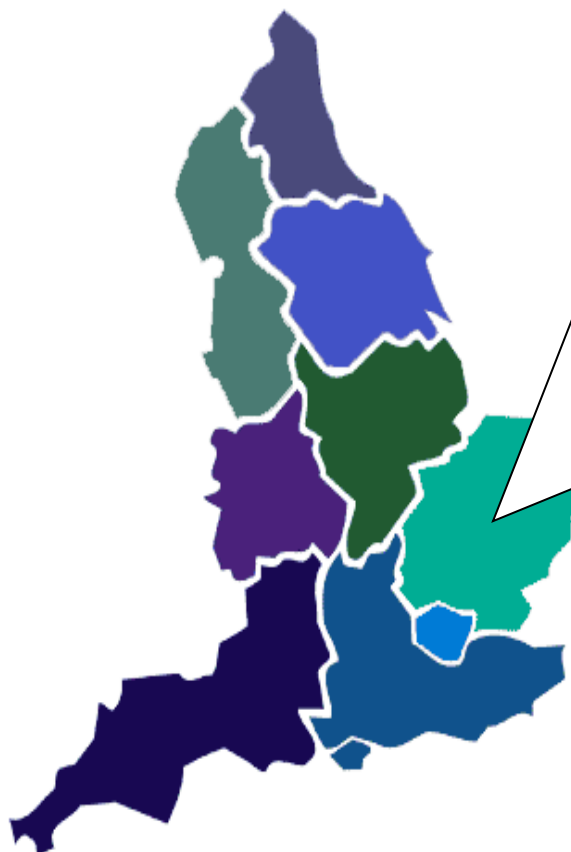


*The Regional Standard*

**TERMS AND CONDITIONS OF CONTRACT**

*For adult social care and housing related support services in the East of England*

*Adopted: 2018*



- ➔ 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

This Document has been approved by the Directors of Adult Social Services  
- Eastern Branch. Please email any queries to [guy.pettengell@hertfordshire.gov.uk](mailto:guy.pettengell@hertfordshire.gov.uk)

**1. FORM OF AGREEMENT**

**IT IS AGREED THAT:**

1. This Form of Agreement with the following attached documents will together form the Contract Documents:

- Conditions of Contract
- Schedule 1 - Specification
- Schedule 2 - Performance Monitoring and KPIs
- Schedule 3 - The Council’s Policy Statements
- Schedule 4 - Price and Payment Schedule
- Schedule 6 - Other Correspondence

2. The Contract effected by the signing/execution (as appropriate) of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior contracts, negotiations, representations or understandings whether written or oral.

3. The Provider shall provide the Services in accordance with the provisions of the Contract and subject to this, the Council shall make to the Provider the payments provided by the Contract for Services provided in accordance with the Contract.

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## CONDITIONS OF CONTRACT

### A. DEFINITIONS AND INTERPRETATION

#### 1. DEFINITIONS

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| <b>“Accreditation”</b>                      | the initial process undertaken by the Council to establish whether a supplier is fit to provide care to Council funded customers   |
| <b>“Affected Party”</b>                     | means a party affected by a Force Majeure Event;   |
| <b>“Authorisation”</b>                      | means an authorisation given by the Council after completion of the statutory assessment process in relation to a Service User, giving lawful authority to deprive a person of their liberty;  |
| <b>“Basic Disclosure”</b>                   | means a Basic Disclosure check carried out through Disclosure Scotland, which is required where a Provider is engaged in a position of trust but is not eligible for a Standard Disclosure check, Enhanced with Barred List Check or Enhanced without Barred List Check;   |
| <b>“Best Value Duty”</b>                    | means the duty imposed on the Council by Part 1 of the Local Government Act 1999 (“1999 Act”) (as may be amended from time to time) and under which the Council is under a statutory duty continuously to improve the way its functions are exercised having regard to a combination of economy efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Public Sector Audit Appointments Limited and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation; |
| <b>“Bribery Act”</b>                        | means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any related guidance or codes of practice issued by the relevant government department;   |
| <b>“Business Continuity Plan”</b>           | means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;  |
| <b>“Change in Control”</b>                  | any change in control as defined by section 416 of the Income and Corporation Taxes Act 1988;  |
| <b>“Commencement Date”</b>                  | means the date specified in Clause 3.1, which is the first date on which the Provider is obliged to provide the Services to the Contract Standard;   |
| <b>“Commissioning Order”<br/>or “Order”</b> | means an order under which one or more Individual Placements may be ordered via a Commissioning Order Form;  |

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| <b>“Commissioning Order Form”</b>    | means an order form based upon the pro forma set out in Schedule 12 under which one or more Individual Placements may be ordered;   |
| <b>“Competent Body”</b>              | means anybody that has authority to issue standards or recommendations with which either party must comply;   |
| <b>“Conditions of Contract”</b>      | means these terms and conditions of contract;   |
| <b>“Confidential Information”</b>    | 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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA;  |
| <b>“Continuous Improvement Plan”</b> | means the plan at Clause 4.8;   |
| <b>“Contract”</b>                    | means these Conditions of Contract, the form of agreement to which they are attached and all attached schedules;  |
| <b>“Contract Manager”</b>            | means the representative appointed by the Council or that representative’s delegate appointed under Clause 6;   |
| <b>“Contract Period”</b>             | means the period during which this Contract shall remain in force and effect pursuant to Clause 3 and shall be the period from the Commencement Date to the Expiry Date inclusive as may be extended in accordance with Clause 3.4;   |
| <b>“Contract Standard”</b>           | means that standard set out in Clause 4.1;  |
| <b>“Council”</b>                     | has the meaning attributed to it in the form of agreement to which these Conditions are attached;   |
| <b>“Council Data”</b>                | means <ul style="list-style-type: none"> <li>(i) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Provider or provided to the Provider for processing under this Contract which at all times shall remain the property of the Council which shall include without limitation copies of any retention schedule produced by the Provider in order to comply with Data Protection Legislation; or</li> <li>(ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever media;</li> </ul> |
| <b>“Council’s DBS Umbrella Body”</b> | means the Council’s HR Safe Staffing Team responsible for the advice, processing and storage of Criminal Records Checks;  |

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| <b>“Council’s Equipment”</b>                          | means all equipment, parts, materials, articles and/or mechanisms provided by the Council for use in connection with the Services;   |
| <b>“Council’s Policy Statements”</b>                  | means those Policy Statements of the Council set out in Schedule 3   |
| <b>“Council’s Premises” or<br/>“Council Premises”</b> | means any premises, services and facilities owned by the Council or for which the Council has legal responsibility;  |
| <b>“Council’s System”</b>                             | the Council's computing environment as at the Commencement Date (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council or the Provider in connection with this Contract which is owned by or licensed to the Council by a third party which interfaces with the Provider’s System or which is necessary for the Service Users(s) and/or Council to receive the Services;   |
| <b>“Criminal Records Checks”</b>                      | means one of four checks carried out (as appropriate) under the bureau established pursuant to the Protection of Freedoms Act 2012: <ul style="list-style-type: none"> <li>• Enhanced Disclosure with a Barred List Check</li> <li>• Enhanced Disclosure without a Barred List Check</li> <li>• Standard Disclosure</li> <li>• Basic Disclosure</li> </ul>   |
| <b>“CQC”</b>  | means the Care Quality Commission;   |
| <b>“CQC Regulations”</b>                              | means the Care Quality Commission (Registration) Regulation 2009;  |
| <b>“Critical Performance Default”</b>                 | means a Performance Default which significantly or materially affects the Provider’s provision of the Services to the Contract Standard or undermines the fundamental purpose of the Contract;   |
| <b>“Data Protection Authority”</b>                    | any organisation which is responsible for the supervision, promotion and enforcement of the Data Protection Legislation, including the Information Commissioner's Office (or any joint, like, replacement or successor organisation from time to time);  |
| <b>“Data Protection Legislation”</b>                  | all privacy laws applicable to the personal data which is processed under or in connection with this Contract, including the DPA and where applicable, EU Directive 95/46/EC, 2002/58/EC, and the GDPR (amongst others) as implemented by the applicable English and Welsh laws, including the DPA, or as directly applicable, and all regulations made pursuant to and in relation to such legislation together with all codes of practice and other statutory guidance on the foregoing issued by any relevant Data Protection Authority, all as amended, updated and/or replaced from time to time; |
| <b>“DBS Check(s)”</b>                                 | means a Criminal Records Check(s) on individuals carried out through the DBS;  |

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| <b>“DBS Update Service”</b>                              | means a service available through the DBS, where an individual has subscribed for the update service for free, instant online checks to be carried out by an employer on individuals to see if any new information has come to light since the criminal records certificate was first issued in respect of an individual;  |
| <b>“Default Notice”</b>                                  | means a notice issued under Clause 36.5;   |
| <b>“Deprivation of Liberty”/”DoL”</b>                    | means the framework of safeguards set out in Schedule A1 of the Mental Capacity Act 2005 (as amended and updated from time to time);   |
| <b>“Disclosure &amp; Barring Service” (“DBS”)</b>        | means the Non-Departmental Public Body which helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups, including children and vulnerable adults;  |
| <b>“Disclosure Scotland”</b>                             | is an executive agency of the Scottish Government, providing criminal records disclosure services by way of a Basic Disclosure check for employers and voluntary sector organisations;   |
| <b>"Directive(s)"</b>                                    | means the EC Acquired Rights Directive 2001/23/EC (as amended);  |
| <b>“Dispute Resolution Procedure”</b>                    | means the procedure set out in Clause 40 of this Contract;   |
| <b>“DPA”</b>   | means the Data Protection Act 1998 (as amended and updated from time to time);   |
| <b>“Eastern Region ADASS Members”</b>                    | means those local authorities who are members of ADASS (Association of Directors of Adult Social Services in England), namely as at the Commencement Date (but may vary during the life of the Contract): Bedford Borough Council, Cambridgeshire County Council, Central Bedfordshire Council, Essex County Council, Hertfordshire County Council, Luton Borough Council, Norfolk County Council, Peterborough City Council, Southend Borough Council, Suffolk County Council and Thurrock Borough Council; |
| <b>“Enhanced Disclosure With Barred List Check”</b>      | means a type of Criminal Records Check, which includes a check of the DBS barred list and any additional information held by the police that is reasonably considered relevant to the role being applied for and includes roles that do not work with children or vulnerable adults specifically but potentially both and should be used for jobs that involve caring for, supervising or being in sole charge of children and/or vulnerable adults;   |
| <b>“Enhanced Disclosure without a Barred List Check”</b> | means a type of Criminal Records Check, which includes an enhanced disclosure check without a barred list check that is  |



required where a Provider is engaged in a role that meets the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations;

**“Equalities Legislation”**

means all Law which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 as amended, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and / or any preceding, successor or amending Legislation concerning the same;

**“Expiry Date”**

means the date specified in Clause 3.2;

**“Exit Plan”**

means the exit plan set out in Schedule 9;

**“Fellow Provider”**

means any other provider engaged to carry out works or provide services to the Council;

**“Force Majeure Event”**

means any of the following events that materially affecting the performance by a Party of its obligations under this Contract: fire, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; terrorist attack; nuclear, chemical or biological contamination; compliance with any governmental order, governmental rule or governmental regulation which comes into effect after the Commencement Date; loss at sea; extreme adverse weather conditions; interruption or failure of utility service;

**“Former Provider”**

means the provider previously appointed by the Council to provide all or any of the services which are substantially similar to any of the services prior to the appointment of the Provider;

**“GDPR”**

the General Data Protection Regulation as set out in Regulation (EC) 2016/679 which comes into force in the UK on 25 May 2018 and as amended and or updated from time to time;

**“Good Practice”**

means the exercise of reasonable skill, care, prudence, efficiency, foresight and timeliness which would be expected from a reasonably and suitably skilled, trained and experienced person performing the relevant obligations;

**“Index”**

means the Consumer Prices Index (CPI) published by the Office of National Statistics;

**“Individual Placement Contract”  
or “IPC”**

means a contact for one or more Individual Placements entered into between the Council and the Provider;

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| <b>“Individual Placement”</b>                     | means a single package of care which is provided for one or more Service Users by the Provider in accordance with the terms of a Commissioning Order;   |
| <b>“Information to Service Provider” or “ISP”</b> | means the information issued to the Service Provider prior to the placement of a Service User which details information of the Service User’s needs on which the Service Provider assesses whether it is able to meet the Service User’s needs;   |
| <b>“Information Sharing Agreement”</b>            | means the document set out at Schedule 13;  |
| <b>“Infringement”</b>                             | has the meaning attributed to it in Clause 18;  |
| <b>“Initial Term”</b>                             | has the meaning attributed to it in Clause 3.2;   |
| <b>“Intellectual Property Rights” or “IPR”</b>    | means all intellectual and industrial property rights including patents, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;  |
| <b>“IR35”</b>                                     | means the off-payroll working rules which apply to a worker providing services through an intermediary;   |
| <b>“Key Performance Indicators” or “KPI”</b>      | means the key performance indicators as defined and set out in Schedule 2;  |
| <b>“Law”</b>                                      | 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, bylaw, regulatory policy, guidance or industry code, judgment of a UK court or the European Court of Justice, or directives or requirements of any Regulatory Body of which the Provider is bound to comply. Any reference to “Legislation” shall be construed accordingly; |
| <b>“MCA”</b>                                      | means the Mental Capacity Act 2005 (as amended and updated from time to time);  |
| <b>“Non-Critical Performance Default”</b>         | has the meaning set out in Clause 36;   |
| <b>“Ombudsman”</b>                                | means a local commissioner (known as the Local Government and Social Care Ombudsman) who is responsible for conducting investigations for the   |

Commission for Local Administration in England (CLAE), which is a body of commissioners established under the Local Government Act 1974 and which, has the power to investigate complaints about councils (and certain other bodies) in England;

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| <b>“Party”</b>                                | means a party to this Contract and “Parties” shall be construed accordingly;   |
| <b>“Performance Default”</b>                  | <ul style="list-style-type: none"><li>• any negligent act or omission; and/or</li><li>• any breach of contract; and/or</li><li>• any failure by the Provider properly to perform any of the obligations, terms and Clauses of the Contract including (without limitation) any failure to perform the Services to the Contract Standard;</li></ul>  |
| <b>“Performance Mechanism”</b>                | means that document set out at Schedule 2;   |
| <b>“Performance Targets”</b>                  | means any specified Key Performance Indicators against which the Provider’s performance in providing the Services shall be measured and which are set out in the Performance Mechanism or the Specification;   |
| <b>“Pre-Existing IPR Rights”</b>              | means any Intellectual Property Rights vested in or licensed to the Council or the Provider prior to or independently of the performance by the Council or the Provider prior to or independently of the performance by the Council or the Provider of their obligations under the Contract and in respect of the Council includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs; |
| <b>“Price”</b>                                | means the price for the Services as set out in Clause 12 and Schedule 4; if a payment mechanism is not agreed between the Parties and identified in Schedule 4, the Price is that set out in the Tender Response Document at Schedule 5;   |
| <b>“Prohibited Act”</b>                       | has the definition at Clause 26.4;   |
| <b>“Property Rights”</b>                      | has the meaning attributed to it in Clause 18;   |
| <b>“Provider”</b>                             | means the party identified as such in the form of agreement to which these Conditions are attached;  |
| <b>“Provider’s Authorised Representative”</b> | means such person nominated in writing by the Provider to act as the Provider’s representative in relation to this Contract and approved by the Contract Manager;  |
| <b>“Provider’s Equipment”</b>                 | has the meaning set out in Clause 10.1;  |
| <b>“Provider’s Premises”</b>                  | means any premises owned by the Provider or for which the Provider has legal responsibility;   |

|                                  |  |
|----------------------------------|--|
| <b>“Provider’s System”</b>       | any computer or IT system used in the provision of the Services;   |
| <b>“Regulatory Body”</b>         | means any body other than CQC carrying out regulatory functions in relation to the Provider and/or for which the Provider the has legal responsibility;  |
| <b>“Replacement Provider”</b>    | means any third party appointed by the Council from time to time to provide all or any of 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; |
| <b>“Request”</b>                 | shall have the meaning specified in Clause 23;   |
| <b>“Review Date”</b>             | means the date three (3) months before an anniversary of the Commencement Date in each year of the Contract Period.  |
| <b>“Run-off Insurance Cover”</b> | means insurance to cover losses occurring from previous insurance policy years where claims made policies (or membership of a NHS Risk Management Scheme) ceases to continue uninterrupted (or transfers to a losses occurring basis) leaving a gap in insurance;  |
| <b>“Serious Incident Report”</b> | means the report of a serious incident as outlined in Schedule 12;   |
| <b>“Service(s)”</b>              | means the Services to be provided pursuant to this Contract, more particularly described in the Specification and any reference to “Service” shall be construed accordingly;   |
| <b>“Service User(s)”</b>         | means the beneficiary or recipient of the Services,  |
| <b>“Significant Decision”</b>    | means a decision that needs to be made relating to serious medical treatment or change of accommodation of a Service User in circumstances in which there are no friends or family who it would be appropriate to consult on the decision;   |
| <b>“Specification”</b>           | means the description of the Services to be provided under this Contract appearing in Schedule 1;  |
| <b>“Staff”</b>                   | means all persons employed or engaged by the Provider to perform this Contract together with the Provider’s servants, suppliers, agents, volunteers and Sub-Providers used in the performance of this Contract and/or the provision of the Services;   |
| <b>“Standard Disclosure”</b>     | means a type of Criminal Records Check for spent and unspent convictions, cautions, reprimands and final warnings, which is required where the role is included in the list of eligible roles detailed in the Rehabilitation of  |

Offenders Act (ROA) 1974 (Exceptions) Order 1975 and the role does not required an enhanced DBS check;

- “Sub-Contract”** means a contract between the Provider and a Sub-Provider;
- “Sub-Contractor”** means an organisation appointed by the Provider or with whom the Provider contracts to provide part of the Services and any of that organisation’s contractors who may be providing any of the Services;
- “SVG”** means the Safeguarding Vulnerable Groups Act 2006 (as amended under the Protection of Freedoms Act 2012);
- “Tender Response Document”** means the Provider’s proposal to meet the Specification setting out the methods to be used by the Provider to provide the Services under this Contract as set out in Schedule 5;
- “VAT”** means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function;
- “Variation”** means any change to:
- (i) the terms and Conditions of Contract or Schedules;
  - (ii) the Services or any part of them; and/or
  - (iii) the standard of performance required of a Party materially over and above that expressly stated or provided for under this Contract;
- “Warning Notice”** has the meaning attributed to it in Clause 36.14; and
- “Working Day”** means Monday to Friday excluding public and bank holidays in England and Wales.

## **2. INTERPRETATION OF THIS CONTRACT**

- 2.1. Except as otherwise expressly provided, the documents comprising this Contract are to be taken as mutually explanatory of one another.
- 2.2. Any references to any Act of Parliament or other Law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force.
- 2.3. Headings are included for ease of reference only and shall not affect the construction or interpretation of any provision to which they refer.
- 2.4. The expression ‘person’ used in this Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- 2.5. In this Contract, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- 2.6. References to Clauses or Schedules shall be to Clauses and Schedules of this Contract.
- 2.7. 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 control of the Provider.

- 2.8. Any reference to a month or day shall unless otherwise specified shall be to a calendar month or day respectively.
- 2.9. Words preceding “include”, “includes” or “including” shall be construed without limitation to the words which followed those words.
- 2.10. In the event of any inconsistency or conflict between the main body of this Contract and the Schedules, the order or precedence as set out below shall prevail:
- (a) the Conditions of this Contract;
  - (b) Schedule 1 (Specification);
  - (c) the remaining Schedules of this Contract

## **B. THE SERVICES AND PERSONNEL**

### **3. DURATION OF CONTRACT**

- 3.1. The Contract shall commence on the date on which the Contract is signed by the Parties and dated (being the latest date of which if different)
- 3.2. The Provider shall provide the Services to the Contract Standard from the Commencement Date until the soonest of:
- The Contract is terminated in accordance with its terms
  - An updated agreement is signed
  - April 1<sup>st</sup> 2043
- 3.3. NOT USED
- 3.4. NOT USED
- 3.5. The Provider shall execute the Contract promptly and shall not, save unless and to the extent that it may be expressly authorised in advance in writing by the Council, commence the provision of the Services or to be entitled to any part of the Price(s) or any remuneration whatsoever until it has so executed the Contract.

### **Pre-Commencement Date Obligations**

- 3.6. The Provider shall liaise with the Former Provider(s) and Fellow Providers to ensure that any handover and contract mobilisation is carried out successfully. In addition, the Provider shall arrange and attend as many meetings with the Council, the Former Provider(s) and any Fellow Provider as are reasonably necessary for the successful handover and mobilisation of the Services.
- 3.7. The Provider shall comply in full with the Council’s Accreditation Process, and maintain all conditions and standards outlined in documentation and The Provider’s return of this.
- 3.8. The Council shall as soon as possible after the Commencement Date:
- 3.8.1. notify to the Provider in writing the name and contact telephone number of the Contract Manager as at the Commencement Date and any persons holding such other positions as may be specified in the Specification; and

- 3.8.2. provide the Provider with such Council Data and information as the Provider may, in the Council's opinion, reasonably require in order for it to commence the Services on the Services Commencement Date

#### **4. THE SERVICES**

- 4.1. The Provider shall provide the Services throughout the Contract Period in accordance with the following (“the Contract Standard”):
- 4.1.1. this Contract and in particular the Specification, which forms part of the Contract;
  - 4.1.2. in co-operation with Fellow Providers and any other Council contractors as required to perform the Services;
  - 4.1.3. in a manner that does not damage the Council’s reputation;
  - 4.1.4. in accordance with Law;
  - 4.1.5. in accordance with Good Practice;
  - 4.1.6. in accordance with the Council’s Policy Statements and the Council’s policies;
  - 4.1.7. using all due skill care and diligence as would a competent provider carrying out services of the same scope or nature as the Services;
  - 4.1.8. as a minimum, meeting (and with the aim of exceeding) the minimum thresholds (targets) of the KPIs;
  - 4.1.9. where applicable, and subject to the Council’s prior written consent, in accordance with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
  - 4.1.10. respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
  - 4.1.11. consider and respond to the recommendations arising from any audit, death, Serious Incident Report;
  - 4.1.12. comply with the recommendations issued from time to time by a Competent Body;
  - 4.1.13. in accordance with the Council’s Policy Statements and the Council’s Policies;
  - 4.1.14. using all due skill care and diligence as would a competent contractor carrying out services of the same scope or nature as the Services; and
  - 4.1.15. in accordance with the reasonable written instructions of the Contract Manager pursuant to or in connection with the Contract.

In the event of any conflict between these requirements, the highest or most onerous of these shall apply. The Provider shall obtain and maintain for the entire Contract Period such registration with any relevant bodies required by Law in order to provide the Services.

- 4.2. The Provider shall discharge its obligations under this Contract by deploying appropriate, competent, qualified and trained Staff. Except as otherwise specified in this Contract, the Provider shall provide all Staff and a sufficient number of Staff, the Provider's Equipment, information and data and anything else whatsoever required for the provision of the Services within the Contract Price to the standards in Clause 4.1.
- 4.3. The Provider shall provide the Services in a manner that conserves energy, water, wood, paper and other resources to reduce waste and phases out the use of ozone depleting substances and minimises the release of greenhouse gases volatile organic compounds and other substances damaging to health and the environment.
- 4.4. In recognition of the Best Value Duty, the Parties to this Contract shall work together to identify how the Services can be continuously improved. Reviews shall be conducted in accordance with Clause 17 (Performance Monitoring and Contract Review) and these Conditions of Contract generally. The Provider agrees to co-operate fully and assist the Council at no extra charge in any manner reasonably required by the Council in connection with the Council's performance of this duty. The Provider shall observe and facilitate the Council's request of cost savings. Where appropriate, a Variation shall then be made in accordance with Clause 16 (Variations and Change Control), provided that such Variation does not constitute a material change to the Contract.
- 4.5. The Provider shall not undertake any act or omission which has or could reasonably be expected to have an adverse impact upon the security of any of the Services or the Council's System, the Council's Equipment or services of the Council.

#### **Continuous Improvement Plan**

- 4.6. The Council may at its absolute discretion request at any time and/or frequency throughout the Contract Period a continuous improvement plan and the Provider shall provide a continuous improvement plan for the approval of the Council which has the objective of securing continuous improvement in the way in which the Services are provided and shall be reviewed by the Council in accordance with the provisions specified in Schedule 2.

#### **Withholding and/or Discontinuation of Service**

- 4.7. Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:
- 4.7.1. who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
  - 4.7.2. who displays abusive, violent or threatening behaviour unacceptable to the Provider (acting reasonably and taking into account the mental health of that Service User);
  - 4.7.3. in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
  - 4.7.4. where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.
- 4.8. If the Provider proposes not to provide or to stop providing a Service to any Service User under Clause 4.7:



- 4.8.1. where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Working Days);
- 4.8.2. the Provider must tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
- 4.8.3. the Provider must inform the Council in writing without delay and wherever possible in advance of taking such action;

provided that nothing in this Clause 4.8 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

4.9. If the Provider gives a notification of a death or other incident to the CQC or any other Regulatory Body which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council within five (5) Working Days.

4.10. NOT USED

### **Exclusivity**

4.11. This Contract shall not be exclusive and the Council reserves the right to place work constituting all or any part of the Services with a third party at any time during the Contract Period or to carry out that work itself. The Council offers no warranties, guarantees or assurances in relation to the volume or value of any work to be carried out by the Provider under the Contract. The Council also reserves the right to omit any part or parts of the Services pursuant to the variation provisions in Clause 16.

### **Individual Placements**

4.12. At any time during the Contract Period the Council shall be entitled to place an Order for an Individual Placement for one or more Service Users. This will be deemed a referral

4.13. A referral will be initiated through the Council's Placement Team or Social Work Service Teams

4.14. An Individual Placement under this Contract shall commence upon acceptance of a referral by the Provider and shall, subject to the terms of the Order, survive expiry of this Contract but be subject to clause 4.17 below.

4.15. The terms applicable to each Individual Placement shall comprise of the terms of this Contract, the Order and the relevant IPC.

4.16. In the event of the Council terminating this Contract then it shall be entitled to give written notice to the Provider that the Provider shall continue to provide the Services in accordance with an Individual Placement, as varied in accordance with any instructions set out within the Council's written notice, and the Provider shall be obliged to act in accordance with the written notice.

4.17. The Council may terminate an Order at any time without liability to the Provider by giving to the Provider written notice having effect immediately or after such period as the Council may determine. The Provider shall provide reasonable assistance at no cost to the Provider to assist in the transfer of the Service User to alternative care or support.

- 4.18. The Council offers no assurances, representations, warranties or guarantees in relation to the number of Orders (if any) that may be placed with the Provider under this Contract.
- 4.19. The Council may establish specific conditions relating to referrals within the documentation issued by the council to confirm accreditation. Where in use this will be included within this contract within Schedule 6- Other Correspondence. Any conditions established within these will be read ahead any conflicting clauses within Schedule 1- Specification.

## **5. PROVIDER'S WARRANTIES, RESPONSIBILITY AND KNOWLEDGE**

- 5.1. The Provider warrants, undertakes and represents that:
- 5.1.1. it has the full capacity power and authority and all necessary consents to enter into and perform this Contract;
  - 5.1.2. it is not and has not been in the three (3) years prior to the Commencement Date 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 accounting or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract;
  - 5.1.3. it has not committed a Prohibited Act at all in connection with the Tender Response Document or generally within the five (5) years immediately before the Commencement Date;
  - 5.1.4. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Provider in connection with the tendering process, and this Contract are true, complete and accurate in all respects;
  - 5.1.5. it has made its own enquiries and has satisfied itself as to the accuracy and adequacy of any information whatsoever supplied to it by or on behalf of the Council and all other matters relating to the Contract including, without limitation, any employment issues and/or the application of TUPE and the Price and in each case the Provider is not reliant on such information;
  - 5.1.6. it is of sound financial standing and is not aware of any circumstances (other than such circumstances as expressly disclosed by the Provider when submitting the Tender Response Document) that may adversely affect such financial standing in the future;
  - 5.1.7. it has or has made arrangement to ensure that it will have sufficient working capital, skilled Staff, equipment, machinery and other resources available to it in order to carry out the Services in accordance with the Contract Standard;
  - 5.1.8. it has obtained or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the Contract Period obtain and maintain all further and necessary consents, licences and permissions to enable it to carry out the Services in each case at its own expense;
  - 5.1.9. it has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Services so as to assess the full scope and

volume of the work involved in performing the Services to the Contract Standard;

5.1.10. it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract; and

5.1.11. it will not at any time during the Contract Period or at any time thereafter claim or seek to enforce any lien, charge or encumbrance over any property of whatever nature aimed or controlled by the Council and which is for the time being in the possession of the Provider.

5.2. The Provider shall be responsible for the accuracy of all drawings, documentation and information or anything else supplied to the Council by the Provider and the Provider shall pay the Council any extra costs incurred by the Council as a result of any discrepancies, errors or omissions therein.

5.3. The Provider shall alert the Council to the risk or the existence of any reason which may prevent the Provider from performing the Services as required in whole or in part as long in advance (and as fully) as reasonably practicable in the circumstances.

5.4. The Provider shall be deemed to have examined the documents constituting the Contract, including the Conditions of Contract, the Specification and the other Schedules and to have satisfied itself before tendering as to the correctness and sufficiency of its tender submission to cover all its obligations under this Contract and for all matters and things necessary for the proper completion of the Services.

## **6. THE COUNCIL'S CONTRACT MANAGER**

6.1. The Council shall appoint a Contract Manager to administer this Contract and act as its representative. The Council may from time to time replace the Contract Manager and shall notify the Provider in writing of this change.

6.2. The Contract Manager shall upon written notice to the Provider be entitled to delegate their role to other persons as they see fit.

6.3. Where this Contract authorises the Contract Manager to instruct the Provider, the Provider shall comply with these instructions.

## **7. THE PROVIDER'S AUTHORISED REPRESENTATIVE**

7.1. The Provider shall provide in writing the name, telephone number and contact address for the Provider's Authorised Representative who will be the Council's main point of contact for the Provider. The Provider shall not be entitled to remove or replace the Provider's Authorised Representative without the prior consent of the Council, such consent not to be unreasonably withheld or delayed.

7.2. The Provider's Authorised Representative must be empowered by the Provider to take decisions in respect of this Contract and must be available to the Council during reasonable working hours. The Provider's Authorised Representative shall upon reasonable notice attend any meetings relating to the Services at the request of the Council.

7.3. The Provider's Authorised Representative must have sufficient knowledge of this Contract and the Services to act as the Provider's main representative.

## **8. STAFF**

8.1. The Provider shall ensure that the Staff shall be sufficient in number, be properly and suitably qualified, competent, skilled, honest, instructed, trained, experienced and supervised and shall at all times exercise due care in the execution of their duties as well as procuring that such Staff shall:

8.1.1. comply with the relevant provisions of the Contract;

8.1.2. comply with all relevant Law, policies, codes, rules, procedures and standards of the Provider and all relevant rules, codes, policies, procedures and standards of the Council, notified to the Provider by the Contract Manager from time to time; and

8.1.3. enable the Provider to perform its obligations under the Contract during periods of absence of staff due to sickness, parental leave, holidays, training or otherwise; and

8.1.4. comply with the rules, regulatory and statutory requirements in relation to health and safety at work.

8.2. The Provider shall be liable for all costs relating to its Staff and any acts, omissions or defaults of its Staff howsoever arising in connection with the Services.

8.3. If and when directed by the Council, the Provider shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with this Contract to any of the Council's Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Council may reasonably desire.

8.4. The Council reserves the right under this Contract to refuse to admit, or withdraw permission to remain on the Council's Premises any Staff member whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

8.5. The Provider shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Provider by the Council for entry to any Council Premises and shall only permit such keys, passes and other means of access to be used in accordance with the Contract Manager's instructions and then only to the extent required for the purposes of providing the Services.

8.6. The Provider shall ensure that the Contract Manager is informed as soon as reasonably practicable of the loss of any keys, passes and other means of access to or around the Council's Premises and shall reimburse to the Council any cost of replacement and/or any reasonable security measures implemented as a direct or indirect result of such loss.

8.7. The Provider shall at all times during the Contract Period provide sufficient supervisory Staff to ensure that Staff are adequately supervised and able to perform their duties to the Contract Standard.

8.8. The Provider shall give the maximum possible advance warning of prospective industrial action and/or industrial dispute by its Staff likely to affect the performance of this Contract and shall take all reasonable steps to mitigate any impact on the Services. For the avoidance of doubt, industrial action by Staff shall not relieve the Provider of the obligation to provide the Services to the Contract Standard.

- 8.9. The Provider shall not (and shall take all reasonable steps to ensure that no member of Staff shall not) in any circumstances solicit or accept gratuity, tips or any other form of money taking or reward, from any person in connection with the provision of all or any part of the Services other than pursuant to the terms of the Contract.
- 8.10. The commission of any act prohibited by Clause 8.9 by the Provider or any member of Staff will be regarded by the Council as a matter of serious misconduct and, without prejudice to any of the Council's other rights under this Contract or at law:
- 8.10.1. the Council shall be entitled in respect of the commission of any such act by a member of Staff to require the removal forthwith from the provision of the Services such member or members of Staff and the Provider shall comply with this requirement; and
- 8.10.2. the Council shall be entitled in respect of the commission of any act by the Provider to terminate this Contract forthwith or on such period of notice as the Council may decide.
- 8.11. For the avoidance of doubt, Clause 8.10.1 shall operate without prejudice to any rights the Council may have under Clause 37 to terminate this Contract.

### **Pre-Employment Checks**

The Provider shall carry out appropriate pre-employment checks prior to the appointment of an individual in connection with the Services (including but not limited to references, medical clearance, proof of right to work in the UK, professional registration/qualifications and the issuing of a satisfactory Disclosure and Barring Certificate by the Disclosure and Barring Service, where relevant). Prior to making any offer of employment, the Provider shall carry out a risk assessment: in relation to any non-UK citizen and any UK citizen who requires a Criminal Records Check and who has lived abroad for six (6) months or more in the five (5) year period prior to being considered for appointment in connection with the Services.

- 8.12. The Provider shall obtain consent prior to the commencement of any work by any Staff member employed to work in connection with this Contract, to carry out all necessary checks under Clause 8.12 and shall obtain consent of the Staff member to provide evidence upon the request of the Council that such checks have been carried out.
- 8.13. Without affecting the Provider's rights and obligations as an employer, the Council or the Contract Manager may, to the extent reasonably necessary to protect the standards and reputation of the Council and following consultation with the Provider, request the Provider to remove from the Services or relevant part of it any person or member of Staff (including the Provider's Authorised Representative) and the Provider shall forthwith comply with such request. The Council shall not in any circumstances be liable to any such person or member of Staff or to the Provider in relation to any such removal, and the Provider shall fully and promptly indemnify the Council in respect of any claims brought by any such person or member of Staff arising from it.
- 8.14. The Provider through monitoring of its compliance with this Clause 8 shall ensure that the Council is kept advised at all times of any Staff member who, subsequent to his/her commencement of and during employment as a Staff member, commits any criminal act whatsoever or whose previous convictions become known to the Provider or commits any act which puts or could put users of the Service or the Council at risk.

### **Offer of Employment**

- 8.15. The Provider shall not, for the Contract Period or a period of twelve (12) months afterwards, employ or offer employment to any of the Council's employees and/or personnel who have been associated with the procurement and/or the contract management of the Services. This Clause shall not affect an offer of employment which results from a response by the employee and/or personnel member to any public advertisement.

#### **Status of Staff**

- 8.16. This Contract constitutes a contract for the provision of services and not a contract of employment.
- 8.17. For the avoidance of doubt, the Parties do not intend Staff working on or for this Contract to be off-payroll working through an intermediary for the purposes of IR35. The Provider must promptly notify the Council in writing if the status of any Staff changes in the case where they fall within IR35.
- 8.18. The Council may at its absolute discretion request from the Provider or Sub-Contractor at any time throughout the Contact Period until six (6) years after the Contract has been terminated, information in order to determine whether Staff fall within IR35. The Provider or Sub-Contractor shall provide the requested information promptly and in sufficient detail to the satisfaction of the Council.
- 8.19. The Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council for and in respect of:
- 8.20.1 any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where recovery is not prohibited by law;
  - 8.20.2 all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
  - 8.20.3 any liability arising from any employment related claim or any claim based on worker status or IR35 (including reasonable costs and expenses) brought by the Provider or Sub-Contractor against the Council arising out or in connection with the provision of the Services.

#### **TUPE and Pensions**

- 8.21 Both Parties shall comply with their respective obligations in accordance with the provisions specified in Schedule 10 (TUPE and Pensions Schedule).

### **9. SAFEGUARDING**

- 9.1. The Provider shall maintain and keep up to date appropriate policies on child protection and the protection of adults at risk. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health guidelines, Suffolk Safeguarding Adults Board and also with policies, procedures and guidelines issued by the Council. The Provider shall ensure that these policies, procedures and guidelines are communicated to Staff and that appropriate training is provided to Staff in relation to them.
- 9.1A. The Provider shall comply with the safeguarding obligations in accordance with the Council's Safeguarding Policy

<http://www.suffolkas.org/assets/Uploads/Suffolk-Safeguarding-Adults-Policy-and-Operational-Guidance.pdf>

- 9.2. The Provider shall have in place comprehensive procedures for reporting of and managing allegations against Staff which demonstrates the promotion of the safety and welfare of children and/or adults at risk and are compliant with statutory requirements. The Provider must be able to evidence safe and robust recruitment procedures and practice for all Staff working with children and/or adults at risk. The Provider shall ensure that Staff know about and comply with the requirements to make accurate, factual and contemporaneous records to ensure compliance with this Clause 9. The Provider shall comply with the Council's Adult and Child Safeguarding procedures in relation to this Clause 9, details of which are available using the following link and may be amended from time to time and notified to the Provider:

<http://www.suffolkas.org/assets/Uploads/Suffolk-Safeguarding-Adults-Policy-and-Operational-Guidance.pdf>

- 9.3. The Provider shall fulfil its legal obligations in relation to carrying out Criminal Records Checks and checking Staff through the DBS or Disclosure Scotland (as appropriate) and the relevant national or local safeguarding authority, where necessary and appropriate and complete a risk assessment form in respect of each Staff member when making decisions in relation to convictions revealed by the Criminal Records Check. The Provider is required to pay the full cost of any such registration and related costs. The Provider acknowledges that the Council has legal responsibilities under the SVG and that the Provider must check the Protection of Children list and the Protection of Vulnerable Adults list and comply with all other relevant Law in relation to safeguarding children and/or vulnerable adults and shall provide such evidence of compliance with this Clause 9 as the Council shall reasonably require. The Provider shall carry out and repeat the checks specified in this Clause 9.3 on every three (3) year anniversary from the Commencement Date. If it is a requirement of the Contract for the Staff member to be registered with the DBS Update Service, the Provider shall be responsible for ensuring that the Staff member maintains their annual subscription of the DBS Update Service.
- 9.4. The Provider shall nominate and name a designated senior officer or manager and make arrangements during the provision of the Services under this Contract to ensure that it complies with the provisions of the SVG.
- 9.5. The designated senior officer or manager referred to in Clause 9.4 above shall comply with the provisions of "*Working together*" for safeguarding children, young people and adults in dealing with allegations of abuse made against the Provider's employees who work with children, young people and adults. The Provider shall have in place a safeguarding policy, which is equal to or exceeds the Council's safeguarding policy (except where a conflict arises between the Council's safeguarding policy with the Conditions and/or the Specification, in which case the order of precedence of documents specified in Clause 2 of the Contract shall apply).
- 9.6. The Provider shall be entirely responsible for the employment and conditions of service of its Staff and all obligations relating thereto. In addition to the pre-employment checks to be carried out under this, the Provider shall ensure that suitable references reflecting the Staff member's suitability to work with children and/or vulnerable adults are taken up as part of the recruitment process. All Staff members proposed for the Service shall be subject to an appropriate Criminal Records Check, which should be carried out and results obtained prior to the Staff member being employed in connection with the Service. Should an adverse entry be revealed as a result of the Criminal Records Check and/or should any convictions including those that would otherwise be spent under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 be revealed, the Provider shall notify the Contract Manager of these immediately. The Council shall have a right to

veto the employment or engagement of any Staff member proposed for the Service as a result of the adverse entry/convictions, but not unreasonably or vexatiously.

- 9.7. The Provider shall use one of the following methods for the advice, processing and storage of each Criminal Records Check:
- 9.7.1. by the Provider directly (if DBS registered);
- 9.7.2 through an external DBS umbrella body.
- 9.8. The Provider shall comply with and observe all relevant Law in relation to Criminal Records Checks and follow all recommendations and general guidance issued including by any Central Government Department on Criminal Records Checks and carrying out Criminal Records Checks in relation to any person engaged in a role that meet the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations, when deciding whether the outcome of the Criminal Records Check is satisfactory and whether the individual concerned is suitable to carry out the role in connection with the Services.
- 9.9. The Provider shall maintain and disclose to the Council a record of the outcome of the Criminal Records Check, in relation to each Staff member where a Criminal Records Check is required, setting out the disclosure number, level of Criminal Records Check and the date the disclosure was made. The Provider shall store the record of the disclosure securely within the Provider's organisation in accordance with Data Protection Legislation and DBS Code of Practice. The Provider warrants, undertakes and represents to the Council that each disclosure number will be unique and can, if necessary, be reconciled against a Staff member's name engaged or appointed in connection with the Services.
- 9.10. If visits are taking place as part of the recruitment process, potential staff of the Provider must be accompanied by a member of Staff at all times and the checks specified in Clause 9 shall have been completed by the Provider prior to such visits taking place.
- 9.11. The Provider must have a robust system which evidences when Staff are suspended or dismissed that safeguarding children and/or vulnerable adults guidance including government guidance is followed and relevant professional bodies informed in the event of non-compliance. The Provider will ensure that it has appropriate procedures in place that support:
- 9.11.1. the immediate reporting to the Contract Manager of concerns and details of any incidents and/or convictions in relation to Staff members; and
- 9.11.2. other action necessary to support the Council's policies, including the possible mandatory participation in child protection meetings and actions.
- 9.12. The Provider shall have codes of conduct in place for all Staff that set out clear standards of conduct especially in relation to personal and sexual relationships between Staff and Service Users or other children and/or vulnerable adults.
- 9.13. The Provider must provide evidence of robust and effective complaints and whistle-blowing policies including a guarantee to Staff and Service Users that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.
- 9.14. If abuse of an individual is taking or has taken place or is suspected the Provider must comply with the "duty to refer" by immediately notifying the Contract Manager and the safeguarding children and adults lead of the Council as well as the Provider's



safeguarding children and vulnerable adults lead and should consider suspension of the Staff member(s) and take emergency measures (for example, inform police/seek medical assessment/treatment (as appropriate)). The Provider must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Contract Manager. The Provider must also notify the DBS and/or Disclosure Scotland (as appropriate) if a Staff member is dismissed or removed from working in connection with the Services for the reasons described in the "Duty to Refer" section of the DBS website.

- 9.15. The Provider shall seek the consent of each Service User to forward the Service User's records to the Replacement Provider(s) and/or one or more third parties determined by the Council on termination or expiry of the Contract. For the avoidance of doubt, the consent should be sought by the Provider from each Service User during the life of the Contract but the transfer(s) of these records shall (if required by the Council) be effected by the Provider (at no cost to the Council) as part of the exit and handover arrangements in accordance with clause 38.2.14.

### **Requests for Information from the Disclosure and Barring Service (DBS)**

- 9.16. The Council shall be entitled under its duty to the DBS to respond to requests from the DBS for further information already held by the Council in relation to the Staff.
- 9.17. The Provider shall respond to requests from the Council within a reasonable time about Criminal Records Checks in relation to the Staff and shall cooperate with the Council to enable the Council to comply with its duty to the DBS.
- 9.18. Failure by the Provider to comply with the safeguarding provisions of this clause 9 shall entitle the Council to terminate the Contract in accordance with Clause 37.

## **10. PROVIDER'S EQUIPMENT**

- 10.1. Notwithstanding the provisions of this Clause 10, the Provider shall ensure that throughout the Contract Period it supplies or makes available and maintains in good condition and in working order and within the Prices all such resources and equipment as may be necessary for the proper provision of the Services to the Contract Standard including, without limitation, Staff, labour, machinery, equipment, materials, transport and delivery facilities, consumables, premises, software, hardware and vehicles (the "Provider's Equipment").
- 10.2. The Provider shall ensure that all licence fees, consent fees, maintenance fees and royalties relevant to the provision of the Services are paid and up to date throughout the Contract Period and that the Provider's Equipment is properly maintained and replaced when necessary.
- 10.3. Any vehicles used in the performance of the Contract shall be maintained by the Provider in a safe condition, must be fully insured and must be certified as roadworthy.
- 10.4. Any specialist equipment used in the performance of the Contract shall be maintained by the Provider in accordance with the manufacturer's instructions, and must not be used or modified in such a way as to negate or diminish any insurance cover which may relate to the equipment or create an additional risk to users of that equipment.
- 10.5. The Provider shall be responsible for the security, insurance and storage of the Provider's Equipment and the Council shall be under no liability in respect thereof including where the Provider's Equipment is used and/or stored on Council Premises save where any damage or loss is caused to the Provider's Equipment by the acts or omissions of the Council.

- 10.6. The Provider shall ensure that any hired or leased equipment is clearly marked with the name of the hirer or owner or that this information is provided to the Contract Manager.
- 10.7. The Provider shall keep all hazardous Provider's Equipment provided for use by the Provider under proper control and safekeeping and shall ensure that all Provider's Equipment is properly and clearly labelled.
- 10.8. Should the Provider engage, use or rely upon the equipment or resources of a Fellow Provider or other party then this shall be an arrangement between the Provider and that other party and the Provider shall be responsible for that equipment or resource as part of the Provider's Equipment and the risk of engaging, using or relying upon such equipment or resources shall for the purpose of this Contract be entirely the Provider's.

## **11. USE OF COUNCIL PREMISES/ COUNCIL EQUIPMENT**

- 11.1. The Provider may be permitted access to some of the Council's Premises from time to time in connection with the provision of the Services at the Council's sole discretion. The Council is under no obligation to provide access to the Council Premises. If permitted by the Council, the Provider will use the Council's Premises only in connection with the proper performance of the Services and will ensure that its Staff and Sub-Contractors and agents use the Council Premises, only for such purpose.
- 11.2. The Provider shall ensure that the Council Premises it uses are left clean and tidy at all times.
- 11.3. Access to or use of any of the Council Premises by the Provider or any of its Staff will not create a tenancy of any nature whatsoever in favour of the Provider or its Staff or agents.
- 11.4. The Provider shall vacate the Council Premises on the Expiry Date, earlier termination or abandonment of this Contract.
- 11.5. The Provider shall ensure that it complies with all Laws relating to the health and safety and welfare of all persons using or employed on or about the Council Premises (including for the avoidance of doubt Service Users and other visitors), including ensuring that all relevant documents relating to the Council Premises are placed in the health and safety file at the same premises and made available at any time to the Council upon request.
- 11.6. In the event that, and to the extent that, the Provider is to provide all or any part of the Services from its own premises, the Provider shall ensure that such premises are safe, secure and suitable for the provision of the Services. Any Council Equipment or Council Data situated at the Provider's premises shall be clearly marked as the property of the Council. The Provider shall afford the Council access upon reasonable notice to inspect the Provider's premises including any security, fire protection and disabled access systems. The Provider shall not provide all or any part of the Services nor store any Council Data at any premises which have not been approved by the Contract Manager.
- 11.7. The Provider shall use the Council Equipment solely in connection with the provision of the Services and shall make good any damage to the Council Equipment caused by the Provider, its Sub-Contractors, Staff, servants or agents. Any damage shall be remedied by the Provider in accordance with the reasonable instructions of the Contract Manager and all costs incurred in complying with this Clause shall be borne by the Provider. The Provider shall inform the Contract Manager immediately of any act of vandalism or damage to the Council Equipment observed by the Provider or its Staff or Sub-Contractors and the Provider shall use its reasonable endeavours to ensure that the vandalism or damage ceases and to ascertain the identity of the perpetrators and to inform the Contract Manager immediately and the police or fire brigade, if appropriate, of the same.

- 11.8. The Council does not guarantee, warrant or give any assurances as to the age or state of repair or suitability for use in the Service of any item of Council Equipment and the Provider hereby acknowledges that it has carried out its own due diligence including inspections of such equipment and has satisfied itself as to the condition and suitability of each item of such equipment for use in the provision of the Service and accordingly the Provider shall not be relieved from any liability in relation to any failure to provide the Service or any part of it where such failure is caused by a failure in of or the unsuitability of any Council Equipment.
- 11.9. The Provider shall be responsible for the maintenance of the Council Equipment at its own expense except where it is stated in this Contract that any such maintenance shall be carried out at the Council's expense. In such circumstances, and for the avoidance of doubt, the Council shall be entitled to cease to maintain any item of Council Equipment when it considers, in its absolute discretion that such Council Equipment has reached the end of its useful life and is no longer economically viable to maintain.
- 11.10. Unless expressly stated to the contrary in this Contract, the Council shall not be obliged to replace any item of Council Equipment and if it does not replace any such item the Provider shall make such arrangements as are necessary including the provision of Provider's Equipment to provide the Service in accordance with this Contract without the relevant piece of Council Equipment.
- 11.11. The Council's Equipment shall remain the property of the Council and shall be delivered up to the Council at the end of the Contract Period or earlier termination except insofar as it has reached the end of its useful life and has been disposed of. Any item of equipment which was not Council Equipment shall remain the property and responsibility of the Provider or relevant third party and shall not, unless expressly provided to the contrary in the Contract, be delivered up to the Council at the end of the Contract Period.

**C. FINANCIAL ARRANGEMENTS**

**12. All details relating to financial arrangements will be maintained in Schedule 4**

**13. NOT USED**

**14. NOT USED**

**D. CONTROL OF THIS CONTRACT**

**15. ASSIGNMENT AND SUBCONTRACTING**

- 15.1. The Provider shall not sub-contract the whole of the Services. The Provider shall not sub-contract a part of the Services without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).
- 15.2. If the Provider should sub-contract the provision of any part of the Services to any person, neither that nor the Council's consent to that sub-contracting under Clause 15.1 above shall relieve the Provider from any liability or obligation under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-Contractor or agents in all respects as if they were the acts, defaults or neglect of the Provider.
- 15.3. Where the Council has consented to the use of a Sub-Contractor or Sub-Contractors, such Sub-contract(s) shall reflect the same terms of this Contract and for the avoidance of doubt the Sub-contract(s) shall not contain any terms which are incompatible and/or conflict with this Contract.

- 15.4. The Council may, as a condition of giving its consent under Clause 15.1 require the Provider to procure from that Sub-Contractor any direct warranties, indemnities or guarantees from that Sub-Contractor in relation to their provision of the Service and performance of their obligations under the Sub-Contract. For the avoidance of doubt, this may also include a requirement for the Sub-Contractor to grant licences or sub-licences in favour of the Council in respect of any land, premises, Intellectual Property Rights or software which are necessary to provide or which benefit from the Services.
- 15.5. The Provider shall not be entitled to assign, novate or otherwise transfer the Contract or its rights and obligations thereunder without the prior written consent of the Council and such consent shall be at the absolute discretion of the Council.
- 15.6. The Provider shall not without the prior written consent of the Council change or replace any sub-Contractor that it has appointed to provide any part of the Services. Any consent required from the Council in accordance with this Clause may be withheld at the Council's absolute discretion.
- 15.7. Any breach by the Provider of Clauses 15.1 to 15.6 shall constitute a substantial and material breach of Contract by the Provider.
- 15.8. The Council may, in its absolute discretion, novate or assign this Contract or any part thereof and will give written notice of any such novation or assignment to the Provider. This Clause in this Contract executed by the Provider shall stand as the Provider's consent to any such novation or assignment.
- 15.9. In the event the Council consents to any assignment, sub-contracting, novation or other arrangement under this Clause 15, it shall be entitled to require and the Provider shall pay the reasonable administrative and legal costs to the Council of formalising this change, including without limitation relating to the new contractual relationship between the Council and the Provider or any third party. For the avoidance of doubt, any such costs may be set-off pursuant to Clause 14 from sums due to the Provider.

## **16. VARIATIONS AND CHANGE CONTROL**

- 16.1. Subject to Clause 16.2 no Variation shall be effective unless it is recorded in writing and signed by duly authorised representatives of the Council and the Provider. Neither the Council nor the Provider shall implement a variation other than one which is in accordance with this Clause 16.1.

### **Council Variations**

- 16.2. The Council may by notice in writing to the Provider, from time to time, require minor and/or non-substantial changes to the Services, the way the Services are provided or any of the Contract Documents; such changes shall not be nor be considered to be a Variation to this Contract nor shall the Prices be affected thereby.
- 16.3. The Council may propose a Variation by giving written notice to the Provider ("the Council Variation Notice").
- 16.4. The Council Variation Notice shall:
- 16.4.1. set out the Variation required in sufficient detail to enable the Provider to calculate and provide an estimate of any adjustment to the Prices in accordance with Clause 16.6 below (the "Estimate");
  - 16.4.2. state the date on or by which the Council wishes the Variation to be implemented.

- 16.5. The Council shall consult with the Provider with respect to the Variation, and the Provider shall provide the Council on or before the date falling ten (10) Working Days after the date of the Council Variation Notice with a reasonable Estimate of the increase or reduction in the Prices (if any), or proposal of other changes to the terms set out herein, which it believes should occur as a result of the changes set out in the Council Variation Notice

#### **Provider Variations**

- 16.6. If the Provider wishes to introduce a Variation to the Services it must serve a notice on the Council (“the Provider Variation Notice”).
- 16.7. The Provider Variation Notice must:
- 16.7.1. set out the proposed Variation in sufficient detail to enable the Council to evaluate it in full;
  - 16.7.2. specify the Provider’s reasons for proposing the Variation;
  - 16.7.3. request the Council to consult with the Provider with a view to deciding whether to agree to the Variation and, if so, what consequential changes the Council requires as a result;
  - 16.7.4. include an Estimate in accordance with Clauses 16.6 and 16.7; and
  - 16.7.5. indicate if there is any date by which a decision by the Council is critical.
- 16.8. As soon as reasonably practicable after the Council receives the Provider Variation Notice the Parties shall meet to discuss the issues in such notice. During such discussions either Party may propose modifications to the proposed Variation.
- 16.9. If the Council accepts the Provider Variation Notice (with or without modification) the relevant Variation shall be implemented by any date specified in the Provider Variation Notice or in the event that it is not practicable for any reason to implement the Variation by such date it shall be implemented by such other date as the Parties acting reasonably may agree.
- 16.10. If the Council rejects the Provider Variation Notice it shall not be obliged to give its reasons for such a rejection.
- 16.11. Unless the Council’s acceptance of the Provider’s proposed Variation specifically agrees to an increase in the Prices, there shall be no increase in the Prices as a result of a Variation proposed by the Provider.
- 16.12. If the Variation proposed by the Provider causes or will cause the Provider’s costs or those of one of its Sub-Contractors to decrease, there shall be a corresponding decrease in the Prices.
- 16.13. Neither Party shall be entitled to reject any Variation which has been proposed to enable the provision of the Services to conform to a change in law.

#### **17. PERFORMANCE MONITORING AND CONTRACT REVIEW**

- 17.1. Contract review meetings will be held between the Provider’s Authorised Representative and the Contract Manager at regular intervals specified in advance by the Council and monitoring visits shall also take place in order to monitor the Provider’s performance both on this Contract as a whole and against any Performance Targets.
- 17.2. The Council may undertake monitoring visits with other strategic partners including other Eastern Region ADASS Members and local clinical commissioning groups. The Council shall also be entitled to share information on the Provider’s performance and other aspects of the Provider’s delivery of the Services with other strategic partners.
- 17.3. The Council shall wherever possible provide five (5) Working Days’ notice of monitoring visits but reserve the right to make unannounced monitoring visits at any time (in which

circumstances the Council shall respect the rights of any Service Users who may be receiving Services at the time of an unannounced visit).

- 17.4. The Provider shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews (including procuring the attendance of the Provider's Authorised Representatives at such meetings), monitoring visits and any further reasonable methods which the Council undertakes to assess the Provider's performance and contract compliance. The Provider shall provide all reasonable cooperation, facilitation and information required at no additional cost to the Council.
- 17.5. The Provider shall monitor and report to the Council its performance against any Performance Targets and provide all information required therein in the format required.
- 17.6. NOT USED
- 17.7. The Council may elect, at its own cost, to undertake its own performance monitoring at any stage for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract. The Provider will use its reasonable endeavours to assist the Council in such an exercise. The Council shall notify the Provider of the outcome of the performance monitoring exercise, and (without prejudice to the Council's other rights under this Contract) the Provider shall have due regard to the Council's findings in relation to the future provision of the Services.

## **18. INTELLECTUAL PROPERTY RIGHTS**

- 18.1. The Provider hereby expressly acknowledges that the Council alone has (subject to such third party rights as may at any time be notified to the Provider by the Council) exclusive ownership and ultimate control of:
- 18.1.1. the format and content of the documentation comprising the Contract;
  - 18.1.2. the Council's logos, insignia and letter heads;
  - 18.1.3. Council Data however and wherever stored and processed by the Provider; and
  - 18.1.4. any Intellectual Property Rights pertaining to any of the above.
- (collectively the "Property Rights").
- 18.2. Any goodwill pertaining to or arising from the use of the Property Rights shall at all times ensure and accrue to the exclusive benefit of the Council absolutely.
- 18.3. The Provider shall at the request of the Council promptly execute such documents and take or desist from such action as the Council may require in order to assure to the Council the full benefit of its Property Rights and/or to confirm the Council's title thereto.
- 18.4. The Council hereby licences the Provider to use the Property Rights solely:
- 18.4.1. to the extent and upon the terms provided by this Contract; and
  - 18.4.2. for the purposes of performing the Services for the Council.
- 18.5. The Provider shall notify the Council on becoming aware of:
- 18.5.1. any information prejudicial to, and/or actual, threatened or suspected complaint or proceedings brought by any third party (including, without limitation, by any user or recipient of the Services) in any way connected with the Services and relating to the Council, the Provider or its Sub-Contractors or any Fellow Provider; or

- 18.5.2. any actual, threatened, attempted or suspected infringement by any third party of any of the Property Rights including (without limitation) any seizure of or other interference with Council Data (an "Infringement").
- 18.6. The Provider shall use its best endeavours to assist, co-operate with and follow the instructions of the Council in relation to any Infringement, including (without limitation) in protecting and/or defending the Property Rights against any infringing party and, at the Council's request or the request of the Council's insurers, the Provider shall entrust the conduct of any proceedings in relation to any such Infringement to the Council.
- 18.7. Save for any Pre-Existing Intellectual Property Rights owned by the Provider, all Intellectual Property Rights in any data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or developed by the Provider in connection with provision of the Services shall vest in and be the property of the Council and the Provider hereby assigns all such Intellectual Property Rights to the Council provided that in the event that any such Intellectual Property Rights do not vest in the Council by operation of law, the Provider shall execute or cause to be executed, including by any employee or agent of its any and all deeds, documents and acts required to assign such Intellectual Property Rights to the Council.
- 18.8. Neither Party shall acquire Pre-Existing IPR Rights of the other Party.
- 18.9. Subject to clause 18.8, the Provider shall grant the Council a fully paid-up, royalty-free non-exclusive licence to use the Provider's logos and insignia in relation to the Services, including the promotion and reporting thereof.

#### **Intellectual Property Rights Indemnity**

- 18.10. The Provider warrants, undertakes and represents to the Council that:
- 18.10.1. it has not given and will not give permission to any third party to use any of the material to which Clause 18.1 relates nor any of the Intellectual Property Rights in such material; and
- 18.10.2. neither the provision of the Services by the Provider nor its receipt by the Council will infringe the Intellectual Property Rights of any third party.
- 18.11. The Provider agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any claim by any third party that their Intellectual Property Rights have been infringed by the provision of the Services or anything supplied, created or done by the Provider in connection with such provision.
- 18.12. The Provider waives any moral rights in relation to any materials it creates in connection with the provision of the Services to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such material or other materials, infringes the Provider's moral rights.

#### **19. ICT AND COMPUTER SYSTEMS**

- 19.1. In relation to any computer system which the Provider uses in connection with its provision of the Services, the Provider shall ensure that the Provider's System(s) is at all times throughout the Contract Period such as to enable the Provider to comply with its obligations under the Contract and in particular (but without limitation) to perform the Services to the Contract Standard. On the reasonable instructions of the Council, the Provider shall ensure that the Provider's System is capable of being rendered compatible with and is in all respects capable of interfacing with the Council's System and, where

reasonably practicable, the relevant computer systems of other partners of the Council and Fellow Providers.

- 19.2. The Provider shall ensure that at all times during the Contract Period (and until any computerised Council Data has been returned to the Council in accordance with the provisions of the Contract) it has in place adequate and robust business continuity and disaster recovery procedures that are in accordance with good data management and security practice and that shall include as a minimum undertaking a full back up of all Council Data at least once per day so that in the event of the partial or total failure of the Provider's computer system the Provider shall be able to continue to provide the Services without interruption and comply with its remaining obligations under this Clause 19.
- 19.3. The Provider shall ensure that any licences in relation to software to be used in connection with the provision of the Services allow for the software to be tested by the Council on a machine and at a location to be determined by the Council and allow the Council to so test all such software before it is used operationally by the Provider if it so requests.
- 19.4. The Provider shall ensure that at all times during the Contract Period it has in place a good quality robust firewall and virus protection software so as to guard against any virus, worm, Trojan horse, logic bomb, time bomb, back door, trap, disabling device, malicious code, or other contaminants or similar form of code intended (or having that effect) to cause harm, damage, or to prevent or restrict the use of the Council Data, the Council's System or any other computer system relevant to this Service (together, "Contaminants"). The Provider warrants, undertakes and represents that it shall not introduce any Contaminants into the Council's System, nor any systems of Collaboration Partners, Fellow Providers or other systems which the Provider is provided access to for the purpose of performing the Services.
- 19.5. The Council shall, free of charge, either in hard copy or in computerised form (as appropriate) provide the Provider with such Council Data as is necessary in the Council's opinion for the Provider to perform the Services.
- 19.6. The Provider shall at all times ensure that the Staff use the Council's System and Council's Equipment in accordance with the terms and conditions of this Contract and the Provider shall be solely responsible for any of the Staff's breach of this Contract.
- 19.7. The Provider shall indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, arising out of or in connection with the Staff's use of the Council's System and/or the Council's Equipment.

## **20. AUDIT AND MONITORING RIGHTS**

- 20.1. The Provider shall permit or procure permission for any authorised representative of the Council (including such other nominated officer and/or the Council's internal auditors and external auditors) and representatives of the Council's partners (at the Council's request), to have reasonable access for audit and monitoring purposes to information, documents, data, systems, the Provider's Premises or the Provider's Equipment used in the provision of the Services and any information, documents, reports, Sub-Contractors and their staff, assets or information, or anything else reasonably required for inspection by the Council and/or its authorised representatives.
- 20.2. Access shall include (without limiting the generality of the foregoing):
  - 20.2.1. reasonable access to the Staff who are engaged in the provision of the Services;
  - 20.2.2. inspection of the materials, premises and arrangements being made by the Provider to comply with its obligations under this Contract;



20.2.3. access to the Provider's Premises and any other locations where the Services are being provided; and

20.2.4. access to such financial and other records kept as part of the provision of the Services by the Provider as may be reasonably required from time to time by the Council to enable the Council to verify the sums due and payable under the terms of this Contract and how the Services are being provided. The Provider shall keep and maintain for a period of six (6) years after the end of the Contract Period, or a longer period as may be agreed between the Parties, full and accurate records of this Contract including Services provided under it, all expenditure reimbursed by the Council and all payments made by the Council. For the avoidance of doubt this Clause 20 is in addition to any legal requirement and does not negate the need for any such retention of records. If the Council's audit of financial records reveals that the Council has overpaid all or part of the Price then the Provider shall immediately pay the Council the balance of such overpayment and the reasonable cost of such audit.

20.3. Access may be at any time without notice, provided there is good cause for access without notice, and provided that the Contract Manager shall comply with all reasonable requirements of the Provider for the purpose of protecting the confidentiality of the information of third parties, and no information will be divulged to any third party save in pursuance of statutory or other legal obligations.

20.4. The Council reserves the right to jointly with the Provider audit or monitor the performance of a Sub-Contractor.

## **21. RECORDS**

21.1. 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 in accordance with Clause 20. Such records shall be Council Data and shall be provided to the Council in such searchable and identifiable form as the Council may request at any stage during the Contract Period.

21.2. 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 including the Council Data.

21.3. The Provider shall ensure that access to records is only provided to Staff as is necessary in connection with the provision of Services. The Provider shall, prior to providing such access, ensure that those Staff members are made aware of the obligations upon the Provider in their dealings with the records, including the safeguards the Staff members must comply with.

21.4. If any records are accidentally or wilfully destroyed otherwise than by the Council or on the authorisation of the Council and in the event that the Provider does not have in place a method for reinstatement or replacement of such records, within five (5) Working Days of receipt of a notice from the Council and without prejudice to the Council's other rights at law, the Provider shall reimburse the Council's reasonable costs in restoring such records and/or the Council Data such costs are to be accounted for during the term of this Contract by way of rebate in subsequent invoices for the sums paid pursuant hereto.

## **22. PUBLICITY**

- 22.1. Except with the prior written approval of the Council, the Provider shall not make any press announcements or responses or publicise this Contract or any part thereof in any way.
- 22.2. Where requested, the Provider shall comply with the Council's local brand policy and guidelines, as revised, updated or re-issued from time to time.
- 22.3. The Provider shall take reasonable steps to ensure the observance of the provisions of this Clause 22 by all of its Staff.
- 22.4. The Council shall have the right to publish the results of the Provider's ratings on the Public Portal and elsewhere and to publicly share information in relation to these ratings (and the Provider acknowledges that such information is not confidential information).

## **E. FREEDOM OF INFORMATION CONFIDENTIALITY AND DATA PROTECTION**

### **23. FREEDOM OF INFORMATION**

- 23.1. The Provider acknowledges that the Council is subject to the requirements under the Freedom of Information Act 2000 ("FOIA") and the Environment Information Regulations 2004 ("EIR") and shall cooperate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements and any requests for information under the FOIA and/or EIR ("Request(s)").
- 23.2. The Provider shall give reasonable assistance to the Council to comply with the FOIA and EIR. The Provider shall not do any act either knowingly or recklessly that would cause the Council to be in breach of the FOIA and/or the EIR.
- 23.3. In particular, the Provider shall supply all such information to the Council (together with reasonable assistance to locate the same) which is needed by the Council to comply with its obligations under the FOIA and EIR within a timescale to be agreed on a case by case basis, but in any event, not to exceed the timescale that the Council must comply with as specified in the FOIA and/or EIR (as appropriate).
- 23.4. The Provider shall advise the Council of any requests for information received by the Provider where the information requested is subject to the Services provided under this Contract and shall follow the Council's access procedures in fulfilling the request.
- 23.5. The Provider shall be required to follow all Council processes and procedures that provide for compliance with the FOIA and EIR where information held is subject to the Services.
- 23.6. Without prejudice to the generality of its obligations under this Clause 23, the Provider shall:
  - 23.6.1. transfer all Requests for Information that it or its sub-contractor receive, to the Contract Manager of the Council as soon as practicable after receipt and in any event within two (2) Working Days following receipt of the Request;
  - 23.6.2. provide the Council with a copy of all information in its or its Staff members' possession or power that the Council reasonably considers relevant to the Request and in the form that the Council requires as soon as practicable and in any event within five (5) Working Days following receipt of the Council's request for that information (and any follow-up information required by the Council thereafter within two (2) Working Days following receipt of the Council's follow-up request); and

23.6.3. provide all necessary assistance as reasonably requested by the Council to respond to the Request for information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.

23.7. In the event that the Council or the Provider receiving a request for information pursuant to Clause 23.6 reasonably believes that any information required to be disclosed by the Council is exempt from the provisions of the FOIA the Provider may notify the Council accordingly, specifying the reasons for the belief that the information is exempt, such notification to be given within two (2) Working Days of the date on which the Request for information is received.

23.8. In the event that the Provider notifies the Council in accordance with Clause 23.7 the Council shall acting in good faith consider the reasons given by the Provider and following such consideration shall either:

23.8.1. withdraw its request in the event that it agrees the information is exempt; or

23.8.2. confirm its request in which case the Provider shall provide the information so requested within such period as may reasonably be specified by the Council.

23.9. Subject to the provisions of Clause 24 the Council shall have the discretion to disclose any information which is the subject of this Contract to any person who makes a request under the FOIA and/or EIR and which, in the opinion of the Council, it has to disclose to discharge its responsibilities under the FOIA and/or EIR.

23.10. When exercising its right under Clause 23.9, the Council shall consult the Provider and may take account of any reasonable suggestions made by the Provider, however the final decision as to whether any information shall be withheld or disclosed shall lie with the Council.

## **24. CONFIDENTIALITY**

24.1. The Parties to this Contract each agree to keep confidential all information that ought to be considered as confidential that is shared between them (however it is conveyed or on whatever media it is stored) in relation to the Services and any Service Users.

24.2. Each Party:

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

24.2.2. 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 this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

24.3. The Provider shall ensure that in the event its Staff are in receipt of any of the Council's Confidential Information, such Staff are under the same legal obligations and undertakings in respect of such Confidential Information as those imposed on the Provider under this Clause.

24.4. The Provider and/or its Staff shall not use any Confidential Information it receives from the Council otherwise than in providing the Services in accordance with this Contract.

24.5. The foregoing restriction set out in Clause 24.2 relating to Confidential Information shall not apply to:

- 24.5.1. information which at the time of disclosure is generally available to the public other than by breach of this Clause 24 by the Council and/or Provider;
- 24.5.2. information which is in possession of the disclosing party (without restrictions) before the date on which the disclosing party received that information as a result of or in connection with this Contract;
- 24.5.3. information which is required to be disclosed by Law and/or compliance with a Court order; and
- 24.5.4. information which is reasonably required by any person engaged in the performance of their obligations in relation to the Contract for the performance of those obligations.

The Council shall not disclose information, which has been forwarded to it by the Provider and designated by the Provider as confidential, including, but not limited to, technical or trade secrets

24.6. Clause 24.6 is without prejudice to -:

- 24.7.1 any other provision in Regulation 21 of Public Contract Regulations 2015, including the obligations relating to the advertising of awarded contracts and the provision of information to candidates and tenderers set out in Regulations 50 and 51 of the Public Contracts Regulations 2015 respectively;
- 26.7.2 the purpose of the examination and certification of the Council's accounts;
- 26.7.3 the purpose of 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;
- 26.7.4 any government department or any other contracting authority (as defined in the Public Contracts Regulations 2015). 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 Information and is not to be disclosed to a third party which is not part of any government department or any contracting authority;
- 24.7.5 the Council complying with its legal responsibilities to allow the re-use of public sector information under the Re-Use of Public Sector Information Regulations 2005; and
- 24.7.6 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.

24.7. The Provider shall take all necessary steps to enable the Council to comply with its obligations under the Re-Use of Public Sector Information Regulations 2005 and at the Provider's own expense.

## **25. DATA PROTECTION**

- 25.1 The Parties shall comply with their obligations under Data Protection Legislation at all times and in particular as set out below.

### **Information Governance – General Responsibilities**

- 25.2 The Provider acknowledges that the Data Protection Legislation will include the GDPR from its entry in to force on 25 May 2018 and will ensure that it complies with the requirements of the GDPR.
- 25.3 For the purposes of this clause, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA and the GDPR.
- 25.4 The Parties also acknowledge their respective obligations arising under the DPA and GDPR and must assist each other as necessary to enable each other to comply with these obligations.
- 25.5 The Provider undertakes to:

- 25.5.1 treat as confidential all Personal Data which may be derived from or be obtained in the course of the Services or which may come into the possession of the Provider or a Staff member, servant or agent or Sub-Contractor of the Provider as a result or in connection with the Services;
- 25.5.2 provide all necessary precautions to ensure that all such information is treated as confidential by the Provider, its Staff members, servants, agents or Sub-Contractors;
- 25.5.3 ensure that it, its Staff members, servants, agents and Sub-Contractors are aware of the provisions of the DPA and GDPR and that any personal information obtained in the course of the performance of this contract shall not be disclosed or used in any unlawful manner;
- 25.5.4 indemnify the Council against any loss arising under the DPA and GDPR caused by any action, authorised or unauthorised, taken by the Provider, its Staff members, servants, agents or Sub-Contractors; and
- 25.5.5 have in place adequate mechanisms to ensure that Sub-Contractors, agents and subsidiaries to whom personal information is disclosed comply with their obligations under this Contract to keep Personal Data and information secure and confidential in accordance with Data Protection Legislation.

### **The Provider as Data Processor**

- 25.6 The Provider shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and GDPR and each of the Parties will duly observe all their obligations under the DPA and GDPR which arise in connection with this Contract.
- 25.7 Notwithstanding the general obligations in clauses 25.1 to 25.5 above, where the Provider is processing Personal Data as a Data Processor for the Council the Provider shall:
- 25.7.1 process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Council;
- 25.7.2 comply with all applicable Laws;

- 25.7.3 process the Personal Data only to the extent and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any regulatory body;
  - 25.7.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 25.7.5 ensure that it is able to demonstrate that Staff members, servants, agents or Sub-Contractors associated with the performance of this Contract are aware of their personal responsibilities under the DPA and GDPR to maintain the security of the Personal Data controlled by the Council;
  - 25.7.6 take reasonable steps to ensure the reliability of its Staff, servants, agents and Sub-Contractors who may have access to the Personal Data;
  - 25.7.7 ensure that Personal Data is not be copied for any purpose other than that agreed with the Council; and
  - 25.7.8 ensure that Personal Data shall be returned to the Council or, under the Council's written instruction, be safely and securely transferred to another provider in accordance with Data Protection Legislation at the end of this Contract or when requested by the Council.
- 25.8 The Provider shall permit the Council (subject to reasonable and appropriate confidentiality requirements), to inspect and audit the Provider's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to verify and/or procure that the Provider is in full compliance with its obligations under this Contract and shall:
- 25.8.1 not Process, cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior written consent of the Council;
  - 25.8.2 ensure that all Staff, servants, agents and Sub-Contractors required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 25;
  - 25.8.3 ensure that none of the Staff, servants, agents and Sub-Contractors publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council;
  - 25.8.4 not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council;
  - 25.8.5 notify the Council within two (2) Working Days:
    - 25.8.5.1 if it receives a request from a Data Subject to have access to that person's Personal Data;
    - 25.8.5.2 if it receives a complaint or request relating to the Council's obligations under the DPA or GDPR; or
    - 25.8.5.3 of any breach or potential breach of this Clause.

- 25.9 The Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 25.10 The Provider agrees to indemnify and keep indemnified and defend at its own expense the Council against all costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Provider or its Staff members, servants, agents or Sub-Contractors to comply with any of its obligations under this Contract.

#### **Responsibilities when engaging sub-contractors**

- 25.11 Subject always to the Council's prior written consent, if the Provider is to require any Sub-Contractor to process Personal Data on its behalf, the Provider must ensure that the Sub-Contractor contracts on terms which are substantially the same as those set out in this Clause.

#### **Information Sharing Agreement**

- 25.12 The Provider shall comply with its obligations set out in the Information Sharing Agreement at all times.
- 25.13 The provision of this Clause 25 shall apply for the duration of the Contract and indefinitely after its expiry.

### **F. ADDITIONAL STATUTORY OBLIGATIONS AND REGULATIONS**

#### **26. BRIBERY, CORRUPTION AND FRAUD**

- 26.1. The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council 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 for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- 26.2. The Provider shall take all reasonable steps to prevent any fraudulent activity (including but not limited to the submission of inaccurate, incomplete, misleading or falsified management information) by the Staff, the Provider (including its shareholders, members and directors) and/or any of the Provider's Sub-Contractors or suppliers, and including in connection with the receipt of monies from the Council.
- 26.3. The Provider shall not, and shall procure that its Staff shall not, in connection with this Contract commit a Prohibited Act as defined in Clause 26.4 below.
- 26.4. The following constitute a Prohibited Act:
- 26.4.1 directly or indirectly to offer, promise or give any person:
    - 26.4.1.1 working for or engaged by the Council a financial or other advantage;
    - 26.4.1.2 induce that person to perform improperly a relevant function or activity;  
or

26.4.1.3 reward that person for improper performance of a relevant function or activity;

26.4.2 directly or indirectly to request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

26.4.3 committing any offence:

26.4.3.1 under the Bribery Act;

26.4.3.2 under legislation creating offences concerning fraudulent acts;

26.4.3.3 at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

26.4.3.4 defrauding, attempting to defraud or conspiring to defraud the Council.

26.5. The Provider shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency for the purpose of compliance with the Bribery Act.

26.6. The Provider shall have an anti-bribery policy.

26.7. If any breach of this Clause 26 is suspected or known, the Provider must notify the Council immediately.

## **27. EQUALITY**

27.1. The Provider shall comply with Equalities Legislation in its performance of the Services.

27.2. The Provider shall:

27.2.1. not discriminate against any person or for any reason within the meaning and scope of Equalities Legislation;

27.2.2. comply with any official guidance and codes of practice in relation to promoting equality in employment and the provision of services;

27.2.3. have an equal opportunities policy approved by the Council or shall have adopted the Council's own equal opportunities policy and procedures which is available on:

<http://www.suffolk.gov.uk/your-council/plans-and-policies/equalities-and-inclusion/equalities-and-inclusion-our-commitment-to-you/>

27.2.4. take all reasonable steps to secure the observance of this Clause 27 by its Staff employed in connection with the Contract; and

27.2.5. provide such information as the Council may reasonably require for the purpose of assessing the Provider's continued compliance with this Clause 27 and to assist in the Council's reporting obligations in respect of equal opportunities.

27.3. If a Court, tribunal or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) shall make a serious finding of unlawful discrimination against the Provider in connection with similar services to the Services



performed in the United Kingdom such that the Council would acting reasonably find it difficult to continue in contract with the Provider without a real and significant risk to its reputation, the Council shall:

27.3.1. have a right to terminate the Contract pursuant to Clause 37; or

27.3.2. shall be entitled to require all reasonable steps from the Provider to mitigate such risks and ensure that any repetition of the circumstances leading to the finding does not occur.

## **28. HEALTH AND SAFETY**

28.1. The Provider shall at all times comply with the Health and Safety at Work etc Act 1974 and all other Law relating to the health and safety of Staff and others who may be affected by the Provider's acts or omissions in providing the Services under this Contract.

28.2. 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 etc Act 1974 and all relevant Law relating to health and safety and provisions within this Clause 28.

## **29. WHISTLEBLOWING**

29.1. The Provider confirms that the Provider' Authorised Representative is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 ("PID Act") and declares that any of its Staff making a protected disclosure (as defined by PID Act) shall not be subjected to any detriment and the 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.

29.2. The Provider shall review its whistleblowing policy and procedure on an annual basis and discuss and review with the Contract Manager and shall reflect in its own policy the Council's Whistleblowing Procedure and Guidance which can be found linked here: <http://www.suffolk.gov.uk/assets/suffolk.gov.uk/Your%20Council/Policies%20and%20Procedures/Whistleblowing%20Procedure%20October%202013.pdf>

## **30. ADDITIONAL SPECIFIC STATUTORY OBLIGATIONS**

### **Human Rights Act 1998**

30.1. In the performance of the Services the Provider shall comply with the Human Rights Act 1998 as if it was a "Public Authority" within the meaning of the Human Rights Act 1998 and where necessary, comply with any modifications to this Contract to enable the Parties to comply with such obligations.

### **Modern Slavery Act 2015**

30.2. The Provider undertakes, warrants and represents that:

30.2.1 neither the Provider nor any of its Staff, agents or Sub-Contractors has:

30.2.1.1 committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");

30.2.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

30.2.1.3 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

30.2.2 it shall comply with the Modern Slavery Act 2015 at all times;

30.2.3 its responses to any Council modern slavery and human trafficking due diligence questionnaire are complete and accurate; and

30.2.4 it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it or any of its Staff, agents or Sub-Contractors have breached or potentially breached any of Provider's obligations under this Clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations.

30.3. Any breach of clause 30.2 by the Provider shall be deemed a material breach of the Contract and shall entitle the Council to terminate the Contract in accordance with Clause 37.2.2.

### **Mental Capacity Act and Deprivation of Liberty Safeguards**

29.1 In relation to the Mental Capacity Act 2005 (as amended) ("MCA"):

29.1.1 the Provider, including all Staff, shall comply with the provisions set out in the MCA when delivering Services;

29.1.2 the Provider shall have a clear written policy approved by the Council on its approach to the MCA. The policy may be reviewed by the Council from time to time and shall ensure that any reasonable amendments requested by the Council are incorporated into its equality/ diversity policy within twenty one (21) days of request by the Council;

29.1.3 all Staff must be trained at induction to follow the reporting procedures specified in the policy and that training should be updated at least annually; and

29.1.4 the Provider shall notify the Council immediately where a Service User may lack capacity and a Significant Decision is to be made.

29.2 In relation to the Deprivation of Liberty Safeguards:

29.2.1 the Provider shall have regard to the MCA Code of Practice including the supplementary DoL Safeguards Code of Practice in its role as a Managing Authority;

29.2.2 the Provider shall have a clear written policy approved by the Council and reviewed from time to time on its approach to the DoL, which includes but is not limited to the following:

29.2.2.1 a clear procedure for the recording of information;

29.2.2.2 the process for applying for an Authorisation to the Council; and

29.2.2.3 the process once a Authorisation request has been made;

- 29.2.3 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 Council of the lead contact details prior to the Commencement Date;
- 29.2.4 the Provider shall forthwith give notice in writing to the Council of any change in the identity or contact details of the person appointed as lead contact; and
- 29.2.5 the Provider shall give maximum possible notice to the Council before changing its lead contact.

**G. INSURANCE AND INDEMNITY**

**30. INSURANCE**

- 30.1. Without prejudice to the general indemnity given at Clause 32 and without thereby limiting its responsibilities under this Clause 31 the Provider shall take out and maintain throughout the Contract Period as a minimum the following insurance cover with a reputable insurance company:

**Public Liability Insurance**

Public liability insurance of a minimum of Five Million Pounds (£5,000,000) or such greater sum as the Service Provider may choose in respect of any one incident.

**Employers Liability Insurance**

Employers Liability Insurance of a minimum of Ten Million Pounds (£10,000,000) or such greater sum as the Service Provider may choose in respect of any one incident.

**Professional Indemnity Insurance**

Professional Indemnity Insurance in respect of the Service Provider's obligations to provide the Services with reasonable skill care and diligence in an amount of not less than five million pounds (£5,000,000) for any one occurrence or a series of occurrences arising out of any one event for a period of twelve (12) years from the completion date of this Contract.

- 30.2. In the event that such insurance cover required by this Clause 31 ceases to be available to the Provider at all or on commercially reasonable rates, the Provider shall notify the Council immediately and the Parties shall acting reasonably consider alternative arrangements. In the event that there are no alternative arrangements that are acceptable to the Council, the Council shall be entitled to terminate the Contract under Clause 37.
- 30.3. The Provider shall supply to the Council at the Commencement Date forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming that the Provider's insurance policies comply with each of the insurance requirements set out in Clauses 31.1.
- 30.4. Where this is possible for the type of insurance cover, the insurance policies shall contain an indemnity to principal clause in favour of the Council.
- 30.5. If the Provider fails to comply with the requirements of this Clause 31, then without prejudice to the Council's other rights under this Contract in respect of such breach, the Council shall be entitled to obtain equivalent insurance cover for the Services on behalf of the Provider and shall be entitled to recover from the Provider as a debt those reasonable costs of obtaining and maintaining such cover.

## **31. LIABILITY AND INDEMNITY**

31.1. Neither Party shall exclude or limit its own liability for:-

- 31.1.1. death or personal injury caused by its negligence, or that of its own personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors);
- 31.1.2. acts of fraud or fraudulent misrepresentation by it or its personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors);
- 31.1.3. breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 31.1.4. any other matter where such limit or exclusion is not permitted under Legislation.

31.2. The Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its employees and agents against all liabilities, demands, proceedings, actions, damages, costs (including legal costs), losses, fines, monetary penalty notices, claims, charges, expenses and any other liabilities whatsoever in any way arising out of or in connection with the Services and/or this Contract and including but not limited to:

- 31.2.1. any death or personal injury, loss of 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;
- 31.2.2. the Provider's failure to provide all or any part of the Services in accordance with the Contract or at all;
- 31.2.3. any breach by the Provider of any of the provisions of the Contract;
- 31.2.4. the use or occupation by the Provider of any of the Council's Premises;
- 31.2.5. the use by the Provider of the Council's Equipment; and
- 31.2.6. any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Provider.

31.3. The liability set out in Clause 32.2 shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services so far as the management of, or instructions issued to, such third parties is the responsibility of the Provider.

## **H. REMEDIES FOR POOR PERFORMANCE AND TERMINATION**

### **32. FORCE MAJEURE**

32.1. No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and for that

reason it is prevented from carrying out all or a material part of its obligations under this Contract by that Force Majeure Event.

- 32.2. On the occurrence of a Force Majeure Event, the Party affected shall notify the other Party within twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 32.3. Within forty-eight (48) hours of the Force Majeure Event, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 32.4. If the Force Majeure continues for more than twenty one (21) days the Council shall be entitled to terminate this Contract under Clause 37.
- 32.5. This Clause 33 does not affect the Council's other rights to terminate this Contract set out in Clause 37.

### **33. BUSINESS CONTINUITY**

- 33.1. The Provider shall Business Continuity Plan capable of acceptance by the Council which shall ensure that the Provider can restore or regenerate full business activity in the event of an internal or external threat within a reasonable period of time as specified by the Council.
- 33.2. The Business Continuity Plan shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of a major failure of the Services or any part thereof, as determined by the Contract Manager.
- 33.3. The Provider shall review and assess the Business Continuity Plan every twelve (12) months and produce a report to the Council within ten (10) Working Days of the success or failure. If the Council is not at that time satisfied with the Business Continuity Plan provided by the Provider, the Provider shall be required to take all reasonable steps to improve the Business Continuity Plan to the Council's satisfaction.
- 33.4. Any costs incurred in the preparation and implementation of the Business Continuity Plan shall be the responsibility of the Provider.
- 33.5. In the event of the following occurring in relation to any premises used to deliver services or homes of customers in receipt of services:
  - I. A Met Office Amber or Red weather warning, or;
  - II. An Environment Agency Flood Warning or Severe Flood Warning, or;
  - III. Industrial Action, or;
  - IV. Any police restrictions that might affect delivery of services

The following terms will apply;

33.5.1) The provider will immediately notify the Council's Customer First contact centre if any customers are, or will be, at risk of harm due to undeliverable services

33.5.2) The provider will contact the Council's contract manager to confirm implementation of a business continuity plan, with appropriate details and provisions agreed by both parties where required.

33.5.3) Within one (1) working day of the notice specified in 1.1, the contract manager will confirm appropriate temporary absences for any affected service users. Payments will be adjusted in line with standard temporary absence terms outlined in [Temp absence clause]. The Council may at this point offer an exceptional or part payment, without indemnifying or providing warranty above the financial obligations contained elsewhere in this contract, to enable the Provider to maintain continuity of services.

#### **34. COMPLAINTS**

- 34.1. The Provider shall ensure that it has a complaints procedure in place from the Commencement Date in respect of complaints about the Services, which is in accordance with the Ombudsman guidance on a complaints system, which shall be approved by the Council from time to time.
- 34.2. The Provider shall notify the Contract Manager within ten (10) Working Days (or sooner if the urgency or significance of the complaint justifies it) if it receives any complaints in relation to the Services with details of how the Provider proposes to resolve the complaint. If the complaint is not resolved to the satisfaction of the Contract Manager within the time specified by the Contract Manager, the Contract Manager may take action in accordance with Clause 36.

#### **35. DEFAULTS AND REMEDIES**

##### **Remedies Available to the Provider:**

##### **Interest**

- 35.1. In the event that any undisputed invoice correctly rendered by the Provider remains unpaid by the Council after thirty (30) days the Provider shall notify the Council in writing giving the Council fifteen (15) further calendar days to pay such an invoice. If the invoice remains unpaid, the Provider shall be entitled to charge interest from the date on which the fifteen (15) day period expired at a rate of two per cent (2%) above the base lending rate published by the Bank of England. The Parties agree that this Clause constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998.

##### **Relief from Liability**

- 35.2. The Provider shall not be liable to the Council for a Performance Default to the extent that it is directly caused by a breach of contract by the Council or Fellow Provider provided that the Provider has notified the Council in writing as soon as it has come to the Provider's attention that such an event has or will occur.

##### **Termination by Provider**

- 35.3. Without prejudice to the Provider's rights pursuant to this Clause 36, if the Council commits a repudiatory breach of contract, the Provider shall be entitled to terminate the Contract by notice in writing provided it first notifies the Council in writing of the breach of contract, stating its intention to issue a termination notice and giving the Council a period to remedy the breach, such period being reasonable in the circumstances and, in any event not less than twenty (20) Working Days or such other longer period as may be reasonable in the circumstances having regard to the nature and effect of the breach. If

the Council remedies the breach within such period the Provider shall not be entitled to accept the repudiation and/or terminate the Contract.

#### **Remedies available to the Council:**

#### **Suspension**

- 35.4. If the Council determines the Provider to be in breach of the standards specified in Schedule 1 of this contract, it may enact a suspension of new placements. The Provider will be notified of this action within three (3) working days. The Council will also communicate this outcome to local partner agencies. This will be reviewed and lifted entirely at the discretion of the Council.

#### **36. TERMINATION**

- 36.1. The Council may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Contract in whole or in part if any one of the events set out in Clause 37.2 occurs.

- 36.2. The events are:

36.2.1. if the Provider commits a Prohibited Act or otherwise breaches Clause 26;

36.2.2. if an express right to terminate has arisen within Section F (Clauses 26 to 30);

36.2.3. if an express right to terminate has arisen under Clause 36;

36.2.4. if the Provider:

36.2.5. ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services;

36.2.6. undergoes a Change in Control;

36.2.7. suffers one or more of the following:

36.2.7.1..1. the appointment of a liquidator, receiver, administrative receiver or administrator;

36.2.7.1..2. insolvency or winding up within the meaning of relevant Legislation;

36.2.7.1..3. having substantial distress attachment execution or other legal process levelled enforced, sued or threatened upon any of its property;

36.2.7.1..4. the suspension of any publicly offered equities;

36.2.7.1..5. the freezing of substantial assets; or

36.2.7.1..6. any other event of incapacity rendering the Provider unable or potentially unable to carry out its obligations under the Contract

and/or to meet any liability which may arise through the Provider's negligence or breach of contract;

- 36.2.7.1..7. has a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of the Provider's affairs approved in accordance with the Insolvency Act 1986;
- 36.2.7.1..8. has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
- 36.2.7.1..9. commits a serious and material breach of contract;
- 36.2.7.1..10. fulfils those conditions under the Performance Mechanism which entitle the Council to terminate the Contract;
- 36.2.7.1..11. commits a serious breach of Clauses 8 (including the commission of any act by Staff contrary to Clause 8.9), 24, 25 or 28;
- 36.2.7.1..12. loses any statutory licence or certification which is required for the performance of the Services or as otherwise required by the Contract;
- 36.2.7.1..13. commits an act or omission which means it would now be excluded from the procurement process for this Contract on a mandatory exclusion ground as specified in Regulation 57(1) of the Public Contracts Regulations 2015;
- 36.2.7.1..14. the majority of shares carrying a right to vote in the Provider or its holding or parent company are acquired by a person who is not at the Commencement Date a majority shareholder and the Council has reasonable concerns that it may suffer damage to its reputation as a result of any contractual association;
- 36.2.7.1..15. fails to comply with the safeguarding provisions of Clause 9;
- 36.2.7.1..16. is unable to provide alternative arrangements that are acceptable to the Council under Clause 31.2;
- 36.2.7.1..17. fails on repeated occasions to work with the Council in relation to the performance management process;
- 36.2.7.1..18. the Council has reasonable grounds to consider the Provider or Sub-contractor working on this Contract to fall within the scope of IR35 off-payroll working through an intermediary rules;
- 36.2.7.1..19. the Force Majeure continues for more than twenty (20) Working Days;
- 36.2.7.1..20. (without prejudice to Clause 37.2.4.9.) if any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable.
- 36.2.7.1..21. fails to comply with any accreditation conditions set out in Schedule 8 of this contract.



- 36.3. If the Contract is determined in part, the Price shall be adjusted to reflect fairly the Services which remain and if the Parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt the Provider shall not be entitled to recover through the adjusted Price any profit that, but for the termination, would have accrued to the Provider in respect of the terminated Services.
- 36.4. The rights of the Council under this Clause 37 and Clause 38 below are in addition and without prejudice to any right that either Party may have for prior breach and to any right the Council may have against the Provider for the breach, default, negligence or event leading to the termination.
- 36.5. The remedies of the Council under this Clause (and Clause 38 below) may be exercised successively in respect of any one or more defaults by the Provider.

#### **Termination where the Court Declares this Contract Ineffective**

- 36.6. In the event that this Contract is subject to a bona fide and substantive legal challenge of any nature relating to the process by which the Provider was awarded this Contract (a "Legal Challenge"), then the Parties shall co-operate in good faith to determine the best way to mitigate the impact of the Legal Challenge, which may include varying some or all of the Contract and/or terminating the Contract in whole or in part.
- 36.7. In the event that this Contract is declared ineffective by a court of competent jurisdiction:
- 36.7.1. this Contract shall be terminated and the provisions of Clause 39 shall apply; and
  - 36.7.2. the Council shall pay to the Provider all sums lawfully due to the Provider in consideration of its proper performance of the Services up until the date and time of the declaration of ineffectiveness. The Council shall pay such sums within thirty (30) days of the receipt by it of a correct invoice for the same from the Provider.
- 36.8. The sums paid to the Provider by the Council under Clause 37.7.2 above shall be in full and final settlement of the Council's liability for any loss and/or expense incurred by the Provider as a result of the Court declaring this Contract ineffective. The Council shall have no further liability to the Provider, including without limitation, in relation to any loss of profit of the Provider.
- 36.9. The Council shall also be entitled to terminate this Contract in the event:
- 36.9.1. this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015; or
  - 36.9.2. the Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;

in which case the provisions of Clause 37.7.2 and Clause 37.8 shall apply.

#### **Individual Placements**

- 36.10. Service packages shall terminate immediately on the death of the Service User. Where the Provider is not immediately notified of the death, the Council shall pay for one abortive visit only.

- 36.11. The Council may terminate an individual place in the Services on giving not less than 28 day's notice to the Service Provider unless mutually agreed otherwise on a case by case basis
- 36.12. The Service Provider may terminate an individual place in the Services on giving not less than 28 day's notice to the appropriate Care Manager and to the Authorised Officer unless mutually agreed on a case by case basis.
- 36.13. Upon expiry of this Contract, or in anticipation thereof, the Council shall notify the Provider of the impact of this upon any Individual Placement(s) in place at that time and the Provider shall provide the Council with all information which the Council shall reasonably require in order for it to make decisions. The Council shall decide, and the Provider shall comply with such a decision, as to whether the Provider shall continue to provide Services to the Service User in accordance with the Individual Placement(s) or whether the Individual Placement is varied or terminated in accordance with the provisions of this Contract or the Individual Placement.
- 36.14. Upon written notice by the Council to terminate this Contract and/or any Individual Placement, the Provider shall continue to provide the Services in accordance with the terms of the Contract and/or any Individual Placement for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the Council Data in respect of that Service User to be successfully migrated to the Council's System or the systems of a third party. The Provider shall give all such assistance as is reasonably required by the Council and third party to ensure a smooth, successful and seamless transition of the Services and conversion and migration of the Council Data. Insofar as such assistance is required after the Contract has expired, the Council shall pay the Provider's reasonable costs and expenses (the Council shall not pay should the Contract have been terminated in accordance with Clause 37).

## **37. CONSEQUENCES OF TERMINATION**

- 37.1. If the Contract expires or is terminated in accordance with Clause 37, the provisions of this Clause 38 and the Exit Plan shall apply.
- 37.2. Notwithstanding the provisions of the Exit Plan, upon termination or expiry:
- 37.2.1. the Provider shall forthwith cease to provide the Services (subject to clause 4.16);
  - 37.2.2. the Provider shall submit to the Council within five (5) Working Days of termination or expiry at the Provider's own cost a comprehensive status report which shall be current as at the date of submission relating to the Services;
  - 37.2.3. the Provider shall cease to use the Council's Data and hand over to the Council a complete and uncorrupted version of all Council Data and all records, information, documents howsoever held and including any media used to store such data including, without limitation, correspondence with Staff, the Council's service departments, any users of the Services and any other relevant third party and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Council (in which event the Council shall reimburse to the Provider the Council's reasonable data conversion expenses) whether such Council Data is on hard copy or on a disk or on any computer systems;

- 37.2.4. the Provider shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with the specific instructions issued by the Council; for the avoidance of doubt, Personal Data shall include but not be limited to that data which is Personal Data and for which the Council retains its Data Controller responsibilities;
- 37.2.5. the Provider shall cease to use and return any Council Equipment (and in the event the Provider fails to comply, the Council may recover possession thereof and the Provider grants a licence to the Council and its authorised representatives to enter (for the purposes of such recovery) any of the Provider's Premises where any such items may be held);
- 37.2.6. the Provider shall vacate any Council's Premises;
- 37.2.7. the Provider shall allow the Council and any new provider, reasonable right of access to the Provider's and Sub-Contractor's premises, systems, procedures and Staff, where appropriate; and
- 37.2.8. the Provider shall deliver to the Council upon request all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted Sub-Contractors, including any Council Data and in default of compliance with this provision, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter for the purpose of any such recovery any premises of the Provider or its permitted Sub-Contractors where any such documents, information or materials may be held. For the avoidance of doubt, this material identified by this Clause shall be in an identifiable and searchable format (and include metadata) and in such form and medium as the Council may reasonably request;
- 37.2.9. the Council shall immediately cease to be under any obligation to make further payment to the Provider until the costs, loss and/or damage to the Council resulting from or arising out of the termination shall have been calculated;
- 37.2.10. the Council shall have the option to purchase at book value any of the assets or equipment used by the Provider solely in performance of its obligations under this Contract. Where the Council wishes to exercise this option it shall notify the Provider in writing accordingly not less than twenty (20) Working Days following the date on which this Contract expires or is terminated;
- 37.2.11. the Provider shall promptly pay in full the cost of providing the Service or having the Service provided or any part thereof as would have been provided by the Provider during the remainder of the Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to the Provider for providing the Services if the termination is due to an act, omission, default, negligence or breach of the Provider or any of its Staff;
- 37.2.12. the Provider shall continue to make the Provider's System available to the Council for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the Council Data to be successfully migrated to the Council's System or the systems of one or more third parties. The Provider shall give all such assistance as is reasonably required by the Council and its Service Users to ensure a smooth, successful and seamless transition of the Services and Service Users and conversion and migration of the Council Data. Insofar as such assistance is required after the Contract has expired, the Council shall pay the Provider's reasonable costs and expenses (the Council shall not pay

should the Contract have been terminated in accordance with Clause 37). For the avoidance of doubt, the Provider's compliance with the provisions of this Clause shall include, inter alia, assistance by the Staff, access to the Provider's System and the provision of information and documentation;

37.2.13. if the Contract expires or is terminated early for any reason, the Provider shall immediately repay to the Council the full amount pre-paid by the Council in respect of the unexpired portion of the Contract;

37.2.14. at the Council's written request, the Provider shall transfer the Service User records to the Replacement Provider(s) and/or one or more third parties as determined by the Council; such transfer may be in whole or in part, howsoever determined by the Council;

37.2.15. the Council shall be entitled to give written notice to the Provider in accordance with its right under clause 4.16 and the Provider shall comply with such notice.

37.3. If the Provider is unable or fails to provide the Services or any part thereof in accordance with this Contract, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due to the Provider under the Contract or shall be recoverable from the Provider by the Council as a debt. The Council's right under this Clause 38.3 shall be without prejudice to any other rights or remedies which it may possess.

37.4. The Council shall be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination of the Contract, to deduct the same from any sum or sums which would but for Clause 37 have been due from the Council to the Provider under the Contract or any other contract or be entitled to recover the same from the Provider as a debt. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof when the total costs, loss and/or damage resulting or arising out of the termination of the Contract have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would but for Clause 37 have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt or alternatively, the Council, subject to Clause 14, shall pay the Provider any balance due to the Provider;

37.5. Expiry or earlier termination of this Contract shall not affect the continuing rights and obligations of the Parties under Clauses 1, 2, 5, 8.21, 14, 18, 20, 21, 23, 24, 25, 31, 32, 37, 38 and 39 or under any other provision of this Contract that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination.

37.6. When the total costs, loss and/or damage resulting from or arising out of such termination as is referred to in this Clause 38 have been calculated and deducted so far as practicable from any sum or sums which would but for Clause 38 have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Provider any balance shown as due to the Provider.

## **38. EXIT AND HANDOVER ARRANGEMENTS**

38.1. On expiry or termination of this Contract the Exit Plan shall apply and the parties shall comply with the provisions of the Exit Plan. The Provider shall not charge the Council or any Replacement Providers for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this Clause 39 and the Exit Plan on expiry or earlier

termination (or for complying with any other provisions in Clause 38 above upon termination or expiry).

- 38.2. The plan for the orderly handover of the Services to the Council or its Replacement Providers following termination or expiry of this Contract shall include compliance by the Provider of the provisions specified in Clause 38.
- 38.3. The Provider shall forthwith upon the request of the Contract Manager, supply to the Council any information reasonably specified by the Council as being necessary for the re-tendering of this Contract.
- 38.4. On giving written notice to the Provider and after twelve (12) months of the date of the expiry or earlier termination of this Contract unless the individual is responding to a job advert the Council shall have the right:
  - 38.4.1. to offer any of the Staff who has previously been involved in performing the Services employment or a contract for services with the Council and the Provider agrees that if such person accepts such offer the Provider shall release such person from any contractual restriction with it which such acceptance may otherwise contravene; and
  - 38.4.2. to require the Provider to provide for a period of four (4) months following the date of expiry or termination such advice assistance and co-operation as the Council may reasonably require to enable the Council to provide the Services in-house or to procure their provision by a Replacement Provider.

#### **TUPE Compliance on Termination**

- 38.5. During the twelve (12) months prior to the expiry of the Contract or after the Council has given notice to terminate this Contract and within ten (10) Working Days of being requested to do so, the Provider shall fully and accurately disclose to the Council any and all information in relation to all persons engaged in providing the Service including:
  - 38.5.1. a list in electronic format of each employee employed by the Provider in the provision of the Service including each employee's start date;
  - 38.5.2. a list of agency workers, agents and independent contractors engaged by the Provider in the provision of the Services;
  - 38.5.3. the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of each employee included in the list to be provided under Clause 39.5.1; and
  - 38.5.4. the terms and conditions of employment of each Transferring Employee; their age and identity; the information that must be included in the employee's written statement of employment particulars under s.1 of the Employment Rights Act 1996; information on any disciplinary procedure taken in relation to the employee or grievance procedure taken by the employee within the previous two (2) years in relation to which the ACAS code of practice on disciplinary and grievance procedures applies; information on any Court or tribunal claim brought by the employee against the transferor within the previous two (2) years and any potential claim against the transferee arising out of the employee's employment with the transferor; information about any collective agreements that will have effect after the transfer in relation to the Transferring Employee.

- 38.6. During the twelve (12) months prior to the expiry of the Contract or where notice to terminate this Contract for whatever reason has been given, the Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:
- 38.6.1. vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
  - 38.6.2. materially increase or decrease the number of employees employed in connection with the Services;
  - 38.6.3. increase the remuneration of employees;
  - 38.6.4. assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services; or
  - 38.6.5. otherwise improve terms and conditions of employment of any of its employees without economic justification towards the end of the Contract Period.

## **I. GENERAL PROVISIONS**

### **39. DISPUTE RESOLUTION PROCEDURE**

- 39.1. The Parties shall each use reasonable endeavours to resolve any dispute by means of prompt bona fide discussion first between the Contract Manager and the Provider's Authorised Representative. Failure to agree a settlement within five (5) Working Days shall result in the dispute being escalated to both Parties' managerial level appropriate to the dispute in question. In the event that such a dispute is not resolved within five (5) Working Days, thereafter it shall be escalated to each Parties' appropriate director for resolution. The respective directors shall meet within five (5) Working Days to resolve the dispute. Failure to reach a settlement shall invoke the rest of this Clause 40.
- 39.2. Nothing in this Clause 40 shall prevent the Parties from seeking from any Court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 39.3. If the dispute cannot be resolved by the Parties pursuant to Clause 40.1 the dispute may be referred to mediation pursuant to the procedure set out in Clause 40.5.
- 39.4. The performance of this Contract by the Provider shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its Staff shall comply fully with the requirements of this Contract at all times.
- 39.5. The procedure for mediation and consequential provisions relating to mediation are as follows:
- 39.5.1. a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he/she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;

- 39.5.2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- 39.5.3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 39.5.4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be confirmed in writing and shall be binding on the Parties once it is signed by their duly authorised representatives; and
- 39.5.5. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the agreement without the prior written consent of both Parties.

39.6. If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

39.7. Unless agreed otherwise in any mediation each Party shall bear its own costs of such mediation.

#### **40. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

40.1. Save where indicated under any clause set out in this Contract which relates to TUPE and pensions, no term of the Contract shall be enforceable by or confer any benefit on any person other than the Parties.

#### **41. LEGAL PROCEEDINGS**

41.1. If requested to do so by the Contract Manager the Provider shall provide to the Council within the timescale set by the Contract Manager any relevant information or assistance (including but not limited to documents and statements from the Provider and/or its Staff) in connection with any legal inquiry, dispute resolution or Court proceedings in which the Council may become involved or any relevant Council internal disciplinary hearing arising out of the provision of the Services or the Provider's presence on any of the Council's Premises and shall give evidence in such inquiries, arbitration or proceedings or hearings.

41.2. Where the Provider or any of its Staff becomes aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services it shall notify the Contract Manager immediately in writing. Such notification shall include all relevant information to enable the Contract Manager to investigate the matter fully.

#### **42. OMBUDSMAN**

42.1. In the event of a complaint to the Ombudsman involving activities the subject of this Contract, the Provider shall at its own expense give to the Council and to the Ombudsman every assistance in the investigation of the complaint.

42.2. Where any investigation by the Ombudsman takes place the Provider shall:

- 42.2.1. provide any information requested in the timescale specified;
- 42.2.2. attend any meetings as required and permit its Staff to attend;
- 42.2.3. promptly allow access to an investigation of any documents deemed to be relevant to the investigation and/or the complaint;
- 42.2.4. allow itself and any Staff deemed to be relevant to be interviewed;
- 42.2.5. allow itself and any of its Staff to appear as witness in any ensuing proceedings; and
- 42.2.6. co-operate fully and promptly in every way required by the Ombudsman during the course of that investigation.

42.3. Where any financial redress, compensation or award is recommended by the Ombudsman in the course of or following any investigation, or is agreed to by the Council following a complaint to the Ombudsman, and which investigation or complaint arises directly or indirectly out of the provision of the Services or any other action or omission by the Provider and/or its Staff then the Council shall be entitled to recover the cost of that financial redress, compensation or award from the Provider.

#### **43. AGENCY**

- 43.1. Neither the Provider nor its Staff shall say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Council. The Provider shall not be the agent of the Council.
- 43.2. The Provider shall make not any representations or give any warranties to third parties on behalf or in respect of the Council, or bind or hold itself out as having authority or power to bind the Council.
- 43.3. This Contract shall not create any relationship between the Parties of partnership, employment or landlord and tenant.

#### **44. ENTIRE AGREEMENT**

- 44.1. Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings (whether oral or written) concerning the subject matter of this Contract.
- 44.2. Nothing in this Clause 45 is intended to exclude or limit liability for any statement, representation or warranty made fraudulently or to any provision of this Contract which was induced by fraud for which the remedies available shall be all those available under the law governing this Contract.

#### **45. CONFLICT OF INTEREST**

- 45.1. The Provider shall take appropriate steps to ensure that neither it nor any of its Staff are 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 persons and the duties owed to the Council under the provisions of this Contract. The Provider shall disclose to the Council full particulars of any such conflict of interest which may arise and take all reasonable steps to remove any such conflict to the satisfaction of the Contract Manager.



## **46. LIEN OR ENCUMBRANCE**

- 46.1. The Provider shall not create, or allow any other person to create, any lien or encumbrance on any property belonging to the Council, the Council's Equipment and/or on the Council's Premises.

## **47. SEVERANCE**

- 47.1. If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.
- 47.2. Pursuant to Clause 48.1, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which as nearly as possible validly gives effect to their intentions as expressed in this Contract.

## **48. WAIVER**

- 48.1. 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.
- 48.2. 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 50.
- 48.3. 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.

## **49. NOTICES**

- 49.1. Except as otherwise expressly provided within this Contract, no notice from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
- 49.2. Any notice which is to be given by either Party to the other shall be given by letter (sent by hand or signed for special delivery post); such letters shall be addressed to the other Party in the manner referred to in Clause 50.3. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was hand delivered or posted or sooner where the Party acknowledges receipt of such letters. Notices under the Contract may not be sent or received by email.

Either Party may change its address for service by serving a notice on the other Party in accordance with this Clause 50.

## **50. LAW AND JURISDICTION**

- 50.1. The Parties accept the exclusive jurisdiction of the English Courts and agree that the Contract, and all non-contractual obligations and other matters arising from or connected with the Contract, are to be governed and construed according to English Law.

## **J. CONTRACT SPECIFIC CONDITIONS**

**51. ACCESSABILITY**

- 51.1. The provider is to maintain an up to date registration on the Council's online directory of contracts, Suffolk Sourcing <http://www.suffolksourcing.uk/>.
- 51.2. The provider is to maintain an up to date registration on the Council's online directory of services, Infolink <http://infolink.suffolk.gov.uk/>. The provider is also to maintain an up to date profile of this contracted service on this site, including the Local Offer pages when it is available to young people up to the age of 25.
- 51.3. The Provider must comply with the Accessible Information Standard <https://www.england.nhs.uk/ourwork/accessibleinfo/>

## SCHEDULE 1

### SPECIFICATION

#### East of England: Service Specification Community Services

#### 1. Introduction

- 1.1 The Services shall be those services to be provided by the Service Provider, as set out below, and performed in accordance with the Contract (the 'Services').

#### 2. General Requirements (of regulated Service Providers)

- 2.1 If providing services regulated by the Care Quality Commission (CQC) the Service Provider is required to be registered with the CQC and to maintain that registration throughout the Contract Period. All Service Providers must meet the 'Fundamental Standards' as set out in Part 3 of the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014** (as amended) (the "Fundamental Standards") and Part 4 of the Care Quality Commission **(Registration) Regulations 2009** (as amended). Each Service Provider must be registered with the Care Quality Commission (CQC) and will be inspected as required by the CQC.
- 2.2 In addition to meeting the requirements of the Fundamental Standards as set out above, the Service Provider is required to meet the specific Contract Standards, as set out in the East of England Service Outcomes and Standards of Care, section 12 below below.
- 2.3 Each Service Provider must ensure that it has the ability to provide the necessary Services with sufficient numbers of trained and competent staff necessary to provide care for each Service User. The Service Provider must ensure that each person responsible for the delivery of care is fully aware of the requirements of the Contract Standards as well as the Fundamental Standards of Quality and Safety and be able to demonstrate a commitment to maintaining and delivering high quality Services for adults with a variety of needs and/or conditions and provide Services where all aspects of a person's care are met.
- 2.4 The Service Provider will provide Services that meet the needs of the individual and are provided by competent staff in a way that supports the safety and security of the Service User. The Services shall be responsive, reliable and maintain a persons dignity and respect at all times. The Services shall be accessible and delivered with understanding and without discrimination.
- 2.5 Where possible services must always be provided in a way that enables the Service User to maximise their independence, health and wellbeing and supports their social, spiritual, emotional and healthcare needs.
- 2.6 The Service Provider shall have regard to and ensure their Services comply with the Care Act 2014 and the Care and Support Statutory Guidance (as amended) issued under the Care Act 2014 by the Department of Health and the 7 principles as detailed and explained in "A Vision for adult social care: capable communities and Active Citizens (November 2010) namely:
- Prevention
  - Personalisation
  - Partnership
  - Plurality
  - Protection
  - Productivity
  - People

The Service Provider must also ensure that their Services are delivered in a manner which is compatible with the following duties placed on the Local Authority under the Care Act 2014:-

- Section 1 - The Duty to Promote Individual Wellbeing
- Section 2 - The Duty to prevent the need for care and support
- Section 3 - The Duty to promote the integration of care and support with health services
- Section 4 - The Duty to Provide information and advice
- Section 5 - The Duty to promote diversity and quality in provision of Services
- Section 6 - The duty to co-operate with partners
- Section 42 - The duty to Safeguarding Enquiries

2.7 The Service Provider must ensure that its Staff have regard for the Service Users equality and diversity and upholds peoples human rights and does not discriminate against people for any reason. Its policies will incorporate respect for both Staff and Service Users.

2.8 The Service Provider ensures that all staff work in an enabling way that allows individuals to increase or maintain their level of independence, develop self caring and move to a reduction in support, where appropriate.

### **3. NOT USED**

### **4. Volume of Service**

4.1 The Service Provider will deliver the hours as set out in the individual service contract. For the avoidance of doubt, the Council does not guarantee any minimum volume of work under this Contract.

### **5. Accessing the Service & Assessments**

5.1 The Council has a statutory responsibility, within its eligibility criteria, to ensure the provision of certain statutory Services in order to meet individual assessed needs.

5.2 The needs of each Service User will be identified through an assessment completed by a Care Manager from the Council in conjunction with the Service User. If the Service User is eligible for the Services, the Care Manager will produce a personalised and outcome focused Care & Support Plan and a Risk Assessment, with input from the Service User and/or their representative, to identify how their needs will be met and setting out the outcomes to be achieved.

5.3 The Council's Placement Team shall have authority to refer Service Users to the Services on behalf of the Council.

5.4 The Service Provider shall nominate those persons with authority to accept referrals and shall inform the Authorised Officer of their names, addresses and telephone numbers from time to time.

5.5 Referrals may be made to the provider by telephone or by email. The Referral and the agreed start date shall be confirmed in writing with the appropriate paperwork by secure email and post. A copy of the Care & Support Plan and Risk Assessment will also be sent to the Service Provider.

5.6 The Service Provider shall provide the Services for the named Service User from the start date, until the Services are cancelled, suspended or varied in accordance with the Contract.

5.7 [NOT USED]

5.8 Any regulated services will only be provided at, or out of, the CQC registered location(s) that have been accredited by the Council.

5.9 No referrals should be accepted for Service Users from outside this area unless by specific agreement with the Authorised Officer.

## **6. Information and Guidance**

6.1 Section 4 of The Care Act 2014 places a duty on the Council to put in place measures that ensure Service Users are supplied with appropriate information and advice.

6.2 [NOT USED]

6.3 [NOT USED]

## **7. Temporary suspension of individual places in the Services**

7.1 The Service Provider must inform the Council if they feel that there is a material change in the Service User's needs, or in the way that a Service User would prefer to have their Services provided, which may require the Council to review the Care and Support Plan.

7.2 The payment arrangements that apply for temporary suspension of places in the Services are set out in Schedule 15 (Calculation of Total Price).

7.3 The care management review will involve the Service User and/or their representative, the Care Manager or their representative, and where appropriate, the Service Provider or designated representative. Consideration will be given to ensure convenience and adequate notice for all participants wherever possible.

7.4 The care management review will consider the extent to which the outcomes set out in the Care and Support Plan are being met and will identify future objectives.

## **8. Termination of individual places in the Services**

8.1 Service packages shall terminate immediately on the death of the Service User. Where the Provider is not immediately notified of the death, the Council shall pay for one abortive visit only.

8.2 The Council may terminate an individual place in the Services on giving not less than 28 day's notice to the Service Provider unless mutually agreed otherwise on a case by case basis. The terms of Schedule 4, 4.13 "Temporary Absence" will remain in effect during this time.

8.3 The Service Provider may terminate an individual place in the Services on giving not less than 28 day's notice to the appropriate Care Manager and to the Authorised Officer unless mutually agreed on a case by case basis. The terms of Schedule 4, 4.13 "Temporary Absence" will remain in effect during this time.

8.4 [NOT USED]

## **9 How and what we will monitor**

9.1 The Council is responsible for monitoring the quality of the Services provided and for reviewing the individual needs of Service Users. However, the Council may also monitor

with other strategic partners and the Provider acknowledges that the Council may undertake monitoring visits with these strategic partners including other Eastern Region and the local Clinical Commissioning Groups (CCG's).

9.2 As part of this Contract the Council will periodically monitor the Service delivery to ensure compliance with the Contract Standards, The East of England Service Outcomes and Standards of Care, its Terms and Conditions as well as the Contract Schedules, and to assess the quality and performance of the Services being delivered to Service Users in relation to meeting their outcomes.

9.4 To do this the Council will use a variety of additional methods to assess Provider quality and contract compliance. Additional assessment will include (but not be limited to) the following:

- Provider Assessment & Market Management Solution (PAMMS) application
- By feedback from Service Users and/or their carers on the standards of Services being provided;
- By feedback from Council officers reviewing whether or not the Service is meeting the Service User's assessed needs and meeting their outcomes in the best possible way;
- By systematic monitoring of the Service Provider by the Council, in order to evaluate and record the Services delivered against the Specification;
- By consulting with Service Users and/or their representatives;
- By the investigation of complaints and / or safeguarding instances;
- By Service Provider Performance Monitoring Forms.
- By reviewing written procedures and records for both Service Users and Staff;
- By the Service Provider, submitting to the Council an annual report detailing the outcome of quality assurance processes, including its service improvement plans;
- Through external compliance reports from CQC.

9.5 [NOT USED]

9.6 The Council is mindful of the need to apply a proportionate approach in respect to the monitoring of Services

9.7 Additionally, the Council will carry out a formal Contract Review. The Service Provider should be prepared to attend, at 4 weeks notice, an annual meeting with the Council to review performance under the contract. The meeting should be used to share good practice and to agree areas for improvement.

9.8 At the request of the Council, the Service Provider will return the following additional information on an annual basis;

- a) Business Continuity Plan.
- b) Accounts for the most recent completed financial year (audited if required by law).
- c) Insurance Schedules and Certificates.
- d) A Copy of the Service Provider Compliance Assessment tool (PCA) or equivalent The Council will examine the PCA or equivalent to identify good practice and areas for improvement.
- e) Results of the Service Provider's Annual Service User Satisfaction Survey. The Council will use the results from the Service User Satisfaction Survey to ascertain views on the quality and performance of the Services.
- f) A copy of the Service Provider's annual report including their Service improvement plan.
- g) A copy of their training matrix for all staff.
- h) A copy of the Care Quality Commissions Quality Risk Profile (QRP) for the Service Provider.
- i) A full breakdown of service costs and pricing structure(s)

- j) Pay policy and scales
- k) Aggregated results of a staff survey, with questions agreed with the Council

9.9 The Service Provider acknowledges and agrees that Officers of the Council may take evidence of risks and concerns identified during contract monitoring visits, including photographs and photocopies, and for this to be used to formulate a plan of action to ensure the Service Provider complies with the Contract.

9.10 [NOT USED]

9.11 The Council is part of the eastern region collaborative and as such may share information gained through the above monitoring with regional partners. Also Council's within the region may conduct monitoring visits with, or on behalf of, other regional authorities.

## **10. Notification to the Council**

10.1 Without prejudice to its responsibilities under Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 the Service Provider will be responsible for notifying the Customer First Team within the Council as soon as it is practical to do so, if any or the following occur:

- (1) Any circumstances where the Service User has consistently refused provision of the Services, medication, or medical attention.
- (2) Serious accident, serious illness or serious injury to the Service User.
- (3) Death of the Service User
- (4) Outbreak of notifiable infectious disease in the Services.
- (5) Any emergency situation e.g. fire, flood.
- (6) Legacy or bequests to Service Provider and/or staff.
- (7) Unplanned absence of the Service User.
- (8) Hospital admission.
- (9) An investigation related to Safeguarding of Vulnerable Adults
- (10) Where the Service Provider has been unable to gain access to the Service User's Home.

## **11. Behavioural Standards and Codes of Practice**

The Service Provider and its staff shall adhere to the relevant codes of conduct for their profession:

The Skills for Care Code of Practice available at:

<http://www.skillsforcare.org.uk/Document-library/Standards/National-minimum-training-standard-and-code/CodeofConduct.pdf>

The Nursing Midwifery Council (NMC) codes of conduct available at:

<http://www.nmc-uk.org>

## SCHEDULE 2

### PERFORMANCE MONITORING AND KEY PERFORMANCE INDICATORS

#### 1. Suffolk Care Home and Home Care Services Delivering and Monitoring Performance

Key Performance Indicators (KPI's) provide the means for measuring and assessing performance using a robust and agreed set of criteria. These assessments also offer useful indication on the progress towards an organisational or change objective. Appropriate KPIs have been developed to effectively highlight areas of concern and lead to a focus for the operational and management team's attention.

Effective performance management is required to help ensure that the contract delivers what is intended.

This Schedule contains the framework for managing the performance of the Contract. The Service Provider is required to operate the framework for managing performance and evolve it throughout the life of the Contract Period. It includes a framework that supports effective service monitoring; measurement of continuous improvement and helps ensure ongoing focus.

|   | Description of indicator   | Critical Success factors  |
|---|--|---|
| 1 | Analysis of Customer feedback / satisfaction in relation to the Service being provided.      | At least annually the Provider will undertake a Customer Survey; the report with accompanying Action Plan will show how improvements will be made within the service based on Customer feedback. The report will be made available on request.  |
| 2 | Information relating to the delivery of the service within the Provider organisation.        | At the request of the Council, the Provider will return one or more of the following additional information on an annual basis to the Council:<br>a) A copy of the Provider Compliance Assessment (PCA) or Compliance Assessment Form (CAF) which is completed for CQC<br>b) Results of the Provider's Annual Service User Satisfaction Survey<br>c) Insurance Schedules and Certificates<br>d) Accounts for the most recent completed financial year (audited if required by law)<br>e) Business Continuity Plan |
| 3 | Attending or providing information for Customer Reviews.                                     | Provider information is reflected in Customer reviews which should be completed by Adult & Community Services either on an annual basis or when required.   |
| 4 | The Care Quality Commission (CQC) is the regulatory body for health and social care. Where a | The Provider notifies the Council immediately when a Care Quality Commission (CQC) inspection identifies there is a moderate or major concern in complying with the fundamental   |



|   |   |  |
|---|---|--|
|   | <p>service is required to register, the CQC will monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety.</p> | <p>standards of quality and safety. Concerns will be established by CQC either directly after an inspection when feedback is delivered, or when the draft inspection report is supplied.<br/>The Council will respond in line with their Accreditation Policy.</p> <p>The Provider notifies the Council immediately if any change occurs within the service that affects their CQC registration.</p> |
| 5 | <p>Where relevant; the expectation is that only one invoice per pay period will be submitted.</p>   | <p>Invoicing will be timely and in line with the Councils schedule of payment periods.</p>   |

## SCHEDULE 3

### THE COUNCIL'S POLICY STATEMENTS

#### **THE COUNCIL'S EQUAL OPPORTUNITIES POLICY STATEMENT**

The Council believes in openness and equality in our dealings with each other and in the way we provide services to members of the community. Every individual is entitled to dignity and respect. Care for the users of our services goes hand in hand with care for our employees. The Council aims to ensure that all groups and individuals within the community are given full opportunity to benefit from the services and job opportunities it provides. No service user or potential service user, employee or potential employee will be discriminated against because of trade union activities or any protected characteristic listed in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

More information is available in the Council's Equalities & Inclusion: Our commitment to you statement which can be found at:

<http://www.suffolk.gov.uk/your-council/plans-and-policies/equalities-and-inclusion/equalities-and-inclusion-our-commitment-to-you/>

#### **TRANSLATION AND INTERPRETING**

The Council is committed to providing equitable, effective and proportionate access to its services to all who need it regardless of their ability to communicate due to lack of or limited proficiency in English and/or hearing related sensory difficulties.

The Council expects and requires that the Service Provider will ensure equal access to the Services they provide on behalf of the Council by way of ensuring that interpreters and translators are made available when needed.

#### **THE COUNCIL'S WHISTLEBLOWING PROCEDURE**

The provider will need to develop a Whistleblowing Policy, in line with the Council's Whistleblowing Procedure, review this on an annual basis and make the policy available to the Contract Manager.

The Council's Whistleblowing Procedure is available:

<http://www.suffolk.gov.uk/assets/suffolk.gov.uk/Your%20Council/Policies%20and%20Procedures/Whistleblowing%20Procedure%20October%202013.pdf>

#### **THE COUNCIL'S HEALTH AND SAFETY RULES FOR SERVICE PROVIDERS**

1. **EQUALITIES ACT 2010 (EA 2010)**

All works carried out on behalf of the Council must be EA 2010 compliant.

## SCHEDULE 4

### PRICE AND PAYMENT SCHEDULE

#### 1. DEFINITIONS

**“Council Contribution”** means the financial contribution per week, which the Council will make to the Provider.

**“Individual Service Contract”** means the individual agreement between the Council and the Service User that sets out the Total Price and how it is calculated

**“Service User’s Contribution”** means the financial contribution per week, if any, which the Service User after assessment by the Council in terms of the National Assistance (Assessment of Resources) Regulations 1992 or any other rule of law is required to make in respect of their residence in the Care Service Provider.

**“Registered Nursing Care Contribution”** means the contribution payable by the NHS for resistered nursing care

**“Third Party Contribution”** means the weekly payment required to be made by a Third Party or the Resident him/herself where legally permitted.

**“Total Price”** means the financial contribution per week, made up of the **Council’s Contribution**, the **Resident’s Contribution** and where applicable any **Third Party Contribution** -

#### 2. PAYMENT

2.1 The Council shall pay the Service Provider for Services purchased in accordance with Individual Service Contracts issued by the Council. For new Individual Service Contracts for services in Suffolk, this will be defined by the agreed rates in Appendix A of this schedule unless otherwise agreed with the Council’s Contract Manager.

2.2 The Price payable for the service shall be detailed on the Service Agreement. Where a Service User is receiving more than one element of care a Service agreement will be raised for each.

2.3 The Service Provider shall not be entitled to any payment for services other than those detailed on the Service Agreement(s) .

2.4 The Price payable in the Service Agreement will be defined by the agreed pricing schedule contained in Appendix A of this document

2.5 [NOT USED]

#### 3. PROCEDURE FOR VARIATION OF TOTAL PRICE

3.1 The price rates quoted in the Annual Suffolk Care Home Placements for Adults Form (Appendix 1) and the Total Prices recorded in Individual Service Contracts issued during the current financial year shall remain fixed until the beginning of the next financial year unless there is a change of need which should be referred to the Council’s Area Social

Work Team. Confirmation of rates will be sent in time for changes to be made on the 1<sup>st</sup> of April each year.

- 3.2 The price rates and the Total Prices recorded in Individual Service Contracts shall be reviewed once each year by the following process and in line with clause 8.16 of the Terms and Conditions:
- 3.2.1 The Council's proposed percentage change in price rates for the Financial Year starting on 1st April shall be notified to the Provider by the Council in writing no later than 28th February of that year.
- 3.2.2 The Provider and the Council shall use all reasonable efforts to agree rates and Total Prices by 1st April of that year. If the Provider is not willing to accept the Council's percentage uplift it will be expected to provide the Council with such financial and management information as may be needed to allow the Council to reach an informed decision on the Annual Price Review in accordance with Clauses 8.16 of the Terms and Conditions of Contract.
- 3.2.3 The new agreed rates shall be fixed for the financial year commencing on 1st April each year and shall be recorded in writing. Total Prices payable and recorded on Individual Service Contracts shall be adjusted accordingly.
- 3.3 In the event that the level of needs of a Service User change to such an extent that the Service Provider considers that they can no longer be met within the Total Price paid on the Individual Service Contract, the Service Provider may request a review by the relevant Area Social Work Team. The outcome of the review will determine whether or not the Total Price should be increased to meet the needs of the Service User and that price should not exceed the maximum price quoted by the Service Provider on the yearly amendment form.
- 3.4 The Provider may be asked by the Council to provide any information to enable the Council to analyse the price for Services.
- 3.5 Payments made against Individual Service Contracts will be uplifted for the first pay period of the financial year as defined by section 4.9 of this schedule.

#### **4. PAYMENT TO PROVIDERS**

- 4.1 No part of the Total Price shall be payable to the Service Provider in respect of any part of the Service rendered before the Start Date or after the date of termination of the Service Agreement
- 4.2 If under the arrangements below the Council or any other party pays for days of Service after the date of termination of the Service Agreement, the Service Provider shall refund on request the amount of the Council's contribution, or the other party's contribution(s) paid in respect of days after the date of termination of the Individual Service Contract. If the sum of money has been outstanding for a period of 3 (three) months or more, then the same may be deducted from any sum due or which at any time may become due to the Council under any contract between the Provider and the Council.
- 4.8 **The Service User's Contribution (not applicable)**
- 4.8.1 It shall be the responsibilities of the Service Provider to collect the amount of the Service User's contribution direct from the Service User or his/her representative as notified by the Council. The amount shall be specified in the Individual Service

Contract and cannot be collected in advance if it causes financial hardship to the Service User or their representative.

- 4.8.2 If the Service User or their representative is unable to pay, or refuses to pay, the Service User's contribution, the Service Provider shall use all reasonable efforts to collect it. 'All reasonable efforts' being construed as sending a reminder 1 (one) month after an unpaid invoice was sent and thereafter pursuing the unpaid contribution at a minimum of fortnightly intervals. The Service Provider shall notify the Council, through the appropriate Care Manager if the contribution remains unpaid for a period of 2 (two) months and outline the action taken and proposed to collect the payment. After it is agreed that the Service Provider has used all reasonable efforts to collect it, then the Council will start to pay the amount of the Service User's Contribution owed to the Service Provider from the date of default by the Service User. If the Service Provider subsequently recovers any of the unpaid Service User's contribution from the Service User, then it shall immediately pay the amount recovered to the Council.
- 4.8.3 The Service User shall not be required to pay from any source including Personal Allowance and/or (if applicable) DLA (Mobility Component) for any part of the Service which is deemed to have been included in the Total Price other than in accordance with the Council's financial assessment of the Service User's contribution and set out in the Individual Service Contract.

#### 4.9 **The Council's Contribution Process for Payment to Providers**

- 4.9.1 The Council shall pay the amount of the as set out in the Service Agreement direct to the Service Provider in accordance with the following method or as the Council may direct from time to time.
- 4.9.2 The Council will make payments to the Provider based on the following procedure:
- 4.9.2.1 For Home Care and Community Based Services it is the Council's normal procedure to make payment against presentation of a correctly presently invoice – see current invoice periods – or by Automated Payments. Automated payments will be made through the existing Auto payment mechanism or the Council's Provider Finance Portal. The council may elect to transfer the provider to either form automated payments with no less than three months' notice during which the Council will provide appropriate training and support.
- 4.9.2.2 The Provider shall notify the Council immediately, in writing, of any changes to the nominated bank account.
- 4.9.2.3 The Council will send an electronic remittance advice note in respect of each payment made by the Council to the Provider. This will detail the name(s) of the Service User(s), the period covered by the payment and the amount paid for each Service User. The Council is only able to electronically forward this advice to one e-mail account. This remittance advice may be provided through the Provider Finance Portal where application.
- 4.9.2.4 The four weekly invoice periods schedule will be notified to the Provider annually. A schedule will be provided to the Provider where autopayments are used and this will confirm submission and payment dates. Payment schedules will be made available on the Council's website here:

[LINK HERE]

- 4.9.2.5 Payment shall be made by the Council to the Provider on dates specified by the Council and shall initially cover 28-day periods commencing on a Monday using the Bankers Automated Credit System (BACS). Payments will be made on the basis of two weeks in advance and two weeks in arrears. The Council reserves the right to alter payment dates and payment periods.
- 4.9.2.6 Payments by the Council to the Provider will be made via BACS to a bank notified in writing by the Provider to the Council.
- 4.9.2.7 Over and underpayment for services will be handled in accordance with the Council's published protocol for under and over payment. This is available at the following link:

[LINK HERE]

#### 4.10 The Third Party Contribution

- 4.10.1 The third party contribution is the amount stated in the Individual Service Contract provided by a party not the Council or the Service User towards the payment of the Total Price. Certain Service Users may top up from their disregarded capital or income. Service Users who can top up are those subject to a 12 (twelve) week property disregard or those on a deferred payment arrangement, within the meaning of The Care and support (Charging Assessment of Resources) Regulations 2014.

A Service User may choose, if available, a placement at a price higher than the Council would normally pay for a person with his/her assessed needs. The Council, however, is not under any obligation to meet the additional cost.

- 4.10.2 It shall be the responsibility of the Service Provider to collect the third party contribution direct from the third party.
- 4.10.3 The third party contribution shall be the subject of an agreement between the Council and the third party, a copy of which will be given to the Service Provider in the form of the Individual Service Contract (Appendix 3 and 4). Any request for increase to the top up will be applied for through the appropriate Area Team.
- 4.10.4 The third party contribution is an amount to meet the difference between the price that the Council would normally expect to pay and the actual higher price charged by the Service Provider.
- 4.10.5 If the third party does not pay the third party contribution, then the Service Provider shall notify the Council on the next Working Day following the day that payment was due. The Council shall have the right to terminate the Individual Service Contract immediately on giving Notice in writing to the Service Provider.
- 4.10.6 For the avoidance of doubt if there is an increase or decrease in the difference between the Total price and the Council's contribution then the third party

contribution cannot be amended without the prior agreement of the Council, payer and Service Provider.

4.10.7 As part of the Council's Annual Rate Review (**Section 3.2**), the provider must return a third-party contribution form (**Appendix 4**) to notify the Council of changes in third-party contributions.

#### 4.11 **Contribution from another Agency**

4.11.1 The contribution from another agency is the amount stated in the Individual Service Contract provided by an agency other than the Council or the Service User towards the payment of the Total Price.

4.11.2 It shall be the responsibility of the Council to collect the Other Agency contribution direct from the Agency.

4.11.3 The Other Agency contribution shall be the subject of an agreement between the Council and the Other Agency.

#### 4.12 **Funded Nursing Care Contribution (FNC)**

The funded nursing care contribution (FNC) is the amount stated on the Individual Service Contract determined by an NHS registered nurse using the FNC tool, and paid to the Service Provider by the Council as part of the Total Price or host authority practice. The FNC may include an allowance for continence aids if the Service User is assessed as needing this service.

#### 4.13 **Temporary Absence**

4.13.1 The Council shall notify the Provider by telephone if it becomes aware that a Service User will not be attending the Service and the Council shall also give written confirmation to the Provider where this is requested. Where the Provider has been advised in advance of the planned absence by either the Council or Service User or their representative, the Provider will not invoice the Council for this session/s.

4.13.2 The Provider will contact Customer First immediately where the reason for a Service Users non attendance is unknown. This contact may be made by either telephone or email.

4.13.3 The Council shall, in the case of any unplanned absence, pay the full price for the first 24 hours only of the Service User's non-availability or non-attendance for receipt of this service. Notice of absences must be given prior to 12:00 o'clock midday on the day preceding the absence, instances of late notification will also be deemed as an unplanned absence.

4.13.4 In circumstances where a Service User does not attend the service the Individual Service Agreement will be immediately suspended and will resume on the return of the Service User. Where the Council or the Provider determines that the length of non-attendance by the Service User requires the Individual Service Agreement to be terminated each will notify the other of this action.

4.13.5 If the Provider does not so notify the Council and the Council makes payment for any period when the Service User is not receiving the Service, the Provider shall repay any such payment to the Council. The Council shall be entitled to deduct the same from any other sum(s) due to the Provider, or otherwise to recover any such

payment as a debt to the Council, without prejudice to any other remedies available under this Contract.

4.13.6 In the case of any unplanned absence and if the Provider has not received advanced notification in accordance with clause 14.3, or by the Service User or a Service User's representative, the Council shall pay the full price for the first 24 hours only of the Service User's non-availability or non-attendance for receipt of this service. Notice of absences must be given prior to 12:00 o'clock midday on the day preceding the absence, instances of late notification will also be deemed as an unplanned absence.

## **5. EXTRAS**

- 5.1 The Service Provider may charge the Service User for any facility not included in the Service, such as the provision of hairdressing, dry cleaning services or outings ("Extras") provided that these have been agreed with the Council and the Service User and recorded in the Individual Service Contract. The Service Provider shall ensure that all Extras are notified to the Service User, or their legal representative where the service user lacks capacity, at the outset of the placement and recorded in the Individual Service Contract.
- 5.2 The Service User, or their legal representative, shall be personally liable for any charge made for Extras and the Service Provider shall be responsible for recovering any charges direct from the Service User. The Council shall not be liable for payment of these charges.
- 5.3 The provision of continence aids to the Service User shall never be an Extra.

## **6. TOTAL PRICE**

The Total Price of the Service is expressed in pounds per week and where the Service is provided for less than a week the price for the part week shall be calculated by dividing the Total Price by 7 (seven) and multiplying the result by the number of days in the part week that the Service is provided. The end date of a placement is deemed to be the last day on which the Service User is in the Service Provider beyond 12 (twelve) noon.



## SCHEDULE 6

### OTHER CORRESPONDENCE

#### **Accreditation**

Where in use, Council's confirmation to accredit will be attached as appendix A of this document. The provider must comply with any conditions outlined within this. Failure to comply with these conditions will result in termination in line with clause **36. Termination (36.2.7.1.21)** of this contract.