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# Bath & North East Somerset Council

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## **CONTRACT**

**FOR THE PROVISION OF SERVICE(S) TO**

**BATH AND NORTH EAST SOMERSET COUNCIL**

**TITLE OF SERVICE: -**

**Syrian Vulnerable Person's Resettlement Scheme**

**PARTIES:**

**(1) Bath and North East Somerset Council  
Lewis House  
Manvers Street  
Bath  
BA1 1JG**

**-and-**

**(2) Julian House  
55 New King Street  
Bath  
BA1 2BN**

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THIS CONTRACT is made on **the 10<sup>th</sup> Day of July 2017**

**BETWEEN**

**BATH AND NORTH EAST SOMERSET COUNCIL**, Lewis House, Manvers Street, Bath, BA1 1JG ("the Council") (1)

And

**Julian House**, 55 New King Street, Bath BA1 2BN ("the Provider") (2)

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Bath & North East  
Somerset Council

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## **1. DEFINITIONS**

### **1.1 Words and phrases used in this Contract shall be interpreted as follows:**

“Branding” means the name of for example a Service(s) and/or the Service(s) delivery process;

“Best Value Duty” means the duty imposed by section 3 of the Local Government Act 1999 (the LGA 1999) as amended, and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to any applicable guidance issued from time to time.

“Breach” means any default of the obligations of the relevant Party (including but not limited to fundamental Breach or Breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;

“Caldicott Guardian” means the senior health professional responsible for safeguarding the confidentiality of patient information.

“Competent Body” means anybody that has authority to issue standards or recommendations with which either Party must comply

“Confidential Information” includes all information which the Council supplies to the Provider about the Service(s) or Project or the Council's affairs or finances or which comes into the possession of the Provider in the course or as a consequence of its providing the Service(s) to the Council but does not include information which is in or comes into the public domain otherwise than as a result of the Breach of this Contract by the Provider;

“Consent” means:

i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by the Law for or in connection with the performance of Services and/or

ii) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Agreement or for the provision by the Provider of the Services in accordance with this Agreement.

“Contract” means this Contract and the attached Schedules A, B and C;

“Contract Period” means the duration of the Contract;

“Contract Price” means the price stated in Schedule C or calculated in accordance with the rates stated in this Contract;

“Contract Standard” means such standard as complies in each and every respect with all relevant provisions of the Contract;

“Council” means the Beneficiary placing the Order i.e. Bath and North East Somerset Council or, if a Third Party Beneficiary places the Order, the Beneficiary to which the Third Party Beneficiary supplies goods and/or Service(s);

“Care Quality Commission” or “CQC” means the care quality commissioned established under Health and Social Care Act 2008.

“DBS” means Disclosure & Barring Service certificate;

“Deliverable” means any data, report, drawing, specification, design, invention, plan, program, document, contract, and/or other material produced by or to be produced by or acquired by or to be acquired by the Provider in the course of the performance of the Service(s);

“Dispute Resolution Procedure” means a set of actions in relation to any matter that cannot be resolved by the Nominated Representative(s);

“DPA” means Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“EDBS” means Enhanced Disclosure & Barring Service certificate;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Force Majeure Event” means one or more of the following to the extent that it is not attributable to the Provider or the Provider’s Staff: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the provision of the Service(s), but which is not confined to the workforce of the Provider or is site specific; pestilence; the actions of governmental authorities to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under the Contract but excluding:

(a) any industrial action occurring within the Provider's or any sub-contractor's organisation; or

(b) the failure by any sub-contractor to perform its obligations under any sub-contract;

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown;

"Good Clinical Practice" means using standards, practices, methods and procedures conforming to the Law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider, or a person providing services the same as or similar to the Services, at the time the Services are provided, as applicable.

"Image" means the general way the Council is perceived by Service User(s), employees, Providers, stakeholders, media, and the public;

"Intellectual Property Rights" means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

"LADO" means Local Authority Designated Officer (Safeguarding/DBS);

"Law" means:

(i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;

(ii) any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;

(iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;

(iv) National Standards;

(v) Guidance; and

(vi) any applicable industry code

in each case in force in England and Wales

"Local HealthWatch" means the local independent consumer champion for health and social care in England

“LSAB” means Local Safeguarding Adult Board;

“LSCB” means Local Safeguarding Children Board;

“Monitoring Form” means a form(s) provided by the Council for Providers to complete to enable an evaluation of the extent to which the Provider has succeeded in achieving outcomes, targets and standards. The Finance Monitoring Form will enable Monitoring of the Provider’s spend of the funding received

“NHS Act 2006” means the National Health Service Act 2006

“National Institute for Health and Clinical Excellence” or “NICE” means the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body)

“Nominated Representative(s)” means the person(s) appointed by the Council and by the Provider in accordance with Clause 3;

“Patient Safety Incident” means any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to, harm to that Service User

“Premises” means the location where the Services are to be supplied, as set out in the Specification;

“Provider” means the provider of the Service(s) pursuant to the Contract;

“Quality Outcomes Indicators” means the agreed key performance indicators and outcomes to be achieved

“Regulatory Body” means anybody other than CQC carrying out regulatory functions in relation to the Provider and/or the Services

“Relevant Personnel” means all relevant staff, sub-contractors, suppliers, servants, employees or agents involved directly in the delivery and administration of the service and staff with access to patient identifiable information in relation to clients using the service.

“Review” means a Review of the Service(s) pursuant to the Contract designed to identify potential service delivery improvements. A Service(s) Review can be used to improve the Provider’s efficiency and effectiveness, and assists in addressing financial sustainability of the Provider;

“Serious Incident” means an incident or accident or near-miss where a patient (whether or not a Service User), member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Provider’s Premises or where the actions of the Provider, the Staff or the Authority are likely to be of significant public concern

“Service(s)” means the service or services provided under this Contract and



as set out in the Specification detailed in Schedule A;

“Services Environment” means the rooms, theatres, wards, treatment bays, clinics or other physical location, space, area, accommodation or such other place as may be used or controlled by the Provider from time to time in which the Services are provided, excluding domiciliary care settings, Local Authority premises, schools and premises controlled by the Responsible Commissioner.

“Service Level Agreement” means the contents of Schedule B which formally specifies Service User(s) expectation, usually in measurable terms, about the solution and tolerances. It is a collection of service level requirements that have been negotiated and mutually agreed upon by the Council and the Provider;

“Service User(s)” means a person(s) (nominated by the Council) to receive the Service(s) as detailed in Schedule A;

“Service User Health Record” means a written record which consists of information relating to the particular physical or mental health or condition of a Service User.

“Specification” means the detailed description of the Service(s) set out in Schedule A;

“Staff” means a person providing Service(s) on behalf of the Provider including Employees, Volunteers or Agency Staff (or any other person acting on behalf of the Provider);

“Start Date” means the day on which the Provider shall begin to provide the Service(s) as stated in Schedule A;

“VAT” means Value Added Tax in accordance with the provisions of the Value Tax Act 1994;

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

- (i) words and phrases set out in the Agreement apply to these Terms and Conditions;
- (ii) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (iii) words importing the one gender shall include other genders;
- (iv) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (v) reference to any statute, enactment, order, regulation or other similar



instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted (whether before or after the Commencement Date) from time to time.;

(vi) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(vii) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

(viii) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;

- 1.3 In the event and to the extent only of any conflict between the Clauses and the Schedules, the Clauses shall prevail. In the event and to the extent only of any conflict between any Special Terms and Conditions and the Clauses, the Special Terms and Conditions shall prevail

## **2. APPOINTMENT OF PROVIDER**

- 2.1 The Council appoints the Provider to provide the Service(s):

2.1.1 promptly (and in any event within any time targets as may be set out in Schedule A or Schedule B) and in a professional and courteous manner so as to reflect and promote the Image of the Council and any Beneficiary;

2.1.2 strictly in accordance with Schedule A and all provisions of the Contract;  
and

2.1.3 in accordance with all applicable UK and European laws and regulations;  
and

2.1.4 in accordance with the policies (including, when on any Premises of the Council on any other Premises where it works alongside the Council's or any Beneficiary's staff, any racial discrimination and equal opportunities policies), rules, procedures standing orders, financial regulations and the quality standards of the Council and any Beneficiary as amended from time to time and providers will be notified of any changes to the policies.

2.1.5 The Provider accepts the terms of appointment as provided in Clause 0.1 in consideration of the Contract Price.

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

### **3. NOMINATED REPRESENTATIVE(S)**

- 3.1 On or before the Start Date, the Provider and the Council shall each appoint a person to act as its Nominated Representative(s) (For the Council also known as the 'Contract Manager') in connection with this Contract and also any deputy authorised by the Provider and Council respectively to act on behalf of their Nominated Representative in connection with this contract. Each party shall notify the other in writing of the name, address and telephone number of its Nominated Representative(s) and its deputy within fourteen days of the appointment, unless already named in Schedule A. Any change of the Nominated Representative(s) and/or deputies shall be notified to the other party from time to time as appropriate.
- 3.2 Any notice, information, instruction or other communication given or made to the Provider's Nominated Representative(s) shall be deemed to have been given or made to the Provider.
- 3.3 The strategic direction of the Service will be the responsibility of the Nominated Representative(s) of Bath & North East Somerset Council.
- 3.4 The Provider's Nominated Representative has the responsibility to ensure the service is compliant with the Terms and Conditions and to liaise with the Named Clinical Lead for the implementation of the services for each specification. The day to day management of each service is the responsibility of the Named Clinical Lead. In addition a work history/biography for the Named Clinical Lead will be submitted to the Council if required.
- 3.5 The Provider shall forthwith give notice in writing to the Council's Representative of the identity of the person appointed as the Provider's Nominated Representative(s) and of any subsequent appointment. Until notice of a subsequent appointment shall have been given, the Council shall be entitled to treat as Provider's Nominated Representative(s) the person last notified to the Council as being the Provider's Nominated Representative(s).
- 3.6 The Provider shall ensure that the Nominated Representative, or a named competent deputy who is duly authorised to act on his or her behalf, is available to the Council within a reasonable time when any Staff of the Provider is on duty for the provision of the specified Service(s). The Provider shall inform the Council of the identity of any Staff authorised to act for any period as deputy for the Provider's Representative before the start of that

period.

- 3.7 The Provider's Representative or his or her deputy shall consult with the Council and such other of the Council's supervisory staff as may from time to time be specified by the Council as often as may reasonably be necessary for the efficient provision of the Service(s) in accordance with the Contract.
- 3.8 The Provider's Staff engaged in and about the provision of the Service(s) shall primarily be under the control and direction of the Provider's own Provider's Representative but nevertheless while on the Council's Premises will obey all reasonable instructions given to them by the Council's supervisory staff in any matter occasioned by the operational needs of the relevant Service(s) or the health, safety or welfare of anyone.

#### **4. PERFORMANCE OF THE SERVICE(S)**

- 4.1 The Council and the 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 Council, to derive the full benefit of the Contract. At all times in the performance of the Service(s), the Provider will co-operate fully with any other Providers appointed by the Council in connection with other Service(s) at the Location.
- 4.2 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Provider to notify the Council of any significant risk to the performance of the services as a result of all significant changes to Staff, rates of pay or conditions of employment, or hours of work or other technological changes (if possible) within two months after the implementation of any such revised arrangements if the changes will impact negatively on the service.
- 4.3 The Provider shall provide information in a format, medium and at times specified by the Council, related to the performance of the Service(s) as may be reasonably required.
- 4.4 If at any time the Provider becomes aware of any act or omission or any proposed act or omission by the Council or by any member, official or employee of the Council which prevents or hinders or may prevent or hinder the Provider from providing the Service(s) in accordance with the Contract then the Provider shall immediately inform the Council of that fact. For the avoidance of doubt, the Provider's compliance with this Clause shall not in any way relieve the Provider of any of its obligations under the Contract.
- 4.5 The Council may, where necessary, require the Provider to set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment of his own Staff whilst carrying out their duties in relation to the Contract at the Location. This shall include, but not be limited to, disciplinary and grievance procedures. The Provider shall provide the Council (on request) with copies of such policies, rules, procedures and

quality standards before commencement of the contract and shall promptly inform the Council of any amendments to such documents once the contract has begun.

4.5.1. The Provider will be responsible for providing and maintaining the Service(s) to the Contract Standard at all times and will ensure continuity of Service(s) (at no extra cost to the Council) in accordance with the Specification. The Provider must have in place contingency plans and arrangements which are supplied to the Council to be approved before the commencement of the contract to ensure continuity of Service(s);

4.5.2. The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council;

4.5.3. The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract;

4.5.4. In the event of industrial action by the Staff, the Provider shall seek approval to its proposals to continue to perform its obligations under the Contract;

4.5.5. If the Provider's proposals referred to in clause 4.5.4 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by *notice in writing*;

4.5.6. If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Provider may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

4.6 Service User(s) will receive the Service(s) agreed, and no Service(s) will be withdrawn or changed without consultation with the Service User(s). Consultation" means explaining action which is proposed before it happens, in sufficient time for it to be changed, if appropriate, in response to a Service User(s) views.

4.7 The Provider undertakes that the Service(s) will be provided using all reasonable professional skill and care.

4.8 The Provider shall use reasonable endeavours to check the accuracy of all; documentation and information prepared by the Provider in connection with the supply of the Services and will be responsible for rectifying any negligent errors, omissions or inaccuracies at the Provider's own cost.

4.9 The Provider shall use its best endeavours to comply with the Service Level Outcomes as detailed in Schedule B.

4.10 The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to Law) with the Council in writing:

a) comply, where applicable, with the registration and regulatory compliance guidance of CQC and other Regulatory Body;

b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC and other Regulatory Body;

c) consider and respond to the recommendations arising from any audit, death and Serious Incident report or Patient Safety Incident Report;

d) comply with the recommendations issued from time to time by a Competent Body;

e) consider and respond with the recommendations from time to time contained in guidance and appraisals from NICE;

f) respond to any reports and recommendations made by Local Healthwatch and;

g) comply with the Quality Outcomes Targets set out in Schedule B.

4.11 Where applicable, under section 1(F)(1) of the NHS Act 2006, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.

4.12 The provider must to the extent reasonably practicable co-operate with and assist the Council in fulfilling its "Best Value Duty".

4.13 In addition to the Provider's obligations under clause 4.12, where reasonably requested by the Council, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Council and shall assist the Council with the preparation of any Best Value performance plans.

## **5 INSPECTION AND MONITORING**

5.1 The Nominated Representative(s) of the Council and the Provider will meet as more particularly detailed Schedule B to discuss the level and standard of Service(s) provided.

5.2 The Provider will co-operate with the Council's procedures for the inspection and Monitoring of quality and financial audits in whatever way is reasonably requested by the Council. In this context the Provider shall (without limitation but in accordance with Information Governance):

5.2.1. permit access at all reasonable times for the Council's



representatives (for example, auditors) to inspect all accounting records and supporting information relating to the provision of the Service but only insofar as such inspection is required for the purpose of verifying the delivery of the Service in accordance with the Contract;

- 5.2.2. at the request of the Council provide copies of all information relating to the Service(s) and/or its and their servants, agents, Staff and Providers including those relating to financial management and governance within two weeks of the request;
  - 5.2.3. inform the Council of any circumstances that occur or are likely to occur that have or are likely to have any effect on its ability to fulfil the objectives set out in the Specification as set out in Schedule A or its standing in the community (for example the probity of its Staff or trustees being called into question);
  - 5.2.4. provide the Council with explanations for any queries arising from Council audit activity;
  - 5.2.5. submit Monitoring returns, as detailed in Schedule B, showing attendance at Service(s);
  - 5.2.6. carry out Monitoring in accordance with the Monitoring dates detailed in Schedule B. The Provider must have all relevant information prepared for the Monitoring meeting date pre-arranged;
  - 5.2.7. submit Monitoring Forms in accordance with the Monitoring dates detailed in Schedule B in preparation for the Reviews carried out with the Council;
  - 5.2.8. submit Financial Monitoring Forms in accordance with the Monitoring dates detailed in Schedule B in preparation for the Reviews carried out with the Council;
  - 5.2.9. arrange for the Councils representative to meet with a selection of Service User(s) for the purpose of obtaining their feedback relating to the Service(s) received. This may occur up to a maximum of twice per year, for each Service(s) provided, at a mutually agreed time at the location the Service(s) take place, at the Provider's Premises or another agreed location.
- 5.3 Where practicable both the Council and the Provider will use anonymised data for the purposes of Monitoring. Where it is not practicable to use anonymised data both parties will ensure appropriate security measures are used to protect the data and will process the data in accordance with the Data Protection Act 1998.
- 5.4 If applicable, the Provider must comply with all written requests made by, CQC, the National Audit Office, any Authorised Person and the authorised representative of the Local Healthwatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing and inspecting such premises and/or the provision of the services,



and  
for information relating to the provision of the services within two weeks of the request.

## **6 PERFORMANCE MEASUREMENT**

- 6.1 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Provider to provide the Service(s) to the Contract Standard which in all respects shall be to the satisfaction of the Council.
- 6.2 The Provider shall institute and maintain a properly documented system of quality control as set out in the Specification and which is to the satisfaction of the Council to ensure that the Contract Standard is met.
- 6.3 The Provider shall allow the Council and any person, firm or organisation authorised by the Council to have access to and to audit all records maintained by the Provider in relation to the supply of the Service(s). The Provider shall assist the Council or any party authorised by the Council (as the case may be) in the conduct of the audit and in accordance with clause 5.3.
- 6.4 If required by the Council, the parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the parties' efficiency. Any such agreements shall be fully recorded in writing by the Council.

## **7 REVIEW OF CONTRACT**

- 7.1 The Provider shall attend formal, minuted Review meetings (each such meeting being a "Review"), as required by the Council, to discuss the Council's levels of satisfaction in respect of the Service(s) provided under the Contract and to agree any necessary action to address areas of dissatisfaction. The Provider will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorised and sufficiently senior staffs of both the Council and the Provider together with any other relevant attendees. The Parties shall agree an agenda for such Reviews.
- 7.2 Review meetings will include Monitoring of Service(s) provided, with reference to Schedule A and Schedule B, including proposals for Service(s) development, financial information, and information about the management of the Service(s) and Service User(s) consultation and involvement. Actions agreed at such meetings shall be implemented by the parties concerned.

## **8. CONTRACT PRICE AND PAYMENTS**

- 8.1 In consideration of the Service(s) to be provided by the Provider, the Council shall pay to the Provider the Contract Price as detailed in Schedule C. The

Contract Price is net of VAT or any other applicable duties which shall be payable in addition to such sums.

- 8.2 The Provider shall invoice the Council at the intervals set out in Schedule C. The Council shall not be obliged to pay for any work unless the Provider has delivered an invoice for it and the Provider may not deliver an invoice for work ahead of any event specified for payment as detailed in Schedule C.
- 8.3 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Service(s) supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice including a valid Purchase Order number. The Purchase Order number shall be advised to the Provider by the Council by the date of the first invoice.
- 8.4 The Council shall not be obliged to pay an invoice submitted by the Provider in accordance with clause 0 unless the Provider has submitted Monitoring in accordance with clauses 5.1 and 5.2
- 8.5 The only sums payable by the Council to the Provider for the provision of the Service(s) shall be the Contract Price as detailed in Schedule C. All other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Contract shall be the responsibility of the Provider with the exception of clause 4.5.6.
- 8.6 The Provider will keep accurate books and records in relation to the provision of the Service(s) in accordance with sound and prudent financial management.
- 8.7 If relevant, any sum under spent by the Provider shall be returned to the Council at the completion of the Contract Period. If the Provider ceases to function then part or all of the funding shall be repaid to the Council at the reasonable discretion of the Council depending on when the cessation occurred and how much of the sum had been appropriately used at that point as determined by the Council. If the Provider fails to use the sum for the specific reasons designated in this Contract then the proportionate amount of the funding, attributable to the failure or failures, shall be repaid to the Council as soon as is reasonably requested by the Council.
- 8.8 Subject to Clauses 8.9 and 8.10 the Contract Price shall not be subject to any increase whatsoever by the Provider during the Contract Period except in cases where an annual inflation is applicable and would be agreed with the Council in writing on March 1st of every year under this Contract.
- 8.9 In the event that the Contract or Specification is varied under Clauses 14 or 15 in such a way as to affect the Contract Price and if agreement between the Parties cannot be reached on any necessary adjustment to the Contract Price within 3 months, then both Parties shall jointly act to resolve the dispute in accordance with Clause 17.

- 8.10 If an adjustment to the Contract Price is not so agreed between the parties until after such variation has taken effect:

8.10.1. the Council shall continue to pay the Provider at the current Contract rate in existence prior to the variation but;

the Council shall pay to the Provider or be entitled to recover from the Provider as the case may be such sum if any as is equal to the difference between the amount which should have been paid in accordance with the adjusted Contract Price and the amount which was actually paid.

8.11 Euro

8.11.1 any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Provider free of charge to the Council;

8.11.2 the Council shall provide all reasonable assistance to facilitate compliance with clause 8.11.1 by the Provider.

## 9 CONSULTATION

- 9.1 The Provider will consult with Service User(s) at regular intervals during the Contract Period in order to take into account their views in the planning and development of Service(s). (See Clause 5.2.9).
- 9.2 The Provider will consult with any relevant organisations, groups or individuals as specified in the Provider's equal opportunities policy affected by or eligible to receive, Service(s) from the Provider.
- 9.3 The Provider will submit, at the end of each Monitoring period as stated in Schedule B, details to the Council of the steps taken to consult on the appropriateness, effectiveness and quality of the Service(s) offered, any responses received and of any action taken by the Provider as a consequence.

## 10 ASSIGNMENT

- 10.1 The Provider shall not:

10.1.1 assign this Contract or any part of it or the benefit or advantage of the Contract or any part of it without the prior express consent of the Council in writing;

10.1.2 sub-contract the provision of the Service(s) or any part of it to any person without the prior express consent of the Council in writing. This Contract is personal to the Provider who shall perform it exclusively. Reliance on the provider's reputation, expertise and

experience being among the reasons for its selection any such approval shall be entirely at the Council's discretion. If such approval should be given, it will only be given in respect of a named and approved subcontractor and only on the basis that both the Provider and the sub-contractor are jointly and severally fully answerable and responsible for that person's contribution to the Service(s).

## **11 LIABILITY, INDEMNITY AND INSURANCE**

- 11.1 Neither Party excludes or limits liability to the other Party for:
  - 11.1.1 Death or personal injury caused by its negligence; or
  - 11.1.2 Fraud; or
  - 11.1.3 Fraudulent misrepresentation.
- 11.2 Subject to clauses 11.3 and 11.4, the Provider shall indemnify the Council and keep the Council indemnified fully against all legally enforceable and properly mitigated claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any negligent advice given or omitted to be given by the Provider, or any other loss which is caused directly by any act or omission of the Provider.
- 11.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by Breach by the Council of its obligations under the Contract.
- 11.4 Subject always to clause 11.1, the total aggregate liability of either Party under or in connection with the Contract shall in no event exceed £10,000,000 (ten million pounds).
- 11.5 Subject always to clause 11.1, in no event shall either Party be liable to the other for any:
  - 11.5.1 loss of profits, business, revenue or goodwill; and/or
  - 11.5.2 loss of savings (whether anticipated or otherwise); and
  - 11.5.3 indirect or consequential loss or damage.
- 11.6 The Provider shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Provider.
- 11.7 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period [and for a minimum of 6



- (six) years following the expiration or earlier termination of the Contract].
- 11.1.1 Public Liability GBP £5,000,000 (five million pounds);
- 11.1.2 Employers Liability GBP £10,000,000 (ten million pounds);
- Professional Indemnity GBP £5,000,000 (five million pounds).
- 11.8 The Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 11.9 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 11.10 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 11.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in clause 11.1.
- 11.12 Professional Indemnity
- 11.12.1 The Provider shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall exercise reasonable skill and care to see that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider has an aggregate limit of indemnity of GBP £5,000,000 (five million pounds). Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

## **12. WARRANTIES AND REPRESENTATIONS**

- 12.1 The Provider warrants and represents that:
- 12.1.1 it has full capacity and Council and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider;
- 12.1.2 in entering the Contract it has not committed any Fraud;
- 12.1.3 as at the Commencement Date, all information contained in the Tender (if applicable) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- 12.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its

knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

12.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

12.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

12.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

12.1.8 in the three 3 years prior to the date of the Contract:

12.1.8.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

12.1.8.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

12.1.8.3 it has not done or omitted to do anything which could have material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract.

### **13. WAIVER**

13.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

13.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 29.

13.3 A waiver of any right or remedy arising from a Breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent Breach of the Contract.

### **14. VARIATION OF THE CONTRACT**

14.1 Where appropriate the parties will be able to jointly agree variations to achieve necessary and constructive changes aimed to improve Service(s) effectiveness.

14.2 The Council reserves the right to renegotiate the terms of the Contract in the event of changes in Service(s) demand or policy. Similarly the Council recognises the right of the Provider to request a renegotiation of the Contract



terms.

- 14.3 Any variation to the terms of the Contract must be recorded in writing and executed by the Council's Representative and the Provider's Representative or such other authorised Representatives of the parties. Such record of the variation in question must address all consequential amendments required to be made to the Contract as a result of such variation, including adjustment to the Contract Price.
- 14.4 Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.

## **15. VARIATION OF THE SPECIFICATION**

- 15.1 Where appropriate the parties will be able to jointly agree variations or additions to the Specification to achieve necessary and constructive changes aimed to improve service effectiveness.
- 15.2 The Council may at any time propose to the Provider any reasonable variation or addition to the Specification and the Provider shall not unreasonably withhold or delay its consent to such variation.
- 15.3 No such variation or addition shall affect the continuation of the Contract.

## **16. CONTRACT EXTENSION**

- 16.1 The Council and the Provider may agree between themselves in writing to extend this Contract on the same terms or on such varied terms as they may agree in writing at the time of the extension.

## **17. DISPUTE RESOLUTION PROCEDURE**

- 17.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Provider shall continue its performance of the provisions of the Contract (unless the Council requests in writing that the Provider does not do so).
- 17.2 If a dispute arises between the Council and the Provider in relation to any matter which cannot be resolved by the Nominated Representative(s), as detailed in Schedule A, either of the parties may refer such dispute to the Dispute Resolution Procedure.
- 17.3 In the first instance each of the Council and the Provider shall arrange for a more senior representative (e.g. Service Manager) who has Council to settle the dispute to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be conducted in such manner and at such venue as agreed between the parties (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question.
- 17.4 If the meeting(s) referred to in Clause 18.2 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance

with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties.

17.4.1 To initiate mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served;

17.4.2 Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties);

17.4.3 Neither Party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally;

17.4.4 If CEDR does not produce a result agreed by both parties then an arbitrator is to be appointed by agreement with both parties. If the parties are unable to agree on an arbitrator one is to be appointed by reference to the Chartered Institute of Arbitrators.

## **18. TERMINATION**

18.1 The Council may by notice in writing immediately terminate this Contract if the Provider shall:

18.1.1 be in Breach of any of the terms of this Contract which, in the case of a Breach capable of remedy, the Provider has not remedied within 14 days (or such other period specified by the Council) of receipt of a written notice from the Council specifying the Breach and requiring its remedy;

18.1.2 be incompetent, guilty of gross misconduct or any serious or persistent negligence or serious or persistent default in the provision of the Service(s), including (but not limited to) the disclosure to any person not authorised by the Council of any Confidential Information;

18.1.3 fail or refuse after written warning to provide the Service(s) properly required under this Contract;

18.1.4 Breach any warranty or undertaking made by him during the procedure for the award of this Contract;

18.1.5 have a petition(s) presented or an order made or a meeting convened to consider the passing of a resolution or have any action taken for or with a view to the winding-up of the Provider;

18.1.6 have an order made for the administration of the Provider;

18.1.7 enter into liquidation whether compulsorily or voluntarily (except for the purposes of reconstruction of a solvent company);

18.1.8 stop or threaten to stop payments to its creditors generally;

18.1.9 cease or threaten to cease trading;

18.1.10 be deemed for the purposes of Section 123 of the Insolvency Act 1986 to be unable to pay his debts or admitting in writing his inability to pay his debts as they become due or otherwise becoming or being declared by any competent Council to be or declaring itself to be insolvent;

18.1.11 convenes a meeting of its creditors with a view to proposing or making any assignment arrangement or composition with or for the benefit of his creditors or any class or group thereof;

18.1.12 suffer any diligence or process of execution to be levied on its goods and the same not having been lifted within seven days;

18.1.13 have an administrative receiver or a receiver appointed of all or any part of the undertaking property or assets of the Provider;

18.1.14 be indebted in respect of monies borrowed from its bankers or any other lending institution or under any guarantee or monies borrowed not being paid when due for payment or within any applicable grace period (or in the case of any such indebtedness payable on demand not being paid on demand) or becoming due for payment prior to its stated maturity otherwise than by the election of the Provider;

18.1.15 act in such a way as it becomes impossible or unlawful for the Provider to perform and observe any of its obligations under this Contract;

18.1.16 or any partner or director of the Provider, any Staff of the Provider or any person acting on the Provider's behalf (whether with or without the Provider's knowledge):

18.1.16.1. be offered, given, agreed to give, received or solicited to or from anyone a bribe, gift, consideration, inducement or reward of any kind for doing or not doing anything in relation to the Contract, the delivery of the Service(s), any other Contract with the Council or any contract with any other local Council or public body; or

18.1.16.2. commit any offence under the Bribery Act 1810

18.1.16.3. be given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972,

## 18.2 Conflicts of Interest

18.2.1. The Provider shall take appropriate steps to ensure that neither the provider nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise;

18.2.2. The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

18.2.3. The Council has relied on the information provided by the Provider contained in the form of tender if applicable and the presentation submitted to the Council prior to its acceptance and prior to the Council entering into this Contract. Any material misrepresentation contained therein shall entitle the Council to rescind or terminate this Contract at its option by written notice that may have immediate effect.

18.2.4. Either party may terminate this Contract at any time without liability to the other by giving the other not less than three months' written notice.

18.2.5. The Provider may by notice in writing immediately terminate this Contract if the Council shall be in Breach of any of the terms of this Contract which the Council has not remedied within 30 days of receipt of a written notice from the Provider specifying the Breach and requiring its remedy.

### 18.2.6. Prevention of Fraud

18.2.6.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Provider (including its shareholders, members, directors) in connection with the receipt of monies from the Council;

18.2.6.2 The Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur;

## 18.3 If the Provider or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Council) the Council may:

18.3.1 terminate the Contract and recover from the Provider the

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

18.3.2 recover in full from the Provider any other loss sustained by the Council in consequence of any Breach of this clause.

## **19 ARRANGEMENTS ON TERMINATION**

- 19.1 The Council and the Provider agree that termination or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the expiration or termination of the Contract in accordance with Information Governance policy.
- 19.2 After termination or expiry all data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Service(s) (including any items which remain to be completed as at the date of termination or expiry) and all other items provided on loan or otherwise to the Provider by the Council shall be delivered by the Provider to the Council provided that the Provider shall be entitled to keep copies thereof to the extent that the information contained therein does not relate solely to the Service(s) or to the extent that the Provider is required by law to maintain copies thereof or to the extent that the Provider was possessed of such data documents and records prior to the date of the Contract. In addition, the Provider shall co-operate fully with the Council during the handover leading to the termination of the Contract. This co-operation shall extend to full access to all documents, reports, summaries and any other information required to achieve an effective transition without disruption to routine operational requirements;
- 19.3 Upon termination of the Contract, all equipment and materials provided in relation, in whole or in part, to the Service(s) and/or assembled by (or which are in the process of being provided or assembled by) the Provider (or any sub-provider of the Provider) in relation, in whole or in part, to the Service(s) or materials and parts of Sites or Locations which, in relation, in whole or part, to the Service(s) are being altered or modified by the Provider (or any sub-provider of the Provider) in accordance with the Contract shall be transferred into the ownership of the Council regardless of whether the assembly of such equipment and materials or the alteration or modification of such settings has been completed;
- 19.4 If termination of the Contract occurs due to the circumstances detailed in clauses 18.1.1 to 18.1.16 and 18.2.2, then the Council may claim from the Provider the additional costs directly incurred by the Council in re-letting the Contract to a replacement Provider for the remainder of the Contract Period. Such costs shall not include any indirectly incurred costs or losses,



## **20. RE-TENDERING AND HANDOVER**

- 20.1 Within 21 days of being so requested by the Council, the Provider shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Council to issue invitations to offer for the future provision of the Service(s) following the termination of this contract and in accordance with clause 5.3.
- 20.2 Where, in the opinion of the Council, the Transfer of Undertakings (Protection of Employment) Regulations 1981 are likely to apply on the termination or expiration of the Contract, the information to be provided by the Provider under 21 shall include, as applicable, accurate information relating to the Staff who would be transferred under the same terms of employment under those Regulations, including in particular (but not limited to):
- 20.2.1. the number of Staff who would be transferred, but with no obligation on the Provider to specify their names;
  - 20.2.1. in respect of each of those Staff, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those Staff individually and any outstanding claims arising from their employment;
  - 20.2.2. the general terms and conditions applicable to those Staff, including Bath and North East Somerset Council provisions, probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.
- 20.3 The Council shall take all necessary precautions to ensure that the information referred to in Clause 20.2 is given only to replacement providers who have qualified to offer for the future provision of Service(s). The Council shall require that such Replacement Providers shall treat that information in confidence, that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to offer issued by the Council and that they shall not use it for any other purpose.
- 20.4 Subject to Clause 19, the Provider shall indemnify the Council against any claim made against the Council at any time by any person in respect of the liability incurred by the Council arising from any deficiency or inaccuracy in information, which the Provider is required to provide under Clause 20.2.
- 20.5 The Provider shall allow access to the site(s), in the presence of a representative of the Council, to any person representing any replacement provider whom the Council has selected to offer for the future provision of Service(s). For the purpose of such access, where the site(s) is on the Provider's Premises, the Council shall give the Provider seven days' written notice of a proposed visit together with a list showing the names of all persons who will be attending those Premises.
- 20.6 All persons who attend the Provider's Premises for the purposes of Clause



- 22.5 shall comply with the Provider's security procedures, subject to such compliance not being in conflict with the objective of the visit.
- 20.7 The Provider shall co-operate fully with the Council during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting up operations period of the new Provider, shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.
- 20.8 Within ten working days of being so requested by the Council, the Provider shall transfer to the Council, or any person designated by the Council, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the Service(s). The transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Council.

## **21. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYEES)**

- 21.1 The Parties hereby acknowledge that, subject to the right of Staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) Regulation 4 (7) , TUPE will operate to transfer each of the Staff to the Provider on the Commencement Date which shall be the "time of transfer" under TUPE.
- 21.2 If in relation to any or all of the Staff the transfer of their employment occurs on any date before the Commencement Date, the provisions of Clause 21.1 and this Clause 21.2 generally will apply to those Staff as if references to the Commencement Date were references to that date.
- 21.3 If it is determined by a Tribunal or other court of competent jurisdiction or as a result of a change of law that TUPE does not apply at or immediately before the Commencement Date the Provider shall ensure that it is able to and does use all or any of those who would have been Staff had TUPE applied to the provision of the Service(s) by the Provider from the Commencement Date on the terms set out in this Clause 21
- 21.4 Where Clause 19.4 applies the relevant Parties shall co-operate generally with a view to securing in a timely and economical manner that, where possible, the Staff shall come to be employed by the Provider.
- 21.5 Subject to Clause 19, the Provider shall indemnify and keep indemnified the Council against any Loss incurred by the Council connected with or arising from any claim or proceedings by any trade union, elected Staff representative or Staff association made against the Council in respect of any or all of the Staff or any other Staff of the Provider and which arises from or is connected with any failure by the 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 Regulation 6 of TUPE.
- 21.6 Subject to Clause 19, the Provider shall indemnify and keep indemnified the Council against any Loss incurred by the Council connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any Staff or of any other person at any time employed by (or engaged as a provider by) the Provider made against the

Council at any time for Breach of such contract, policy or any such collective agreement, pay, unfair dismissal, statutory or contractual redundancy pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Council and which results from any act, fault or omission of the Provider while such Staff were or such other person was employed by the Provider.

- 21.7 Subject to Clause 19, the Provider shall indemnify and keep indemnified the Council against any Loss incurred from any change or proposed change to the terms and conditions of employment of any Staff where such change is or is proposed to be effected following the transfer of any such person pursuant to the Contract and in respect of any Loss incurred by the Council arising from the employment or proposed employment of any such Staff otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.
- 21.8 Upon the day which is three months before the Termination Date or as soon as the Provider is aware of the proposed termination of the Contract or the provision by it of the Service(s) the Provider shall upon the request of the Council and to the extent permitted by law, supply to the Council all information required by the Council as to the terms and conditions of employment and employment history of any Staff then assigned by the Provider to the provision of the Service(s) and shall warrant the accuracy of such information.
- 21.9 Except with the prior written consent of the Council, the Provider shall not vary any terms and conditions of employment of any Staff or any policy or collective agreement applicable to any Staff then assigned by the Provider to the provisions of the Service(s) (provided always that this provision shall not affect the right of the Provider to give effect to any pre-existing contractual obligation to any such Staff) nor remove or replace any particular Staff so assigned (unless requested by such Staff or upon the resignation of such Staff in which case the Provider shall replace such person with another person of similar skills, qualifications and experience) after the Council has served notice of the termination of the Contract or after the Provider shall have otherwise become aware of the proposed termination of the Contract or the provision by it of the Service(s).
- 21.10 On the termination of the Contract, where there is no transfer pursuant to TUPE such that Staff assigned by the Provider to the provision of the Service(s) do not transfer to a Replacement Provider, the Provider shall use reasonable endeavours to procure that the Relevant Council body or Replacement Provider as the case may be may use any such Staff in the provision of Service(s) equivalent to the Service(s) from the date of expiry or termination for a period of up to 12 months thereafter.

## **22. INTELLECTUAL PROPERTY**

- 22.1 The Provider warrants that in providing the Service(s) it shall not infringe the copyright design right patent or any other Intellectual Property Right of any third party and indemnifies the Council against any claim made against it arising from any infringement of any intellectual property right belonging to

- any third party.
- 22.2 The copyright and other intellectual property right in any materials produced in the course of or in consequence of providing the Service(s) shall belong jointly to the Council and the Provider and both shall have the right to utilise these rights with the others written permission which shall not be unreasonably withheld.
- 22.3 The 'Branding' shall belong to the Council and the Provider shall not have a right to utilise the Branding name without prior written permission from the Council.

## **23. CONFIDENTIALITY**

- 23.1 The Provider agrees at all times to treat all Confidential Information as secret and confidential to the Council and safeguard it accordingly. Except as provided in clause 23.2, the Provider shall not at any time for any reason disclose or permit to be disclosed to any person any Confidential Information and the Provider shall not otherwise make use of or permit any use to be made of any Confidential Information by any person.
- 23.2 Without prejudice to clause 23.1, the Provider may disclose to such of its personnel as need to know it such Confidential Information as that individual needs to know in order to provide the Service(s). The Provider shall at all times ensure that its personnel involved in providing the Service(s) or who otherwise come across Confidential Information in the course of their duties are made aware of the nature of the Confidential Information and do not disclose it or otherwise Breach the provisions of this clause.
- 23.3 Without prejudice to clause 23.1, the Provider may disclose to relevant third parties such Confidential Information as that third party needs to know in order for the Provider to provide the Service(s) or where it is necessary for the Service Users mental and physical well-being, where to do so is required by law or they have the consent of the Service User to do so.
- 23.4 On termination of this Contract (however such termination may arise) the Service(s) Provider shall deliver up to the Council all working papers, computer disks and tapes or other material and copies provided or prepared by it (or any sub-provider of the Provider) pursuant either to this Contract or to any previous obligation owed to the Council regarding the Service(s).
- 23.5 The Provider (or any sub-provider of the Provider) shall not use any Confidential Information otherwise than for the purposes of this Contract.
- 23.6 In the event that the Provider fails to comply with this clause 23, the Council reserves the right to terminate the Contract by notice in writing with immediate effect.
- 23.7 The Council agrees at all times to treat all Confidential Information as secret and confidential to the Provider and safeguard it accordingly, notwithstanding the Council's obligations under clause 24

## **24 DATA PROTECTION**

- 24.1 Each party shall comply with its respective obligations under the Data Protection Act 1998 (DPA).
- 24.2 Notwithstanding the general obligation in Clause 24.1 where the Provider is processing personal data (as defined by the DPA) as a data processor for the Council, the Provider shall comply with the DPA as if they were a Data Controller. In addition the Provider shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental losses or destruction of, or damage to, the personal data) as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
  - 24.2.1. provide the Council with such information as the Council may reasonably require satisfying itself that the Provider is complying with its obligations under the DPA;
  - 24.2.2. promptly notify the Council of any Breach of the security measures required to be put in place under Clause 26.2; and
  - 24.2.3. ensure that it does nothing knowingly or negligently which places the Provider in Breach of the Council's obligations under the DPA.
- 24.3 Providers who choose to subcontract the control of the data to a data processor should ensure compliance by the subcontractor with Clause 24; and
  - 24.3.1. Notify the Council in writing when making plans to subcontract with a data processor and obtain in writing the Council's consent to do so; and
  - 24.3.2. Provide a copy to the Council of the draft contract with the data processor for the Council's approval; and
  - 24.3.3. Failure by the Provider to comply with Clause 24.3 shall entitle the Council in its absolute discretion to terminate this Contract in writing forthwith.
  - 24.3.4 The provider will ensure that no data in relation to this contract is processed outside of the European Union
- 24.4 The provisions of this clause shall apply during the continuation of this Contract and indefinitely after its expiry or termination.

## **25. FREEDOM OF INFORMATION**

- 25.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 25.2 Publicity, Media and Official Enquiries



25.2.1. Without prejudice to the Council's obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party;

25.2.2. Both Parties shall take reasonable steps to ensure that their employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 25.2.1.

25.3 The Provider shall and shall procure that its sub-contractors shall:

25.3.1. provide the Council with a copy of all information in its possession or power in the form that the Council requires within five working days (or such other period as the Council may specify) of the Council requesting that information; and 25.3.2. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the Freedom of Information Act 2000.

25.4 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:

25.4.1. is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations;

25.4.2. is to be disclosed in response to a Request for Information.

25.5 The Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of Freedom of Information Act 2000, November 2004) be obliged under the Freedom of Information Act 2000 or the Environmental Information Regulations to disclose information:

25.5.1. without consulting with the Provider, or

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

25.6 The Provider shall ensure that all information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time and in accordance with clause 5.3.

25.7 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 25.5.

## **26. HEALTH AND SAFETY**

26.1 To comply at all times with the requirements of the Health and Safety at Work Act 1974 and other health and safety legislation regulations or orders and in particular to consult with the Council and Staff to provide a safe working environment and work systems, having regard to the needs of Disabled

People.

## **27. EQUAL OPPORTUNITIES**

- 27.1 The Provider shall not, and shall procure that the Provider's personnel or Sub-Contractors, suppliers, servants, employees or agents, do not, unlawfully discriminate either directly or indirectly on grounds including, but not exclusively, race, colour, ethnic or national origin, disability, gender, gender identity, sexual orientation, religion or belief, marriage or civil partnership, pregnancy and maternity, 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, Human Rights Act 1998, Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Age) Regulations 2006 or any statutory modification or re-enactment thereof or any other Law relating to discrimination in employment.
- 27.2 The Provider shall, and shall procure that the Provider personnel or its Sub-Contractors, suppliers, servants, employees or agents, shall, operate in a manner and co-operate with the Council so as to allow the Council to comply with its statutory public sector equality duties which means any legislation in relation to the promotion of equality on the grounds as specified in this clause above.
- 27.3 The Provider shall for the purposes of ensuring compliance with all equality legislation above, see also clause 31. of this Contract, in relation to staff employed in the performance of the Contract, observe the provisions of the Equality and Human Rights omission Code of Practice in Employment, including but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunity policy which may be tested by the Council at their discretion from time to time including requesting information the Council may require from time to time to ensure compliance.
- 27.4 The Provider shall, and shall procure that the Provider Personnel or its Sub-Contractors, comply with the Council's equality and diversity policy as may be amended from time to time, copies of which will be provided by the Council to the Provider at the Provider's written request.
- 27.5 The Provider shall expressly notify the Nominated Representatives forthwith as soon as it becomes aware of any investigation of or proceedings brought against the Provider under all relevant legislation including, but not exclusively statutes in 27.1 above.
- 27.6 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Provider's any "Relevant Personnel's"



performance of the Contract, being in contravention of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation including but not exclusively in 27.1 of this Clause, the Provider shall, at no cost to the Council:

27.6.1. Provide any information requested in the timescale allotted;

27.6.2. Attend any meetings as required and permit Staff to attend;

27.6.3. Promptly allow access to and investigation of any documents or data

deemed to be relevant;

27.6.4. Allow itself and any Staff to appear as witness in any ensuing proceedings; and

27.6.5. Cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

27.7 Where any investigation is conducted or proceedings are brought under the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation including but not exclusively in 27.1 of this Clause, which arise directly or indirectly out of any act or omission of the Provider's personnel or Sub-Contractors, suppliers, servants, employees or agents, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay a third party.

27.8 Where any investigation is conducted or proceedings are brought under the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation including but not exclusively in 27.1 of this Clause, which arise directly or indirectly out of any act or omission of the Provider's personnel or Sub-Contractors, suppliers, servants, employees or agents, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay a third party.

27.9 In the event that the Provider enters into any subcontract in connection with the Contract, it shall impose obligations on its subcontractors in terms substantially similar to those imposed on it pursuant to this clause.

27.10 Reference to any provision of any Act or statutory provisions shall (except where otherwise stated) include any modification extension or re-enactment

thereof and any amendments made thereto.

## **28. NOTICES**

28.1 Any notice to be given under the Contract shall either be delivered personally, sent by facsimile, sent by first class recorded delivery post (airmail if overseas) or electronic mail. The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:

28.1.1. if personally delivered, at the time of delivery;

28.1.2. if sent by facsimile at the time of transmission;

28.1.3. 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

28.1.4. if sent by electronic mail, a telephone call is made to the recipient 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) on the same day as that on which the electronic mail is sent.

28.2 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 Council 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.

## **29. FORCE MAJEURE**

29.1 No Party shall be entitled to bring a claim for a Breach of obligations under the Contract by the other Party or incur any liability to the other Party for any Loss or damages incurred by that party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event of Force Majeure.

29.2 In the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

29.3 As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree

appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

### **30. SEVERABILITY**

- 30.1 If any term or provision in this Contract shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this Contract and the enforceability of the remainder of this Contract shall not be affected.

### **31. LAW**

- 31.1 The Provider agrees that the Contract is to be governed and construed according to English law.

### **32 THIRD PARTY RIGHTS**

- 32.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Contract is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions.

### **33. SAFEGUARDING**

- 33.1 These safeguarding standards apply to all B&NES Council contracts for all Providers, regardless of whether the service works with children, young people, families or adults. The term 'child/ children' will be used in these standards to cover all children and young people up to their 18th birthday. The term 'adult' will be used in these standards to cover all people over the age of 18 years. These standards are informed by legislation and statutory guidance and evidenced from research. All Providers will be expected to comply with all statutory / national guidance related to safeguarding children and adults, this includes but is not limited to;

- Children Act 1989
- Children Act 2004
- Working Together to Safeguard Children 2015
- Care Quality Commission Regulation 11 of the Health and Social Care Act 2008 (Regulated Activities) 2010
- Care Act 2014
- Human Rights Act 1998
- Mental Capacity Act 2005

#### **33.2 Policies, Procedures and Guidelines**

- 33.2.1 The Provider to ensure the safeguarding policies, procedures and

related guidelines are reviewed every three years and updated in light of changes to legislation, national and local guidance (this will include guidance on safeguarding adults and children from the Department of Health, Department for Education, Home Office, Ofsted, CQC, ADASS and ADCS). These policies and procedures will be in line with those of the Local Safeguarding Adults Board (LSAB) Multi-agency Safeguarding Adults Policy and Procedures and the Local Safeguarding Childrens Board (LSCB) Policies and Procedures – see also [www.swcpp.org.uk](http://www.swcpp.org.uk)

33.2.2 The Provider to include in the policy a named person in the organisation that all staff can identify as the leads for safeguarding adults and / or safeguarding children (child protection) and deals with relevant concerns. All Providers must also identify a lead for Child Sexual Exploitation, Prevent, Mental Capacity Act, FGM and Human Trafficking. Adult Care Providers must also identify a lead for Self-Neglect. This can be the same or different people within the organisation.

33.2.3 The Provider to have clear procedures which include details of how individual staff who are concerned that a child or adult, is at risk, has or may have been abused, is required to report this immediately to the identified named person within their organisation and consider with them a referral to the relevant social care team (adults or children) and document that decision.

33.2.4 The Provider to detail in the policy and procedures how they ensure effective multi-agency working around safeguarding including but not limited to:

33.2.5 Compliance with all relevant Multi-agency Policy and Procedures including but not limited to LSCB Serious Case Review Process, the LSAB Safeguarding Adult Review Process, the Child Death Review process and Serious Untoward Incident Process where required.

### **33.3 Effective Supervision**

33.3.1 The Provider will have a Supervision Policy / statement setting out the arrangements for staff. This will include details on the frequency and ensure opportunities are provided to discuss safeguarding concerns where relevant for adults at risk and children. Supervision should be delivered by suitably skilled and experienced supervisors who have access to their own supervision.

### **33.4 Safe Recruitment and Retention of Staff**

33.4.1 The Provider to have in place a Safe Recruitment Policy and ensure this is in line with statutory guidance. The LSCB has guidance which the Provider must take into consideration about safer recruitment practices (for example collecting two references before an employee commences in post).

33.4.2 The Provider to ensure those staff responsible for interviewing staff, volunteers and agency staff have undertaken appropriate safer recruitment training.

33.4.3 The Provider to include details in the policy of the recruitment process for paid Staff, volunteers and agency staff.

33.4.4 The Provider to include details in the policy of how the Provider will comply with Government criteria for Disclosure and Barring Service (DBS) checks (including validation of certificates). <https://www.gov.uk/disclosure-barring-service-check/overview>

33.4.5 The Provider to ensure the Safe Recruitment Policy includes a section on managing a positive DBS disclosure, this will include how the Provider deals with convictions, relevant 'soft' information and third party information

33.4.6 For Providers of services which support children and families the Policy must set out that any positive disclosures or relevant information on DBS checks will be reported to the Council Nominated Representative(s) using a risk assessment tool (it is advised that the Council tool is used). Where the Provider is concerned about the DBS check and the appropriateness of the person to work with children and young people they can discuss this with the Local Authority Designated Officer (LADO).

33.4.7 The Provider shall ensure that the Council is promptly kept advised at all times of any "Relevant Personnel" who subsequent to his/her commencement of employment as a member of staff receives a conviction or caution.

### **33.5 Managing Allegations against Paid, Volunteers and Agency Staff Who Work with Children**

33.5.1 The Provider to ensure that they include in their policies and procedures sections which demonstrate their compliance with national and local guidance on allegations management.

For Providers supporting children and families this will include reference to:

<http://www.online-procedures.co.uk/swcpp/?s=managing+allegations+against+staff>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419595/Working\\_Together\\_to\\_Safeguard\\_Children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf)

[http://www.bathnes.gov.uk/sites/default/files/sitedocuments/Children-and-Young-People/ChildProtection/managing\\_allegations\\_against\\_staff\\_or\\_volunteers\\_who\\_work\\_with\\_children.pdf](http://www.bathnes.gov.uk/sites/default/files/sitedocuments/Children-and-Young-People/ChildProtection/managing_allegations_against_staff_or_volunteers_who_work_with_children.pdf)

33.5.2 With regard to allegations against staff/volunteers working with children, the Provider to ensure the policy has a named officer in their organisation who will consult with/report all allegations in the first instance to the LADO.

33.5.3 The Provider shall ensure that the LADO is kept informed at all times of any disciplinary incident relating to its staff/volunteers involving children and/or



visitors, or the Council's staff or property and the outcome of any investigation.

33.5.4 The Provider shall ensure that the Council's Nominated Representative(s) is kept informed of any other incidence of serious misconduct involving any "Relevant Personnel" (non LADO related) and undertake a risk assessment as set out above.

33.5.5 With regard to allegations against those Staff working with adults at risk, the LSAB Multi-Agency Safeguarding Procedure will be implemented and the Provider to ensure they work within this

[http://www.bathnes.gov.uk/sites/default/files/sitedocuments/Children-and-Young-People/ChildProtection/managing\\_allegations\\_protocol\\_2014.pdf](http://www.bathnes.gov.uk/sites/default/files/sitedocuments/Children-and-Young-People/ChildProtection/managing_allegations_protocol_2014.pdf)

### **33.6 Knowledge and Use of the Multi- Agency Escalation Policy**

33.6.1 The Provider to ensure the Policy is made available and training provided as required to its entire staff to implement the policy as detailed on the LSCB web pages for the Multi-Agency Escalation Policy.

[http://www.bathnes.gov.uk/sites/default/files/sitedocuments/Children-and-Young-People/ChildProtection/lscb\\_escalation\\_policy\\_for\\_resolving\\_professional\\_disagreement.docx](http://www.bathnes.gov.uk/sites/default/files/sitedocuments/Children-and-Young-People/ChildProtection/lscb_escalation_policy_for_resolving_professional_disagreement.docx)

### **33.7 Whistle blowing Policy**

33.7.1 All Providers should have a Whistleblowing Policy with a clear process for raising concerns about individuals or organisational culture at all levels in the organisation.

### **33.8 Policy for the Use of Social Networking**

33.8.1 All Providers should have a Policy for staff use of social networking. This Policy should detail expectation regarding an individual's behaviour, conduct and interaction when using all social media including social networking sites. This includes contact with adults, parents and children who use the organisations services.

### **33.9 Knowledge and Use of other Policies**

33.9.1 The Provider to ensure it is aware of the other policies and guidance the LSAB and the LSCB have in addition to the Multi-Agency Safeguarding Policy and Procedures.

### **33.10 Single Central Record**

33.10.1 For Providers of Children and Families Services to complete and keep an up to date a single central record of all Staff, volunteers and agency staff as per the template on the LSCB website Local Safeguarding Children Board | Bathnes and see safer recruitment toolkit or equivalent and in compliance with

DBS guidance

<https://www.gov.uk/government/publications/handling-of-dbs-certificate-information>

33.10.2 For adult services or if the Provider has no single central record then they must be able to provide evidence of any checks (including the DBS) if requested to do so by the Council and reviewed annually

### **33.11 Safeguarding Audit and Monitoring**

33.11.1 Children and Families Service Providers are required to complete a quarterly safeguarding report to the Council Nominated Representative.

33.11.2 Children and Families Service Providers must complete the annual safeguarding children's audit (sometimes referred to as a Section 11) that the LSCB has approved for any given year. The audit tool that has been approved for use is the one developed by Safe Network, which the LSCB adopted at the end of 2014.

33.11.3 Where remedial actions are identified the Provider must deliver these through their action plan. This will be reviewed annually with the Council's Nominated Representative(s) and where there is continued delay in implementing actions to address areas of concern relevant to this contract the Provider may be subject to sanctions including the possibility of notice being given on the contract.

33.11.4 Adult care service Providers must complete the range of audits and monitoring as required by the Council Nominated Representative and the LSAB when requested. These will be shared with the Council Nominated Representative who will discuss at your (annual) review to ensure remedial actions identified are being addressed.

33.11.5 All Providers will participate in case audits (single or multi-agency) or case reviews and completing relevant actions in order to demonstrate compliance as required

### **33.12 Training and development of staff/volunteers relevant to their role within the organisation**

33.12.1 The adult service Provider will ensure that a safeguarding training needs analysis is undertaken of relevant staff and reviewed annually and that the LSAB training audit is specifically completed as requested.

33.13.2 The children and families service Providers will report staff training through their annual audit and will maintain the Single Central Record.

33.13.3 All Providers will ensure all staff are made aware of safeguarding and the law in relation to the Mental Capacity Act (for agencies providing support to

individuals over the age of 16 years) during their induction; will ensure all relevant new staff will complete safeguarding awareness training (usually half a day) either through the Council's Common Induction Training or sourced by the Provider; for adult care Providers safeguarding awareness training is referred to as Level 2 training and is available either via Sirona Care and Health or must be sourced independently by the Provider.

33.13.4 All Providers will ensure the nominated officer in their organisation will undertake the one day inter-agency child protection training course (or equivalent).

33.13.5 All Providers must ensure that relevant staff have the appropriate level of investigation training.

33.13.6 Adult care Providers will ensure that regardless of their role all adults in their organisation working in an environment where there are children and families are required to have a level of child protection training.

33.13.7 Safeguarding adults and child protection training should be updated at regular intervals, currently every 3 years for staff working with children, families and adults. For those named officers (sometimes referred to as those with designated responsibilities) for children and families this should be every two years.

33.13.8 Mental Capacity Act training should be undertaken once (this applies to relevant staff only).

### **33.13 Caldicott Principles**

33.13.1 All Providers must at all times during the term of the Contract comply with the Caldicott Principles and identify a lead officer in their organisation - the Council must be notified in writing of who is the lead prior to the service commencement date.

33.13.2 All Providers must notify the Council Nominated Representative if the Caldicott Principles is breached and report the actions taken by the Provider in relation to this. The Council Nominated Representative will notify the Council Caldicott Guardian in writing who will record the breach and action taken by the Provider.

33.13.3 All Providers must keep a written record of all breaches

## **34. SERVICE USER RECORDS**

34.1 36.1.1 The Provider shall create, maintain, store and retain Service User Records for all Service Users. The Provider shall retain such records for the periods of time identified in Law and securely destroy from thereafter.

34.1.2 Subject to compliance with the Law, the Provider shall at the reasonable request of a Council promptly transfer or deliver a copy of the Service User Records held by the Provider for an Service User for which the Council is responsible to a third party provider or healthcare or social care services designated by the Council.

34.1.3 The Provider shall:

- i. use Service User Records solely for the execution of the Provider's obligations under this Agreement and;
- ii. give each Service User full and accurate information regarding his/her treatment and shall evidence that in writing in the relevant Service User Record.

THIS CONTRACT is for: The Provision of the Syrian Vulnerable Persons Resettlement Scheme

between

BATH AND NORTH EAST SOMERSET COUNCIL, Lewis House, Manvers Street, Bath, BA1 1JG ("the Council") (1)

and

JULIAN HOUSE, 55 New King Street, Bath BA1 2BN ("the Provider") (2)

for the period from 10<sup>th</sup> July 2017 to 31<sup>st</sup> July 2022

for the total Contract Price of £20,396.67 per person up to a maximum contract value of £509, 916.75 for the Contract duration.

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written.

**The Common Seal of  
Bath and North East  
Somerset Council, was here unto  
affixed in the presence of**

  
Authorised Signatory

Name: SAMANTHA JONES

Position: ~~INCLUSIVE COMMUNITIES MANAGER~~



*Deputy Leader  
Place Legal team*

Executed as a deed on behalf of  
**Julian House**  
acting by a Director and its Secretary or two Directors

 ..... Director/Company Secretary

Name: Robert Law .....

 ..... Director

Name: ROBERT LAW .....



## Schedule A: Service Specification

1	<p><b>CONTRACT MANAGEMENT:</b></p> <p>B&amp;NES Council Representative: Samantha Jones</p> <p>Provider's Representative: TBC</p>
2	<p><b>DETAILS OF THE SERVICE:</b></p> <p><u><b>User Group Of The Service</b></u></p> <p>The Syrian Vulnerable Persons Resettlement Scheme (SVPR) prioritises people requiring urgent medical treatment, survivors of torture and violence, and women and children at risk. Those with a criminal past or links to war crimes or extremism are excluded from the scheme.</p>
3	<p><b>DESCRIPTION OF SERVICE:</b></p> <p>The SVPR scheme prioritises help for survivors of torture and violence, women and children at risk, and those in need of medical care. UNCHR works with Home Office to identify suitable cases.</p> <p>Those who are accepted under SVPR are granted humanitarian protection giving them leave to remain for 5 years with full access to employment and public funds and rights to family reunion comparable to refugees. At the end of the 5 years, if they have not been able to return to Syria, they may be eligible to apply for settlement in the UK. Settlement may be refused if the person is convicted of a criminal offence during their leave and will be refused if they pose a danger to the public, or to national security.</p> <p><b>Locally</b></p> <p>Bath &amp; North East Somerset Council accepted 25 individuals (comprising 5 households) in Year 1 of the scheme who are currently being supported via in house provision. It is now in a position to accept approximately 25 more refugees during year 2 however due to the in house provision being at capacity, these additional families will need to be support through an externally commissioned provider.</p> <p>All arrivals must be settled / housed and their GP must be within the Bath &amp; North East Somerset (B&amp;NES) Council boundary.</p> <p>The Council will lead on working with key local partners such as the Clinical Commissioning Groups, NHS England Area Team, Public Health England and local housing providers to secure access to healthcare, education etc.</p>

## **Scope**

The successful provider must ensure either directly or in partnership that the following needs are met;

- Initial reception service; general orientation and promoting independence
- Support planning and key working
- Fit for purpose housing; housing related support
- Health care – including access to primary and secondary care
- Education – both adults and children
- Benefits advice
- Employment & training
- Wellbeing care – clothing , food , including integration into local communities

## **Service Delivery and Location**

The provider will offer a flexible approach to delivering support; for example an individual may require intensive support when they arrive and then as they settle in require a less intensive approach.

A named keyworker must be allocated to the individual and a support plan which promotes independence rather than reliance must be agreed; support should be tapered as and when the individual(s) become self-sufficient and more independent.

Some people are likely to have multiple issues, including poor health and possibly significant mental health issues due to the trauma they have experienced. Therefore it is essential that the service provider is able to meet these needs through partnership or sub-contracting arrangements.

The service provider will ensure that the service is accessible including arrangements for out of office hours provision and for those unable to speak or read English. e.g. interpreting services.

**The following are mandatory needs that must be met:**

### **A Housing Accommodation & Support**

Furnish property to a modest standard; tenancy support; emergency utilities connection & help set up payments; how to use appliances; DWP – benefits claims, budgeting; health and safety issues, details of emergency services.

### **B Health Needs**

All individuals must have access and be registered with a GP, dentist and pharmacy and screened for any health issues. A good practice medical screening proforma has been developed by B&NES CCG, this should be used by GP practices.

**C Wellbeing Care**

The provider should assist individuals to become integrated into local communities including helping them to access relevant faith communities groups and develop other non-professional support networks. This may include befriending services and access to leisure services.

**D General Orientation**

The provider will introduce people to local amenities; tour local area; book appointment with DPW for benefits; provide food or funds to purchase until the individuals DWP benefits have been processed; register with GP and dentist; provide one off clothing allowance; provide one off baby pack; provide a limited pre-paid SIM card; provide a limited initial cash support where required; meet and greet at the airport and provide airport pick up.

**E Children's Education**

The provider will work with the local authority in securing primary and secondary school places. The provider will then lead on supporting individual(s) to secure a place within the selected schools and identify any additional support needs that cannot be met through the school service, i.e. English as an additional language or disability needs. The additional costs of specialist provision in school must be calculated and approved by the local authority.

**F Adult Employment, Education & Training**

The provider will support the individuals into the labour market working in conjunction with DWP, education and training establishments, including but not limited to ESOL providers. ESOL access and provision is mandatory.

  
B&NES Representative Initial: LB Date: 25.7.17

  
Provider Representative Initial: SH Date: 27.7.2017

## Schedule B: Service Level Agreement

Quantity of Service to be delivered	Quality Standards
A minimum of 25 individuals to access the service	<p>There are sufficient numbers of staff in place to deliver the service to the standards of the contract</p> <p>The qualifications, skills and knowledge base of staff proposed to deliver the service are centred around working with vulnerable persons</p> <p>The service is inclusive and complies with the 2010 Equality Act</p>

Service User Outcomes	KPIs / Measures
1) Families receive appropriate accommodation and support	<ul style="list-style-type: none"> <li>• Properties are furnished to a modest standard</li> <li>• Families receive tenancy support</li> <li>• Families receive emergency utilities connection &amp; help to set up payments;</li> <li>• Families are shown how to use appliances;</li> <li>• Families are support with DWP – benefits claims, budgeting;</li> <li>• Families are briefed on potential health and safety issues within their new home</li> <li>• Families are provided details of emergency services</li> </ul>
2) Family have their health needs appropriately met	<ul style="list-style-type: none"> <li>• All individuals must have access and be registered with a GP dentist and pharmacy and screened for any health issues</li> </ul>
3) Families have their wellbeing and care needs appropriately met	<ul style="list-style-type: none"> <li>• Individuals are supported to become integrated into local communities including helping them to access relevant faith communities groups and develop other non-professional support networks. This may include befriending services and access to</li> </ul>

	leisure services.
4) Families are given appropriate knowledge of the local area	<ul style="list-style-type: none"> <li>• Families are introduced to local amenities and given a tour of the local area</li> <li>• Appointments are booked with DPW for the provision of benefits;</li> <li>• Families are provided with food or funds to purchase until the individuals DWP benefits have been processed</li> <li>• Individuals are provided with a one off clothing allowance</li> <li>• Families are provided with a limited pre-paid SIM card and limited initial cash support where required</li> <li>• Families are greeted at the airport and taken to their accommodation</li> </ul>

#### Monitoring Data to be provided

- A quarterly monitoring form evidencing progression towards the achievement of the targets and outcomes detailed in the table above.
- An annual monitoring form provided by Home Office
- Safeguarding Monitoring form (to be completed quarterly) – N.B this includes the minimum safeguarding standards indicators.
- A breakdown of actual expenditure each monitoring period
- No. of requests for the service not accepted or actioned due to oversubscription (or other reasons, please specify).

#### The following should be retained for inspection by the Contract Manager on request:

- DBS Single Central Record for all staff working within the service.
- The Safeguarding Self-Audit (to be completed at least annually).
- Copies of any evaluation forms completed by relevant stakeholders evidencing achievement of the outcomes listed in the table above.
- Evidence that demonstrates that the service is being delivered in line with the quality standards listed in the table above.



## MONITORING SCHEDULE

	1 <sup>st</sup> Period (Apr - June)	2 <sup>nd</sup> Period (July-Sept)	3 <sup>rd</sup> Period (Oct - Dec)	4 <sup>th</sup> Period (Jan - March)
<b>2017/2018</b>				
Monitoring reminder sent to provider	1 <sup>st</sup> July	1 <sup>st</sup> October	2 <sup>nd</sup> January	1 <sup>st</sup> April
Monitoring forms due back to the Contract Manager by:	14 <sup>th</sup> July	14 <sup>th</sup> October	14 <sup>th</sup> January	14 <sup>th</sup> April

	1 <sup>st</sup> Period (Apr - June)	2 <sup>nd</sup> Period (July-Sept)	3 <sup>rd</sup> Period (Oct - Dec)	4 <sup>th</sup> Period (Jan - March)
<b>2018/2019</b>				
Monitoring reminder sent to provider	1 <sup>st</sup> July	1 <sup>st</sup> October	2 <sup>nd</sup> January	1 <sup>st</sup> April
Monitoring forms due back to the Contract Manager by:	14 <sup>th</sup> July	14 <sup>th</sup> October	14 <sup>th</sup> January	14 <sup>th</sup> April

	1 <sup>st</sup> Period (Apr - June)	2 <sup>nd</sup> Period (July-Sept)	3 <sup>rd</sup> Period (Oct - Dec)	4 <sup>th</sup> Period (Jan - March)
<b>2019/2020</b>				
Monitoring reminder sent to provider	1 <sup>st</sup> July	1 <sup>st</sup> October	2 <sup>nd</sup> January	1 <sup>st</sup> April
Monitoring forms due back to the Contract Manager by:	14 <sup>th</sup> July	14 <sup>th</sup> October	14 <sup>th</sup> January	14 <sup>th</sup> April

	1 <sup>st</sup> Period (Apr - June)	2 <sup>nd</sup> Period (July-Sept)	3 <sup>rd</sup> Period (Oct - Dec)	4 <sup>th</sup> Period (Jan - March)
<b>2020/2021</b>				
Monitoring reminder sent to provider	1 <sup>st</sup> July	1 <sup>st</sup> October	2 <sup>nd</sup> January	1 <sup>st</sup> April
Monitoring forms due back to the Contract Manager by:	14 <sup>th</sup> July	14 <sup>th</sup> October	14 <sup>th</sup> January	14 <sup>th</sup> April

	1 <sup>st</sup> Period (Apr - June)	2 <sup>nd</sup> Period (July-Sept)	3 <sup>rd</sup> Period (Oct - Dec)	4 <sup>th</sup> Period (Jan - March)
<b>2021/2022</b>				
Monitoring reminder sent to provider	1 <sup>st</sup> July	1 <sup>st</sup> October	2 <sup>nd</sup> January	1 <sup>st</sup> April
Monitoring forms due back to the Contract Manager by:	14 <sup>th</sup> July	14 <sup>th</sup> October	14 <sup>th</sup> January	14 <sup>th</sup> April

The Nominated Representative(s) of the Council and the Provider will discuss the level and standard of Service(s) provided at least once each monitoring period.

Monitoring to be sent to: The Equality Team at [equality@bathnes.gov.uk](mailto:equality@bathnes.gov.uk)

B&NES Representative Initials  Date 27.7.2017.....

Provider Representative Initials  Date 25.7.17.....

Bath & North East  
Somerset Council

## **Schedule C: Contract Price and Payment Schedule**

The Syrian Vulnerable Persons Resettlement Scheme is currently funded in two parts

1. Year 1: The year 1 tariff is from the Official Development Assistance budget and provides £8,500 per person for direct local authority costs incurred delivering the Statement of Requirements. Local Authorities will receive funding if they deliver the services set out in the Syrian Vulnerable Persons Relocation Scheme Year 1 Funding Instruction. There is additional support for property adaptations, additional void costs for large properties, educational and medical needs and social care which will be paid to the local authority or relevant health organisation, as appropriate. Resettled people will also be able to access welfare benefit payments (subject to eligibility) and other public services.
2. Years 2-5: Funding is an un ring-fenced per person tariff paid by the Home Office to local authorities to assist with the costs incurred supporting people. The funding is un ring-fenced and local authorities can determine the best use of the funds to support the people they are supporting. The type of services it will fund can include for example, integration support such as additional English language training and social care. Funding is broken down as follows: Year 2 tariff is £5,000; Year 3 tariff is £3,700; Year 4 tariff is £2,300; Year 5 tariff is £1,000.

### **Please see attached pricing schedule for a full breakdown of costs**

The commissioner wishes to minimise disruption to services/organisations once the contract is awarded and therefore reserves the right to vary the contract both in volume and length of time, should this be required during the contract period.

Invoices to be sent to: - [equality@bathnes.gov.uk](mailto:equality@bathnes.gov.uk) **Please note payments may take up to 30 days from the date on the invoice.**

A purchase order reference will be provided on contract signing. This must be included on invoices in order for them to be paid.

The Council shall not be obliged to pay an invoice submitted by the Provider in accordance with Contract clause 8.2 unless the Provider has submitted Monitoring in accordance with Contract clause. Please see Schedule B for monitoring due dates.

### Payment Schedule

This will be a spot purchase agreement where payments will be made annually on a per person basis on receipt of a valid invoice. N.B. The package of support available to each person will last up to 5 years and begins when the family first arrives in the UK or transfers to Bath and North East Somerset.

B&NES Representative Initials  Date 27.7.2017

Provider Representative Initials  Date 25.7.17

Bath & North East  
Somerset Council

