working Agreement

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EXECUTED under the Common Seal of
PETERBOROUGH CITY COUNCIL
In the presence of

.....
Duly Authorised Officer

EXECUTED under the Common Seal of
CAMBRIDGESHIRE COUNTY COUNCIL
In the presence of

.....
Duly Authorised Officer