

LONDON BOROUGH OF ENFIELD

DIRECTORATE OF
ADULT SOCIAL CARE

TERMS AND CONDITIONS –

CARE AND SUPPORT SERVICES FOR
PEOPLE WITH LEARNING DISABILITIES

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THE CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

Absence	means any period where the Care Service is not provided to the Service User at the Premises which shall for the avoidance of doubt comprise any periods of planned absence exceeding one (1) week or unplanned absence;
Agreement	means the agreement between the Authority and the Service Provider comprising the Service Instruction, Care and Support Plan, Memorandum of Payment, these Conditions and any Schedules attached hereto. For the avoidance of doubt all other terms, conditions or warranties other than any terms, conditions or warranties implied by law in favour of the Authority are excluded from the agreement between the Authority and the Service Provider unless expressly accepted in writing by the Authorised Officer;
Agreement Standard	means such standard as complies in each and every respect with all relevant provisions of the Agreement;
Agreement Period	means the period starting from the Commencement Date and continuing until termination of this Agreement in accordance with its terms;
Authorised Officer	means a person designated as such by the Authority to act as the representative of the Authority for all purposes connected with the Agreement, including any authorised representative of such person;
Authority	means the Mayor and Burgesses of the London Borough of Enfield, PO Box 60, Civic Centre, Silver Street, Enfield, London EN1 3XA;
Business Continuity Plan	means a plan setting out the detailed procedures and processes to be followed and actions to be taken by the Service Provider where there is a failure or disruption to the Care Services;
Care Manager	means a person designated as such by the Service Provider from time to time as notified in

writing to the Authority to act as the duly authorised representative of the Service Provider for all purposes connected with the Agreement, including any authorised representative of such person. Such individual shall be the Registered Services Manager as required by the CQC;

Care Plan Co-ordinator means the Authority's Delegate with responsibility for compiling and progressing the Care and Support Plan and acting as the Authority's key worker for the Service User;

CQC means the Care Quality Commission;

Care Quality Commission Guidance means all guidance produced by the Care Quality Commission relating to the Care Services including but not limited to the guidance referred to within Appendix B to this Agreement and any such revisions, amendments, supplementary or subsequent guidance issued by the Care Quality Commission from time to time;

Care Review means an assessment of the Service User's needs by the Care Plan Co-ordinator or Delegate to assess whether the Service User is receiving the outcomes intended for that individual as described in the Service User's Care and Support Plan;

Care Services Means the provision of social care services including but not limited to care services, welfare services, support services, for which a Service User has been assessed for eligibility and funded by the Authority's Social Services function. The Care Services to be delivered by the Service Provider are identified in a Service User's Care and Support Plan;

Commencement Date means the commencement date set out in the Service Instruction;

Complaints Manager means a person designated as such by the Authority from time to time as notified in writing to the Service Provider with responsibility for recording any complaints relating to the Services, including any authorised representative of such person;

Conditions means these terms and conditions including any appendices attached hereto and any modification thereof duly made in accordance with their provisions;

Confidential Information	<p>means information, data and material of any nature which either Party may receive or obtain in connection with the procurement negotiation and operation of the Agreement and:</p> <ul style="list-style-type: none"> (a) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998); (b) the release of which is likely to prejudice the commercial interests of the Authority or the Service Provider respectively; or (c) which is a trade secret;
Continuing Care Funding	<p>means NHS Continuing Health Care funding from the NHS where eligibility criteria has been met;</p>
Contract Monitoring Officer	<p>means the person notified to the Service Provider and designated as such by the Authority from time to time with responsibility for contract review and quality assurance, including any authorised representative of such person;</p>
Contributions	<p>‘Authority’s Contribution’ means the Fee payable by the Authority in relation to the Care Services for the Service User which shall include the Service User’s Contribution;</p> <p>‘Service User’s Contribution’ – means the contribution paid by the Service User to the Authority for the Care Service following the Service User’s financial assessment.</p>
Delegate	<p>includes the Authority’s:</p> <ul style="list-style-type: none"> (1) Care Plan Co-coordinator and/or (2) Broker and/or (3) Service Manager and/or (4) Contract Monitoring Officer; (5) Authorised Officer <p>Or anyone else appointed by the Director and notified to the Service Provider in writing;</p>
Director	<p>means the Director of Adult Social Care, London Borough of Enfield, for the time being, of the Authority or the successor in title to that post in the event of a change in the organisation of the Authority;</p>
Duly Authorised	<p>means such person/s who are entitled to sign</p>

Signatory	the Agreement on behalf of the Authority and the Service Provider;
Enfield Quality Checkers	means the Authority's selected volunteers who are current or former Adult Social care service users or carers of service users. All Quality Checker volunteers are residents of Enfield. The Quality Checkers visit sites where Care Services are delivered and give their independent opinion on the quality of Care Services provided
Exempt Information	means exempt information within the meaning of the Secretary of State's Directions issued in accordance with the Local Government and Public Involvement in Health Act 2007 currently 'Directions about the Arrangements to be made by Relevant Bodies in respect of Local Involvement Networks 2008' and any revisions, amendments or further Directions issued by the Secretary of State from time to time which describes exempt information for the purposes of the Public Involvement in Health Act 2007.
Fees	means the monies payable by the Authority to the Service Provider for the provision of the Care Services as set out in the Service Instruction. In the absence of agreement by the Parties to the contrary, the fees shall be inclusive of all taxes, duties, expenses and disbursements save for VAT (if applicable) and shall include the costs of all equipment and materials supplied by the Service Provider and all traveling expenses involved;
Good Industry Practice	means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Care Services under the same or similar circumstances as those applicable to the Agreement and which are in accordance with any codes of practice published by relevant trade associations;
Guarantor	means the duly authorised Guarantor/Third Party named in the Service Instruction;
ASC	means the Adult Social Care department of the Authority or any such successor department notified by the Authority to the Service Provider;

Individual Support Plan	means the Support Plan developed by the Service Provider as part of providing Care Services to the Service User;
Loss	means losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and/or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss and the reasonable cost to the Authority for the time spent by its officers in terminating the Agreement and in making alternative arrangements for the provision of the Care Services;
Memorandum of Payments	means the Memorandum of Payments attached to the Service Instruction as Schedule B;
National Health Service or NHS	means the publicly funded health service which the Government's Department of Health has responsibility for operating;
Personal Data	means personal data as defined by the Data Protection Act 1998;
Premises	means the location where the Service Provider will provide Care Services to the Service User, in accordance with this Agreement;
Broker	means a person designated as such by the Authority from time to time as notified in writing to the Service Provider with responsibility for issuing Service Instructions and for placing a Service User with the Service Provider, including any authorised representative of such person;
Safeguarding Adults	means the Authority's policies and procedures to prevent a Service User at risk experiencing abuse, neglect and exploitation
SAB	means the Enfield Safeguarding Adults Board, or such successor body or organisation notified to the Service Provider by the Authority, being a multi-agency partnership concerned with the safeguarding of at risk adults in the Authority's area.;
Serious Accident	means an accident which results in emergency services being called to the Premises;

Service Instruction	means the document issued by the Authority to the Service Provider setting out its requirements relating to the delivery of Care Services comprising the Care and Support Plan and Memorandum of Payments;
Service Manager	means the person notified to the Service Provider and designated as such by the Authority from time to time who is the Authority's authorised budget holder, including any authorised representative of such person;
Service Provider	means the provider of Care Services to a Service User pursuant to this Agreement as detailed in the Service Instruction;
Service User	means an individual who has been assessed by the Authority and meets the Authority's Social Services eligibility criteria to receive the Care Service detailed in the Care and Support Plan and Service Instruction;
Care and Support Plan	means the Service User's Care and Support Plan created by the Authority's Social Service's function containing a description of the Care Services to be carried out by the Service Provider to the Service User attached to the Service Instruction as Schedule A;
Termination Date	means the date on which the Agreement Period terminates following the issue of a notice to terminate in accordance with the terms of this Agreement;
Third Party Top Up	means the contribution which a Guarantor has agreed to pay directly to the Service Provider for Care Services in addition to the Authority's Contribution and Service User's Contribution.
Trial Period	means the period stipulated in Condition 11;
Trial Period Review	means the review of Trial Period conducted in accordance with Condition 11.1 and 11.2
Working Day	means any day save for Saturday, Sunday and any bank or public holiday in England.

1.2 In the construction of this Agreement, unless the context otherwise requires:

- (a) references to legislation include all subsequent legislation amending replacing or re-enacting it and any regulation made or guidance directions or codes issued under it (where appropriate);
- (b) references to Conditions, Schedules and Appendices are to Conditions, Schedules and Appendices to this Agreement unless stated otherwise;
- (c) references to the masculine include feminine and references to the singular include the plural and vice versa;
- (d) the index and headings are for ease of reference and do not affect its interpretation;
- (e) references to any party include their successors and assignees;
- (f) terms defined in any relevant guidance have the same meaning in this Agreement except where the definitions conflict when the meaning in this Agreement shall take precedence; and
- (g) references to organisations include all bodies, persons, companies, trusts and unincorporated associations.
- (h) In these terms and conditions “staff” and “employees” shall have the same meaning.

2. APPOINTMENT

2.1 The Authority appoints the Service Provider to provide the Care Services pursuant to a Service Instruction (and any modifications thereof authorised under condition 21):

2.1.1 promptly (and in any event within any time targets as may be set out in the Care and Support Plan) and in a professional and courteous manner so as to reflect and promote the image of the Authority; and

2.1.2 strictly in accordance with the Care and Support Plan and all provisions of the Agreement to the Agreement Standard and in accordance with all other instructions issued by the Authority; and

2.1.3 in accordance with all applicable UK and European laws and regulations and Good Industry Practice to the entire satisfaction of the Authorised Officer; and

2.1.4 in accordance with the policies (including, when on any premises of the Authority or on any other premises where it works alongside the Authority’s staff, any racial discrimination and equal opportunities policies), rules, procedures and the quality standards of the Authority as amended from time to time; and

- 2.1.5 in accordance with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, the Care Quality Commission (Registration) Regulations 2009 and the Care Quality Commissions Guidance; and
- 2.1.6 in accordance with any central government White Papers (Command Papers) or Green Papers relating to the Care Services.
- 2.2 The Service Provider accepts the terms of appointment as provided in Condition 2 in consideration of the payment of the Fees
- 2.3 These Conditions set out all the terms and conditions regarding the provision of the Care Services and supersede any representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered into before the Commencement Date.
- 2.4 The Authority reserves the right to terminate a Service Instruction placed with the Service Provider where the Service Provider seeks to unilaterally impose terms in relation to the Care Services other than those contained within these Conditions or that are agreed between the Authority and the Service Provider.
- 2.5 The Authority shall be entitled at any time during the term of this Agreement to order Care Services from other service providers.

3 AUTHORISED OFFICER

- 3.1 The Authorised Officer shall be the person specified in the Service Instruction or such other person nominated in writing by the Authority from time to time to act in the name of the Authority for the purposes of the Agreement.
- 3.2 Before issuing any instructions to the Service Provider in accordance with this Agreement the Authorised Officer shall consult with the Service Provider.
- 3.3 The Authorised Officer shall have power to issue reasonable instructions to the Service Provider requiring compliance with this Agreement and the Service Provider shall comply with such instructions.
- 3.4 From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. Where such appointment is made or terminated, the Authorised Officer shall give written notice thereof to the Service Provider and until such notice is received the Service Provider shall be under no obligation to comply with any instruction issued by such representative.

4. SERVICE PROVIDER'S OBLIGATIONS

- 4.1 The Service Provider shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of the Care Services to the Agreement Standard.
- 4.2 To the extent that the Care and Support Plan or Service Instruction includes the date, format and method of delivery of the Care Services, the Service Provider will abide by the same.
- 4.3 Time shall be of the essence with regard to the obligations of the Service Provider under the Agreement.
- 4.4 The Authority and the Service Provider will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the Authority to derive the full benefit of the Agreement. At all times in the performance of the Care Services, the Service Provider will co-operate fully with any other contractors appointed by the Authority in connection with other services at the Premises.
- 4.5 Any request by either Party to amend the scope or execution of the Care Services shall be dealt with by the Parties in accordance with Condition 21.
- 4.6 In addition to any more specific obligations imposed by the terms of the Agreement, it shall be the duty of the Service Provider to notify the Authorised Officer of all significant changes to staffing, rates of pay or conditions of employment, or hours of work or other technological changes or changes to the Care Service delivery at least one month prior to the implementation of any such revised arrangements.
- 4.7 The Service Provider shall provide information related to the performance of the Care Services as may be reasonably required by the Authority in a format, medium and at times specified by the Authority.
- 4.8 In providing the Care Services, the Service Provider shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Authority's computer systems.
- 4.9 If at any time the Service Provider becomes aware of any act or omission or any proposed act or omission by the Authority or by any member, official or employee of the Authority which prevents or hinders or may prevent or hinder the Service Provider from providing the Care Services in accordance with the Agreement then the Service Provider shall immediately inform the Authorised Officer of that fact. For the avoidance of doubt, the Service Provider's compliance with this Condition shall not in any way relieve the Service Provider of any of its obligations under the Agreement.

- 4.10 The Service Provider shall comply with such policies, guidance, codes of practice and strategies of the Authority as are detailed within the Agreement and any other such policies, guidance, codes of practice and strategies as are notified to the Service Provider by the Authority during the Agreement Period. The Authority shall provide the Service Provider with copies of its policies, rules, procedures and quality standards (and shall promptly inform the Service Provider of any amendments to such documents) subject to the Authority (at its sole discretion) being of the opinion that such provision will enable the Service Provider to comply with its obligations under the Agreement.
- 4.11 The Service Provider shall set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment of its own staff whilst carrying out their duties in relation to the Agreement at the Premises as required by the Authority during the Agreement Period. This shall include, but not be limited to, disciplinary and grievance procedures. The Service Provider shall provide the Authority with copies of such policies, rules, procedures and quality standards (and shall promptly inform the Authority of any amendments to such documents). For the avoidance of doubt the Authority shall have no liability whatsoever to the Service Provider in relation to the implementation of any such policies, rules, procedures and quality standards.
- 4.12 The Service Provider will immediately notify the Authorised Officer of any actual or potential problems relating to the Service Provider's own suppliers that affects or might affect its ability to provide the Care Services.
- 4.13 The Service Provider will be responsible for providing and maintaining the Care Services to the Agreement Standard at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with the Service Instruction and the Care and Support Plan. The Service Provider must, at all times, have in place contingency plans and arrangements to ensure continuity of supply in accordance with Conditions 4.17 and 4.18.
- 4.14 The Service Provider will immediately notify the Authorised Officer of any actual or potential industrial action, including strike action, whether such action be of his own staff or others, that affects or might affect his ability at any time to provide the Care Services.
- 4.15 The Service Provider will be responsible for providing and maintaining the Care Services to the Agreement Standard during industrial action, at no additional cost to the Authority. The Service Provider must have in place contingency plans and arrangements which are approved by the Authority.
- 4.16 In the event of the Service Provider being unable to maintain the Care Services to the Agreement Standard, the Service Provider shall without prejudice to the remedies of the Authority permit the Authorised Officer and its staff, to have access to and unrestricted use of such machinery, equipment and materials which being the property of the Service Provider deemed necessary to maintain the Care Services by the Authorised

Officer during industrial action, or any other such occurrence, without additional charge.

- 4.17 The Service Provider shall maintain a Business Continuity Plan during the Agreement Period. The Service Provider shall immediately provide to the Authority a copy of its Business Continuity Plan upon request at any time. In the event of a major incident (as determined by the Authority from time to time) the Service Provider shall perform the Care Services in accordance with its Business Continuity Plan
- 4.18 The Service Provider shall ensure that it is able to implement the Business Continuity Plan at any time in accordance with its terms.
- 4.19 The Service Provider shall test the Business Continuity Plan on a regular basis (and in any event not less than once in every twelve (12) month period). The Authority may require the Service Provider to conduct additional tests of the Business Continuity Plan where the Authority considers it necessary, including where there has been any change to the Care Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan. The Authority reserves the right to attend any Business Continuity Plan test undertaken by the Service Provider.
- 4.20 The Service Provider shall:
- 4.20.1 notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Care Services; and
 - 4.20.2 prior to the Commencement Date, obtain and at all times maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Care Services.
- 4.21 The Service Provider will deliver a structured yet flexible service, able to promptly adjust to changes in individual circumstances and needs so as to enhance and maintain the quality of life of the individual Service User.
- 4.22 The Service Provider will maintain individual records relating to Service User's and participate in and record the outcome of reviews and shall at all times comply and ensure that its employees and contractors comply with the provisions of the Data Protection Legislation.
- 4.23 During the Agreement Period, the Service Provider will deliver the Care Services, and any authorised changes within the Care and Support Plan in accordance with Condition 2 in a safe, proper, skillful and caring manner to the satisfaction of the Authority's Director of Adult Social Care or their Delegate and shall comply with any legislation and other statutory regulations relevant to provision of the Care Services.
- 4.24 The Service Provider will at all times during the Agreement Period, including any Trial Period thereof, notify the Authority of any significant changes in the Service User's personal circumstances. This includes any

improvement or deterioration in the Service User's circumstances or care needs or if they leave the Premises either permanently or temporarily.

- 4.25 The Service Provider must inform the Authority of any significant change to their organisation, establishment, ownership, management of the Care Services, or change of address. This includes any cessation of or significant disruption to the service being provided.
- 4.26 In the event of a Service User's Absence from the Premises or the hospitalisation or the death of a Service User ('Event'), the Service Provider will notify the Authorised Officer within twenty four (24) hours of the Absence or Event or where the Absence or Event took place on a weekend or bank Holiday, on the first Working Day following a weekend or Bank Holiday. The Service Provider will within twenty four (24) hours of the Absence or Event occurring send to the Authorised Officer in writing the details of the Absence or Event to ensure that the matter is dealt with and resolved quickly, safely and efficiently.
- 4.27 The Service Provider and Authority shall in good faith agree a reduced Fee for any extended period of Absence or hospitalisation, as detailed within the Memorandum of Payment. Where a reduced Fee cannot be agreed between the parties, the Authority reserves the right to terminate the Agreement with immediate effect.
- 4.28 The Service Provider will use its best endeavours to keep the Service User at the Premises when they are ill including but not limited to procuring suitable support provided by the National Health Service save where the Service User wishes to be placed elsewhere or the Service User's General Practitioner advises otherwise. Where the Service Provider reasonably feels it cannot provide the necessary level of care and support needed it must immediately inform the Service User's General Practitioner and the Authority's Delegate.
- 4.29 The Service Provider will at all times ensure that the Service User is encouraged to exercise choice and control over the support they receive.
- 4.30 The Service Provider must provide the Care and Support Services within the following principles:
- 4.30.1 Equity – people with similar needs should receive the same standard of care, regardless of where they live in the Borough.
 - 4.30.2 Accessibility – everyone should have ready access to the services they need when they need them. People with a disability, of a different race or culture, or who speak a different language should not be at a disadvantage in receiving a service.
 - 4.30.3 Effectiveness – from the perspective of the Service User, the service should meet their need in the best possible way.
 - 4.30.4 Efficiency – the service should meet local needs and be flexible enough to cope with any change.

4.30.5 Responsiveness – within the framework of the Eligibility Criteria the service should reflect what the Service User’s needs.

4.31 Condition 4.30 will be subject to review and revision by the Authority during the term of the Agreement. All revisions will be made available to the Service Provider and will form part of the Agreement

5. BEST VALUE SERVICES

5.1 The Service Provider shall maintain an effective and economical programme for quality, planned and developed in conjunction with any other functions of the Service Provider necessary to satisfy the requirements of the Agreement. The Service Provider acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Authority is required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Service Provider shall assist the Authority to discharge this duty where possible and agrees to negotiate in good faith (acting reasonably) any changes to this Agreement in order for the Authority to achieve best value.

5.2 The Service Provider shall provide the Care Services under the Agreement in a cost effective, efficient, timely, reliable, responsive, consistent, courteous manner that gives effect to the Authority’s policies.

5.3 The Service Provider will provide periodical and regular inspections and reviews of performance standards as required by the Authority and will provide suggested improvements where requested to do so. The Service Provider will submit a financial cost breakdown in a format requested by the Authority to assist in the demonstration of Best value when requested by the Authority. The Authority will treat this information in the strictest confidence and only use it for the purpose it was asked for. The Authority agrees to tell the Service Provider of any concerns which may arise from it.

5.4 The parties agree to work together in an open and trusting manner with a view to ensuring best value is achieved and a fair price is paid for the any Care Services provided.

6. SAFEGUARDING ADULTS

6.1 The Service Provider must comply with London Multi Agency Safeguarding Policy & Procedures to safeguard adults from abuse including any updates, modifications or revisions thereto. A full version of the document may be located at the following web page:

<https://londonadass.org.uk/safeguarding/review-of-the-pan-london-policy-and-procedures/>

- 6.3 The Service Provider must comply with any other procedures issued to the Service Provider during the Agreement Period by the Authority for Safeguarding Adults.
- 6.4 The Service Provider will ensure that all staff are appropriately trained to respond effectively, efficiently and professionally to Safeguarding Adults concerns and incidents. This will include an understanding of how to prevent abuse.
- 6.5 The Service Provider shall operate in accordance with the requirements of the Authority and the London multi agency procedures to operate a safer recruitment process in relation to both checking the suitability of potential staff and reporting and managing concerns as necessary.
- 6.6 The Service Provider must comply with the Enfield Safeguarding Adults Development and Training Guidance Tool (recommended minimum requirements) approved by the SAB, and any subsequent changes, updates, modifications or amendments to such guidance and any compulsory training that is identified by the Authority or the SAB from time to time during the Agreement Period. The Enfield Safeguarding Adults Development and Training Guidance Tool may be found via the following webpage link
- <http://enfield.learningpool.com/>
- A registration to access the training tool maybe requested from Authority's Adult Social Care Training and Development Team support@learningpool.com or 0845 543 6033.
- 6.7 The Service Provider will ensure that Safeguarding Adults is incorporated into the Service Provider's organisational learning processes including but not limited to individual and group supervision sessions, organisational learning events.
- 6.8 The Service Provider shall co-operate with any investigation carried out in relation to Safeguarding Adults.
- 6.9 The Authority may, at any time require the removal of a member of the Service Provider's staff from duties under this Agreement, either as part of a safeguarding adult's investigation, or if there are concerns about the conduct of that individual(s) relating to safeguarding adults.

7. TERMINATION

- 7.1 The Authority may immediately terminate the Agreement (in whole or in part) by serving written notice on the Service Provider in any of the following circumstances:-
- 7.1.1 where there is a material failure (in whole or in part) by the Service Provider to perform any obligation of the Service Provider under this Agreement or the Service Provider commits a fundamental breach of any term of this Agreement or where the Authority has

issued 3 Default Notices in any rolling 12 month period or the Authority exercises its right to terminate the Agreement pursuant to Condition 42;

- 7.1.2 the Service Provider fails (in whole or in part) to perform any of the Care Services or any material obligation of the Service Provider under this Agreement;
- 7.1.3 the Service Provider becomes Insolvent or otherwise ceases to be capable of providing the Care Services;
- 7.1.4 the Service Provider is in default of any duty of care or any fiduciary or statutory duty owed to the Authority or agent of the Authority;
- 7.1.5 there is a change of ownership or control of the Service Provider which, in the reasonable opinion of the Authority will have a material impact on the provision of the Care Services or the image of the Authority;
- 7.1.6 the Service Provider purports to assign, transfer, subcontract or novate the Agreement in breach of Condition 10;
- 7.1.7 the Service Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Agreement, Service Instruction or any other contract with the Authority, or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement, Service Instruction or any other contract with the Authority; or similar acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Service Provider);
- 7.1.8 committed any offence under the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation or given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
- 7.1.9 the Service Provider ceases or threatens to cease to carry on its business;
- 7.1.10 the Service Provider suffering an execution to be levied on the Service Provider's goods or if the Service Provider consists of a partnership less than three individuals any such individual dying, entering into a composition, or arrangement for the benefit of his creditors, or having a receiving order in bankruptcy made against him;

- 7.1.11 if any of the information provided by the Provider contained any document submitted to the Authority in connection with this Agreement shall prove to be materially untrue or incorrect;
- 7.1.12 if one or more of the Service Provider's directors involved in any way in connection with this Agreement shall be convicted of a criminal offence other than an offence under the Road Traffic Acts;
- 7.1.13 if the Service Provider does or permits to be done anything which would make the insurance cover required to be taken out pursuant to Condition 24 hereof void or voidable;
- 7.1.14 if the Service Provider fails to comply with the registration and inspection requirements detailed within Condition 36 hereof;
- 7.1.15 the Service Provider changes the Service Provider's composition or staffing in a way which, in the reasonable opinion of the Authority, seriously affects the ability of the Service Provider to perform its obligations under this Agreement;
- 7.1.16 the Service Provider experiences, in the opinion of the Authorised Officer (whose opinion shall be final and binding), an irreconcilable conflict of interest between the interests of the Authority and any other client of the Service Provider;
- 7.1.17 the Service Provider's core business fundamentally changes, which renders the continuity of the Agreement impractical or not desirable on the Authority's part;
- 7.1.18 there is a finding of discrimination pursuant to Condition 28 or the Provider fails to comply with Condition 16;
- 7.1.19 there is a breach of Health & Safety under Condition 25 or the Authority considers there is a serious risk to the Service User's health, wellbeing or safeguarding;
- 7.1.20 where the Service Provider attempts to unilaterally impose terms other than those contained within these Conditions under Condition 2.4;
- 7.1.21 where absence exceeds eight (8) weeks and the Authority decides that the Care Service is not to continue
- 7.1.22 where the Service Provider has failed to notify the Authority of the Hospitalisation of a Service User;
- 7.1.23 where Continuing Care Funding will commence from the Local Clinical Commissioning Group;
- 7.1.24 where the Authority do not agree the Service Provider's charges for any additional Care Services;

- 7.1.25 if the Authority considers that the Service Provider is not to resume provision of some or all of the suspended Care Service(s) suspended pursuant to a Suspension Notice;
 - 7.1.26 where the Fee is not agreed in accordance with Condition 4.27;
 - 7.1.27 where the Authority so decides at any time during the Trial Period or following a Trial Period Review pursuant to Condition 11;
 - 7.1.28 upon the death of the Service User or where the Service User opts to take on self directed care;
 - 7.1.29 if the Service User is unwell or the Service User's well-being will be affected by continuing to receive Care Services under this Agreement as determined by the Authority's Director or Care Quality Commission Inspection and there will be full accounting between the Parties;
- 7.2 In the event of termination in accordance with Condition 7.1 the Authority may at its option and without prejudice to any of its remedies under this Agreement and without prejudice to any rights of action which shall accrue or shall have already accrued to the Authority do any or all of the following:
- 7.2.1 suspend payment to the Service Provider;
 - 7.2.2 retain any amount due to the Service Provider howsoever arising from the Authority;
 - 7.2.3 Without determining the whole of the Agreement determine the Agreement, in respect of any part of the Care Services only by notice in writing having immediate effect and thereafter itself provide or procure a third party to provide such part of the Care Services;
 - 7.2.4 determine the Agreement by notice in writing having immediate effect;
- 7.3 In the event of the termination of the Agreement or any part thereof in accordance with Condition 7.1.1 to 7.1.25:
- 7.3.1 The Service Provider shall unless requested otherwise by the Authorised Officer forthwith cease to perform any of the Care Service(s) (or part thereof as directed by the Authority); and
 - 7.3.2 The Service Provider shall fully and promptly indemnify the Authority against all loss and damage suffered by the Authority by reason of such termination and without prejudice to the generality of this condition shall fully and promptly indemnify the Authority in respect of the cost of causing to be performed such Care Services as would have been performed by the Service Provider to the extent that such cost exceeds such sums as would have been lawfully payable to the

Service Provider for performing such Care Services for period of 4 weeks following termination. The Authority shall be at liberty to have such Care Services performed by any persons (whether or not servants of the Authority) as the Authority shall in its absolute discretion think fit and shall be under no obligation to employ the least expensive method of having such Care Services performed notwithstanding the Authority's duty to mitigate its own loss.

- 7.4 The rights of the Authority under this condition are in addition and without prejudice to any other right the Authority may have to claim the amount of any Loss or damage suffered by the Authority on account of the acts or omissions of the Service Provider.
- 7.5 Termination or expiration of the Agreement shall be without prejudice to the rights and remedies of the Service Provider and the Authority accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either such party to recover any amount outstanding at the termination or expiration. For the avoidance of doubt, termination of this Agreement may result in the termination of all Service Instructions issued to the Service Provider,
- 7.6 The Authority shall be entitled to recover from the Service Provider the amount of any Loss resulting from termination under Condition 7.1.1 - 7.1.21
- 7.7 The Service Provider agrees that upon termination for any reason (under Condition 7.1 or otherwise) or expiry of the Agreement it shall not be entitled to make a claim against the Authority in relation to costs incurred by the Service Provider in providing the Care Services or costs incurred in acquiring equipment and/or materials used in the provision of the Care Services or in engaging third parties in connection with the Care Services whether or not such costs were amortised in the calculation of the Fees payable by the Authority under the Agreement. For the avoidance of doubt, the Service Provider will not be restricted from making any claim in respect of the Fees to the extent the Fee is outstanding and due and payable.
- 7.8 The Authority and the Service Provider agree that termination (in whole or in part) or expiry of the Agreement shall not affect either Party's obligations which the Agreement provides shall survive the termination or expiry of the Agreement or the continuance of the part or parts not terminated where the Agreement is terminated in part only.
- 7.9 Any termination (in whole or in part) of the Agreement will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effect.

8. BREAK

- 8.1 The Authority may terminate the Agreement by giving the Service Provider four (4) weeks written notice and such termination shall not affect the

Authority's obligation to pay for any Care Services to be performed up to the date of termination and such termination shall not affect the continued operation of the Agreement or any other Service Instruction.

8.2 The Authority and Provider may terminate the Agreement by mutual agreement. Should the Service Provider consider it necessary to seek to terminate the Agreement on the basis that:

8.2.1 such termination is required in the interests of the security or well-being of the Service User, staff or visitors to the Premises;

8.2.2 a Service User's care needs are no longer most appropriately met through the Services provided; or

8.2.3 such termination is otherwise required for the safe and proper provision of the Services,

then the Service Provider shall discuss the matter with the Authorised Officer. In the first instance, the Parties shall use all reasonable endeavours to continue the Agreement where this is in the best interests of the Service User.

8.3 Subject to Condition 8.2, where the Authorised Officer agrees that the Agreement should be terminated then the Authorised Officer shall confirm the same in writing to the Service Provider and the Agreement shall be terminated on such date as is agreed by the Parties. Upon termination the Service Provider shall support the Authority with transition arrangements in respect of the Service User, and shall facilitate an effective and efficient transfer of Care Services.

9. RECOVERY OF SUMS DUE.

9.1 Nothing contained in these Conditions entitles the Service Provider to receive payment for Care Services which have not been performed in accordance with this Agreement.

9.2 Whenever any money is due to the Authority from the Service Provider under this Agreement, it may be deducted from any sum(s) that are due to the Service Provider, or that may become due to the Service Provider under this Agreement, or any other Agreement with the Authority. Where any sums remain outstanding, such sums may be recovered as a civil debt.

10 ASSIGNMENT AND SUB-CONTRACTING

10.1 The Service Provider shall not transfer, assign or novate the Agreement the benefit or advantage of the Agreement or any part thereof without the prior written consent of the Authority (which shall not be unreasonably withheld)

- 10.2 Where the Authority has agreed to the Service Provider sub-contracting the provision of all or part of the Services under the particulars, any such sub-contracting shall be subject to the prior written consent of the Authority. The Authority shall have complete discretion as to whether or not such consent is given.
- 10.3 The Service Provider shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any sub-contractor or any other delegation of its responsibilities under this Agreement.
- 10.4 The Service Provider shall be responsible for the acts omissions and neglect of any sub-contractor (whether employed directly or indirectly by the Service provider) and the agents or employees of any such sub-contractor as fully as if they were the acts or omissions or neglect of the Service Provider.
- 10.5 The Authorised Officer may at any time (and without giving reasons) require that any particular sub-contractor employee or agent of the Service Provider shall not in the future be involved in the provision of the Care Services.

11 SERVICE PROVISION –TRIAL PERIOD

- 11.1 The first 6 weeks from the Commencement Date of the Service Instruction will be treated as a “Trial Period”. During the Trial Period the Agreement between the Service Provider and the Service User will be treated as being from week to week and renewable each week. The Authority will conduct a Trial Period Review of the Care Service at the end of the Trial Period. If the Trial Period Review has not been completed by the Authority within the specified time, the Trial Period may be extended by the Authority, until the completion of the Trial Period Review. The Authority may with the Service Provider’s agreement change the length of the Trial Period for the Service User.
- 11.2 Upon completion of the Trial Period Review under Condition 11.1, the Authority may either,
- 11.2.1 notify the Service Provider by means of the review outcome that the Trial Period has been successful and that the placement shall continue as detailed in the Service Instruction; or
 - 11.2.2 terminate the Service Instruction with immediate effect; or
 - 11.2.3 without prejudice to any other rights or remedies available to the Authority , extend the Trial Period for any such further period. Any such extension will be subject to a further Trial Period Review in accordance with Condition 11.1 and the Authority shall be entitled to exercise its rights under Condition 11.2.1 or 11.2.2 following such Trial Period Review.

- 11.3 The Service Provider will immediately cease performing any or all of the Care Services when told to do so by the Authority's Director or their Delegate. This will happen if it is felt by the Authority that the Care Service is harmful to the Service User's needs and/or wishes. Any requests from the Authority to cease providing the Services will be confirmed in writing.

12 CARE REVIEWS AND SERVICE MONITORING.

- 12.1 Reviews of the Service User's Care and Support Plan and the Care Services provided pursuant to this Agreement will involve the Authority, Service Provider and Service User and/or their representatives. Reviews will be conducted be at the end of the Trial Period in accordance with Condition 11.1 and at least annually thereafter and/or at the reasonable request of any party involved in the Care and Support Plan. The Authority's reviews will take into account information from the Service Provider and all other relevant parties.
- 12.2 The Service Provider will review and develop Individual Support Plans with the Service User on a six monthly basis and will keep the Authority informed of any change in a Service User's condition or circumstances that affects their ability to meet their needs as detailed in the Care and Support Plan. The Authority will undertake reviews as set out in the assessment and care management procedures.
- 12.3 The Service Provider will at all times cooperate with the procedures of the Authority for monitoring, evaluating and quality assurance in whatever way is reasonably requested by the Authority. The Authority or its authorised representative reserves the right to visit the Premises and or Service User at any time without giving notice and without prejudice to the Service User's right to privacy.
- 12.4 The Service Provider shall attend formal, minuted review meetings at no additional cost to the Authority (each such meeting being a "Review"), as required by the Authorised Officer, to discuss the Authority's levels of satisfaction in respect of the Care Services provided under the Agreement, to monitor and review the Service Provider's performance under the Agreement and to agree any necessary action to address areas of dissatisfaction. The Service Provider will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorised and sufficiently senior employees of both the Authority and the Service Provider together with the Service User and any other relevant attendees. The Parties shall agree a standing agenda for such Reviews. The Service Provider shall bring to this meeting such information and records as may be requested by the Authorised Officer together with such information as the Service Provider is obliged to retain for the information of the Authority under this Agreement.
- 12.5 The Service Provider shall be required to attend such other meetings relating to the Care Services provided to individual Service Users and generally relating to the provision of the Care Services as indicated in the Service Instruction and Care and Support Plan at no additional cost to the Authority.

- 12.6 The Service Provider shall manage monitor and review its performance of Care Services in accordance with the Agreement and shall provide such reports to the Authority in accordance with the Agreement or as required by the Authority from time to time.
- 12.7 Reviews will include but shall not be limited to reviews of,
- 12.7.1 strategic relevance or demand;
 - 12.7.2 quality;
 - 12.7.3 engagement with resident, relatives, carers and stakeholders;
 - 12.7.4 any performance indicators;
 - 12.7.5 value for money.

13 QUALITY ASSURANCE AND CONTROL

- 13.1 The Service Provider must comply with the requirements set out in the Specification as is notified to the Service Provider by the Authority during the Agreement Period. Without limitation to the foregoing, the Service Providers must meet the following requirements:-
- 13.1.1 promote & comply with the service standards within the HHASC Customer Services charter (contained within the Specification) and standards required in this Agreement;
 - 13.1.2 undertake customer feedback exercises that evaluate the extent to which the service standards contained within condition 13.1.1 are being met;
 - 13.1.3 review performance and change the way Care Services are developed & provided in light of ongoing customer feedback;
 - 13.1.4 comply with the Authority's monitoring framework as is notified to the Service Provider during the Agreement Period;
 - 13.1.5 complete self evaluation questionnaires accurately and in compliance with timescales notified to the Service Provider by the Authority.
 - 13.1.6 Allow access for Enfield Quality Checkers to independently monitor the Care Service provided.
- 13.2 The Authority will continue to use contract monitoring data to review and improve the way Care Services are designed, commissioned and delivered.
- 13.3 Quality assurance and control are the responsibility of the Service Provider. The Service Provider shall work with the Authority to establish and maintain a documented quality system, which demonstrates that its responsibilities to Service Users are met, and demonstrates the way in which analysis informs service development

- 13.4 The quality system shall comply with any standards issued by the Care Quality Commission regulating health and adult social care and shall cover all aspects of this Agreement.
- 13.5 The quality system shall document the standards required, the method of attaining these, and the frequency of reporting and audit procedures
- 13.6 The quality system shall have as integral a method to take account of the views of Service Users, carers and staff.
- 13.7 A summary annual report will be made available to Service Users and the Authority upon request.
- 13.8 The Authority will reserve the right to develop and introduce, in partnership with the Service Provider, further measures and incentives to ensure that Care Service quality is sustained and improved throughout the life of the Agreement.
- 13.9 The Service Provider will at all times co-operate with the procedures of the Authority for monitoring, evaluating and for quality assurance in whatever way is reasonably requested by the Authority. The Authority reserves the right to visit the Premises and/or Service User at any time without giving notice and without prejudice to the Service User's right to privacy.
- 13.10 The Service Provider will comply with all monitoring tools that are developed by the Authority and notified to the Service Provider and required by the Authority for the provision of Services.

14 PUBLIC SCRUTINY

- 14.1 The Service Provider shall comply with the requirements of the Local Government and Public Involvement in Health Act 2007 and all relevant Regulations and Directions in carrying out its contractual obligations in relation to the Care Services. Without limitation to the foregoing the Service Provider shall acknowledge that it is an independent provider as defined in the Directions about the Arrangements to be made by Relevant Bodies in respect of Local Involvement Networks 2008 and shall comply with the requirements of the Directions and those of the Local Involvement Network (Duty of Providers to Allow Entry) Regulations 2008.
- 14.2 Where the Service Provider receives a request for information from the Local Healthwatch Organisation ("the Requesting Person"), the Service Provider must respond in accordance with the requirements of this Condition 14.
- 14.3 If the Service Provider holds the information requested, and it is not Exempt information, the Service Provider must provide that information to the Requesting Person within twenty (20) Working Days following the date of receipt by the Service Provider of the request for information.
- 14.4 If the Service Provider holds the information and it is Exempt information , the Service Provider must:

- 14.4.1 If the information is Exempt Information because it is confidential and relates to a living individual (unless the individual consents to the information being disclosed) or the Exempt Information is prohibited from disclosure by any enactment or order of the court or prohibited or restricted from disclosure by any rule of common law because the information is capable of identifying a living individual, provide the information requested to the Requesting Person in a form in which the identity of the individual cannot be ascertained within twenty (20) Working Days following the date of receipt by the Service Provider of the request for information; or
- 14.4.2 In any other case, within twenty (20) Working Days following the date of receipt by the Service Provider of the request for information, notify the Requesting Person that the Service Provider is not required to disclose the information requested.
- 14.5 If the Service Provider does not hold the information, the Service Provider must notify the Requesting Person of this within twenty (20) Working Days following the date of receipt by the Service Provider of the request for information.
- 14.6 The Service Provider is only required to provide information or notify the Requesting Person where:
- 14.6.1 The request for information is made in writing; and the information requested is, in the opinion of the Requesting Person, necessary for the effective carrying on of the activities specified in section 221(2) of the Local Government and Public Involvement in Health Act 2007 (as amended by the Health and Social Care Act 2012) that the Requesting Person is to carry on pursuant to arrangements made under section 221(1) of the Act.
- 14.6.2 The Service Provider shall allow authorised representatives from the Local Healthwatch Organisation to enter the management office(s) for the purposes of viewing and observing the day-to day service operation. The requirement to allow access for the purpose of viewing and observing shall not apply where the Secretary of State has so determined under the Local Government and Public Involvement in Health Act 2007 as amended by the Health and Social Care Act 2012).

15 RECORDS AND RECORD KEEPING.

- 15.1 The Service Provider shall keep and maintain to the satisfaction of the Authority until seven years after the Agreement has terminated, such records as are required by the Authority. These records must be kept in a secure and confidential manner and the Service Provider shall on request afford the Authority or its representatives such access to and the right to make copies of those records as may be required by the Authority.

- 15.2 The Service Provider shall as soon as reasonably practicable provide the Authorised Officer with any information including statistical information and reports relating to carrying out of the Care Services as he may reasonably request or as may be specified in the Service Instruction and Care and Support Plan. The Service Provider will maintain and make available on reasonable request, a true, correct and systematic set of records regarding attendance and delivery of Care Services under the terms of this Agreement.
- 15.3 For the purpose of inspection of work the Authorised Officer and any third parties authorised by the Authority shall be permitted access to the Service Provider's premises and for the avoidance of doubt this right to inspect shall include the right to take copies of any documentation access to computer data bases and to interview staff.
- 15.4 The Service Provider shall maintain adequate procedures to reconstruct computer data swiftly in the event of site disaster or system failure. The Service Provider shall co-operate with the Authority or any third parties authorised by the Authority in any enquiry they may make to be satisfied that such arrangements are adequate and shall comply with any reasonable requirements by the Authority in connection with this.
- 15.5 The Service Provider shall provide the Authorised Officer the Authority's internal and/or external auditors any third parties authorised by the Authority and the Local Government Ombudsman with full access on demand during normal business hours to all correspondence documentation and files created in the performance of the Care Services whether stored on paper microfiche computer software or other medium.
- 15.6 The Service Provider will keep accurate books and records in relation to the provision of the Care Services in accordance with sound and prudent financial management. All such books and records shall be made available to the Authority upon request.
- 15.7 The Service Provider shall maintain proper accounting records and make such periodic detailed returns, summaries and reports as the Authorised Officer may reasonably require. This will include records of sickness periods/absence. In addition, and without prejudice to the forgoing, the Service Provider shall provide a copy of any reports submitted to the Care Quality Commission during the Agreement Period to the Authorised Officer.
- 15.8 The Service Provider shall maintain up to date and in good order such books of accounts, chits, memoranda, invoices, files, registers, details of performance measures, work progress and work outstanding and logs of correspondence received and action taken as the Authorised Officer shall direct.

16 CONFIDENTIALITY

- 16.1 In respect of any Confidential Information it may receive from the disclosing party ("the Discloser") and subject always to the remainder of

this Condition 16, the receiving party (“the Recipient”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:

16.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;

16.1.2 the provisions of this Condition 16 shall not apply to any Confidential Information which:-

- (a) is in or enters the public domain other than by breach of the Agreement or other act or omissions of the Recipient;
- (b) is obtained by a third party who is lawfully authorised to disclose such information; or
- (c) is authorised for release by the prior written consent of the Discloser; or
- (d) the disclosure of which is required to ensure the compliance of the Authority with the Freedom of Information Act 2000 (the “FOIA”), Environmental Information Regulations 2004 or as required by Law.

16.2 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement:-

16.2.1 is given only to such staff of the Service Provider and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;

16.2.2. is treated as confidential and not disclosed (without prior approval from the Authority) or used by any staff of the Service Provider or such professional advisors or consultants otherwise than for the purpose of the Agreement.

16.3 Where it is considered necessary in the opinion of the Authority, the Service Provider shall and shall ensure that its staff or such professional advisors or consultants sign a confidentiality undertaking in a form approved by the Authority before commencing work in connection with the Agreement. The Service Provider shall ensure that its staff, its professional advisors and consultants are aware of the Service Provider’s confidentiality obligations under these Conditions.

16.4 Nothing in this Condition 16 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Service Provider is the Recipient, to the Service Provider's immediate or ultimate holding company provided that the Service Provider procures that such holding company complies with this Condition 16 as if any

reference to the Service Provider in this Condition 16 were a reference to such holding company.

- 16.5 The Service Provider authorises the Authority to disclose the Confidential Information to such person(s) as may be notified to the Service Provider in writing by the Authority from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Care Services supplied in accordance with the Agreement, such exercise being commonly referred to as "benchmarking". The Authority shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Authority shall not without good reason claim that the lowest price available in the market is the realistic market price.
- 16.6 The Service Provider acknowledges that the Authority is or may be subject to the FOIA. The Service Provider notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions (the "Codes of Practice") and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time (the "EIR"). The Service Provider will act in accordance with the FOIA, the Codes of Practice and EIR (and any other applicable codes of practice or guidance notified to the Service Provider from time to time) to the extent that they apply to the Service Provider's performance under the Agreement.
- 16.7 The Service Provider agrees that:
- 16.7.1 without prejudice to the generality of Condition 16.2, the provisions of this Condition 16 are subject to the respective obligations and commitments of the Authority under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and EIR;
 - 16.7.2 subject to Condition 16.7.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority;
 - 16.7.3 where the Authority is managing a request as referred to in Condition 16.7.2, the Service Provider shall co-operate with the Authority making the request and shall respond within five (5) Working Days of any request by it for assistance in determining how to respond to a request for disclosure.
- 16.8 The Service Provider shall and shall procure that its sub-contractors shall:
- 16.8.1 transfer any request for information, as defined under section 8 of the FOIA, or EIR (as appropriate) to the Authority as soon as practicable after receipt and in any event within five (5) Working Days of receiving a request for information;

- 16.8.2 provide the Authority with a copy of all information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- 16.8.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for information within the time for compliance set out in section 10 of the FOIA or EIR (as appropriate).
- 16.9 The Authority may consult the Service Provider in relation to any request for disclosure of the Service Provider's Confidential Information in accordance with all applicable guidance.
- 16.10 This Condition 16 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. Save as aforesaid and unless otherwise expressly set out in the Agreement, this Condition 16 shall remain in force for a period of 3 years after the termination or expiry of this Agreement.
- 16.11 In the event that the Service Provider fails to comply with this Condition 16, the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 16.12 Without prejudice to any other rights or remedies the Authority has under this Agreement the Service Provider agrees to indemnify and keep indemnified the Authority against all claims and proceedings and all liability, loss, costs and expenses incurred howsoever arising as a consequence of a breach of this Condition by the Service Provider.

17. DATA PROTECTION

17.1 The following definitions shall also form part of this Contract:

Data Subject: takes the meaning given in the GDPR

Data Subject Access Request: means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

Data Protection Legislation: means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of Personal Data and privacy; (iii) all applicable Law about the processing of personal data and privacy

Data Protection Impact Assessment: means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Controller, Data Processor, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018 (subject to Royal Assent)

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-Processor: any third Party appointed to process Personal Data on behalf of the Data Controller related to this Contract

17.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Service Provider is the Data Processor.

17.3 The Parties agree that the only processing of the Personal Data the Service Provider is authorised to do is limited to the extent as is necessary for the provision of the Services under this Contract, or otherwise required by Law.

17.4 The Parties agree that the processing of the Personal Data by the Service Provider shall be in strict accordance with the provisions of this Clause 17, and in accordance with any specific instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Authority to the Service Provider)

17.5 The Service Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation

17.6 In relation to all Personal Data, the Service Provider shall:

17.6.1 comply with all applicable Data Protection Legislation in its capacity as a Data Processor

17.6.2 prepare and maintain valid and up to date records in accordance with the Data Protection Legislation covering as applicable the data controlling & processing to be performed in connection with the provision of Services.

17.6.3 provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- a) A systematic description of the envisaged processing operations and the purpose of the processing
- b) An assessment of the necessity and proportionality of the processing operations in relation to the Services
- c) An assessment of the risks to the rights and freedoms of the Data Subjects and;
- d) The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

17.6.4 ensure that its employees do not process Personal Data except in accordance with this Contract.

17.6.5 take all reasonable steps to ensure the reliability and integrity of any of its employees who have access to the Personal Data, ensuring they;

- a) are aware of and comply with the Service Provider's duties under this Clause
- b) are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-Processor
- c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract and;
- d) have undergone adequate training in the use, care, protection and handling of Personal Data

17.6.6 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Service Provider must:

- a) Notify the Authority in writing of the intended Sub-Processor and processing

- b) Obtain the written consent of the Authority
- c) Enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this Clause such that they apply to that Sub-Processor and;
- d) Provide the Authority with such information regarding the Sub-Processor as the Authority may reasonably require.

17.6.7 The Service Provider and any Sub-Processor shall:

- a) agree that the processing of any Personal Data by the Service Provider / Sub-Processor shall be in strict accordance with the provisions of this Clause 17, and in accordance with any specific instructions from the Authority (if provided).
- b) only undertake processing of Personal Data as is required in connection with the provision of its obligations under this Contract and shall not transfer any Personal Data to any country or territory outside the European Economic Area, including processing on equipment situated outside the European Economic Area;
- c) process any Personal Data in compliance with the Authority's instructions and the provisions of this Contract and immediately notify the Authority if it is unable to do so;
- d) bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of Service Provider Personnel having access to the Personal Data;
- e) deal promptly and properly with all inquiries from the Authority relating to its processing of the Personal Data and abide by the advice of the Information Commissioner's Office with regard to the processing of the Personal Data;
- f) take any and all measures as required to enable it to process the Personal Data in compliance with obligations equivalent to those imposed on the Authority by Data Protection Legislation and especially to ensure the security and integrity of all Personal Data which is under the care and control of the Service Provider and to protect against the unauthorised or unlawful processing or the accidental loss or damage of the Personal Data;

17.6.8 immediately notify the Authority if the Service Provider/Sub-Processor receives or becomes aware of:

- (a) a Data Subject Access Request (or purported Data Subject Access Request);
- (b) a request to rectify, block or erase any Personal Data
- (c) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) any legally binding request for disclosure of Personal Data by a law enforcement authority unless otherwise prohibited,
- (f) a Data Loss Event
- (g) any accidental or unauthorised access;
- (h) any complaint, investigation or request relating to the Authority's compliance with the Data Protection Legislation and
- (i) any request received directly from a data subject without responding to that request, unless it has been authorised to do so;
- (j) any complaint relating to the Service Provider's or the Authority's compliance with DPA 2018;

and at its own cost, provide the Authority with such assistance as is reasonably requested by the Authority including the provision of further information to the Authority in phases, as details become available.

17.6.9 Taking into account the nature of the processing, the Service Provider shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made as outlined above in sub-clauses (a) – (j) and shall furthermore promptly provide the Authority with:

17.7 full details and copies of the complaint, communication or request; such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

17.7.1 any Personal Data it holds in relation to a Data Subject assistance as requested by the Authority following any Data Loss Event assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office

17.7.2 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Service Provider or the Sub-Service Provider (where applicable) within fifteen (15) Business Days of such a request, the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, the Service Provider is complying with Data Protection Legislation.

17.7.3 The Service Provider shall not disclose Personal Data to any third parties other than:

to its employees and Sub-Service Provider(s) to whom such disclosure is necessary in order for the Service Provider to carry out its obligations under this Contract; or

to the extent required under a court order,

provided that disclosure under clause 17.7.3 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 17 and that the Service Provider shall give notice in writing to the Authority of any disclosure of Personal Data which either the Service Provider or a Sub-Service Provider is required to make under clause 17 immediately upon becoming aware of such a requirement.

17.7.4 The Service Provider shall ensure that it has in place Protective Measures to protect against a Data Loss Event having taken account of the:

- a) nature of the data being protected
- b) harm that might result from a Data Loss Event
- c) state of technological development; and
- d) cost of implementing any measures

17.5 The Service Provider shall ensure that it does not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- a) the Authority or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority
- b) the Data Subject has enforceable rights and effective legal remedies
- c) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred and;
- d) the Service Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data

17.6 The Service Provider shall ensure that at the written direction of the Authority (or of a Data Subject), it deletes or returns Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Service Provider is required by Law to retain that Personal Data.

17.7 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:

- a) the Authority determines that the processing is not occasional
- b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR and;
- c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of the Data Subjects

17.8 The Service Provider shall allow for audits of its Data processing activity by the Authority or the Authority's designated Data Protection Officer

17.9 The Service Provider shall designate a Data Protection Officer for the purposes of this Contract

17.10 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may, on not less than 30 Working Days' notice to the Service Provider, amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

18. PERSONNEL

18.1 The Service Provider shall be entirely responsible for the employment and conditions of service of his staff.

18.2 The Service Provider will employ sufficient employees to ensure that all of the Care Services are provided at all times and in all respects in complete conformity with the Care and Support Plan and Service Instruction. This will include, but not be limited to, the Service Provider providing a sufficient reserve of trained and competent staff to provide the Care Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Care Services, the Service Provider will employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Service Provider's expense) and carries out the Care Services with regard to

18.2.1 the task or tasks that person has to perform;

18.2.2 all relevant provisions of the Agreement, Service Instruction and the Care and Support Plan;

18.2.3 all relevant policies, rules, procedures and standards of the Authority (including any racial discrimination and equal opportunities policies);

18.2.4 the need for those working in a health service environment to observe the highest standards of safety, customer care, courtesy and consideration;

- 18.2.5 the need to keep confidential all information howsoever acquired whether relating to the Authority and its business;
- 18.2.6 provide client group focused training to staff to meet the needs of the Service User.
- 18.3 The Service Provider will, when recruiting potential employees for the purpose of the Agreement, act in accordance with the Service Instruction and Care and Support Plan.
- 18.4 The Service Provider shall ensure that employees of appropriate levels of experience and expertise perform the Care Services to achieve cost efficiency.
- 18.5 The Authority reserves the right to reject staff that they consider to be unsuitable for the duties proposed. Where staff are rejected the Service Provider shall supply alternative staff. In addition, the Authorised Officer may (but not unreasonably or vexatiously) instruct the Service Provider to remove from work in or about the provision of the Care Services any person employed by the Service Provider and the Service Provider shall immediately comply with such instruction, and shall, as soon as it is reasonably practicable thereafter provide a substitute.
- 18.6 The Service Provider shall procure that all potential staff or persons performing any of the Care Services during the Agreement Period who will or may in the course of their employment or engagement have access to Service Users, children or other vulnerable persons:
- 18.6.1 are questioned concerning their Convictions; and
- 18.6.2 obtain two satisfactory references, one of which must be from the present or most recent employer. All requests for references should say that the post is exempt from Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act (Exemptions) Order 1975; and
- 18.6.3 obtain standard and enhanced disclosures from the Disclosure and Barring Service ('DBS') in accordance with Part V of the Police Act 1997 including a check against the adults' barred list or the children's barred list, as appropriate before the Service Provider engages the potential staff or persons in the provision of the Care Services. The Service Provider shall take all necessary steps to procure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service including, without limitation, the Service Provider being registered with the Disclosure and Barring Service;
- 18.7 The Service Provider shall forward to the Authority upon request the results of the checks referred to in Conditions 18.6.1, 18.6.2 and 18.6.3 and the Service Provider shall procure that no person who is barred by the DBS, or discloses any Convictions upon being questioned about their Convictions in accordance with Condition 18.6.1, or who is found to

have any Convictions following receipt of standard and enhanced disclosures from the DBS in accordance with Condition 18.6.2, or who fails to obtain standard and enhanced disclosures from the DBS upon request by the Service Provider in accordance with Condition 18.6.2 is employed without the Authority's prior written consent.

- 18.8 The Service Provider shall procure that the Authority is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of staff receives a Conviction or whose previous Convictions become known to the Authority or whose status changes with the DBS.
- 18.9 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 18.10 The Service Provider shall monitor the level and validity of the checks under this Condition 18 for each member of staff.
- 18.11 The Service Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 18.12 The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Condition 18 have been met.
- 18.13 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users or children or vulnerable adults.
- 18.14 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users
- 18.15 The Service Provider shall procure that the Authority is kept advised at all times of any:
- 18.15.1 disciplinary incident relating to his staff involving visitors, or the Authority's staff or property; and
- 18.15.2 incidence of serious misconduct involving his staff.
- 18.16 The Service Provider shall only employ staff for the purposes of the Agreement who:

- 18.16.1 fulfil any minimum training and qualification requirements of the Authority and all training and qualification requirements that may be deemed necessary by the Authorised Officers, legislation, or any special bodies or associations;
- 18.16.2 are medically and physically fit in so far as the requirements of the work are concerned taking into account any reasonable adjustments in accordance with the Equality Act 2010.
- 18.17 As a condition of employment in the Agreement, the Service Provider and its staff:
- 18.17.1 shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Agreement assignments
- 18.17.2 shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of the Agreement assignment instructions;
- 18.17.3 shall not act in a manner reasonably likely to bring discredit upon the Authority;
- 18.17.4 shall maintain proper standards of appearance and deportment whilst at work;
- 18.17.5 shall not at any time be on duty under the influence of alcohol or drugs;
- 18.17.6 shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Agreement;
- 18.17.7 shall not misuse or abuse the Authority's property;
- 18.17.8 shall not smoke while at the Premises, except in those areas where smoking is expressly permitted.
- 18.17.9 shall not claim or hold themselves out to be employees or agents of the Authority;
- 18.17.10 shall not in any circumstances claim to be authorised to enter into any contract for on behalf of the Authority or in any way to bind the Authority to the performance, variation, release or discharge of any obligation
- 18.17.11 shall not seek any tips, money, gifts or legacies from any person while employed in the Care Services under the terms of this Service Agreement.

- 18.18 The Service Provider shall provide its staff with a form of identification that is acceptable to the Authority and which staff shall display on their clothing at all times when they are at the Premises
- 18.19 The Authority shall not be liable for loss of or damage to, the personal property of Service Provider's staff, howsoever caused.
- 18.20 It is the joint responsibility of the Service Provider and its staff to ensure that the staff supplied to carry out the Care Services have not worked excessive hours which could prejudice the standards of Care Service. In accordance with the Working Time Regulations 1998 it is the responsibility of the Service Provider to monitor the hours of staff who appear to be close to the working time limit, and make sure they do not work too many hours.

19. CONTROL AND SUPERVISION OF STAFF

- 19.1 The Service Provider must inform the Authority in writing of the name of the Care Manager who shall be responsible for managing the Care Services and has the power to act on the Service Provider's behalf for all purposes connected with this Agreement or before the Commencement Date.
- 19.2 Any notice, information, instruction or other communication given or made to the Care Manager shall be deemed to have been given or made to the Service Provider.
- 19.3 The Care Manager shall be suitably qualified in managing the Care Services.
- 19.4 The Service Provider shall forthwith give notice in writing to the Authorised Officer of the identity of the person appointed as Care Manager and of any subsequent appointment. Until notice of a subsequent appointment shall have been given the Authority shall be entitled to treat as Care Manager the person last notified to the Authorised Officer as being the Care Manager.
- 19.5 The Service Provider shall ensure that the Care Manager, or a competent deputy who is duly authorised to act on its behalf, is available to the Authority at all times when any employee of the Service Provider is on duty for the provision of the specified Care Services.
- 19.6 The Service Provider shall inform the Authorised Officer of the identity of any person authorised to act for any period as deputy for the Care Manager before the start of that period.
- 19.7 The Care Manager or his deputy shall consult with the Authorised Officer and such other of the Authority's own supervisory staff as may from time to time be specified by the Authorised Officer as often as may reasonably be necessary for the efficient provision of the Care Services in accordance with the Agreement.

- 19.8 The Service Provider shall provide a sufficient complement of supervisory staff in addition to the Care Manager, to ensure that the Service Provider's staff engaged in and about the provision of the Care Services are adequately supervised and properly perform their duties at all times.
- 19.9 The Service Provider's staff engaged in and about the provision of the Care Services shall primarily be under the control and direction of the Service Provider's own supervisory staff but nevertheless while on the Authority's premises will obey all reasonable instructions given to them by the Authority's supervisory staff in any matter occasioned by the operational needs of the relevant Service or the health, safety or welfare of anyone.
- 19.10 Any employee subcontractor or agent of the Service Provider shall disclose his identity to the Service User in advance of entering a Service User's dwelling and shall not attempt to avoid so doing. Any employee subcontractor or agent of the Service Provider who has direct contact with Service User must display an identity badge
- 19.11 The Service Provider shall not employ any staff in the direct provision of the Care Services who are below the age of sixteen.

20 COMPLAINTS AND CUSTOMER CARE

- 20.1 Where any person or organisation makes a complaint concerning the Care Services the Service Provider shall immediately investigate the complaint and shall take such corrective action as is appropriate. The Service Provider shall immediately upon receipt of a complaint notify the Authority of the nature of the complaint.
- 20.2 The Service Provider must have a written complaints procedure which is based on the Authority's Complaint Procedure (Complaints- Have your Say, available from www.enfield.gov.uk, search customer feedback and complaints. Such complaints procedure must be brought to the attention of all staff, volunteers, Service User's and carers and will form part of this Agreement.
- 20.3 The Service Provider will inform the Authority in writing of any serious disciplinary matters or complaints about staff which results, or may result in a formal warning, transfer, suspension or dismissal. The Service Provider will fully investigate complaints and disciplinary matters and will provide the Authority with written details of any inquiry and decision reached.
- 20.4 In the event of a report of alleged gross misconduct, the Service Provider must take immediate appropriate action to ensure the safety of the Service User. The Authorised Officer and the Authority's Complaints Manager must be notified within 24 hours of the Service Provider being made aware of such alleged gross misconduct. Without limitation, the following non exhaustive list provide examples constituting gross misconduct:

- 20.4.1 Sexual/physical/mental/financial abuse including: assault, verbal abuse, acts of cruelty, threatening behaviour, inappropriate physical restraint, deprivation, neglect, willful inaction, fraud and theft;
 - 20.4.2 Exploitation or harassment;
 - 20.4.3 Racist comments or discriminatory behaviour;
 - 20.4.4 Inappropriate administering of medicines.
- 20.5 The Service Provider must adhere to the "London Multi Agency Adult Safeguarding Policy & Procedures " document which Enfield has adopted and is located on the following webpage: <https://londonadass.org.uk/safeguarding/review-of-the-pan-london-policy-and-procedures/> and shall comply with any changes, updates, modifications or revisions thereto made by the Authority during the Agreement Period
- 20.6 The Service Provider must inform the Authority of any other complaint, not constituting alleged gross misconduct, within three (3) Working Days.
- 20.7 The Service Provider must provide an initial response to a formal complaint within one (1) Working Day of receiving the complaint. A full investigation and written response must be provided by the Service Provider to the complainant within 4 calendar weeks of receiving the complaint. A copy of such written response must be sent to the Authorised Officer and the Authority's Complaints Manager.
- 20.8 All complaints must be dealt with by the Care Manager who must promptly investigate the complaint and liaise throughout the complaint with the Authority's Complaints Officer and the Authorised Officer
- 20.9 Without prejudice to Condition 13, the Service Provider shall comply with any quality initiatives that are agreed between the Parties prior to the commencement of this Agreement or agreed by the Parties in writing during its term. The Service Provider's responsibilities as a result of complying with such initiatives shall include the following:
- 20.9.1 Ensuring that the aims and standards of the initiatives are satisfied;
 - 20.9.2 Demonstrating the highest standards of customer care, including being polite, helpful and courteous at all times;
 - 20.9.3 Expressing all written communications clearly and concisely and keeping technical jargon to a minimum;
 - 20.9.4 Identifying the names of its key staff contacts;
 - 20.9.5 Adopting a professional telephone manner; calls shall be answered promptly and courteously and messages shall be clear and responded to;

20.9.6 Being aware of the different needs of the Authorised Officer and others affected by this Agreement and taking account of particular requirements for reasons of age, gender, race or disability;

20.9.7 Setting up and operating a complaints procedure in accordance with Condition 20.

20.9.8 The Service provider shall ensure that all correspondence received from members of the public in connection with this Agreement is followed by a written reply; even if only to confirm that the matter has been received.

21 AMENDMENTS

21.1 Both the Authority and the Service Provider have the power by mutual agreement to amend this Agreement. No amendments to this Agreement will be effective unless they are recorded in writing and signed by the duly authorised representative of the parties.

21.2 Any agreement or amendment made orally will be void and of no effect unless it is confirmed in writing and signed by the duly authorised representatives of both parties.

22 COMPLIANCE

22.1 All Parties will be responsible for complying with all terms and conditions of this Agreement. No delays, neglect or forbearance will affect this responsibility.

23 FEES & EXPENSES

23.1 In consideration of the Care Services to be rendered by the Service Provider under this Agreement, the Authority shall pay the Service Provider in accordance with the Fee detailed in the Service Instruction

23.2 The only sums payable by the Authority to the Service Provider for the provision of the Care Services shall be the Fee. All other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Agreement shall be the responsibility of the Service Provider

23.3 For the avoidance of doubt, the fees payable by the Authority to the Service Provider for Care Services delivered under this Agreement do not include any Third Party Top Ups which a third party has agreed to pay to the Service Provider. The collection of any Third Party Top Ups from third parties is the responsibility of the Service Provider. The Service Provider is responsible for invoicing the third party directly for the Third Party Top Up element of the care package.

- 23.4 The Service Provider acknowledges that the cost information contained within the Service Instruction relating Third Party Top Ups is provided for information purposes only. The Service Provider acknowledges and agrees that the Authority shall not be liable to the Service Provider for the payment of any additional fees including but not limited Third Party Top Ups and confirms that the payment of the Authority's Contribution detailed within the Service Instruction is sufficient to meet the care needs of the Service User.

24 INDEMNITY AND INSURANCE

- 24.1 Without prejudice to any rights or remedies of the Authority (including the Authority's rights and indemnities pursuant to the Agreement) the Service Provider shall indemnify the Authority and keep the Authority indemnified in full against all actions direct, indirect or consequential liabilities, claims demands losses charges costs and expenses whatsoever which the Authority may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from the performance by the Service Provider of the Care Services or the negligent or wrongful act or omission of the Service Provider of its obligations under the Agreement or an infringement or alleged infringement of any intellectual property rights caused by the Service Provider's performance of the Care Services.

- 24.2 During the term of the Agreement and for a period of 6 years thereafter the Service Provider (but without limiting its obligations and responsibilities under the indemnity given by the Agreement herein) shall have in force and shall require any sub-contractor to have in force with a reputable insurer:-

24.2.1 employers liability insurance in accordance with any legal requirements for the time being in force and in any event for not less than ten million pounds (£10,000,000) for any one incident or series of incidents unlimited in total; and

24.2.2 public liability insurance for such sum and range of cover as the Service Provider deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these conditions in the sum of not less than five million pounds (£5,000,000) for any one incident or series of incidents unlimited in total, unless otherwise agreed by the Authority in writing and detailed in the Agreement.

24.2.3 hold professional indemnity insurance in a sum normal and customary for a service provider in the business in which the Service is but in any event not less than three million pounds (£3,000,000) for any one incident unlimited in total unless otherwise agreed by the Authority in writing and detailed in the Agreement.

- 24.3 The policy or policies of insurance referred to in Condition 24.2 shall include a term whereby in the event of any claim in respect of which the Service Provider would be entitled to receive indemnity under the policy being brought or made against the Authority, the insurer will indemnify the Service Provider against such a claim and any costs, charges and expenses in respect thereof. The Service Provider shall whenever required produce to the Authority the policy or policies of insurance and receipts for payment of the current premiums and the event that there is evidence that any required insurance is not in force the Authority may effect and keep in force any such insurance and the Service Provider shall pay to the Authority any sums expended by it for such purposes.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Agreement.

25 HEALTH AND SAFETY

- 25.1 The Service Provider shall observe and comply with the provisions of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999, and all other regulations and approved codes of practice and all applicable amendments, Regulations and Codes of Practice, or any other future legislation which concerns health and safety in the delivery of Care Services including any statutory modification or re-enactment thereof whether currently in force or coming into force during the term of the Agreement.
- 25.2 The Service Provider shall adopt safe methods of work for all operations coming within the scope of the Agreement or any associated operations in order to protect the health, safety and welfare of their own employees, other employees, including the Authority's employees, and all other persons and members of the public. The Service Provider shall at all times maintain a specific Health and Safety at Work policy relating to the employment of his own staff whilst carrying out their duties in relation to the Agreement.
- 25.3 The Service Provider shall ensure the co-operation of its employees in all prevention measures designed against fire, or any other hazards, and shall notify the Authority of any change in the Service Provider's working practices or other occurrences likely to increase such risks or to cause new hazards.
- 25.4 The Service Provider's staff shall be trained to recognise situations which involve an actual or potential hazard including:
- 25.4.1 danger of personal injury to any person on the premises and
- (a) where possible, without personal risk, make safe any such situation; or
 - (b) report any such situation to the Authorised Officer;

- 25.4.2 fire risks and fire precautions and procedures including attendance at fire lectures/drills in accordance with the Authority's policies;
 - 25.4.3 security;
 - 25.4.4 risk management;
 - 25.4.5 major incident;
 - 25.4.6 first aid
- 25.5 The Service Provider shall provide such first aid facilities and ensure that its staff abides by such first aid procedures as shall be required by the Authority.
- 25.6 The Service Provider shall co-operate with the Authority's Fire, Security and Safety Advisors and shall comply with their reasonable instructions.
- 25.7 The Service Provider will comply with the Control of Substances Hazardous to Health (COSHH) Regulations and COSHH hazard management and control.
- 25.8 All Serious Accidents shall immediately be brought to the attention of the Authorised Officer. The Authorised Officer shall be empowered to suspend the provision of the Care Service in the event of non-compliance by the Service provider with health and safety matters. The Service Provider shall not resume the provision of the Care Service until the Authority is satisfied the non-compliance has been rectified. In respect of any such period of suspension the Service Provider shall not claim payment but the Authority shall be entitled to claim its reasonable additional cost for engaging a replacement/substitute Service Provider to continue to carry out the Care Services.
- 25.9 The Service Provider shall undertake risk assessments in respect of all activities contained in this Agreement before such activities are offered to the Service User. All risk assessments undertaken shall meet the standards required by law and where applicable the Authority's policies, procedures, and codes of practice. If requested, the Service Provider's risk assessment shall be submitted to the Authorised Officer for approval and the Service Provider shall make such amendments, as the Authorised Officer may require. The Service Provider shall thereafter ensure that all health, safety and welfare measures indicated by the risk assessment are implemented, operated and maintained. For the avoidance of doubt, the approval by the Authorised Officer of a risk assessment and the measures to be adopted in consequence thereof shall not relieve the Service Provider from any responsibilities, duties or obligations it may have at law.
- 25.10 The Service Provider must permit and facilitate any safety officer or Environmental Health Officer of the Authority or any other person whom the Authority authorises to inspect any office of the Service Provider together with any people, vehicles, equipment or other materials used in connection with the performance of the Care Services, and to test, take

measurements, samples, and photographs of any premises, people, vehicles, equipment or materials used by the Service Provider in the provision of the Care Services.

26 DISPUTES

26.1 The Authority and the Service Provider have a mutual desire to ensure the welfare of the Service User and will discuss openly and co-operate within the terms of the Agreement being mindful of this. Any unresolved breach by either Party will be dealt with first on an informal basis. If either Party considers that the other has failed to meet their terms of the Agreement then the following will happen:-

26.1.1 the matter will be discussed at a meeting between the Service Provider's representative and the Care Plan Co-coordinator and/or Delegate within ten (10) Working Days of the dispute arising;

26.1.2 if the dispute remains unresolved following a meeting being convened in accordance with Condition 26.1.1 then a further meeting will be arranged between senior management from the Authority and the Service Provider's senior representative. This may be called at the request of either Party and should take place within 20 Working Days of the meeting referred to in 26.1.1

26.2 If the dispute is not resolved to the satisfaction of both parties, either party may serve on the other notice to commence a mediation (the "mediation") to settle the dispute. On receipt of such notice either party may within 7 days notify and request that a mediator be appointed. Any such mediation shall be in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. The mediation shall be deemed to have commenced on notification to both parties in writing of the appointment of the mediator by an appointing authority agreed between the parties and upon written confirmation having been received by the parties of the mediator's acceptance of the appointment.

26.3 If at any time after 30 days from the commencement of the mediation no settlement has been achieved either party may refer to dispute to arbitration in accordance with Condition 26.4. Neither party shall be entitled to commence arbitration pursuant to Condition 26.4 unless mediation has been attempted and has, after a period of 30 days, failed to settle the dispute.

26.4 If the dispute is not resolved by mediation in accordance with Condition 26.3 the dispute shall be referred to a single arbitrator to be agreed between the parties, and failing such agreement, within 14 days of the request of one party to the other in writing that the matter be referred to arbitration. Such referral shall be to a single arbitrator appointed for that purpose.

- 26.5 The cost of the arbitration will be borne by the parties as directed by the arbitrator. Any reference to “arbitration” under this Condition shall be deemed to be a reference to arbitration within the meaning of the Arbitration Act 1996.

27 PREVENTION OF CORRUPTION

- 27.1 The Authority shall be entitled to terminate this Agreement forthwith if the Service Provider, its staff, servants or agents with or without its knowledge has:

27.1.1 offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Agreement, Service Instruction or any other contract with the Authority, or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement, Service Instruction or any other contract with the Authority; or similar acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Service Provider); or

27.1.2 committed any offence under the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation or given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

- 27.2 Any attempt at bribery, corruption or improper conduct which comes to the Service Provider’s attention in connection with the Services shall be immediately reported to the Authorised Officer. Such report shall be made verbally or by facsimile transmission in the first instance followed by written confirmation. The Service Provider shall, at its own expense, cooperate with and provide statements and other evidence as required by the Authority, its internal and external auditors, the District Auditor, Police or any other competent organisation appointed to or responsible for investigating any possible irregularities connected with this Agreement.

28. DISCRIMINATION

- 28.1 The Service Provider or its agents, employees or sub-contractors shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour ethnic or national origin, disability, gender, gender reassignment, sexual orientation, religion or belief, marriage or civil partnership, pregnancy, maternity or age and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (and any European equivalent) , the Human Rights Act 1998, Equality Act 2010 Codes of Practice (Services, Public Functions and Associations, Employment, and Equal Pay) Order 2011 or other relevant legislation, or any statutory modification or re-enactment thereof (the “Discrimination

Acts”) together with any guidance or codes of practice issued by the relevant government departments concerning the Discrimination Acts.

28.2 The Service Provider shall notify the Authority immediately of any investigation of or proceedings against the Service Provider in relation to the Discrimination Acts and shall co-operate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

28.3 The Service Provider shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought in relation to the Discrimination Acts due directly or indirectly by any act or omission of the Service Provider, its agents, employees or sub-contractors. The Service Provider shall take all appropriate steps to prevent repetition of the unlawful discrimination.

28.4 The Service Provider shall impose on any sub-contractor obligations substantially similar to those imposed on the Service Provider by this Condition 28.

28.5 The Service Provider shall ensure that:

28.8.1 the Care Services are provided with due regard to the need to eliminate unlawful discrimination and to promote equal opportunities; and

28.8.2 the Service Provider shall in its performance of the Care Services, use its best endeavours to comply with the Authority’s Policy ‘Enfield- Equal Opportunities for all, Enfield Councils Valuing, Diversity and Equal Opportunities’ as revised 2008.

29. FORCE MAJEURE

29.1 In the event of an Act of God or Force Majeure (which shall include acts of Government fire tempest acts of war and related matters which are both beyond the control of the Service Provider and are such that the Service Provider with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the performance of the Care Services the duty of the Service Provider to perform the Care Services shall be suspended until such circumstances have ceased. The Authority shall not be liable to make any payment to the Service Provider in respect of such suspension and any such sum already paid in respect of any part of the Care Services not yet performed shall be held to the credit of the Authority and returned to the Authority.

29.2 For the avoidance of doubt it is hereby expressly agreed that industrial relations difficulties strike action and industrial action relating to the Service Providers workforce and failure to provide adequate premises equipment materials consumables and/or staff or similar matters which a

prudent and diligent Service Provider could have avoided with the application of foresight are not to be considered as events of Force Majeure or Acts of God.

- 29.3 If the period of suspension under condition 29.1 above lasts for longer than one month either party may serve upon the other one month's written notice of termination of the Agreement unless the Care Services have been resumed before the expiration of such notice the Agreement shall terminate in accordance with such notice.

30. WAIVER

- 30.1 Failure by the Authority at any time to enforce any of the provisions of the Agreement or to require performance by the Service Provider of any of the provisions of the Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Agreement or any part thereof or the right of the Authority to enforce any provision in accordance with its terms.

31 SEVERANCE

- 31.1 In the event of any provision of the Agreement being or becoming legally ineffective or unenforceable either in its entirety or in part this shall be without prejudice to the validity of and shall not invalidate the remaining provisions of this Agreement that shall remain in full force and effect.

32. WHOLE AGREEMENT

- 32.1 This Agreement contains the whole agreement between the parties relating to the subject matter of this Agreement and shall supersede all previous agreements between the parties relating to that subject matter.

33. GOVERNING LAW & JURISDICTION

- 33.1 The construction, performance and validity of the Agreement shall be governed by English Law. The Parties submit to the exclusive jurisdiction of the Courts of England and Wales provided that the Authority has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated.

34. THIRD PARTY RIGHTS

- 34.1 Unless the right of enforcement is expressly provided the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

35 SERVICE INSTRUCTIONS

- 35.1 The Service Provider agrees to provide Care Services to Service Users pursuant to a Service Instruction in accordance with the Care and Support Plan and this Agreement.
- 35.2 Where appropriate, the Service Instruction shall include, without limitation, the tasks and estimated duration of time required for service delivery, the Service User's assessed needs and shall identify objectives for the service including for personal, social and emotional needs and shall include any other information that may be required by the Service Provider for the delivery of the Services to the Service User during the placement. The Authority reserves the right to amend the format of the Service Instruction on giving the Service Provider 7 days written notice of its intention to do so. Any other variations to this Agreement shall be made in accordance with Condition 21 of this Agreement.
- 35.3 The Authority reserves the right to verbally instruct the Service Provider to provide Care Services where the Authority in its absolute discretion deems there to be an emergency. Where the Service Provider accepts such verbal instruction from the Authorised Officer, it will respond to such request and provide such Care Services immediately. The Authority shall provide a written Service Instruction to the Service Provider by the close of business on the first Working Day following the verbal request for emergency Services
- 35.4 The Service Instruction shall detail the Contributions and the Commencement Date of the placement. The Service Instruction shall contain details of any Third Party Contribution (if any) for information purposes only,
- 35.5 The Authority reserves the right to terminate with immediate effect the Care Services or any discrete part of the Care Services contained within a Service Instruction in accordance with Condition 7.
- 35.6 These Conditions shall apply to all Service Instructions placed with the Service Provider.

36. REGISTRATION AND INSPECTION

- 36.1 The Service Provider shall be obliged to make such adjustments and improvements to the manner in which it performs the Services in order to comply with any changes that may take place throughout the Agreement Period with regards to registration and inspection requirements at no additional cost to the Authority.
- 36.2 The Service Provider must continually maintain registration with the Care Quality Commission or such successor body for the provision of Care Services throughout the Agreement Period and must maintain such other registrations as are required by the Authority.

37. NOTICES

- 37.1 Any notice to be given under the Agreement shall either be delivered personally, sent by facsimile, or sent by first class recorded delivery post (airmail if overseas) or electronic mail in the case of the Authority to the Authorised Officer and in the case of the Service Provider to the Care Manager at the Service Providers registered address. The address for service of each Party shall be its registered office or such other address as detailed in the Service Instruction or as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:
- 37.1.1 if personally delivered, at the time of delivery;
 - 37.1.2 if sent by facsimile at the time of transmission;
 - 37.1.3 If posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and
 - 37.1.4 if sent by electronic mail, a telephone call is made to the recipient prior to being sent warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) posted on the same day as that on which the electronic mail is sent.
- 37.2 In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or airmail letter (as appropriate) or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice as the case may be.

38. INCONSISTENCIES

- 38.1 Except as otherwise expressly provided the Agreement documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be referred by the Service Provider to the Authorised Officer who shall thereupon issue to the Service Provider appropriate instructions in writing and the Service Provider shall carry out and be bound by such instructions.
- 38.2 In the event of any inconsistency between the Conditions and any provision in any of the other documents comprising the Agreement, the Conditions shall prevail.

38.3 In the event of any inconsistency between the Authorised Officer's written instructions and any of the documents comprising the Agreement (including but not limited to the Care and Support Plan and Service Instruction) then the Authorised Officer's written instructions shall prevail.

39. LOCAL GOVERNMENT OMBUDSMAN/AUDITOR INVESTIGATIONS AND RECOMMENDATIONS

39.1 In the event that the Local Government Ombudsman or the Authority's internal and/or external Auditors identify any unlawful practices or procedures being undertaken by the Service Provider in its performance of the Care Services or where any practice or procedure undertaken by the Service Provider has resulted in a finding of mal-administration causing injustice against the Authority the Service Provider shall forthwith upon written notice from the Authorised Officer cease to operate the practice or procedure specified therein and shall amend the practice or procedure to the satisfaction of the Authorised Officer.

39.2 In the event that the Local Government Ombudsman or the Authority's internal and/or external Auditors make recommendations for the amendment and/or improvement of any of the practices or procedures undertaken by the Service Provider in its performance of the Care Services the Service Provider shall endeavour to amend the practice or procedure to take into account the recommendations made.

39.3 The Service Provider shall indemnify and keep indemnified the Authority against any payment made by the Authority to a complainant by way of a local settlement by the Authority of a complaint made to the Local Government Ombudsman or following a finding of maladministration causing injustice by the Local Government Ombudsman where such Local settlement or finding results from any act or omission of the Service Provider or any of the Service Provider's partners agents employees or sub-contractors.

40 TUPE

40.1 Subject to Condition 24 (Insurance & Indemnity), the Service Provider shall fully indemnify and keep the Authority fully indemnified against any Loss incurred by the Authority connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association or employee or other affected employee of the Authority made against the Authority in respect of any or all of the employees or any other employee of the Service Provider and which arises from or is connected with any failure by the Service Provider to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or of TUPE.

40.2 Subject to Condition 24 (Insurance & Indemnity), the Service Provider shall fully indemnify and keep the Authority fully indemnified against any Loss incurred by the Authority connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in

respect of any employee or of any other person at any time employed by (or engaged as a service provider by) the Service Provider made against the Authority at any time for inter alia breach of such contract, policy or any such collective agreement, pay, unfair dismissal, statutory or contractual redundancy pay, sex, race, age or disability discrimination, or discrimination on the grounds of religion, belief or sexual orientation, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Authority and which results from any act, fault or omission of the Service Provider while such employees were or such other person was employed by the Service Provider.

- 40.3 As soon as the Service Provider is aware of the proposed termination of the Agreement or the provision by it of the Care Services the Service Provider shall upon the request of the Authority, supply to the Authority all information required by the Authority or any Replacement Contractor under Regulation 11 of TUPE of any employees then assigned by the Service Provider to the provision of the Care Services and shall warrant the accuracy of such information.
- 40.4 Except with the Approval of the Authority, the Service Provider shall not vary any terms and conditions of employment of any employee or any policy or collective agreement applicable to any employee then assigned by the Service Provider to the provisions of the Care Services (provided always that this provision shall not affect the right of the Service Provider to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Service Provider shall replace such person with another person of similar skills, qualifications and experience) after the Authority has served notice of the termination of the Agreement or after the Service Provider shall have otherwise become aware of the proposed termination of the Agreement or the provision by it of the Care Services.
- 40.5 On the termination of the Agreement, where there is no transfer pursuant to TUPE such that employees assigned by the Service Provider to the provision of the Care Services do not transfer to a Replacement Contractor, the Service Provider shall use reasonable endeavours to procure that the Replacement Contractor or the Authority as the case may be may use any such employees in the provision of services equivalent to the Care Services from the date of expiry or termination for a period of up to twelve (12) Months thereafter.
- 40.6 This Condition shall survive the expiry or termination of the Service Provider's appointment (whether pursuant to Condition 7 (termination) or otherwise) and shall continue in full force and effect.

41 INFORMATION TO THE AUTHORITY

- 41.1 Subject to Conditions 17 (Data Protection Act) and 16 (Confidentiality), at the Authority's reasonable request, The Service Provider must provide the

Authority with such information and data as the Authority may reasonably require to enable the Authority to prepare the necessary documentation to appoint another person to provide the Care Services in the Service Providers place.

- 41.2 The information referred to in Condition 41.1 is to be provided to the Authority at the Authority's reasonable request within the timescales specified by the Authority acting reasonably.
- 41.3 The requirement set out in Condition 41.1 does not include any information or data which the Service Provider considers commercially sensitive.
- 41.4 This Condition 41 shall survive expiry or earlier termination of this Agreement.

42 DEFAULTS AND SUSPENSION

- 42.1 Where in the Authority's opinion the Service Provider is in default of any requirement of this Agreement (which shall include but not be limited to a continued failure to deliver planned service improvements) and without prejudice to any other rights or remedies which the Authority have, the Authority shall be entitled to issue a written notice giving full details of the default and the rectification (if any) required together with the time within which the Service Provider is to effect such rectification ('Default Notice').
- 42.2 If the Service Provider fails to comply with the terms of the Default Notice or where the Authority does not require such rectification, the Authority shall be entitled to recover from the Service Provider any costs the Authority have reasonably incurred as a consequence of the Service Provider's default and may deduct such costs from any payments due or that become due to the Service Provider.
- 42.3 Where the Authority requires rectification and the Service Provider complies with the Default Notice to the Authority's satisfaction, the Authority shall not recover the costs pursuant to condition 42.2.

Suspension

- 42.4 If the Authority considers (acting reasonably) that:
- (i) the default is of such seriousness or
 - (iii) the provision of Care Services has fallen below the minimum CQC standards or
 - (iv) there is a continuing threat to the health, safety or welfare of any or all of the Service Users such that in either case it is not appropriate for the Service Provider to carry on providing any or all of the Care Services,

then the Authority will also be entitled to serve on the Service Provider a notice to suspend provision of services or part thereof ('Suspension

Notice')

- 42.5 If the Authority serves a Suspension Notice then the Authority may
- (i) Require the Service Provider to cease providing the Care Service(s) detailed in the Suspension Notice from the date specified in the Suspension Notice and
 - (ii) Provide some or all of the Care Service(s) or employ another person to do so as long as the Suspension Notice is in force.
- 42.6 If the Service Provider has been served with a Suspension Notice then the Authority shall consider (acting reasonably) whether or not the Service Provider is to resume provision of some or all of the suspended Care Service(s).
- 42.7 If the Authority considers that the Service Provider is to resume provision of some or all of the suspended Care Service(s) then the Authority will serve on the Service Provider a notice to which shall set out the Care Service(s) to be resumed and the date upon which they are to be resumed ('Resumption Notice').
- 42.8 The Authority will be entitled to set out in the Resumption Notice such conditions relating to the Service Provider's resumption of the Care Service(s) as may be reasonable.
- 42.9 If the Authority considers that the Service Provider is not to resume provision of some or all of the suspended Care Service(s) then the Authority will be entitled to give the Service Provider notice terminating this Agreement with immediate effect.
- 42.10 During any period of suspension the Authority must continue to pay the Service Provider the Authority's Contribution for any Care Services that continue to be delivered. The Authority may withhold payment for any Care Services that have not been delivered.

43. NOT USED

44. HUMAN RIGHTS ACT 1998

- 44.1 The provider recognises that the Authority has duties under the Human Rights Act 1998 in relation to Service Users. The Service Provider shall therefore respect the human rights of all Service Users as if it were a public authority with duties under the 1998 Act. Without prejudice to its liability for breach of Agreement, the Service Provider shall be liable for and shall indemnify the Authority against any liability, loss, costs, expenses, claims or proceedings whatsoever brought against the Authority under the Human Rights Act 1998.

45. CUMULATION OF REMEDIES

- 45.1 Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

For information

DIRECTORATE OF ADULT SOCIAL CARE

SERVICE INSTRUCTION – CARE AND SUPPORT SERVICES FOR PEOPLE
WITH LEARNING DISABILITIES

WHEREAS:

- A. The Authority is a local authority as defined by section 270 of the Local Government Act 1972 and is entering into this Agreement for the performance of its functions in relation to the provision of Care Services to Service Users, pursuant to the National Health Services and Community Care Act 1990, National Assistance Act 1948 and pursuant to its duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to combination of economy, efficiency and effectiveness and pursuant to section 1 of the Local Government Act 1997 and all other relevant statutory powers of the Authority.
- B. The Service Provider is committed to providing accommodation and Care Services for Service Users who have an eligible need at the point of admission and that are contained in the individual Service User's Care and Support Plan (attached as Schedule A).
- C. It is agreed that the Director and his/her Delegate on behalf of the Authority shall have the right to monitor the overall administration and management of this Agreement and any subsequent Agreements thereto and any care or other Agreement or updates or amendments made in reliance upon this Agreement
- D. This Agreement commences from the date the Service User begins to receive the Care Services, this being [*insert*] ('Commencement Date'), and will continue until the Agreement is terminated in accordance with its terms
1. The Mayor and Burgesses of the London Borough of Enfield of Civic Centre, Silver Street, Enfield, Middlesex, EN1 3XA ("The Authority")
And
2. (a) Name (of Service Provider):
(Company / Individual)
Address

Post Code
(Registered/Business address)
("The Service Provider")
2. (b) This Agreement relates to the provision of care at:-

The Premises:

Address

Post Code

for (Name of Service User):

3. This Agreement comprises ,

(i) This Service Instruction; and

(ii) The Conditions including all Appendices attached thereto which were notified to the Service Provider on [*insert*]; and

(iii) The Care and Support Plan attached to this Service Instruction as Schedule A; and

(iv) The Memorandum of Payment attached to this Service Instruction as Schedule B

(v) Specification and responses to the Invitation to Quote.

which together form the whole Agreement between the Parties.

4. The Authority and Service Provider agree as follows:

4.1 The Service Provider shall provide the Care Services under the terms of this Agreement.

4.2 In consideration of the Service Provider providing the Care Services, the Authority will pay the Service Provider the Fee identified in paragraph 4.3 in accordance with the Memorandum of Payments and the Care and Support Plan

4.3 BREAKDOWN OF FEE IN RESPECT OF THE CARE AND SUPPORT PLAN

Name of Authorised Officer

Name of Service User

Name of the Guarantor

The Premises

The total fee for Care Services provided under this Service Instruction comprising the Authority's Contribution and Service Users Contribution (per week excluding value added tax) £ per week ('Fee')

4.4 Breakdown of specified care hours included in the Fee:

Hours per week Staffing level Rate (per hour) Sub total (per week)

4.5 The following figures are produced for information purposes only. The Service Provider acknowledges and agrees that the Authority is not responsible for or liable to the Service Provider for the payment of any other costs, fees or expenses including but not limited to Third Party Top Ups

Authority's Contribution		
+	£	per week
Service User's Contribution		
Third Party Top Up	£	per week
(from the Guarantor, paid direct to the Service Provider)		
TOTAL COST	£	per week
(For Information Purposes Only)		

4.6.1 Signed on behalf of the Authority
 Print Name
 Position of person signing
 Date

4.6.2 Signed on behalf of the Service Provider
 Print Name
 Position of person signing
 Date

**Schedule A
CARE AND SUPPORT PLAN**

For information

Schedule B

MEMORANDUM OF PAYMENT

1. The Authority will pay the weekly Fee, as outlined in the Service Instruction.
2. Invoices for Care Services delivered are to be submitted monthly in arrears by the Service Provider to the Authority (Adults Payments Team - adults.payments.team@enfield.gov.uk)
3. The Fee may be varied by the Authority according to the provisions of the Agreement based on the following events;
 - a) Annually
 - b) The care needs of the Service User change
 - c) Through Best Value or price review of the Care Service provision

There is no right to any annual uplift of the Fee. The Authority may however, at its absolute discretion, apply an annual uplift to the Fee.

The Authority reserves the right to conduct a best value service review, using the care funding calculator or equivalent tool, to establish a fair price for the new and existing Care Service provision.

The Authority believes in working in collaboration with service providers. However, in the event that either party does not agree to a proposed fee change, the Authority shall convene a meeting with the Service Provider within 14 days. If agreement has not been reached within 14 days of the meeting the Authority will refer the placement to the appropriate Panel or budget holder within the Authority who will consider whether the placement is best placed to meet the Service User's needs. Any agreed price adjustment will take effect from the fee review date.

4. A Service User may choose a placement over and above the standards of service that the Authority would normally pay to meet their care needs. In this case the balance between the Fee and the cost of the extra facilities must be met by the Service User directly or a Third Party Top Up from a Guarantor. The Third Party Top Up (if any) or any additional charge (if any) attributable directly to the Service User above the Service User Contribution will be recorded as part of the Breakdown of Fees in the Service Instruction, outside of the Authority's contracted arrangement. The Service Provider will collect Third Party Top Ups (if any) directly from the Guarantor and any additional charge (if any) attributable directly to the Service User above the Service User Contribution from the Service User. If payment of the Third Party Top Up or Service User Contribution stops for any reason the Authority will be under no obligation to continue to fund the Care Services under this Agreement.
5. All parties involved in contributing towards the placement will be responsible for having formal agreements in place reflecting the arrangements. The Service Provider may not increase any Contributions or Third Party Top Ups without the prior written agreement of the party making the Contribution or Third Party Top Up. The Authority shall not be liable to

the Service Provider in any event for the payment of any Third Party Top Up whatsoever. Subject to paragraph 6, in the event of a Service User's Absence from the Premises for any reason, the Authority shall pay the Service Provider the full Fee for the first week of Absence. Where such Absence continues for a period of more than one week the Fee will be reduced to 90% of the Fee for a period of [seven] weeks during the Absence. Thereafter, the Authority reserves the right to negotiate a further reduction to the Fee, taking into account costs no longer incurred and running costs still incurred by the Service Provider. Payment for any extras agreed by the Authority or the Service User will immediately cease to be payable during any period of Absence.

6. Any planned absence taken by a Service User of less than one (1) week will not be considered Absence for the purposes of this Agreement. Any planned absence taken by a Service User exceeding one (1) week will be considered Absence for the purposes of this Agreement. For the avoidance of doubt the first week of any planned absence period taken by a Service User shall not constitute an Absence for the purposes of this Agreement.
7. The Service Provider acknowledges that the Authority's Contribution and Service User's Contribution covers all costs, charges and expenses whatsoever incurred by the Service Provider in providing the Care Services to meet the Service User's care needs, as assessed by the Care Plan Co-ordinator.
8. The Service Provider will make no extra charge to the Authority, Guarantor or the Service User beyond the fees detailed in the Service Instruction. Any funding request for additional services must be in writing to the Authority.
9. In the event of an overpayment by the Authority a refund will be made by the Service Provider within 28 days of notification of the overpayment.
10. Monies payable to the Service Provider under this Agreement are exclusive of Value Added Tax.
15. The Authority will pay the Service Provider any Value Added Tax that is chargeable on Care Services they are supplying.
16. The Service Provider shall notify the Authority in writing:
 - (1) which part or parts of the Care Services are exempt from Value Added Tax;
 - (2) which part or parts of the Care Services have zero rate of Value Added Tax;
 - (3) which part or parts of the Care Services have a rate of Value Added Tax higher than zero. The exact rate chargeable will be shown in each case.