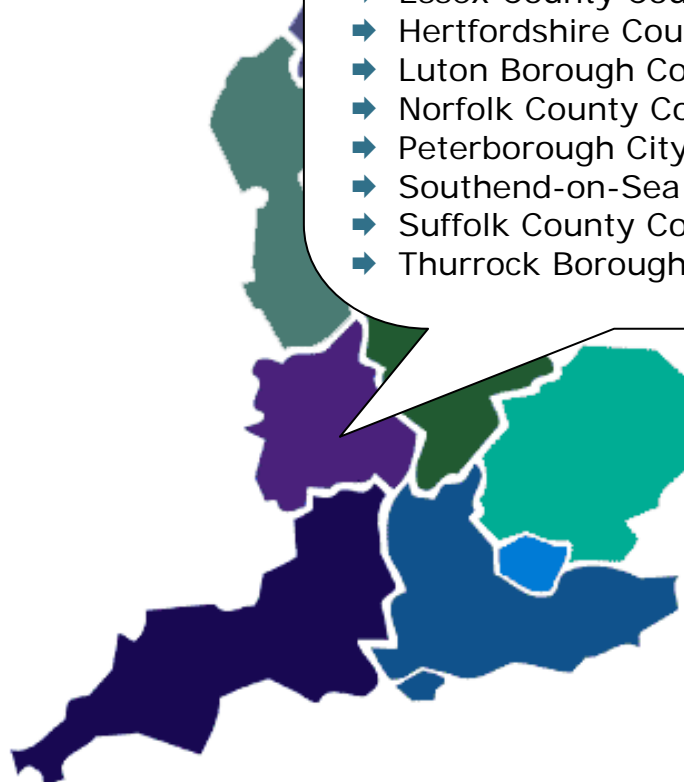


The Regional Standard
TERMS AND CONDITIONS OF CONTRACT
for adult social care and housing support
services in the East of England

Adopted: 3 October 2008

**Councils in the East of England with
Social Services Responsibilities**

- ➔ Bedford Borough Council
- ➔ Central Bedfordshire Council
- ➔ Cambridgeshire County Council
- ➔ Essex County Council
- ➔ Hertfordshire County Council
- ➔ Luton Borough Council
- ➔ Norfolk County Council
- ➔ Peterborough City Council
- ➔ Southend-on-Sea Borough Council
- ➔ Suffolk County Council
- ➔ Thurrock Borough Council



Version 1.3 – 6 April 2009

This Document has been approved by the Directors of Adult Social Services - Eastern Branch. Please email any queries to contract.rationalisation@thurrock.gov.uk

**The regional standard terms and condition of contract
for adult social care and housing support services in the East of England**

**Revision
History**

Date of next revision:

Version Number	Revision date	Previous revision date	Summary of Changes	Changes marked
1.0			Version Adopted by ADASS Eastern on 3 October 2008	
1.1	28 October 2008		Correction to Section B8 "Provider's Obligations", insertion of B9 "Council's Obligations" and renumbering to the end of Part B	No
1.2	5 January 2009		Addition of new clause Mental Capacity Act and Deprivation of Liberty Safeguards	No
1.3	6 April 2009		Addition of New Unitaries, new LINK definition and clause, Financial Distress definition and Clause Provider's Financial Stability Clause, amendment to F3 Audit and H1.3 Consequences of Termination.	Yes

**TERMS AND CONDITIONS
OF CONTRACT FOR SERVICES
Version 1.3 – 6 April 2009**

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THIS CONTRACT is made the:

BETWEEN

(1) SUFFOLK COUNTY COUNCIL of:

Endeavour House, 8 Russell Road, Ipswich, IP1 2BX

and

(2) [Insert details of provider]

PART A - OPERATIVE PROVISION

A1 DEFINITIONS

The terms and expressions used in these Terms and Conditions shall have the meanings set out below:

“Approval” and “Approved” means the written consent of the Authorised Officer

“Arrangements for delivering and monitoring Outcomes Schedule” means Schedule 6 containing Outcomes and their measurement

“Authorisation” means an authorisation given by the Council after completion of the statutory assessment process, giving lawful authority to deprive a person of their liberty in the Care Home

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“Authorised Officer”	means the person for the time being appointed by the Council and specified in Schedule 1 as being authorised to administer the Contract on behalf of the Council or such person as may be nominated by the Authorised Officer to act on its behalf
“Business Day”	means between Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays
“Care and Support Plan”	means the plan, drawn up following the assessment of a Service User, which sets out how their care and support needs will be met and the outcomes to be achieved
“Carer”	means any relative, friend or neighbour who, without payment, provides help and support to the Service User
“Code of Practice”	means the guidance and information about how the Mental Capacity Act 2005 works in practice and is to support the legal framework provided by the Act
“Commencement Date”	means the date the Provider will start to provide the service.
“Conditions”	means this Contract’s terms and conditions and/or any modification duly agreed in accordance with this Contract

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“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, Developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers or either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information Schedule 8
“Contract”	means the agreement between the Provider and the Council consisting of these Conditions and any attached Schedules, the Invitation to Tender and any other documents (or parts thereof) specified by the Council
“Contract Manager”	means the person for the time being appointed by the Provider and specified in Schedule 1 as being authorised to administer the Contract on behalf of the Provider or such person as may be nominated by the Contract Manager to act on its behalf
“Contract Period”	means the period of duration of the Contract in accordance with Clause B1

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“Contract Price” and “Price”	means the price exclusive of any applicable tax, payable to the Provider by the Council under this Contract, as set out in the Contract Price Schedule, for the full and proper performance by the Provider of its obligations under this Contract
“Contract Price Schedule”	means the document attached as Schedule 4 containing details of the Contract Price
“Contract Standard”	means those standards set out in Appendix 1 of Schedule 3
“Council”	means Suffolk County Council or its successor body as applicable
“Council’s Procedure for Dealing with Complaints”	means the document set out in Schedule 5 as may be amended from time to time
“Default”	means any failure, either on the Council’s or the Provider’s part to carry out their respective obligations under this Contract
“Deprivation of Liberty (DoL) Safeguards”	means the framework of safeguards under the Mental Capacity Act 2005 for people who need to be deprived of their liberty in a Care Home in their best interest for care and who lack the capacity to consent to the arrangement made for their care
“Direct Payment”	means the local Council payments for people who have been assessed as needing help

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from social services, and who would like to arrange and pay for their own care and support services instead of receiving them directly from the local Council

- “Dispute Resolution Procedure” means the procedure set out in clause H6
- “Financial Distress Notice” means a Notice served on the Provider by the Council in the circumstances set out in clause H3.5
- “Force Majeure” means and includes the occurrence after the Commencement Date:
- (a) war, civil war, riot, civil unrest, civil emergency, terrorist attack or threat of terrorist attack;
 - (b) nuclear, chemical or biological contamination; or
 - (c) an act of God.
- “General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which would affect or relate to a comparable supply of Services of the same or a similar nature to the supply of the Services

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“Intellectual Property Rights”	means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
Local Involvement Network (LINK)	Local Involvement Networks aim to give citizens a stronger voice in how their health and social care services are delivered. Run by local individuals and groups and independently supported - the role of LINKs is to find out what people want, monitor local services and to use their powers to hold them to account. Each local authority (that provides social services) has been given funding and is under a legal duty to make contractual arrangements that enable LINK activities to take place.
“Material Breach”	means the following issues are considered (without limitation) to be a material Default: <ul style="list-style-type: none"><li data-bbox="734 1624 1409 1713">○ failure to have in place the insurance cover required under clause G2.<li data-bbox="734 1736 1409 1825">○ non-compliance with the equal opportunity requirements of clause E2.<li data-bbox="734 1848 1409 1930">○ evidence of deliberate abuse and/or mistreatment of a Service User by the

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Provider or the Provider's Staff or agents or by any sub-contractor or such sub-contractor's staff or agents or negligence by the Provider or any sub-contractor in permitting such abuse or mistreatment

- breach of the requirements of clause B11 (Fraud) or clause E1 (Prevention of Corruption).
- the conviction of the Provider of an offence under the provisions of the Care Standards Act 2000.
- persistent use by the Provider or a sub-contractor of unqualified or untrained Staff except where the Council has given written consent to such use.

“Law”

means but is not limited to any applicable Act of Parliament, statutory legislation, 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, by-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply. Any reference to “Legislation” shall be construed accordingly

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“Managing Authority”	means the person or body with management responsibility for the Care Home in which a person is, or may become, deprived of their liberty
“Notice”	means any formal communication between the Parties as required by the Contract
“Outcomes”	means the impacts or end results of the Service on a person’s life
“Party” and “Parties”	means a party to this Contract and “Parties” shall be construed accordingly
“Personal Budget”	means a streamlined assessment across agencies responsible for a number of support funding streams, resulting in the transparent allocation of resources to an individual, in cash or in kind, to be spent in ways which suit them
“Placement of Service Users”	means each individual request for the provision of Service to a Service User placed by the Council as defined and set out in Schedule 2
“Provider”	means the person, firm or company with whom the Council enters into this Contract
“Qualifying Change in Law”	means: (a) a General Change in Law (b) a Specific Change in Law

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which was not foreseeable at the date of this Contract

“Quality and Performance Schedule”

means the quality and performance standards as defined and set out in Schedule 3

“Records”

means the Contract and all documents, data or other information relating to, produced, or received as part of or in connection with the Service and stored on whatever medium

“Regulatory Bodies”

means those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the Providers and “Regulatory Body” shall be construed accordingly

“Replacement Provider”

means any third party appointed by the Council from time to time to provide any services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party

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“Schedule”	means a schedule attached to this Contract
“Services”	means the services to be provided as specified in Schedule 2 (Service Specification)
“Service Specification Schedule”	means the document attached as Schedule 2 containing details of the Services to be provided
“Service User”	means a person to whom the Provider shall provide the Services
“Significant Decision”	means a decision that needs to be made concerning serious medical treatment and change of accommodation and there are no friends or family who it would be appropriate to consult on the decision
“Specific Change in Law”	means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Provider, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services
“Staff”	means all persons employed by the Provider to perform the Contract together with the Provider’s employees, agents and sub-contractors used in the performance of the Contract

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“Value Added Tax”	means Value Added Tax or any similar tax replacing it or performing a similar fiscal function
“Variation”	means a change to this Contract or to the Services, made in accordance with clause B2 (Contract Variation)
“Whistleblowing”	means raising concerns about misconduct within an organisation or within an independent structure associated with it

A2 INTERPRETATIONS

A2.1 Except as otherwise expressly provided, the documents comprising this Contract are to be mutually explanatory of one another. Should the Provider become aware of any ambiguities or discrepancies in or between any of the documents comprising the Contract, the Provider shall immediately inform the Authorised Officer giving full details. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise coming to the notice of the Authorised Officer shall be resolved by the Authorised Officer who shall issue to the Provider any appropriate instructions in writing.

A2.2 Any references to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force, and to include any EU Directives, by-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder, and any condition attaching thereto.

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- A2.3 Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the reasonable control of the Provider.
- A2.4 The headings in the Contract are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- A2.5 The expression 'person' used in the Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- A2.6 In the Contract the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- A2.7 Any reference to government departments and the like is deemed to include its or their successors.
- A2.8 References to Clauses or Schedules shall be to Clauses and Schedules of these Conditions of Contract.

A3 ENTIRETY OF CONTRACT

This Contract represents the entire understanding between the parties and supersedes all representations, understandings and agreements, whether oral or written, made by the Council or the Provider.

PART B – GENERAL PROVISION

B1 CONTRACT PERIOD

B1.1 The Contract shall commence on the Commencement Date and shall continue in force until the termination date shown in Schedule 4 (subject to the provisions for early termination).

B1.2 Subject to satisfactory performance by the Provider during the Term set out in B1.1, the Contract may, with the agreement of both parties, be extended for a period of up to [insert number] years (subject to 6 months notice in writing). The clauses in the Contract will apply throughout any such extended period save for this clause B1.

(B1.2 Not Applicable to Spot Purchase Contracts)

B2 CONTRACT VARIATION

B2.1 The Contract may only be varied or modified if such variation or modification is in writing and signed by the Authorised Officer and the Provider's Contract Manager.

B2.2 If either party wishes to vary this Contract then it shall serve on the other a Variation Notice which shall set out the nature of the variation sought and the reasons for it.

B2.3 If either party receives a Variation Notice then within 20 Business Days of receipt it shall notify the other whether or not it agrees to the variation and if not, the reasons.

B2.4 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Council and agreed in writing with the Provider and shall be such amount as properly

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and fairly reflects the nature and extent of the Variation in all the circumstances.

B2.5 The Provider shall provide such information as may be reasonably required to enable such varied price to be calculated.

B2.6 If the Variation cannot be agreed between the Parties the matter shall be determined in accordance with the provisions of clause H6.

B3 NOTICES

B3.1 Any Notice required by this Contract to be given by either party to the other shall be in writing and shall be serviced personally, by fax or by sending it by registered post or recorded delivery or by email to the appropriate person, address, fax number or email address set out in Schedule 1.

B3.2 Any Notice required by this Contract shall be issued by the Contract Manager or Authorised Officer or any person nominated to act on their behalf as set out in Schedule 1.

B3.3 Any Notice served personally will be deemed to have been served on the day of delivery, any Notice sent by post will be deemed to have been served 48 hours after it was posted, any Notice sent by fax will be deemed to have been served 24 hours after it was despatched, any Notice sent by email before 5 p.m. for which a confirmation of delivery receipt has been received will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

B4 SEVERANCE

B4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provision of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

B4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

B5 WAIVER

B5.1 The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

B5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause B3.

B5.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

B6 ASSIGNMENT AND SUB-CONTRACTING

- B6.1 The Provider shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the supply of the Services.
- B6.2 The Provider shall not use the services of agency staff without prior approval from the Council.
- B6.3 The Provider shall remain responsible and liable for the acts and omission of any sub-contractor or agents as though they were its own.
- B6.4 The Provider shall give the Authorised Officer at least twenty (20) Business Days written notice if there is to be a change of control. There will be no automatic assignment of this contract in this instance.
- B6.5 The Council shall be entitled to:
- B6.5.1 assign, novate or dispose of its rights and obligation under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or
 - B6.5.2 transfer, assign or novate its rights and obligations where required by Law.
- B6.6 Where the Council elects to assign, novate, sub-contract or otherwise dispose of its rights and obligations under the contract, the Council shall seek the prior written consent of the Provider to

such assignment, such consent not to be unreasonably withheld or delayed.

B7 AGENCY

B7.1 Neither the Provider nor its Staff shall in any circumstances hold itself or themselves out as being the employee or agent of the Council, or enter into any Contract or bind the Council to any undertaking unless otherwise agreed in writing by the Council.

B8 PROVIDER'S OBLIGATIONS

B8.1 The Provider must provide the Service in accordance with the terms and conditions of the Contract and Service Specification. The Provider agrees that the Council has the power to inspect and examine the performance of the Services at the Provider's premises at any reasonable time or, provided that the Council gives reasonable notice to the Provider, at any other premises where any part of the Service is being performed.

B8.2 The provider must at all times deliver the service in accordance with the law.

B9 COUNCIL'S OBLIGATIONS

B9.1 Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counter party and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to

any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

B10 FORCE MAJEURE

B10.1 Neither the Provider nor the Council shall be liable for breach of its obligations under the Contract to the extent that such breach is caused by Force Majeure. For the avoidance of doubt any industrial action occurring within the Provider's organisation, the inability of the Provider to recruit staff, or failure by any sub-contractor to provide services shall not be Force Majeure.

B10.2 The Provider shall as soon as reasonably practicable notify the Council in writing of such Force Majeure events as they occur and shall use its reasonable endeavours to secure the continued provision of all or such part of the service as shall have been affected by the event of Force Majeure.

B10.3 If the event Force Majeure continues for more than one (1) month either party may give one (1) month written notice to the other to terminate the Contract or set a termination date that both parties may agree.

B11 CONFLICTS OF INTEREST

B11.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any employee agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or such person and the duties owed to the Council under the provision of the Contract. The Provider will disclose to

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the Council full particulars of any such conflict of interest which may arise.

B11.2 The provision of this Condition shall apply during the continuance of this Contract and for a period of 24 months after its termination.

B12 FRAUD

B12.1 The Provider shall safeguard the Council's funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Provider's directors and suppliers.

B12.2 The Provider shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

B12.3 The Council reserves the right to take whatever action it deems necessary in the event of either notification of, or a suspected fraud.

PART C – PROVISION OF SERVICES

C1 AUTHORISED OFFICER

C1.1 The Council shall appoint an Authorised Officer to act on behalf of the Council for all purposes connected with the Contract. Details of the person are set out in Schedule 1.

C1.2 The Council shall forthwith give notice in writing to the Provider of any change in the identity, address and telephone numbers of the person appointed as Authorised Officer. The Council shall give

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maximum possible notice to the Provider before changing its Authorised Officer.

C2 CONTRACT MANAGER

C2.1 The Provider shall appoint a Contract Manager to act on behalf of the Provider for all purposes connected with the Contract. Details of the person are set out in Schedule 1.

C2.2 The Provider shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Provider shall give maximum possible notice to the Council before changing its Contract Manager.

C3 THE SERVICE

C3.1 The Provider shall provide the Services during the Contract Period in accordance with the Contract.

C3.2 The service will be provided as and when specified in Schedule 2.

C3.3 In providing the Services, the Provider shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

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C3.4 The Provider shall be registered and shall remain registered throughout the Contract Period with any relevant Regulatory Bodies.

C4 STANDARDS OF THE SERVICE

The Provider shall comply with all relevant current and future statutory provision and local requirements that are laid down in this Contract or that are issued to the Provider as part of a Variation Notice.

C5 QUALITY ASSURANCE

The Provider shall throughout the Contract Period demonstrate and maintain a properly documented system of quality assurance.

C6 PROVIDER'S STAFF

C6.1 The Provider shall employ sufficient trained, suitably qualified and experienced Staff to ensure that the service throughout the Contract Period is provided in all respects to the Contract Standard.

C6.2 The Provider shall ensure that it has sufficient Staff to provide the service to the Contract standard during period of staff absence due to sickness, maternity leave, staff holidays or otherwise.

C6.3 The Provider's Staff employed in and about the provision of the Services shall at all time exercise due care and diligence in the execution of their duties and the Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services.

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- C6.4 The Provider shall:
- C6.4.1 insofar as it is able by law to require disclosure by applicants of all criminal convictions in recruitment and engagement of Staff;
 - C6.4.2 ensure that it complies with its statutory obligations under the Care Standards Act 2000;
 - C6.4.3 obtain and maintain Enhanced Criminal Record Bureau (CRB) disclosures and carry out all appropriate checks against the Independent Safeguarding Authority (ISA) Barred List in respect of each applicant and Staff member working with children or vulnerable adults;
 - C6.4.4 obtain a full employment history and satisfactory references for all applicants;
 - C6.4.5 confirm the applicant's legal right to work in the UK;
 - C6.4.6 not allow any member of Staff to commence employment prior to the receipt of a satisfactory check;
 - C6.4.7 notify the Council immediately if any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Provider (or any employee of a sub-contractor involved in the provision of the Services).

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C6.5 The Authorised Officer acting reasonably shall be entitled to require the Provider to remove immediately from the provision of the Service a named member of the Provider's Staff. The Provider shall have the right to make representations to the Authorised Officer concerning such person. After taking any representations into account, the Authorised Officer shall be entitled to confirm, revoke or vary his decision.

C6.6 The Provider shall bear the cost of or costs arising from any Notice, instruction or decision of the Council under this clause.

C7 ACCESSING THE SERVICE

The Council shall nominate Service Users to the Provider as set out in the Service Specification.

C8 SAFEGUARDING OF VULNERABLE ADULTS

C8.1 The Provider must have a procedure approved by the Council for dealing with allegations or suspicions of abuse.

C8.2 All staff must be trained at induction to follow the reporting procedures and training should be updated at least annually.

C8.3 The Authorised Officer must be notified immediately of all instances of suspected abuse pertaining to the contract.

C9 RIGHTS OF ACCESS AND INSPECTION

C9.1 The Provider shall allow officers of the Council to have reasonable access to the Provider's premises, records and Staff to enable the

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Council to ascertain that the Services are being provided in accordance with the Contract and any relevant statutory provisions.

C9.2 Any information made available to the Council under this Clause shall be treated as Confidential Information.

C10 PERFORMANCE MONITORING

The Provider shall comply with the performance monitoring arrangements set out in Schedule 3.

C11 CONTRACT REVIEW

Contract reviews will be undertaken by the Council to review performance against the Contract as a whole. The frequency and format of the reviews shall be set out and agreed in Schedule 3. The Provider shall afford all reasonable resources and facilities to allow the Council to carry out its contract reviews and provide all reasonable information required.

C12 FAILURE TO PERFORM

C12.1 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall acting reasonably instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure within such period of time as the Council may direct.

C12.2 In the event that:

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C12.2.1 the Provider fails to comply with clause C12.1 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

C12.2.2 the Provider persistently fails to comply with clause C12.1 above,

the Council may suspend or terminate the Contract with immediate effect by Notice in writing with reference to Schedule 2: Service Specification, 5.5.2 and 5.5.3 for Care Homes; 6.3.5 and 6.3.6 for Home Care and Supported Living.

C12.3 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Council may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

C12.3.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;

C12.3.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

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C12.3.3 terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

C12.4 The Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

C13 COMPLAINTS

C13.1 The Provider shall ensure that it has a complaints procedure which shall be approved by the Council from time to time and which is integrated with the Council's Procedure for Dealing with Complaints.

C14 WHISTLEBLOWING

C14.1 The Provider shall ensure that it has a Whistleblowing Procedure which shall be approved by the Council from time to time.

C14.2 The Provider confirms that the Council is authorised as a person whom the Provider's Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and its Staff will be made aware of this provision. The Provider further declares that any provision in any contract purporting to preclude a member of its Staff from making a protected disclosure is void.

PART D – CONTRACT PRICE AND PAYMENT

D1 CONTRACT PRICE

In return for the Provider carrying out its obligation under this Contract the Council shall pay the Provider the Contract Price as set out in Schedule 4.

D2 VALUE ADDED TAX

D2.1 Value Added Tax (VAT), where applicable, shall be shown separately on all invoices as a strictly net extra charge.

D2.2 The Council and the Provider agree to pay to the other any VAT properly chargeable.

D3 RECOVERY OF SUMS DUE

D3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract), the Council may deduct that sum from any sum then due to the Provider under the Contract or under any other agreement or contract with the Council.

D3.2 Any overpayment by the Council to the Provider shall be recoverable by the Council.

D3.3 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount,

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abatement or otherwise unless the Provider has obtained the prior Approval of the Council to such deduction.

D4 EURO

D4.1 Any legislative requirement to account for the services in euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Provider at nil charge to the Council.

D4.2 The Council shall provide all reasonable assistance to facilitate such changes.

PART E – STATUTORY OBLIGATIONS AND REGULATIONS

E1 PREVENTION OF CORRUPTION

E1.1 The Provider shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

E1.2 The Provider warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.

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E1.3 If the Provider, its Staff or anyone acting on the Provider's behalf, engages in conduct prohibited by clauses E1.1 or E1.2, the Council may:

E1.3.1 terminate the Contract and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

E1.3.2 recover in full from the Provider any other loss sustained by the Council in consequence of any breach of those clauses.

E1.4 In exercising its rights or remedies under this clause, the Council shall:

E1.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;

E4.1.2 give all due consideration, where appropriate, to action other than termination of the Contract.

E2 EQUAL OPPORTUNITIES

E2.1 In the performance of the Services, the Provider and any sub-contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to

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discrimination (whether in race, gender, religion, belief, disability, sexual orientation, age, human rights or otherwise) in employment.

E2.2 The Provider shall take all reasonable steps to secure the observance of clause E2.1 by its Staff employed in the execution of this Contract:

E2.2.1 The Provider shall have an equal opportunities policy approved by the Council;

E2.2.2 The Provider shall provide such information as the Council may reasonably require for the purpose of assessing the Provider's continued compliance with this clause E2.

E2.3 If any court or tribunal, or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) should make any finding of unlawful discrimination against the Provider, then the Provider shall immediately inform the Council of such a finding.

E2.4 The Provider shall take all necessary steps to prevent reoccurrence of such unlawful discrimination. The Provider will provide the Council with details of the steps taken to prevent such a reoccurrence.

E2.5 In the event of a re-occurrence, the Council shall have a right to terminate this Contract if after having discussed the matter with the Provider the Council is of the opinion that the actions of the Provider leading up to the re-occurrence were sufficiently serious as to undermine its compliance with clause E2.1 above.

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E2.6 In the event that the Council does not exercise its right of termination under clause E2.5 the Provider shall discuss with the Council the appropriate steps the Provider needs to take to prevent repetition of the unlawful discrimination and shall provide the Council with details of any such steps taken.

E3 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

No person who is not a Party to the Contract shall have any right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

E4 HEALTH AND SAFETY

E4.1 In relation to the Provider's Staff, the Provider shall at all times comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice pertaining to the health and safety of employees and others who may be affected by the Provider's acts or omissions in providing the Services under this Contract and shall require that any sub-contractors likewise comply.

E4.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Council on request.

E4.3 The Provider shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Service and the acts of its Staff. The Provider shall notify the

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Council in writing if any method or practice set out in the Specification shall be or shall become an unsafe method of practice.

E4.4 The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work Act 1974 and provision within this clause E4.

E5 HUMAN RIGHTS

E5.1 The Provider shall comply with the Human Rights Act 1998 (HRA) as if it were a 'Public Authority' within the meaning of the legislation.

E5.2 The Provider shall indemnify the Council against any liability, loss, claim or proceedings arising out of any violation of the HRA by the Provider in the course of the provision of the Service under this Contract.

E6 TRANSFER OF UNDERTAKINGS

[insert as applicable]

E7 ENVIRONMENTAL REQUIREMENTS

The Provider shall operate and comply with and provide for the Council on request a comprehensive Environmental Policy, which includes but is not limited to:

- Purchasing of Goods and Services
- Transport and Travel

- Energy Usage
- Waste and Recycling
- Printing
- Environmental Action Plans.

E8 DIVERSITY

The Provider shall have a Diversity Policy that is Approved by the Council and promotes an inclusive society, opposing all forms of intolerance and prejudicial discrimination, whether intentional, institutional or unintentional. The Provider and its staff shall comply with the Diversity Policy.

**E9 MENTAL CAPACITY ACT AND DEPRIVATION OF LIBERTY
SAFEGUARDS**

9.1 In relation to the Mental Capacity Act 2005 (MCA):

9.1.1 The Provider, including its Staff shall comply with the provisions set out in the MCA when delivering Services.

9.1.2 The Provider shall have a clear written policy approved by the Council on its approach to the MCA.

9.1.3 All staff must be trained at induction to follow the reporting procedures set down in the policy and that training should be updated at least annually.

9.1.4 The Provider shall notify the Council immediately where a service user may lack the capacity and a Significant Decision is to be made.

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- 9.2 In relation to the Deprivation of Liberty Safeguards
- 9.2.1 The Provider shall have regard to the MCA Code of Practice including the supplementary Deprivation of Liberty (DoL) Safeguards in its role as a Managing Authority.
- 9.2.2 The Provider shall have a clear written policy approved by the Council on its approach to the DoL, which includes but is not limited to the following;
- 9.2.2.1 a clear procedure for the recording of information
- 9.2.2.2 the process for applying for an Authorisation to the Council
- 9.2.2.3 the process once a DoL Authorisation request has been made
- 9.2.3 The Provider shall appoint a lead contact to act on behalf of the Provider for all purposes connected with the MCA and DoL. The Provider shall notify the Councils of the lead contact details prior to the Commencement Date.
- 9.2.4 The Provider shall forthwith give Notice in writing to the Council of any change in the identity, address, e-mail and telephone numbers of the person appointed as lead contact. The Provider shall give maximum possible notice to the Council before changing its lead contact.

E10 Local Involvement Network

E10.1 The Provider shall upon reasonable notice permit or procure permission for the authorised representatives of the Suffolk LINK to have access to and observe the carrying-on of activities on premises controlled by that Provider and provide information to the LINK.

E10.2 The above does not apply if:

2.1 the presence of the authorised representative on the premises or that part of it would compromise the effective provision of care and support services or the privacy or dignity of any person,

PART F – INFORMATION

F1 DATA PROTECTION ACT

F1.1 Each party, including its Staff, shall comply with the requirements of the Data Protection Act 1998 (the “DPA”) in relation to the provision of the Services and shall not knowingly or negligently by any act or omission, place the other party in breach, or potential breach of the DPA.

F1.2 The Provider shall in accordance with the DPA be notified and shall advise the Authorised Officer of its notification reference on the Public Register of Data Controllers.

F1.3 The Provider shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal

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data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

F1.3.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;

F1.3.2 immediately notify the Council of any breach of the security measures required to be put in place pursuant to this Clause F1; and

F1.3.3 ensure that it does nothing knowingly or negligently which places the Council in breach of the Council's obligations under the DPA.

F1.4 The Provider agrees to indemnify the Council against all costs that the Council incurs as a result of the Provider's failure to comply with this clause F1.

F1.5 The Provider shall ensure that personal data is not transferred to a country or territory outside the European Economic Area without the prior written consent of the Council.

F1.6 On termination of this Contract the Provider shall return all personal data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Council.

F1.7 The provision of this Condition shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

F2 CONFIDENTIALITY

F2.1 Each Party: -

F2.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

F2.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

F2.2 The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:

F2.2.1 is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

F2.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

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- F2.3 The Provider shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Contract.
- F2.4 The provisions of clauses F2.1 to F3. shall not apply to any Confidential Information received by one Party from the other:
- F2.4.1 which is or becomes public knowledge (otherwise than by breach of this clause);
- F2.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- F2.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- F2.4.4 is independently developed without access to the Confidential Information; or
- F2.4.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 pursuant to clause 46.
- F2.5 Nothing in this clause shall prevent the Council disclosing any Confidential Information:
- F2.5.1 for the purpose of the examination and certification of the Council's accounts; or

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- F2.5.2 any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or
- F2.5.3 to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
- F2.5.4 to any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Contract provided that in disclosing information the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- F2.6 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Council in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

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F2.7 In the event that the Provider fails to comply with this Clause F2, the Council reserves the right to terminate the Contract by Notice with immediate effect.

F3 AUDIT

The Provider shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Council, all payments made by the Council, and Service User's financial expenditure, specifically personal money and their belongings. The Provider shall on request afford the Council or the Council's representatives such access to those records to conduct a financial audit or random checks as may be required by the Council in connection with the Contract. The financial auditing process may form part or whole of a planned monitoring visit. Any irregularities in Service User's financial records will be subject to an investigation.

F4 PUBLICITY

F4.1 Except with the Approval of the Council, the Provider shall not make any press announcement or publicise this Contract or any part thereof in any way. Such Approval not to be unreasonably withheld or delayed.

F4.2 The Provider shall take reasonable steps to ensure the observance of the provision of clause F4.1 by all its Staff.

F4.3 The provision of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

F5 LOGO

Neither party shall use the crest nor logo belonging to the counter party either on its own or in combination with their crest or logo nor cause nor permit it to be used without express permission.

F6 RECORDS

F6.1 The Provider shall maintain current and accurate Records of all work carried out in the provision of the Services and shall ensure that these Records shall be available for inspection by an authorised representative of the Council at all reasonable times.

F6.2 The Provider shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of Records irrespective of the storage media which are under the Provider's control as part of the Services. Such safeguards shall include an obligation on the Provider to ensure that access to Records is only obtained by such Council Staff as may be specifically designated by the Authorised Officer.

F6.3 If any Records are:

F6.3.1 accidentally or wilfully destroyed, otherwise than by the Council or on the authorisation of the Council, or;

F6.3.2 altered without authorisation

in the event that the Provider does not put in hand a method for reinstatement or replacement of such Records within seven days of receipt of a Notice from the Council then without prejudice to the

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Council's other rights at law, the Provider shall reimburse the Council reasonable costs in restoring such Records.

F6.4 Immediately upon expiry or termination of this Contract for any reason whatsoever the Provider shall at the sole option of the Council either return to the Council all Records in an agreed form, timescale and location or destroy all copies thereof.

F7 FREEDOM OF INFORMATION

F7.1 The Provider acknowledges that Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 and must assist and cooperate with the Council (at the Providers expense) to enable the Council to comply with these information disclosure requirements.

F7.2 The Provider must and must procure that any sub-contractors:

F7.2.1 transfer the request for information to the Council as soon as practicable after receipt and in any event within 20 Business Days of receiving a request for information;

F7.2.2 provide the Council with a copy of all information in its possession or power in the form that the Council require within 20 Business Days (or such other period as the Council may specify) of the Council requesting that Information; and

F7.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to

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respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

F7.3 The Council will be responsible for determining at its absolute discretion whether any information:

F7.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

F7.3.2 is to be disclosed in response to a request for information, and in no event will the Provider respond directly to a request for information unless expressly authorised to do so by the Council.

F7.4 The Provider acknowledges that the Council may, acting in accordance with the Ministry of Justice Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

F7.4.1 without consulting with the Provider, or

F7.4.2 following consultation with the Provider and having taken its views into account.

F7.5 The Provider must ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for

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disclosure and must permit the Council to inspect such records as requested from time to time.

- F7.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause F7.4. The Provider acknowledges that the Council is subject to the requirements under the Freedom of Information Act 2000 (the “Act”) and the Environment Information Regulations 2004 (the “Regulations”) and shall cooperate with the Council (at the Provider’s expense) to enable the Council to comply with these information disclosure requirements.

PART G – LIABILITY AND INSURANCE

G1 LIABILITY

- G1.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations.
- G1.2 The Provider shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses, consequential loss or damage and any other liabilities whatsoever arising out of, in respect of or in connection with this Contract including but not limited to any death or personal injury, loss or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

G1.3 This clause G1 shall not apply if the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default or by any circumstances within its control.

G2 INSURANCE

G2.1 The Provider shall effect and maintain with an insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

G2.2 The Provider shall hold public liability Insurance cover for an amount of not less than £10 (ten) million in respect of any one incident.

G2.3 The Provider shall hold professional indemnity insurance cover for an amount of not less than £5 (five) million for any occurrence arising out of each and every event. Such insurance shall be maintained for a minimum of 12 (twelve) years following the expiration or earlier termination of this Contract.

G2.4 The Provider shall hold employer's liability insurance cover for an amount of not less than £10 (ten) million in respect of any one incident.

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- G2.5 The Provider shall supply to the Council forthwith and upon each renewal date of any relevant policy referred to in clause G2.1 to G2.5 a certificate from its insurers or brokers demonstrating that appropriate cover is in place.
- G2.6 The Provider shall hold adequate insurance for all vehicles used by the Provider and ensure that any Staff using their motor vehicles to carry Service Users and/or Carers have valid business insurance on their motor vehicles and shall produce a copy of each certificate to the Authorised Officer if requested to do so provided that if the Council requests this information more often than once a year the Council shall meet the Provider's reasonable cost of production.
- G2.7 If the Provider fails to take out and maintain the insurances required by this Contract the Council may itself insure against any risk in respect of which the failure shall have occurred and a sum or sums equivalent to the amount paid or payable by the Council in respect of premiums therefore may be deducted by the Council from any monies due or to become due to the Provider under this Contract or such amount may be recoverable by the Council from the Provider as a debt.

G3 WARRANTIES AND REPRESENTATIONS

- G3.1 The Provider warrants and represents that:
- G3.1.1 the Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this

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Contract and that this Contract is executed by a duly authorised representative of the Provider;

G3.1.2 the Provider shall discharge its obligation hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;

G3.1.3 the Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect to its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

PART H – DISPUTE, DISRUPTION AND TERMINATION

H1 TERMINATION

H1.1 The Council shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving not less than three calendar months' written notice to the Provider (or lesser period by agreement between the parties).

H1.2 Where the Council terminates the Agreement under clause H1.1, the Council must indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Agreement, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the

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Provider must reduce its unavoidable costs by any insurance sums available. The Provider must submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred as a result of termination under clause H1.1.

H1.3 Subject to the provisions of clause B9 (Force Majeure) the Council may terminate the Contract by Notice in writing with immediate effect if:

H1.3.1 the Provider ceases or threatens to cease to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets that in the reasonable opinion of the Council would adversely affect the delivery of the Services;

H1.3.2 the Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

H1.3.3 the Provider is an individual or a firm and a petition is presented for the Provider's bankruptcy, or a criminal bankruptcy order is made against the Provider or any partner in the firm, or the Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Provider's or firm's affairs; or

H1.3.4 the Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise

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than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

H1.3.5 where the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

H1.3.6 in respect of any premises which are essential to the delivery of the Services, any landlord is granted an order for the forfeiture of the lease; or

H1.3.7 any person holding a mortgage or other charge over any premises which are essential to the delivery of the Services is granted an order for possession of the premises or any similar order; or

H1.3.8 or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

H1.4 If the Provider, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part

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VII of the Mental Health Act 1983, the Council shall be entitled to terminate this Contract by Notice to the Provider or the Provider's Representative with immediate effect.

H1.5 The Provider shall notify the Council immediately if any of the events listed in Clause H1.3 occur.

H2 TERMINATION ON DEFAULT

H2.1 The Council may terminate the Contract, or terminate the provision of any part of the Contract by written Notice to the Provider with immediate effect if the Provider commits a Default and if:

H2.1.1 the Provider has not remedied the Default to the satisfaction of the Council within the timeframe specified by the Council, after issue of a written Notice specifying the Default and requesting it to be remedied; or

H2.1.2 the Default is not capable of remedy; or

H2.1.3 the Default is a fundamental breach of the Contract.

H2.2 Without prejudice to any other right or remedy, the Provider may terminate this Agreement by giving six calendar months' notice to the Council.

H3 PROVIDER'S FINANCIAL STABILITY

H3.1 Upon written request the Provider shall submit to the Council a copy of its latest annual accounts.

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- H3.2 If:
- H3.2.1 the Provider fails to submit statutory accounts before any statutory deadline; or
 - H3.2.2 a County Court Judgment is made against the Provider for a sum greater than or equal to 1% of the Provider's annual turnover, and the debt is not settled within 28 days; or
 - H3.2.3 the Acid Test Ratio, calculated from the provider's last annual accounts, falls below 1:1; or
 - H3.2.4 the Provider makes a loss exceeding 5% of its turnover; or
 - H3.2.5 in respect of any premises which are essential to the delivery of the Services, any landlord makes an application to the court to recover unpaid rent or for the forfeiture of the lease; or
 - H3.2.6 any person holding a mortgage or other charge over any premises which are essential to the delivery of the Services makes an application to the court to recover unpaid loan obligations, for possession of the premises or for any similar order; or
 - H3.2.7 the Council has reasonable grounds to believe that any of the events set out in Clause H1.3 has occurred or is about to occur
 - H3.2.7 the provisions of Clause H3.4 shall apply.

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H3.3 The Provider shall notify the Council immediately if any of the events listed in Clause H3.2 occur.

H3.4 Where the circumstances set out in Clause H3.2 apply, the Provider shall, on receipt of a written request from the Council, furnish the Council with:

H3.4.1 a copy of its latest Management Accounts;

H3.4.2 a cash flow forecast for the coming period;

H3.4.3 a reference from its bankers; and

H3.5.4 such other evidence that it is and will remain a going concern as the Council may reasonably require

and shall meet the Council within five working days of receipt of the written request to discuss its position with the Council and answer such questions as the Council may reasonably ask.

H3.5 If upon considering the evidence set out in Clause H3.4 the Council considers that the Provider is no longer a going concern or that there is a significant risk that the Provider will cease to be a going concern within six months, then the Council may serve a Financial Distress Notice on the Provider and the process set out in Section H.4 shall commence.

H4 PROVIDER'S FINANCIAL DISTRESS

H4.1 The Council may at its sole option and discretion serve a Financial Distress Notice in the circumstances set out in Clause H3.5.

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- H4.2 The Notice shall be sent to the Provider's last known email address and the Council shall make reasonable endeavours to contact the Provider by telephone to advise it that the Notice has been served. A copy shall be sent immediately by first class post.
- H.4.3 The Notice shall:
- H4.3.1 state that it is a Financial Distress Notice
- H4.3.2 set out the reasons why the Council believes that the Provider is no longer a going concern, or is at significant risk of ceasing to be a going concern within the next six months
- H4.3.3 state that the Contract shall terminate one month from the date of the Notice, or at such later date as the Council may specify.
- H4.4 If the Provider does not accept that the Council is correct in its assessment that the Provider is no longer a going concern, or is at significant risk of ceasing to be a going concern within the next six months it may serve on the Council, within ten days of receipt of the Financial Distress Notice, an appeal (the "Appeal Notice").
- H4.5 The Appeal Notice shall set out the grounds for appeal and the Provider may enclose with the Notice concise and pertinent information and evidence in support of the appeal.
- H4.6 The Council shall consider the Appeal Notice and shall at the Provider's request meet the Provider and/or its financial advisers within five working days of the date of the Notice and shall notify

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the Provider within ten days of receipt of the Notice whether it accepts the appeal.

H4.7 If the Council rejects the Provider's appeal then the matter may be submitted to binding expert determination in accordance with the provisions of Paragraph H4.

H4.8 If the Council rejects the Provider's appeal pursuant to Paragraph H4.3.3 then, at the Provider's request, the matter shall be submitted to an independent expert for binding determination.

H5 CONSEQUENCES OF TERMINATION

H5.1 If the Council terminates this Contract or terminates the provision of any part of this Contract under clause H2 or clause C12, the Council shall:

H5.1.1 be entitled to employ and pay a Replacement Provider to provide and complete the provision of the Services or any part thereof; and

H5.1.2 be entitled to recover from the Provider the costs incurred of making those other arrangements including any additional expenditure incurred by the Council; and

H5.1.3 be entitled to deduct from any sum or sums which would have been due from the Council to the Provider under this Contract or the recovery of any sum or sums as a debt.

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H5.2 Where this Contract is terminated, no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making alternative arrangements.

H6 HANDOVER

H6.1 The Provider shall not charge the Council or any Replacement Provider for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this clause H6.

H6.2 At the end of the Contract Period (and howsoever arising) the Provider shall forthwith deliver to the Council upon request all the Council's Property (including but not limited to materials, documents, information) relating to the Contract.

H6.3 The Provider shall use all reasonable endeavours to transfer all data in accordance with industry standard format (or any format reasonably specified by the Council or a Replacement Provider) relating to the Services including without limitation requests for Services to be undertaken which have not been completed.

H6.4 At any time upon reasonable notice from the Authorised Officer or (where the request is occasioned by the termination of the Contract) forthwith and in any event upon the day which shall be not less than fifteen (15) months before the end of the Contract Period or within four (4) weeks of early termination of the Contract the Provider shall supply to the Council full, complete and accurate information as to the identity and terms and conditions of employment of all employees then currently engaged in the provision of the Service (whether or not employed by the Provider) and any other Employee liability information as specified in the

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Regulations and shall warrant the accuracy of such information and shall forthwith notify the Council of any change in such information.

H6.5 The Provider shall permit the Council to use the information provided pursuant to Clause H6.4 for informing any tenderer for the Service or any part thereof and shall enable and assist the Council and such other persons as the Council may determine to communicate with and meet the Staff and their trade unions or other employee representatives or staff associations as when and where the Council may determine.

H6.6 The Provider shall comply with any reasonable request made by the Council for information concerning the numbers, identity, functions and terms and conditions of employment of Staff employed by the Provider in connection with the performance of the Service, if such request is made by the Council for the purpose of considering the application of, or complying with the requirements of the Directive and/or the Regulations upon the termination of the Contract or any part thereof. The Provider shall supply the requested information to the Council within a reasonable time following the request and shall use its best endeavours to ensure that such information is accurate. The Council shall treat such information as confidential to itself and its advisors, save as required by law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Service in succession to the Provider.

H6.7 The Provider undertakes to effect no changes in the numbers, identity, functions and terms and conditions of employment of Staff employed by the Provider in connection with the performance of the Contract during the last 12 months of the Contract Period without

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the Council's consent. Such consent not to be unreasonably withheld or delayed.

H6.8 At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Provider shall co-operate free of charge with the Council and any new provider appointed by the Council to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.

H6.9 The provisions of this Clause H6 shall survive the continuance of the Contract indefinitely after its termination.

H7 DISRUPTION

H7.1 The Provider shall give the maximum possible advance warning of prospective industrial action by the Provider's Staff or other industrial disputes likely to affect the performance of this Contract adversely.

H7.2 In the event that:

H7.2.1 industrial action is taken by any Staff of the Provider such as that the provision of the Services are, in the opinion of the Council, materially disrupted; or

H7.2.2 action is taken by the Provider so as to prevent its Staff from providing the Services the Council reserves the right to make alternative arrangements for the provision of the Services and to charge the Provider for any difference in resultant cost or terminate this Contract by Notice in writing to the Provider.

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H7.3 In the event that industrial action is taken by Staff of the Council the Provider shall make every attempt to ensure that its Staff continues to provide the Services and the Council shall meet the Provider's reasonable and proper additional costs incurred in so maintaining the Service in these circumstances.

H8 DISPUTE

H8.1 If there is a dispute between either party concerning the interpretation or operation of this Contract then either party may notify the other that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Contract Manager to resolve, negotiating on the basis of good faith.

H8.2 If after 20 Business Days (or such longer period as both of the Parties may agree) of the date of the Notice referred to in clause H8.1 the dispute has not been resolved then either party may notify the other that it wishes the dispute to be referred to a meeting of a Senior Officer of the Council (or a person appointed by her to act on her behalf) and a senior officer of the Provider, to resolve, negotiating on the basis of good faith.

H8.3 If after 20 Business Days (or such longer period as both parties may agree) of the date of the Notice referred to in clause H8.2 the dispute has not been resolved then either party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time.

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- H8.4 If both parties to this Contract do not agree on the identity of the mediator then either one of the Parties may request CEDR to appoint one.
- H8.5 The procedure in the Model Procedure will be amended to take account of:
- H8.5.1 any relevant provisions in this Contract; or
- H8.5.2 any other agreement, which both Parties may enter into in relation to the conduct of the mediation ("Mediation Agreement").
- H8.6 Both of the Parties shall:
- H8.6.1 use their best endeavours to ensure that the mediation starts within 20 Business Days of the date on which the Notice referred to in clause H8.3 was served; and
- H8.6.2 pay the mediator's fee in equal shares.
- H8.7 Any agreement the Council reaches with the Provider as a result of mediation shall be binding on both of the Parties, as set out in the Model Procedure. However, if the dispute has not been settled by mediation within 10 Business Days of the commencement of mediation, then either party may commence litigation proceedings (but not before then).
- H8.8 Neither party shall be precluded by clause H8.7 from taking such steps in relation to court proceedings or otherwise as the Council or

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the Provider (as the case may be) may deem necessary or desirable to protect their respective positions. This shall include:

H8.8.1 issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; or

H8.8.2 applying for interim relief; and

H8.8.3 issuing or otherwise pursuing proceedings that are necessary to protect their employees, or their agents, or Service Users.

H8.9 The use of the dispute resolution procedures set out in this clause H8 shall not delay or take precedence over the provisions for termination set out in clause H1.

H9 LAW AND JURISDICTION

Subject to clause H8, the parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Contract and the legal relationship established by this Contract.

H10 CHANGE OF LAW

H10.1 The Provider shall take all steps reasonably necessary to ensure that the Services are performed in accordance with the terms of this Contract following any change in Law.

H10.2 General Change in Law:

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The Provider shall comply with any General Change in Law at the Provider's sole risk and cost.

H10.3 Qualifying Change in Law:

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

H10.3.1 any necessary change in the Services and the Contract Price;

H10.3.2: whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;

H10.3.3: whether relief from compliance with the obligations is required, including the obligation of the Provider to achieve the Commencement Date, milestones or to meet any service level requirements at any time.

H10.4 As soon as practicable after any notification in accordance with clause H10.3 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Provider can mitigate the effect of the Change in Law, including:

H10.4.1 providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;

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- H10.4.2 demonstrating that a foreseeable Qualifying Change in Law had been taken into account by the Provider before it occurred;
- H10.4.3 giving evidence as to how the Qualifying Change in Law has affected the cost of providing the Services;
and
- H10.4.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.
- H10.5 Any increase in the Price or relief from the Provider's obligations agreed by the Parties pursuant to this clause H10 shall be implemented in accordance with clause B2.

PART I – CONTRACT SPECIFIC CONDITIONS

I1 OUTCOMES

The Provider shall comply with the Arrangements for Delivering and Monitoring Outcomes as defined and set out in Schedule 6.

I2 SELF- DIRECTED SUPPORT

[Regional Standard clause to be developed and inserted]

SIGNATURES

IN WITNESS of which this Contract has been duly executed by the parties.

Agreed and accepted for and on behalf of **[insert Name of Provider]** by

Signature

Name

Position.....

Date

Agreed and accepted for and on behalf of **Suffolk County Council** by

Signature

Name

Position.....

Date

Agreed and accepted for and on behalf of **Suffolk County Council** by

Signature

Name

Position.....

Date