

CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

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

“Achieved Service Level” means in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 6).

“Appendix” means an appendix to this Contract and **“Appendices”** shall have the same meaning ascribed hereto.

“Approval” means the written consent of the Council.

“Award Letter” means the letter of placement, including, but not limited to, Commencement Date, Contract Price, escalation personnel and Form of Agreement.

“Caldicott Principles” means those identified in the Department of Health report on the review of Patient Identifiable Information December 1997 (or as updated from time to time) and as set out in Schedule 8.

“Change” means any change to this Contract.

“Commencement Date” means the start of the contract as stipulated within the Award Letter.

“Commercially Sensitive Information” means where applicable the information listed in Schedule 7 (Commercially Sensitive Information) comprised of information:

(a) which is provided by the Provider to the Council in confidence for the period set out in that Schedule; and/or

(b) that constitutes a trade secret.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information 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. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause 30 (Confidential Information));
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Contract”	means the terms and conditions of this Contract including its Schedules and Appendices.
“Contract Manager”	means the person appointed and nominated from time to time by the Council to oversee and supervise the management of this Contract.
“Contract Period”	means the period commencing on the Commencement Date as stipulated within the Award Letter and ending upon the termination of this Contract.
“Contract Price”	means the price (exclusive of any applicable VAT), payable to the Provider by the Council as set out in the Award Letter, for the full and proper performance by the Provider of its obligations under this Contract.
“Contracting Authority”	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.
“Council”	means The Kent County Council of County Hall, Maidstone, ME14 1XQ.
“CQC”	means Care Quality Commission established under the Health and Social Care Act 2008.
“DBS”	means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.
“Default”	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other.
“Disaster”	means an event defined as a disaster in the Disaster Recovery Plan.

“Disaster Recovery Plan”	means a plan which sets out the procedures to be adopted by the Provider in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Provider in planning and providing for any such event), the Disaster Recovery Plan at the date of this Contract.
“DPA”	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
“Employment Checks”	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.
“Enhanced DBS & Barred List Check”	means an Enhanced DBS & Barred List Check (Child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) as appropriate.
“Enhanced DBS & Barred List Check (Child)”	means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children’s barred list.
“Enhanced DBS & Barred List Check (Adult)”	means a disclosure of information comprised in an Enhanced DBS Check together with information from DBS adult’s barred list.
“Enhanced DBS & Barred List Check (Child & Adult)”	means a disclosure of information comprised in an Enhanced DBS check together with information from the DBS children’s and adult’s barred list.
“Enhanced DBS Check”	means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for.
“Enhanced DBS Position”	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) which also meets the criteria set out in The Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted.
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Equipment”	means the Provider or the Council’s equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under this Contract.
“Fees Regulations”	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
“Force Majeure”	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <p>(a) any industrial action occurring within the Provider’s or any Sub-contractor’s organisation; or</p> <p>(b) the failure by any sub-contractor to perform its obligations under any Sub-contract.</p>
“Good Industry Practice”	means using and complying with present and future clinical guidance, governance, arrangements, standards, practices, methods and procedures conforming to the Law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider or a person or body engaged in providing services the same as (or similar type of undertaking to the Services at the time the Services are provided) applicable.
“Information”	has the meaning given under section 84 of the FOIA.
“Institutional Investor”	means an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pensions fund, private equity firm, venture capitalist, insurance company or investment trust.
“Intellectual Property Rights”	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United

Kingdom) and the right to sue for passing off.

“Key Personnel”

means the person appointed and nominated from time to time by the Provider to oversee and supervise the management of this Contract.

“Law”

means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Provider is bound to comply.

“Local HealthWatch”

means the local independent consumer champion for health and social care in England.

“Losses”

means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses.

“Month”

means calendar month.

“NICE”

means National Institute for Health and Care Excellence being the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of all ill health (or any successor body).

“Party”

means a party to this Contract.

“Premises”

means the location where the Services are to be supplied, as set out in the Specification.

“Prohibited Act”

the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly 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 Agreement;
- (c) committing any offence:

- (i) under the Bribery Act 2010;
- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

“Property”	means the property, other than real property, issued or made available to the Provider by the Council in connection with the Contract.
“Provider”	means the person, firm or company with whom the Council enters into this Contract.
“Provider Party”	means the Provider's agents and contractors, including each Sub-contractor.
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
“Receipt”	means the physical or electronic arrival of the invoice at the address of the Council or at any other address given by the Council to the Provider for the submission of invoices.
“Regulated Activity”	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
“Regulated Activity Provider”	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
“Regulatory Body”	means a body established by those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly. “Regulatory Bodies” shall have the same meanings ascribed hereto.
“Relevant Convictions”	means a conviction that is relevant to the nature of the Services or as listed by the Council.

“Relevant Index”	is as described and set out in clause 21A
“Relevant Transfer”	a relevant transfer for the purposes of TUPE.
“Replacement Provider”	means any third party provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
“Request for Information”	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).
“Restricted Person”	means: (i) any person, other than an Institution Investor who has a material interest in the production of tobacco products or alcohol beverages; or any person who the Council otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider or in the Sub-contractor.
“Schedule”	means a schedule attached to, and forming part of, this Contract.
“Service Credits”	means the sums attributable to a Service Failure as specified in Schedule 9.
“Service Failure”	a failure by the Provider to provide the Services in accordance with any individual Service Level.
“Service Levels”	the service levels to which the Services are to be provided, as set out Schedules 1 & 6.
“Services”	means the services to be supplied as specified in the Specification.
“Service Item”	means any subset of the Services (or item within that subset) or one or more Service Users as identified in the Specification.
“Service User”	means the person directly receiving the Services provided by the Provider as specified in the Service Specifications and includes their Carer and Legal Guardian where appropriate and “Service Users” shall have the same meaning ascribed hereto.
“Specification”	means the description of the Services to be supplied under this Contract as set out in the Specification Schedule.
“Staff”	means all persons employed or engaged by the Provider to perform its obligations under this Contract together with the Provider’s servants, agents, suppliers and Sub-contractors used in the performance of its obligations under the Contract.
“Staff Vetting Procedure”	means the Council’s procedures for the vetting of personnel and as advised to the Provider by the

Council.

“Standard DBS Check”	means a disclosure of information which contains certain details of an individual’s convictions, cautions, reprimands or warnings recorded on police central records and includes both ‘spent’ and ‘unspent’ convictions.
“Standard DBS Position”	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted.
“Sub-contractor”	means any third party with whom the Provider enters into a sub-contract or the servants or agents of that third party.
“Tender”	means the document(s) submitted by the Provider to the Council in response to the Council’s invitation to suppliers for formal offers to supply it with the Services.
“Third Party Top Up”	means an agreement between the Council and a third party where the third party reimburses the Council for the difference between the Contract Price. “TPTU” shall have the same meaning ascribed hereto.
“Transferring Employees”	means those persons (or person) whose contract of employment becomes transferred by the application of TUPE or otherwise on the expiry or termination of this Contract.
“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended from time to time.
“Variation”	has the meaning given to it in clause 38 (Variation).
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
“Working Day”	means any calendar day including Sundays and Bank Holidays.

1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.2.8 The terms and conditions of this Contract and Schedules are to be read as mutually explanatory of one another. In the even that there is a conflict or inconsistency between the clauses and the Schedules and/or any Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.2.8.1: Schedule 1 (Specification)
 - 1.2.8.2: Schedule 2 (Pricing) and Schedule 6 (Contract Management)
 - 1.2.8.3: the remaining Schedules equally

2. CONTRACT PERIOD

This Contract shall take effect on the Commencement Date until such a time the contract is terminated in accordance with the provisions of this contract.

3. PROVIDER’S STATUS

At all times during the Contract Period the Provider shall be an independent Provider and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

4. COUNCIL’S OBLIGATIONS

Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty

and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

5. NOTICES

- 5.1 Except as otherwise expressly provided within this Contract, no notice or other communication 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.
- 5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 5.3 For the purposes of clause 5.2, notices shall be addressed for the attention of the Council's Contract Manager and the Provider's Key Personnel and the address for Service for each Party shall be the address stipulated above.
- 5.4 Either Party may change its address for the service by serving a notice in accordance with this clause.

6. MISTAKES IN INFORMATION

The Provider shall be responsible for the accuracy of all documentation and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

7. CONFLICTS OF INTEREST

- 7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.
- 7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

8. THE SERVICES

- 8.1 The Provider shall supply the Services during the Contract Period with due skill, care and diligence and in accordance with:
- 8.1.1 the Quality Standards (if any stipulated in the Specification);
 - 8.1.2 Good Industry Practice;
 - 8.1.3 the Law; and
 - 8.1.4 the requirements of the Contract.
- 8.2 The Council may inspect and examine the manner in which the Provider supplies the Services at the Premises any time during a Working Day on giving reasonable notice to the Provider. The Council reserves the right to carry out an unannounced inspection (without giving notice to the Provider) where the Council has concerns about the Services being provided to Service Users.
- 8.3 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.
- 8.4 The Provider will carry out the Services in accordance with the requirements of the Specification in a professional manner with due diligence and exercising all the due care, skill and judgement to be expected of a competent provider of services of a similar kind and in a similar field/industry.
- 8.5 The Provider shall devote such time to providing the Services as are required to provide them to the standard required under or by virtue of this Contract and shall provide all equipment and other items necessary for the carrying out of the Services
- 8.6 The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Council in writing:
- 8.6.1 comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
 - 8.6.2 respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
 - 8.6.3 consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
 - 8.6.4 comply with the recommendations issued from time to time by a Regulatory Body;
 - 8.6.5 comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
 - 8.6.6 respond to any reports and recommendations made by Local HealthWatch;

8.6.7 comply with performance indicators and quality outcomes indicators set out in Schedule 6 and

8.6.8 comply with the Caldicott Principles set out in Schedule 8 where applicable (and appropriate) to the provision of the Services

9. SERVICE LEVELS AND SERVICE CREDITS

9.1 The Provider shall provide the Services set out in Schedule 1 of this Contract.

9.2 Where any part of the Services is stated in Schedule 1 to be subject to a specific Service Level, the Provider shall provide that part of the Services in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.

9.3 The Provider shall provide records of management reports and information summarising the Achieved Service Levels as provided for in clause 42.

9.4 If the Provider fails to provide the Services in accordance with any individual Service Level, the Provider shall pay to the Council the Service Credit (and liquidated damages) set out in clause 9.5.

9.5 The parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Council. The Provider has taken the Service Credit (and liquidated damages) into account in setting the level of this Contract Price. The items that comprise of liquidated damages under this clause include costs of finding a replacement provider for the Service Users, costs of any transport arranged (including associated expenses) to move the Service User from the Provider's Premises, Council officers of their nominated representatives time and resources)

9.6 If the Provider fails to provide the information required in accordance with the provisions of this Contract, and fails to provide any KPI for a period of three (3) consecutive months, then the Council has the right to withdraw or suspend for a nominated period the Provider from receiving new placements.

10. PROVISION AND REMOVAL OF EQUIPMENT

10.1 The Provider and the Council may be required to make Equipment available for the provision of the Services. The Provider shall follow the Council's Equipment protocol for the provision of the Services

10.2 The Provider shall ensure that any Equipment used for the delivery of the Services shall comply with industry standard and all applicable Law.

10.3 All Equipment brought onto the Premises for the provision of the Services shall be at the Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.

10.4 The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

- 10.5 The Provider shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
- 10.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with this Contract; and
 - 10.5.2 replace such item with a suitable substitute item of Equipment.
- 10.6 On completion of the Services the Provider shall return to the Council any Equipment made available to the Provider by the Council during the Contract Period. All such Equipment shall be in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Council Equipment other than fair wear and tear.

11. KEY PERSONNEL AND CONTRACT MANAGER

- 11.1 The Provider and the Council shall each appoint and nominate a Key Personnel and a Contract Manager to supervise and manage the provision of the Services.
- 11.2 The Provider shall notify the Council of a change in the Key Personnel. The Provider warrants that the change of the Key Personnel shall not adversely affect the provision of the Services.
- 11.3 Any replacements to the Key Personnel shall be notified to the Council within 24 hours of the change of the current Key Personnel. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 11.4 The Provider shall minimise any adverse impact on this Contract and Service Users which could be caused by a change in Key Personnel.
- 11.5 The Council shall notify to the Provider from time to time where there is a change in the Contract Manager

12. PROVIDER'S STAFF

- 12.1 The Council may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain involved in the delivery of the Services:
- 12.1.1 any member of the Staff; or
 - 12.1.2 any person employed or engaged by any member of the Staff, whose admission or continued involvement with the delivery of the Services would, in the reasonable opinion of the Council, be undesirable.
- 12.2 At the Council's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with this Contract to the Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Council may reasonably request.
- 12.3 The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, policies and requirements (including those

relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

- 12.4 The Provider shall comply with Staff vetting procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff vetting procedures.
- 12.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council may require the Provider to carry out a Disclosure and Barring Service check in respect of any person to be employed or engaged in the provision of the Services. The Provider shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Provider to have a Relevant Conviction (whether as a result of or through a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.
- 12.6 If the Provider fails to comply with clause 12.2 within 21 Working Days of the date of the request the Provider shall be in Default of its obligations under this Contract.
- 12.7 The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Provider has failed to comply with clause 12.2 shall be final and conclusive and the Provider shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under clause 12.1.

13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 13.1 The Provider shall assign to the performance of the Service sufficient Staff who shall possess and exercise such qualifications, skill and experience as is necessary for the proper performance of the Service
- 13.2 At all times, the Provider must ensure that:
 - 13.2.1 each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 13.2.2 there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;
 - 13.2.3 where applicable, Staff are registered with the appropriate professional regulatory body; and
 - 13.2.4 Staff are aware of and respect equality and human rights of colleagues and Service Users.
- 13.3 If requested by the Council, the Provider shall as soon as practicable and by no later than 20 Working Days following receipt of that request, provide the Council with evidence of the Provider's compliance with Clause 13.2.
- 13.4 The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:

- 13.4.1 proper and sufficient continuous professional and personal development, training and instruction; and
- 13.4.2 full and detailed appraisal (in terms of performance and on-going education and training), each in accordance with Good Clinical Practice and the standards of any applicable relevant professional body.
- 13.5 Where applicable under section 1(F) (1) of the NHS Act 2006, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.
- 13.6 The Provider must carry out Staff surveys in relation to the Services at intervals and as agreed in writing from time to time.
- 13.7 Subject to Clause 13.8, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
 - 13.7.1 the Employment Checks; and
 - 13.7.2 such other checks as required by the DBS.
- 13.8 Subject to Clause 13.9, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Council.
- 13.9 Where Clause 13.8 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
 - 13.9.1 an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - 13.9.2 wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - 13.9.3 the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Agreement; and
 - 13.9.4 any other reasonable requirement of the Council.
- 13.10 Where the Council has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Council and in any event within 20 Working Days of that request (unless otherwise agreed in writing), provide the Council with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.
- 13.11 The Provider shall indemnify and keep indemnified the Council and any successor service provider against any Losses incurred by the Council and/or the successor service provider in connection with any claim under this Clause 13 or demand by any transferring employee under TUPE.

- 13.12 Where the Contract Manager (but not unreasonably or vexatiously) is of the opinion that any Staff are unsuitable to work with children and vulnerable adults he may require their exclusion from being engaged in the Services and the Provider shall immediately comply with this requirement.
- 13.13 The Provider shall undertake checks to ensure that any potential Staff who is likely to be in a position where they are providing the Service to a Service User has a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom. The Provider shall not employ or engage any Staff prior to receipt of a satisfactory check. Should the check disclose information about Staff which indicates that the person does not have a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom then that person shall not be so employed or engaged in any work in or about the Service.
- 13.14 The Provider shall ensure that the employment or involvement of young Staff complies with the law and in particular the Children and Young Persons Act 1933 (as amended) and the Children Act 1989.
- 13.15 The Provider shall ensure that volunteers using their own vehicles in or about the performance of the Services have informed their insurers of their volunteer driving.
- 13.16 The Provider shall notify the Council in writing on the engagement of any person in a Restricted Post.
- 13.17 The Provider must have policies and procedures which acknowledge and provide for on-going monitoring of the Staff including undertaking further DBS disclosures if required.
- 13.18 The Provider must keep and must procure that the Council is kept advised at all times of any Staff who subsequent to their commencement of employment receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider (or any employee of a Sub-contractor involved in the provision of the Services).
- 13.19 In the event that the Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this Clause 13 and shall procure that the Sub-contractor complies with such terms. The Provider shall indemnify the Council and keep the Council indemnified in full from and against all loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.
- 13.20 Failure by the Provider to comply with this Clause 13 may lead to the termination of this Contract at the Council's sole discretion.
- 13.21 The Provider shall comply and shall ensure that all Staff comply with the Kent and Medway Safeguarding Children's Procedures 20071 and the Multi Agency Adult Protection Policy, Protocols and Guidance for Kent and Medway (updated six monthly) and the Provider's own policy and procedure concerning Adult Protection/Safeguarding.

- 13.22 The Provider's Safeguarding Policy shall include safeguarding vulnerable adults and children from any form of abuse or exploitation which includes physical, financial, psychological or sexual abuse, neglect, discriminatory, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance.
- 13.23 The Provider shall have in place robust procedures for responding to suspicion or evidence of abuse or neglect to ensure the safety and protection of the Service User. The procedures shall reflect local multi-agency Policy, Protocols and Guidance, including informing the Care Quality Commission and where appropriate involving the police in accordance with the Public Interest Disclosure Act 1998 and the Department of Health guidance "No Secrets" and the Disclosure and Barring Service
- 13.24 The Provider's Safeguarding Policy and Procedures must ensure that all allegations and incidents of abuse are followed up in a prompt, specified timeframe. All details and actions taken are recorded in a special record/electronic file kept specifically for the purpose, and on the personal file of the Service User. The Provider shall have regard to the following Council policy:
- [Kent and Medway SAB - Useful links and Resources \(kmsab.org.uk\)](http://kmsab.org.uk)
- 13.25 The Provider shall have a Public Interest Disclosure Act 1998 (Whistleblowing) policy which will include procedures under which Staff can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way. These can include situations when Staff believe that:
- 13.25.1 a criminal offence has been committed;
- 13.25.2 someone has failed to comply with a legal obligation;
- 13.25.3 a miscarriage of justice has occurred;
- 13.25.4 the health and safety of an individual is being endangered; and
- 13.25.5 there are or may be financial irregularities.
- 13.26 The Provider shall have in place policies and procedures for Staff regarding the Service User's will and bequests. The policies and procedures shall prevent the involvement of any Staff, or family members of Staff, in the making of, or benefiting from, the Service Users will, soliciting any other form of bequest or legacy, acting as a witness or executor, and being involved in any way with any other legal arrangement.
- 13.27 The Provider shall ensure that all Staff shall receive training on the prevention of abuse within one Month of employment and this must be updated annually. Adult Protection level 1 is the minimum requirement for all staff and levels 1 and 2 for managers.
- 13.28 The Provider shall ensure that all Staff shall comply with the Mental Capacity Act (MCA) 2005 (as amended and updated from time to time), and the Deprivation of Liberty Safeguards (DoLS). The Provider's processes shall incorporate consideration of whether a person has capacity to consent to the services which are to be provided and whether their actions are likely to result in a deprivation of liberty. The Provider's records must provide evidence of

compliance with the MCA and DoLS where appropriate. The Provider shall ensure that all Staff shall receive training on MCA and DoLS.

- 13.29 The Provider shall have in place throughout the Contract Period MCA policies and procedures to ensure that all Staff understand and comply with their duties and responsibilities under the MCA 2005 for all care and support services.
- 13.30 The Provider shall have in place throughout this Contract Period DoLS policies and procedures to ensure that potential deprivation of liberty is identified, applications for DoLS authorisations are promptly made where appropriate, conditions are properly followed and reviews are regularly undertaken.
- 13.31 The Provider shall ensure that all Staff will be aware of the conditions under which to instruct and consult the statutory advocacy service, Independent Mental Capacity Advocacy (IMCA) service, under MCA. All Staff shall understand the role of the IMCA and the role of the paid Relevant Person's Representative (RPR) under DoLS.

Safeguarding and Serious Case Reviews

- 13.32 The Provider shall (at no additional cost to the Council) assist the Council by providing such information as the Council may request in relation to a serious case review. If for any reason, the Provider cannot assist they must inform the Council in writing within 48 hours of request. The Provider must also stipulate why they cannot assist with the request.

Safeguarding Vulnerable Adults

- 13.33 Providers must follow guidance issued by the Council under the Kent and Medway Safeguarding Vulnerable Adults Multi Agency Policies and Protocols:
- [Kent and Medway SAB - Useful links and Resources \(kmsab.org.uk\)](http://kmsab.org.uk)
- 13.34 The Provider acknowledges that they should at all times have regard to the health and safety of all those accessing the Residential/Nursing home i.e. Staff, Sub Contractors, Service User and visitors.
- 13.35 The Provider shall be responsible for the observance of the Health and safety legal and policy requirements for its staff, employees and any Sub-contractor engaged by the Provider to carry out the designated service on any of the Providers Premises.
- 13.36 The Provider will immediately report to the Council all accidents which concerns or relates to the Service(s) being delivered and which ordinarily require reporting in accordance with the Health and Safety at Work Act 1974.
- 13.37 The Provider shall use all reasonable endeavours to ensure that all Provider Parties have read and understood both the Providers and Statutory and local health and safety policies before they undertake any Service delivery on or within the Providers premises.
- 13.38 Provider must ensure that any observed and/or reported Health and Safety breach is addressed within the quickest possible timespan and any effected areas are made safe before activity is re-commenced.

Regulatory Compliance

- 13.39 The Provider shall supply or make available to the Council all certification, licences, permits etc. that is required to ensure that the Provider is legally permitted to deliver the services made available to the Council, the Service Users or any other recipient.
- 13.40 The Provider shall ensure that full traceability is available in relation to all Services, products and facilities supplied to the Service Users.

14. TUPE AND PENSIONS

14.1 Where applicable and if TUPE applies upon termination of this Contract (such date being termed the "Transfer Date") for whatever reason the provisions of 14.1.1 and 14.1.2 shall have effect in respect of Transferring Employees regardless of whether legislation shall determine that TUPE applies:

14.1.1 The Provider shall or shall procure that all wages, salaries and other benefits of the Transferring Employees and other employees or former employees of the Consultant (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Provider up to the Transfer Date are satisfied;

14.1.2 Without prejudice to Clause 14.1.1, the Provider shall:

(a) remain responsible for all the Provider employees (other than the Transferring Employees) on or after the time of expiry or termination of this Agreement and shall indemnify the Council or any new service provider appointed to provide the Services against all Losses incurred by the Council or new Provider resulting from any claim whatsoever whether arising before on or after the Transfer Date by or on behalf of any of the Provider's employees who do not constitute the Transferring Employees;

(b) in respect of those employees who constitute Transferring Employees the Provider shall indemnify the Council, or any new service provider appointed by the Council to provide the Services against all Direct Losses incurred by the Council or new Provider resulting from any claim whatsoever by or on behalf of any of the Transferring Employees in respect of the period on or before the Transfer Date (whether any such claim, attributable to the period up to and on the Transfer Date, arises before, on or after the Transfer Date) including but not limited to any failure by the Provider to comply with its or their obligations under Regulation 10 of TUPE and/or Article 6 of the Acquired Rights Directive as if such legislation applied, even if it does not in fact apply, save to the extent that any such failure to comply arises as a result of an act or omission of the Council or the new Provider.

14.2 For the purposes of Clauses 14.1.2(a) and 14.1.2(b), Losses means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client

paying basis), proceedings, demands and charges whether arising under statute contract or at common law.

14.3 The Council shall be entitled to assign the benefit of the indemnity in this clause 14 to any replacement service provider appointed by the Council to provide services equivalent to those provided by the Provider under this Contract.

14.4 The Provider agrees to provide the Council with full and accurate employment information regarding the Transferring Employees and will not for a period of 12 Months prior to termination or expiry of the Services make any material changes in the numbers of Transferring Employees, their remuneration or other terms and conditions of employment.

14.5 In respect of those employees (if any) of another service provider and who were wholly or mainly engaged in the provision of the Services immediately before the commencement of the Services by the Provider ("Outgoing Transfer Date") the Provider shall indemnify the Council against all Losses incurred by the Council resulting from any claim whatsoever by these employees from the issue of the order for Services (whether such claim attributable to the period before the Outgoing Transfer Date arises before on or after the Outgoing Transfer Date) arising out of or by virtue of any failure by the Provider to comply with its or their obligations under Regulation 10 of TUPE and or Article 6 of the Acquired Rights Directive save to the extent that such failure to comply arises out of an act or remission of the Council.

14.6 The Council undertakes, in respect of any Transferring Employees to comply with its obligations under TUPE.

15. INSPECTION OF PREMISES

15.1 The Provider shall during the Contract Period use suitable Premises in compliance with the provisions of the Law.

15.2 The Council, its representatives or any Regulated Body shall have the right to inspect the Premises where the Services are being provided with or without prior notice.

16. LICENCE TO OCCUPY COUNCIL PREMISES

16.1 This provisions of this clause 16 shall apply where the Council makes Premises available to the Provider for the provision of the Services

16.2 Any land or Premises made available from time to time to the Provider by the Council in connection for the provision of the Services shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under this Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of this Contract.

16.3 The Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.

- 16.4 Should the Provider require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Provider's expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.
- 16.5 The Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 16.6 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

17. PROPERTY

- 17.1 Where the Council issues Property free of charge to the Provider such Property shall be and remain the property of the Council and the Provider irrevocably licences the Council and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and bailee of the Council. The Provider shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractor and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.
- 17.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Council otherwise within 5 Working Days of receipt.
- 17.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with this Contract and for no other purpose without prior Approval.
- 17.4 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 17.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Provider shall inform the Council within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

18. PARENT COMPANY GUARANTEE

Where applicable and if required by the Council the Provider shall procure the delivery of a parent company guarantee substantially in the form requested by the Council.

19. PERFORMANCE BOND

Where applicable and if required by the Council the Provider shall procure the delivery of a performance bond substantially in the form requested by the Council.

20. CONTRACT PRICE

20.1 In consideration of the Provider's performance of its obligations under this Contract, the Council shall pay the Contract Price as set out in the Award Letter.

20.2 The Council shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Contract.

21. PAYMENT AND VAT

21.1 Unless otherwise specified in Schedule 2, the Council shall pay all sums due to the Provider within thirty (30) days of receipt of a valid invoice, submitted monthly in arrears.

21.2 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

21.3 Where the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under this Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

21.4 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under this Contract. Any amounts due under this clause 21.5 shall be paid by the Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.

21.5 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate this Contract in accordance with the provisions of this Contract.

21.6 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by this Council during the Contract Period and following the end of this Contract for a period of six (6) years.

- 21.7 The Provider acknowledges the Council's position that electronic payment may be introduced and implemented during the Contract Period as a means of paying the Provider for the provision of the Services. Implementation of any electronic payment system by the Provider within its organisation shall be at the Provider's costs.
- 21.8 Save as otherwise expressed in this Contract, in the event of failure by the Council to pay sums due within the period agreed, interest shall be due at the rate of two per cent (2%) above the base rate for the time being of Bank of England calculated on a daily basis which the Parties agree shall be a sufficiently substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998. For the avoidance of doubt the provision of this Clause 21.9 shall only apply to undisputed amount.

22. RECOVERY OF SUMS DUE

- 22.1 Wherever under this Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Council.
- 22.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 22.3 The Provider shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 22.4 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

23. PREVENTION OF BRIBERY AND CORRUPTION

- 23.1 The Provider:
- 23.1.1 shall not, and shall procure that any Provider Staff or Provider Party shall not, in connection with this Contract commit a Prohibited Act;
- 23.1.2 warrants, represents and undertakes that 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.
- 23.2 The Provider shall:
- 23.2.1 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 in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

- 23.2.2 within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this clause 23 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 23.3 The Provider shall ensure that its anti-bribery policy is provided to the Council on request.
- 23.4 If any breach of clause 23.1 is suspected or known, the Provider must notify the Council immediately.
- 23.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 23.1, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the Contract Period, Extended Period and 6 years following the expiry or termination of this Contract.
- 23.6 The Council may terminate this Contract by written notice with immediate effect if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 23.1.
- 23.7 Any notice of termination under clause 23.6 must specify:
- 23.7.1 the nature of the Prohibited Act;
- 23.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
- 23.7.3 the date on which this Contract will terminate.
- 23.8 Despite clause 57 (Dispute resolution), any dispute relating to:
- 23.8.1 the interpretation of clause 23; or
- 23.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 23.9 Any termination under clause 23.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

24. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

- 24.1 The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- 24.2 The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).

24.3 In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:

24.3.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;

24.3.2 advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and

24.3.3 foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

and for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.

24.3.4 as soon as reasonably practicable following any reasonable request from the Council, the Provider must provide the Council with a plan detailing how it will comply with its obligations.

24.3.5 the Provider must provide to the Council as soon as reasonably practicable, any information that the Council reasonably requires to:

(a) monitor the equity of access to the Services; and

(b) fulfil their obligations under the Law.

24.4 In the event of any finding of unlawful discrimination being made against the Provider in the last three years by any Court or Tribunal or of an adverse finding in any form of investigation by anybody charged with carrying out such investigation over the same period the Provider shall take appropriate steps to prevent repetition of the unlawful discrimination.

24.5 The Provider shall set out its policy on discrimination:

24.5.1 in instructions for those concerned with the recruitment training and promotion;

24.5.2 in documents available to employees recognised Trade Unions or other representative groups of employees;

24.5.3 in recruitment advertisements or other literature.

24.6 The Provider shall on request provide the Council with examples of the instructions and document of recruitment advertisements or other literature

24.7 The Provider shall observe as far as possible all relevant codes of practice and maintain a system of audit monitoring and actions in respect of the provisions of this clause 24.

24.8 The Provider shall fully indemnify the Council against all actions, claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Provider or this clause 24.

25. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

26. ENVIRONMENTAL REQUIREMENTS

- 26.1 The Provider shall, when working on the Premises, perform its obligations under this Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 26.2 The Provider shall comply with statutory obligations under Environmental Legislation and for the purposes of this Contract "Environmental Legislation" means the Environmental Protection Act 1990, the Water Resources Act 1991, the Clean Air Act 1993, the Environment Act 1995 and any regulations, directions or guidance having statutory effect pursuant to the same, or any EU directive having effect which makes provision for the control of pollution, the control of hazardous substances land use control and wild life and countryside protection.
- 26.3 In the event of any finding by any Court or Tribunal or other judicial or quasi judicial body being made against the Provider in respect of any breach of environmental legislation the Provider shall take appropriate steps to abate such a breach and prevent its repetition.
- 26.4 The Provider shall upon request provide the Council with details of any steps taken under clause 26.3 above.
- 26.5 The Provider shall within three (3) Months of the date of this Contract adopt a policy and shall thereafter maintain such a policy taking account as far as is reasonably practical of any amendment to that policy from time to time made by the Council and any revisions or amendments to any national guidelines or any nationally recognised procedures or lists which relate to the minimising of environmental emergency.
- 26.6 The Provider shall observe as far as possible the policy from time to time enforced by virtue of clause 26.5 above.
- 26.7 The Provider shall provide such information as the Council may reasonably request for the purposes of assessing the Provider's compliance with paragraphs 26.6 above as far as is relevant including examples of documents advertisements or other literature.
- 26.8 The Provider shall where applicable:-
- 26.8.1 institute and maintain an environmental management system in accordance with the procedures targets and other specifications mentioned in, and shall provide and perform the service in all respects in accordance with, the Environmental Statement (where the words "Environmental Statement" mean the environmental method statement

and any other information or representations supplied with incorporated into or presented within the Provider's tender or submission to the Council in respect of this Contract);

- 26.8.2 operate such environmental management system as referred to in 26.8.1 above during the Contract Period and shall furnish such detailed information as the Council may reasonably require in regard thereto and without prejudice to the generality of the foregoing shall accurately complete and submit to the Council, at such times as the Council shall reasonably direct (but so that the Provider shall not be required to submit more than one return in any one period of twelve (12) Months), performance returns in the form to be directed by the Council (acting reasonably) The Provider shall also permit the Council (acting reasonably) to inspect the system referred to in this paragraph for compliance with the requirements of this paragraph.
- 26.9 The Provider shall provide the service so that all vehicles used in provision of the service will comply with the Councils best practice requirements under its policy from time to time in force. Where higher standards are not set under such policy the minimum standard will be for all vehicles used in the provision of the service to meet the current Euro Standards.

27. HEALTH AND SAFETY

- 27.1 The Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract. The Council shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under this Contract.
- 27.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 27.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under this Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 27.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under this Contract.
- 27.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

28. DATA PROTECTION ACT

Information Governance – General Responsibilities

- 28.1 Clause 28 is to be read in conjunction with Schedule 11 and Schedule 11 – Annex 1.

- 28.2 For the purposes of this Clause 28, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing shall have the meaning prescribed under the DPA.
- 28.3 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Council is the Data Controller and that the Provider is the Data Processor.
- 28.4 The Parties acknowledge their respective obligations arising under the DPA and must assist each other as necessary to enable each other to comply with these obligations.
- 28.5 The Provider undertakes to:
- 28.5.1 Treat as confidential all Personal Data which may be derived from or be obtained in the course of the Contract or which may come into the possession of the Provider or an employee, servant or agent or Sub-Contractor of the Provider as a result or in connection with the contract; and;
 - 28.5.2 Provide all necessary precautions to ensure that all such information is treated as confidential by the Provider, his employees, servants, agents or Sub-Contractors; and
 - 28.5.3 Ensure that he, his employees, servants, agents and Sub-Contractors are aware of the provisions of the DPA and that any personal information obtained from the Council shall not be disclosed or used in any unlawful manner; and
 - 28.5.4 Indemnify the Council against any loss arising under the DPA caused by any action, authorised or unauthorised, taken by himself, his employees, servants, agents or Sub-Contractors
 - 28.5.5 Nominate a data protection lead to be responsible for data protection and for providing the Council with regular reports on information security matters, including details of all incidents of data loss and breach of confidence;
 - 28.5.6 Have in place adequate mechanisms to ensure that Sub-Contractors, agents and subsidiaries to whom personal information is disclosed comply with their contractual obligations to keep personal data and information secure and confidential in accordance with data protection requirements;
 - 28.5.7 Ensure that the Council is kept informed at all times of the identities of the data protection lead.
- 28.6 The Provider as a Data Processor
- 28.7 The Provider shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- 28.8 Notwithstanding the general obligation in Clause 28.3, where the Provider is processing Personal Data as a Data Processor for the Council the Provider shall:

- 28.8.1 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 Contracting Authority;
 - 28.8.2 Comply with all applicable Laws;
 - 28.8.3 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;
 - 28.8.4 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;
 - 28.8.5 must be able to demonstrate that employees, servants, or agents associated with the performance of this contract are aware of their personal responsibilities under the DPA to maintain the security of the Personal Data controlled by the Council;
 - 28.8.6 take reasonable steps to ensure the reliability of its Staff and agents who may have access to the Personal Data;
 - 28.8.7 obtain prior written consent from the Contracting Authority in order to transfer the Personal Data to any Sub-Contractor for the provision of the Services;
 - 28.8.8 Personal Data must not be copied for any other purpose than that agreed between the Provider and the Council.
 - 28.8.9 Personal data shall be returned to the Council at the end of the contract, or on completion of works or when requested by the Council.
 - 28.8.10 The Council is required to comply with Her Majesty's Government information security standards for the secure destruction of data processed on its behalf. The Provider must provide certificated evidence of secure destruction to the required standards when equipment is decommissioned or retired or at the end of the Contract.
- 28.9 The Provider shall permit the Council or the Council 's representative (subject to reasonable and appropriate confidentiality requirements), to inspect and audit, in accordance with Clause 34 (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 enable the Council to verify and/or procure that the Provider is in full compliance with its obligations under this Contract;
- 28.9.1 not Process, cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Council and, where the Council consents to the transfer, to comply with;

- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the Council;
- 28.9.2 ensure that all Staff and agents 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 28;
- 28.9.3 ensure that none of the Staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council;
- 28.9.4 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; and
- 28.10 notify the Council (within five Working Days) if it receives:
 - 28.10.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 28.10.2 a complaint or request relating to the Council's obligations under the DPA;
 - 28.10.3 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.
- 28.11 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 employees or agents to comply with any of its obligations under this Contract.

Responsibilities when engaging Sub-Contractors

- 28.12 Subject always to Clause 35 (Transfer and Sub-Contracting) if the Provider is to require any Sub-Contractor to process Personal Data on its behalf, the Provider must:
 - 28.12.1 require that the Sub-Contractor provides sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;
 - 28.12.2 ensure that the Sub-Contractor is engaged under the terms of a written agreement requiring the Sub-Contractor to:
 - (a) process such personal data only in accordance with the Provider 's instructions;

- (b) comply at all times with obligations equivalent to those imposed on the Provider by virtue of the Seventh Data Protection Principle of the DPA;
- (c) allow rights of audit and inspection in respect of relevant data handling systems to the Provider or to the Council or to any person authorised by the Provider or by the Council to act on its behalf; and
- (d) impose on its own Sub-Contractors (in the event the Sub-Contractor further Sub-Contracts any of its obligations under the Sub-Contract) obligations that are substantially equivalent to the obligations imposed on the Sub-Contractor by this Clause 28.

28.13 The provision of this Clause 28 shall apply during the Contract Period and indefinitely after its expiry.

29. CONFIDENTIAL INFORMATION

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

- 29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

29.2 clause 29.1 shall not apply to the extent that:

- 29.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 30 (Freedom of Information);
- 29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 29.2.3 such information was obtained from a third party without obligation of confidentiality;
- 29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 29.2.5 it is independently developed without access to the other Party's Confidential Information.

29.3 The Provider may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

29.4 The Provider shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.

- 29.5 At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 29.6 Nothing in this Contract shall prevent the Council from disclosing the Provider's Confidential Information:
- 29.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 29.6.2 to any consultant, Provider or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
 - 29.6.3 for the purpose of the examination and certification of the Council's accounts; or
 - 29.6.4 for 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.
- 29.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 29.6 is made aware of the Council's obligations of confidentiality.
- 29.8 Nothing in this clause 29 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

30. FREEDOM OF INFORMATION

- 30.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 30.2 The Provider shall and shall procure that any Sub-contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- 30.2.1 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
 - 30.2.2 provide all necessary assistance as reasonably requested by the Council to enable 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 Environmental Information Regulations.

- 30.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- 30.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 30.5 The Provider acknowledges that (notwithstanding the provisions of clause 30) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:
- 30.5.1 without consulting the Provider; or
 - 30.5.2 following consultation with the Provider and having taken their views into account;

provided always that where 30.5 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- 30.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 30.7 The Provider acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule 7 is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause 30.

Electronic Communications

- 30.8 The Provider shall ensure that prior to the Commencement Date they will have registered (set up) and provided the Council with their generic email address, (i.e. admin@Provider.com, office@Provider.com, manager@Provider.co.uk.) The use of Hotmail, AOL and any other personal email addresses will not be accepted by the Council.
- 30.9 If the Provider fails to provide the Council with the address new referrals at the start of this Contract may not be sent.

31A INFORMATION GOVERNANCE

- 31A.1 In providing the Services the Parties have a legal responsibility to ensure that their use of personal information is lawful, properly controlled and that an individual's rights are respected.

31A.2 The Provider and its Staff shall during the provision of the Services comply with the provisions of Schedule 8 Part B.

31A.3 The Provider will ensure that its' Staff:

31A.3.1 remember that the Data Protection Act is not a barrier to sharing information but provides them with a framework to ensure that personal information about living persons is shared appropriately.

31A.3.2 are open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.

31A.3.3 seek advice if they are in any doubt, without disclosing the identity of the person where possible.

31A.3.4 share with consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. Information may still be shared without consent if, in their judgment, that lack of consent can be overridden in the public interest. They will base their judgment on the facts of the case.

31A.3.5 consider safety and well-being, basing their information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.

31A.3.6 apply the following principles when sharing information, "necessary, proportionate, relevant, accurate, timely and secure", ensuring that the information shared is necessary for the purpose for it is being shared, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.

31A.3.7 keep records of their decisions and the reasons for them – whether it is to share information or not. If the decision is to share the record will indicate what has been shared, with whom and for what purpose.

31A.4 Indemnity

31A.4.1 Where the Provider fails to comply with or breaches the provisions of clause 31A the Provider shall indemnify the Council against legal liability for a negligent act or accidental error or accidental omission which may be incurred in circumstances where the subject of the exchange of information suffers loss as a result of the misuse or inaccuracy of the information and brings an action claim or demand as a consequence thereof.

31. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

31.1 The Provider shall not make any press announcement or publicise this Contract, the Services or any aspects thereof in any way, except with the prior written Approval of the Council.

- 31.2 The Provider shall take reasonable steps to ensure that its servants, employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause 31.1.

32. SECURITY

- 32.1 The Provider shall comply with all security requirements of the Council while on the Premises, and shall ensure that all Staff comply with such requirements. The Council shall be responsible for maintaining the security of the Premises over which the Council has control in accordance with its standard security requirements.

33. INTELLECTUAL PROPERTY RIGHTS

- 33.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

33.1.1 furnished to or made available to the Provider by or on behalf of the Council shall remain the property of the Council; and

33.1.2 prepared by or for the Provider on behalf of the Council for use, or intended use, in relation to the performance by the Provider of its obligations under this Contract shall belong to the Council;

and the Provider shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of this Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

- 33.2 The Provider hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 33.1.2. This assignment shall take effect on the date of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation necessary to execute this assignment.

- 33.3 The Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.

- 33.4 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Provider or to any other third party supplying services to the Council.

- 33.5 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Provider shall, during and after this Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council

or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- 33.5.1 items or materials based upon designs supplied by the Council; or
 - 33.5.2 the use of data supplied by the Council which is not required to be verified by the Provider under any provision of this Contract.
- 33.6 The Council shall notify the Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Provider.
- 33.7 The Provider shall, at its own expense, conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Provider, provided always that the Provider:
- 33.7.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 33.7.2 shall take due and proper account of the interests of the Council; and
 - 33.7.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 33.8 The Council shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Provider by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Provider's obligations under this Contract and the Provider shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 33.5.1 or 33.5.2.
- 33.9 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Provider in connection with the performance of its obligations under this Contract.
- 33.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:
- 33.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

33.10.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,

and in the event that the Provider is unable to comply with clauses 33.7.1 or 33.7.2 within fifteen (15) Working Days of receipt of the Provider's notification the Council may terminate this Contract with immediate effect by notice in writing.

33.11 The Provider grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Provider owned or developed prior to the Commencement Date and which the Council reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

34. AUDIT AND INSPECTION

34.1 The Provider shall keep and maintain for the period stipulated in this Contract full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with this Contract.

34.2 The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, any authorised person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.

34.3 Subject to Law and notwithstanding clause 34.2 the Contract Manager or other Council nominated representatives may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.

34.4 Within ten (10) Working Days of the Council's reasonable request, the Provider must send the Council a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.

34.5 The Council shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.

34.6 During any audit undertaken under clause 34.2 and 34.3, the Provider must provide the Council with all reasonable co-operation and assistance in relation to that audit, including:

- 34.6.1 all reasonable information requested within the scope of the audit;
 - 34.6.2 reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
 - 34.6.3 access to the Staff.
- 34.7 The Council will have the right to carry out a full or part financial audit of costs within the first year of the Contract term. The audit may be undertaken by the Council's Officers or by an independent third party appointed by the Council.

35. TRANSFER AND SUB-CONTRACTING

- 35.1 The Provider shall not assign, sub-contract or in any other way dispose of this Contract or any part of it without prior Approval. Sub-contracting any part of this Contract shall not relieve the Provider of any of its obligations or duties under this Contract.
- 35.2 The Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- 35.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.
- 35.4 The Provider shall ensure that the assignee notifies the Council of the Assignee's contact information and bank account details to which the Council shall make payment.
- 35.5 The provisions of clause 21 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.
- 35.6 The Council may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:
- 35.6.1 any Contracting Authority; or
 - 35.6.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
 - 35.6.3 private sector body which substantially performs the functions of the Council, (**"the Transferee"**)

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under this Contract.

- 35.7 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.
- 35.8 The Council may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under this Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the

performance of the Provider's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

- 35.9 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Contract.
- 35.10 If a Sub-contractor is appointed to service a requirement under this Contract this does not release the Provider from any liability to the Council or Service User in respect of the sub-contracted services and the Provider shall be responsible for the acts, defaults, or neglect of any Sub-contractor or their agents or employees in all respects as if they were the acts, defaults or neglects of the supplier or their agents or employees.

36. WAIVER

- 36.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, 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.
- 36.2 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 clause 5 (Notices).
- 36.3 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.

37. VARIATION AND CHANGE CONTROL

- 37.1 Subject to the provisions of this clause 37, the Council may request a variation to the Specification including a change to the Specification. Such a change is hereinafter called a "Variation".
- 37.2 The Council may request a Variation by notifying the Provider in writing of the Variation and giving the Provider sufficient information to assess the extent of the Variation and consider whether any change to this Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Provider shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Provider accepts the Variation it shall confirm the same in writing.
- 37.3 In the event that the Provider is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to this Contract Price, the Council may;
 - 37.3.1 allow the Provider to fulfil its obligations under this Contract without the variation to the Specification;

- 37.3.2 terminate this Contract with immediate effect.
- 37.4 The Provider may propose variations to this Contract, provided that the Council shall be under no obligation whatsoever to accept any request for a variation. A variation proposed by the Provider shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.

Change Control Procedure

- 37.5 A change request must be submitted to the Council's Contract Manager in the case of a request by the Provider and to the Provider's Key Personnel in the case of a request by the Council.
- 37.6 Either Party may raise a change request in the form (the "Contract Change Control Form") annexed in Schedule 5. All Contract Change Control Forms should where practicable be supported by additional information which should accompany this Contract Change Control Form. Where a Party requires additional information from the other Party in order to complete the Contract Change Control Form as fully as possible then that other Party shall respond to such request for additional information as soon as practicable and in any event shall use all reasonable endeavours to supply the necessary details within 48 hours, or such other timescales as may be agreed between the parties.
- 37.7 For the purposes of this clause, a Change of Control shall mean:
- 37.7.1 Any sale, transfer or disposal of any legal, beneficial or equitable interest in relation to more than 50% of the outstanding voting securities or capital stock of the Provider, or any other comparable equity or ownership interest with respect to the Provider as defined in section 1124 of the Corporation Tax Act 2010, except where such sale or transfer of shares relates to:
- (a) shares traded on a stock exchange; or
 - (b) a transfer to an Affiliate.
- 37.8 Both Parties agree to waive their rights to execute any Variation or Change to this Contract as a Deed.
- 37.9 Where the Provider undergoes a Change of Control without obtaining the prior written approval of the Council, the Council may terminate this Contract forthwith by notice in writing to that effect, provided that the Council exercises its right to terminate within six (6) months of:
- 37.9.1 receiving notification of the Change of Control from the Provider; or
- 37.9.2 otherwise becoming aware of the Change of Control.

38. SEVERABILITY

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

39. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 39.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Council shall be entitled to investigate the complaint in accordance with the contract monitoring and management procedures contained in Schedule 6 (Contract Management). The Council may, in its sole discretion, uphold the complaint and take further action in accordance with clause 49 (Termination on Default) of this Contract.
- 39.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Council may, without prejudice to its rights under clause 49 (Termination on Default), do any of the following:
- 39.2.1 without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with this Contract;
 - 39.2.2 without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in this Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - 39.2.3 terminate, in accordance with clause 49 (Termination on Default), the whole of this Contract.
- 39.3 Without prejudice to its right under clause 22 (Recovery of Sums Due), the Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 39.4 If the Provider fails to supply any of the Services in accordance with the provisions of this Contract and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Council may direct.
- 39.5 In the event that:
- 39.5.1 the Provider fails to comply with clause 39.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
 - 39.5.2 the Provider persistently fails to comply with clause 39.4 above,

the Council may terminate this Contract with immediate effect by notice in writing.

40. REMEDIES CUMULATIVE

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

41. CONTRACT MANAGEMENT

41.1 The Provider shall comply with the monitoring and contract management arrangements set out in the Schedule 6 (Contract Management) including, but not limited to, providing such data and information as the Provider may be required to produce under this Contract.

41.2 Provided that the Provider's Key Personnel and other nominated officers of the Provider as required are given reasonable notice of the same the Provider's Key Personnel shall attend meetings where an issue related to the Services is to be considered.

42. CONTRACT REVIEW

42.1 The Council shall monitor and review this Contract against the performance targets set out in Schedule 6. The Provider shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews and provide all necessary information required. The review may lead to a Change or Variation of the Council's requirements for the Services. As a result of the review, the Council shall (in its discretion) be entitled to:

42.1.1 affirm that this Contract shall continue in accordance with its terms; or

42.1.2 reduce the Contract Period; or

42.1.3 exercise the option to terminate this Contract in accordance with the provisions of this contract; or

42.1.4 require a reduction in the volume or scope of the Services (which shall take effect as a Variation in accordance with clause 37) in return for a reduction in the Contract Price; or

42.2 The Council shall notify the Provider in writing of the results of the annual Contract review and the Provider shall take all necessary steps to implement the outcome of the review within four (4) weeks of receiving such notice (or such other reasonable period as may be specified by the Council).

42.3 The Provider shall co-operate and shall procure that its Sub-contractors co-operate with the Council in carrying out the monitoring review referred to in this clause 42 at no additional charge to the Council.

42.4 After the contract review and contract management (as the case may be) the Council may where applicable invoke the provisions of Schedule 9 (Sanctions and Escalation Process)

43. ENTIRE AGREEMENT

- 43.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

44. COUNTERPARTS

This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

45. LIABILITY AND INDEMNITY

- 45.1 Neither Party excludes or limits liability to the other Party for:
- 45.1.1 death or personal injury caused by its negligence; or
 - 45.1.2 Prohibited Act; or
 - 45.1.3 fraudulent misrepresentation; or
 - 45.1.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 45.2 Subject to clause 45.3 the Provider shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:
- 45.2.1 the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under this Contract;
 - 45.2.2 the act, omission or default of the Provider, any Sub-contractor or any member of Staff including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by any such Party; and
 - 45.2.3 any other loss which is caused directly or indirectly by any act or omission of the Provider.
- 45.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under this Contract.

46. INSURANCE

- 46.1 The Provider shall throughout the Contract Period effect and maintain with a reputable insurance company the following policies of insurance:
- 46.1.1 public liability insurance; and

- 46.1.2 employer's liability insurance
- 46.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 46.3 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of this Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 46.4 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.
- 46.5 Where applicable and required for the provision of the Services, the Provider shall effect the additional insurances stipulated within the Contract Particulars.
- 46.6 Where professional indemnity insurance is required the Provider shall maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, Sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the amount stated in clause 46.7. Such insurance shall be maintained for a period of twelve (12) years after the Expiry Date or earlier termination of this Contract.
- 46.7 Insurance Levels
- 46.7.1 The Provider shall maintain the levels of insurance set out below for the provision of the Services. The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.
- public liability insurance - £5million (five million pounds)
(not less than £5,000,000 each and every claim)
 - employer's liability insurance - £10million (ten million pounds)
(not less than £10,000,000 each and every claim)
- 46.7.2 Adequate insurance cover to enable you to fulfil your responsibility under this Agreement in the event of material damage which causes the Service to be continued at another or multiple other locations;
- 46.7.3 Adequate professional indemnity, errors and omissions or malpractice insurance cover in respect of any one claim which you become legally liable to pay for loss or injury caused by any negligent act, error or omission occurring or committed in good faith in the conduct of your activities or duties.

47. WARRANTIES AND REPRESENTATIONS

47.1 The Provider warrants and represents that:

- 47.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Provider;
- 47.1.2 in entering the Contract it has not committed any Prohibited Act;
- 47.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of this Contract;
- 47.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Contract;
- 47.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 47.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 47.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;
- 47.1.8 in the three (3) years prior to the date of this Contract:
 - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

48. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 48.1 The Council may terminate this Contract with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:
- 48.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 48.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 48.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
 - 48.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 48.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 48.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - 48.1.7 being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 48.1.8 any event similar to those listed in 48.1(1-7) occurs under the law of any other jurisdiction.
- 48.2 The Council may terminate this Contract with immediate effect by notice in writing where the Provider is an individual and:
- 48.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
 - 48.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Provider's bankruptcy; or
 - 48.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 48.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - 48.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or

enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) days; or

- 48.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
 - 48.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 48.3 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). The Council may terminate this Contract by notice in writing with immediate effect within six months of:
- 48.3.1 being notified that a change of control has occurred; or
 - 48.3.2 where no notification has been made, the date that the Council becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

49. TERMINATION ON DEFAULT

- 49.1 The Council may terminate this Contract by written notice to the Provider with immediate effect if the Provider commits a Default and if:
 - 49.1.1 the Provider has not remedied the Default to the satisfaction of the Council within fifteen (15) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - 49.1.2 the Default is not, in the opinion of the Council, capable of remedy; or
 - 49.1.3 the Default is a material breach of this Contract.
- 49.2 In the event that through any Default of the Provider, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 49.3 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may invoke the Dispute Resolution process (clause 57), save that such right shall not apply where the failure to pay is due to the Council exercising its rights under clause 22 (Recovery of Sums Due).

50. BREAK CLAUSE

- 50.1 The enactment of this clause 50 will not affect the terms and conditions of the individual placements made under this contract

50.2 Where the Council exercises its right to terminate this Contract under clause 50.1, the Provider shall only be entitled to payment for Services duly rendered up to the date of termination and the Council shall incur no liability to the Provider in respect of any other losses whatsoever whether:

50.2.1 loss of future profits;

50.2.2 redundancy or Sub-contractor breakage costs; or

50.2.3 any other costs whatsoever incurred by the Provider as a consequence of such termination.

50.3 Either the Council or the Provider may terminate this contract where it is for a Short-Term placement (i.e. Trial Period, Assessment Bed, Emergency Respite bed etc) by giving to the other party at least 5 Working Days' notice in writing, or at least 2 Working Days' notice if the placement is for less than a week.

50.4 In the case of Longer-Term placements, the Council may terminate this contract by giving the Provider at least 20 Working Days' notice in writing in the event that the Council considers that the Service User no longer requires the Service, in line with Schedule 9 and the escalation process outlined.

50.5 Where both parties agree that the needs of the Service User change to the extent that the Home is no longer able to provide appropriate care, either the Council or the Provider may terminate a Long-Term placement without notice. Payment will continue until such time that a new placement is sourced and will cease on the date that the Service User leaves the home.

50.6 If any of the parties fail to provide the requisite notification as set out in clauses 50.3 and 50.4 then such party shall be responsible for paying to the other party the full notice period or number of outstanding days remaining, unless agreed in writing between the Provider and the Contract Manager.

50.7 If the Service User's condition or behaviour is having a persistent and detrimental effect on the well-being of other Service Users then the Provider shall inform the Case Manager in writing within 48 hours. The Council will work with the Provider to enable additional short-term support to be provided as an alternative to termination of the contract, through an exceptional payment mechanism if required. The Provider may terminate the contract without notice only when a Service User's condition or behaviour continues to have a persistent and detrimental effect on the well-being of other Service Users despite any additional support provided and the Case Manager has not arranged alternative accommodation within 20 Working Days after a written request has been issued by the Provider to the Council.

50.8 The Council may terminate the contract without notice in the event that the Service User has to be moved due to closure of the Home. Payment will cease on the date that the Service User leaves and no payments will be made past the date of the closure of the Home.

50.9

51. CONSEQUENCES OF EXPIRY OR TERMINATION

51.1 Where the Council terminates this Contract under clause 49 (Termination on Default):

- 51.1.1 the Council may recover from the Provider the cost reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.
- 51.1.2 no further payments shall be payable by the Council to the Provider (for Services supplied by the Provider prior to termination and in accordance with this Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.
- 51.2 Save as otherwise expressly provided in this Contract:
- 51.2.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 51.2.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under clauses 21 (Payment and VAT), 22 (Recovery of Sums Due), 23 (Prevention of Bribery and Corruption), 28 (Data Protection Act), 29 (Confidential Information), 30 (Freedom of Information), 33 (Intellectual Property Rights), 34 (Audit), 40 (Remedies Cumulative), 45 (Liability and Indemnity), 46 (Insurance), 51 (Consequences of Termination), 53 (Recovery upon Termination) and 56 (Governing Law and Jurisdiction).
- 51.3 If the Provider's employment is terminated as provided in clause 51 the Council shall cease to be under any obligation to make any further payment under the costs loss and/or damage resulting from or arising out of the termination of the Provider's employment shall have been calculated and provided such calculation shows a sum or sums due to the Provider.

52. DISRUPTION

- 52.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council.
- 52.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.
- 52.3 In the event of industrial action by the Staff, the Provider shall seek Approval to its proposals to continue to perform its obligations under this Contract.
- 52.4 If the Provider's proposals referred to in clause 52.3 are considered insufficient or unacceptable by the Council acting reasonably, then this Contract may be terminated with immediate effect by the Council by notice in writing.
- 52.5 If the Provider is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Council, the Provider may request a reasonable allowance of time and in addition, the Council will

reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

53. RECOVERY UPON TERMINATION

- 53.1 On the termination of this Contract for any reason, the Provider shall:
- 53.1.1 immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-contractors, which was obtained or produced in the course of providing the Services;
 - 53.1.2 immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Provider under clause 17. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 53.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress;
 - 53.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Provider to conduct due diligence.
- 53.2 If the Provider fails to comply with clause 53.1.1 and 53.1.2, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-contractors where any such items may be held.
- 53.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under clause 53.1.3 and 53.1.4 free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

54. FORCE MAJEURE

- 54.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Contract for a period in excess of six (6) Months, either Party may terminate this Contract with immediate effect by notice in writing.
- 54.2 Any failure or delay by the Provider in performing its obligations under this Contract which results from any failure or delay by an agent, Sub-contractors or supplier shall be regarded as due to Force Majeure only if that agent, sub-Provider or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.

- 54.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 54.2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

55. DISASTER RECOVERY

- 55.1 The Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.
- 55.2 Following the declaration of a Disaster in respect of any of the Services, the Provider shall:
- 55.2.1 implement the Disaster Recovery Plan;
 - 55.2.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and
 - 55.2.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
- 55.3 To the extent that the Provider complies fully with the provisions of this clause 55 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Provider), the Service Levels (if any) to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in Schedules 1 and 6 but shall be the service levels set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

56. GOVERNING LAW AND JURISDICTION

Subject to the provisions of clause 57, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that this Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

57. DISPUTE RESOLUTION

- 57.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within ten (10) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 57.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 57.3 If the dispute cannot be resolved by the Parties pursuant to clause 57.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 57.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.

- 57.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Provider and the Staff shall comply fully with the requirements of this Contract at all times.
- 57.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 57.5.1 a neutral adviser or mediator (the “Mediator”) shall be appointed by the Centre for Effective Dispute Resolution.
 - 57.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him 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 the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
 - 57.5.3 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.
 - 57.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - 57.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.
 - 57.5.6 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.

58. SUCCESSORS

- 58.1 This Contract will be binding on and will be for the benefit of the Council and Provider and their respective successors and permitted transferees and assigns.
- 58.2 If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on the other Party’s decision whether or not to contract or continue to contract substantially on the terms of this Contract, the Party aware of the conflict must immediately declare it to the other. The other Party may then take whatever action under this Contract as it deems necessary.

59. DOCUMENTATION GOVERNANCE AND ACCESS

- 59.1 The Provider shall keep and maintain for the period of twelve (12) years starting from the last day of this contract, full and accurate records of this Contract, including:

- 59.1.1 the Services supplied under it;
 - 59.1.2 all expenditure reimbursed by the Council;
 - 59.1.3 all payments and reimbursed payments made by the Council.
- 59.2 The Provider shall on request afford the Council or the Council's representatives, such access to all relevant records as may be requested by the Council in connection with this Contract over this twelve (12) year period. These records include but are not exclusive to, all policies, procedures and the following:
- 59.2.1 Care and Support Plan - The plan produced by the Case Manager that gives particulars of the intended outcomes for the Service User meeting including his or her needs which are required to be delivered;
 - 59.2.2 Health and Medication Records.
- 59.3 During the Contract Period the Council's Contract Manager may require other documentation to be made available.

60. CONTINUOUS IMPROVEMENT

- 60.1 The Provider shall have an ongoing obligation during the Contract Period to identify new or potential improvements to the Services in accordance with clause 6.
- 60.2 As part of its obligations the Provider shall identify and report to the Contract Manager from time to time and at least during each contract review:
 - 60.2.1 the adoption of new or emerging technological or product / service developments that can be used to improve this Contract offering and deliver increased benefits to the Service Users, the Provider and the Council.
 - 60.2.2 improvements to the Providers service offering in areas such as people skills, support, knowledge, quality, Service User satisfaction and contract performance, in areas such as leadership and management.
 - 60.2.3 environmental impact considerations, such as biodegradability, sourcing from local businesses, improved travel arrangements, improved software media, community involvement.
- 60.3 The provisions of clause 60.2 provides an indicative list and not an exhaustive list.
- 60.4 In undertaking the Services, the Provider shall be under a duty to secure demonstrable, measurable continuous improvement (having regard to efficiency, economy and effectiveness) in the achievement of the delivery of its contractual obligations and of the Services as a whole, including specifically the cost of the Services, the time, cost quality and health and safety standards of the various processes involved in delivery of the Services and generally to provide best value outcomes to the Council as are set out in the Specification AND FURTHER the Provider shall co-operate with the Council and others to the extent required so that the Council can keep under review the performance required under this Agreement and this Clause in particular.

61. EXIT PROCESS

- 61.1 During the Contract Period a new working relationship may be discussed with the market. During the lifetime of this contract, information and process development will need the cooperation of the Provider; this will not be unreasonably withheld.
- 61.2 It is important that the eventual exit from this contract is considered, either by renewal with another supplier, requirement discontinuation, or contract termination. For each option, the Provider will be required to confirm how it will address the situation, as necessary. The Provider accepts a contractual commitment to undertake and fully cooperate with the Council and other Contracting Authorities to ensure a timely and accurate contract changeover.
- 61.3 If the Provider exits this Contract, for any reason, all details relating to the Service User, supported by the Council funding, should be delivered to the Council within seven (7) Working Days of the Expiry Date.
- 61.4 The Provider is to engage actively with the Council to ensure that a transition to a new service provider can be completed with minimal disruption and emotional impact to the Service User.
- 61.5 A full inventory of the Service User's personal provisions is to be completed with the Council's Contract Manager.
- 61.6 Time and resources will be made available by the Provider to ensure that all queries are resolved within seven (7) Working Days of Contract termination.

62. THE CARE ACT 2014

- 62.1 Following any amendments to the Care Act 2014, the Parties agree that this Contract will be deemed automatically varied where those provisions come into force and as a result the Council shall issue a Change request notice in accordance with Schedule 5.
- 62.2 The Change request notice will set out the changes and the extent to which they impact on this Contract including where relevant, adjustments to be made to the Contract Price (if any) to reflect the changes.
- 62.3 Subsequent to the provisions of clause 62.1 and its implementation the Council shall notify to the Provider in the Change request notice the change in the quality criteria and mandatory clauses required to be added (where applicable) to this Contract

63. TEMPORARY ABSENCE FROM THE HOME

- 63.1 This Contract may be reviewed where a Service User becomes absent from the Home for a continuous period of more than forty-two (42) days in the case of hospitalisation or twenty-one (21) days in the case of other absences or in the case of any such other period as agreed between the Provider and the Case Manager.

- 63.2 For placements over the periods stated in 50.3, the Contract Price shall be reduced by 25%, until the Service User returns to the Home or the placement is terminated.
- 63.3 The Parties agree that they shall not re-let or otherwise use the Service User's allocated room during any absence without prior consent of the Service User, his or her representative.
- 63.4 For Service User's that have been hospitalised, should there be no change in need the home needs to make arrangements to accept that Service User the same day they are assessed for discharge.

64. REASSESSMENT

- 64.1 On reassessment, any Service User that is identified by the Council as experiencing a significantly increased level of need, (as specified in the Specification, Annex A - Levels of Need), within a Care Home either with or without Nursing:
- 64.1.1 Can be accommodated within their existing home, with a revised Contract Price, or exceptional payment process for additional support, determined by the Council and agreed with the Provider.
- 64.1.2 Where the needs cannot be accommodated within the current Home an alternative Home will be sourced using the Council's purchasing protocols in place at that time.

65. DEATH OF DISCHARGE OF A SERVICE USER

- 65.1 The Provider shall notify the Case Manager within 24 hours when a Service User either dies or discharges himself or herself from the Home
- 65.2 When a Service User dies, Contract shall come to an end two (2) days after his or her death (counting from the first day after the day of death) or any other period agreed between the Provider and the Contract Manager.
- 65.3 The Provider shall contact the Service User's next of kin or where appropriate the local District or Borough Council to make necessary arrangements, including a funeral, upon the death of a Service User.
- 65.4 In the event a Service User discharges himself or herself from the Home, the date of discharge shall be deemed as the start of the period of notice from the Council as stated in clause 50.3 for a Short Term placement or 50.4 for a Longer Term placement

66. STATUORY OBLIGATIONS

- 66.1 Both Parties shall comply with all the relevant current and future legislation applicable to the provision of the Service.

67. HANDLING OF SERVICE USER'S MONEY

- 67.1 The Provider shall ensure that they shall inform the Case Manager if a Service User's capacity to manage his/her affairs diminishes.

- 67.2 As soon as the Provider becomes aware that a Service User has or acquires substantial financial or property assets, the Provider shall immediately inform the Case Manager in writing.
- 67.3 The Provider shall ensure that the Personal Expenses Allowance (i.e. the Service User's personal income) shall not be used to supplement the t Contract Price that the Council pays the Provider for meeting the Service User's assessed care needs.
- 67.4 Any money handled by Staff on the Service User's behalf must be fully accounted for at all times and shall be held either in individual accounts for each Service User or in one account which is separate from the Provider business account/s and that all the Service User's records and receipts must be held in the Service User's personal record.
- 67.5 In the event that the Provider is administering finance on behalf of Service Users, the Provider shall ensure that any interest earned is given to the Service User within 30 days.
- 67.6 All essential toiletries shall be made available to all Service Users and shall ensure that should a Service User wish to purchase additional toiletries of their choice they should be allowed to do so.
- 67.7 The Provider must keep a documented record of all items which are purchased on behalf of the Service Users and shall allow the Council access to inspect at any time the Service User's expenditure and any income received by the Provider from the Service User in accordance with the Contract. Such records shall be retained for inspection by the Council during the Contract Period and following the end of the Contract for periods specified in the main Contract.
- 67.8 The Provider will ensure that there are processes and procedures in place to ensure that its staff do not profit from any Service User's vulnerability. Such procedures shall be produced to the Council on request and shall be in place for the duration of the Contract Period.

68. PROBITY

- 68.1 The Provider shall ensure that they have in place a written policy relating to probity and this should also form part of the terms and conditions of staff employed, including any agency staff and Sub-contractors.
- 68.2 All Staff shall not agree to be an executor of a Service User's will.
- 68.3 Staff or relatives of staff shall not accept gifts or agree to be a beneficiary of a Service User's estate and shall, if they are named as a beneficiary, report in writing to the Registered Manager and to the Service User's Case Manager immediately.
- 68.4 Staff and/or the Provider making any purchases on behalf of the Service Users shall not benefit from the purchases and shall ensure that any purchases are recorded as outlined in Clause 69.

69. BUSINESS CONTINUITY

- 69.1 In accordance with the Civil Contingencies Act 2004 the Council is required to continue providing essential services such as housing support at all times

regardless of emergencies or business interruptions. The Provider shall also have their own resilient contingency arrangements in place.

69.2 The Provider shall assist the Council in meeting these duties by:

69.2.1 developing and adopting a Business Continuity Plan which complies with the Civil Contingencies Act 2004;

69.2.2 operating the Business Continuity Plan for the duration of this Contract;

69.2.3 providing the Council with a copy of any such plan upon request

69.3 The Provider acknowledges that its obligations under this Clause 70 shall include regular risk assessments and business impact analysis in relation to this Contract to be carried out on an annual basis or more frequently if the Council requests that additional testing be undertaken.

70. CLOSURE OF THE HOME

70.1 The Provider agrees that they shall provide the Contract Manager with three months' notice in the event of a planned closure of the Home, or as soon as it is known that there will be an actual or potential emergency closure of the Home.

70.2 Any costs incurred by the Council as a result of the closure of the Home will be reclaimed by the Council as set out in clause 9 of the Terms and Conditions.

