



**Autistic Spectrum Condition
Service Contract for Supported
Living Services
Contract ID: SC117**

TERMS & CONDITIONS

**Autistic Spectrum Conditions Service Contract for Supported Living Services
for Reading Borough Council
provided by [insert winning tenderer]**

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A GENERAL PROVISIONS

1 Definitions and Interpretation

- 1.1 The definitions and interpretation of expressions used within these Terms and Conditions are set out in Schedule VIII 'Definitions and Interpretations'.
- 1.2 Unless the context makes it clear that this is not what is intended, any reference in this Agreement to:
 - 1.2.1 the feminine includes a reference to the masculine and vice versa;
 - 1.2.2 the singular includes a reference to the plural and vice versa;
 - 1.2.3 a person includes a reference to an individual or a firm, partnership, company, or corporation;
 - 1.2.4 a clause or a schedule is a reference to the whole of that clause or schedule unless stated otherwise.
- 1.3 The headings in this Agreement are for ease of reference only and do not affect its interpretation.
- 1.4 Reference to any statute, enactment, order, regulation or other similar instrument shall be taken to mean as a reference to the statute, enactment, order, regulation, or instrument as subsequently amended or re-enacted.
- 1.5 References to Staff of the Provider shall include references to all persons engaged, employed or appointed by the Provider in the performance of the Service.

2 Details of the Terms & Conditions

- 2.1 These Terms and Conditions together with the Schedules form the Contract between the Council and the Provider.
- 2.2 The Parties to the Contract are detailed in the **'Form of Agreement'**.

3 Term of Contract

- 3.1 The Contract shall commence on the **'Commencement Date'** of [to be inserted] and will continue for a period of 5 (five) years until the **'Expiry Date'** of [to be inserted] unless it is otherwise terminated in accordance with the terms of this Contract, or extended in accordance with clause 3.2
- 3.2 The Council may by giving written notice to the Service Provider of not less than 3 (three) Months, extend the Contract for a further period or periods of up to a further aggregate of 5 (five) years (the maximum contract period therefore being 10 (ten) years including the Initial Contract Period).
- 3.3 The provisions of the Contract including the Contract Price will apply throughout any such extended period.

4 Contract Signatures, Authorised Officer and Contract Manager

- 4.1 The signatures of the Parties executing the Contract as a Deed are contained in the Form of Agreement.
- 4.2 The Council will appoint a person to exercise its rights and powers under this Contract, called the **'Authorised Officer'**. This will not limit in any way either the Council's rights or its obligations.

- 4.3 Details of the person the Council has appointed to act as Authorised Officer (their telephone number, fax number, e-mail address and postal address) are set out in Schedule V 'Details of Authorised Officer and Contract Manager'. If no such details are set out, then the Authorised Officer will be the person who signs this Contract on the Council's behalf.
- 4.4 The Authorised Officer will be entitled to appoint another person or persons to exercise some or all of their functions (each a Deputy Authorised Officer).
- 4.5 The Council will notify the Provider in writing of any changes in the details of the Authorised Officer and Deputy Authorised Officer as is necessary.
- 4.6 The Provider will appoint a person to exercise its rights and powers under this Contract, called the **Contract Manager**. This will not in any way limit either its rights or its obligations.
- 4.7 Details of the person the Provider has appointed to act as Contract Manager from the Commencement Date (their telephone number, fax number, e-mail address and postal address) are set out in Schedule V 'Details of Authorised Officer and Contract Manager'. If no such details are set out, then the Contract Manager will be the person who signs this Contract on the Provider's behalf.
- 4.8 The Contract Manager will be entitled to appoint another person or persons to exercise some or all of their functions (each a Deputy Contract Manager).
- 4.9 The Provider must notify the Council in writing of any changes in the details of the Contract Manager as soon as they are known to it by sending us a notice in accordance with clause 5 'Notices'.

5 Notices

- 5.1 Any notice or other communication from one Party to the other shall only be valid under the Contract if it is made in writing on behalf of the Party concerned.
- 5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 4.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 (two) Working Days after the day on which the letter was posted, or 1 (one) Working Day, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 5.3 For the purposes of clause 5.2, the address of each Party shall be as set out at Schedule V 'Details of Authorised Officer and Contract Manager'.
- 5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

6 Entirety of Contract

- 6.1 This Contract sets out all the terms and conditions, which the Council and the Provider have agreed regarding the provision of the Service. This means that it supersedes all prior negotiations, representations, documents or understandings between us, whether written or oral, made, carried out or entered into before the date of this Contract. This clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.
- 6.2 If there is any inconsistency or conflict between what is set out in any of the clauses of the Terms and Conditions, any document referred to in the clauses, and what is set out in any of the Schedules, the conflict shall be solved in accordance with the following order of precedence:
- 6.2.1 the clauses of the Terms and Conditions;

- 6.2.2 the Schedules and
- 6.2.3 any other document referred to in the clauses of the Terms and Conditions and or Schedules.

7 Counterparts

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

8 Conflicts of Interest

- 8.1 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 an actual conflict or potential conflict, between the financial 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 the full particulars of any such conflict of interest which may arise.
- 8.2 The Provider shall ensure that it has a procedure that meets all relevant professional codes of practice relating to conflicts of interests and, if necessary, will make amendments to practice to ensure that it continues to do so throughout the Term. The Provider will also ensure that this procedure is observed at all times by Staff so as to prevent the occurrence of situations not only where a conflict has arisen, but where one is likely to arise. If required by the Council, a separation of duties will be implemented by the Provider to prevent such conflicts of interest.
- 8.3 The Council reserves the right to terminate the Contract immediately by notice in writing and/or 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 financial 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.

9 Agency

- 9.1 The Provider must not represent to anyone, nor allow any of its employees or agents to represent to anyone, that it is the Council's agent or servant for any purpose whatsoever.
- 9.2 The Provider must not enter into a contract on the Council's behalf or on behalf of any of the Clients, or in any way claim that it is authorised to do so. This includes not binding the Council or any of the Clients to carrying out, varying, releasing or discharging any obligation, whether or not by way of a formal contract.
- 9.3 The Provider does not have the power under this Contract to make, vary, discharge or waive any bye-law or regulation of any kind and it must not represent itself as having any such power.

B SUPPLY OF SERVICE

10 The Service

- 10.1 The Provider shall supply the Service during the Term in accordance with the Council's requirements as set out in Schedule I 'Service Specification' and the provisions of the Contract in consideration of the payment of the Contract Price. The Council may inspect and examine the manner in which the Provider supplies the Service at any time.
- 10.2 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Service does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Council, the Provider shall at its own expense re-schedule and carry out the Service in accordance with the requirements of the Contract within a reasonable time as may be specified by the Council.

- 10.3 The Provider confirms it has satisfied itself as to the nature and extent of the Service required by the Service Specification prior to the execution of this Contract.
- 10.4 The Council does not guarantee either the number of Clients or the hours of Service required under this Contract.
- 10.5 The Provider acknowledges that the hours of Service required by a Client may reduce or increase following a reassessment of the Client's needs by the Council.

11 Manner of Carrying Out the Service

- 11.1 The Provider will operate the Service for Clients in accordance with the Specification.
- 11.2 The Provider shall deliver the outcomes specified in Schedule I 'Service Specification' and in Schedule VII 'Performance and Monitoring'.
- 11.3 The Provider shall at all times comply with the Quality Standards contained in Schedule VII 'Performance and Monitoring'. To the extent that the standard of Service has not been specified in the Contract, the Provider shall agree the relevant standard of the Service with the Council prior to the provision of the Service and, in any event, the Provider shall perform its obligations under the Contract in accordance with the Law and Good Health and Social Care Practice, and shall unless otherwise agreed with the Council in writing:
- 11.3.1 comply with the registration and regulatory compliance guidance of the Relevant Registration Authority and any other standards or recommendations issued by it from time to time; and
- 11.3.2 respond to requirements and any enforcement action of the Relevant Registration Authority (where applicable).
- 11.4 The Provider shall ensure that all Staff supplying the Service shall do with all due skill, care and diligence and shall possess such skills and experience as are necessary for the proper provision of the Service. The Provider and its Staff shall exercise in the performance of the Service all such professional skill, care and diligence as may be reasonably expected of a competent Provider experienced in carrying out work of a similar size, scope and complexity to the Service required under the Contract.
- 11.5 The Provider shall not cause or permit anything which may damage or endanger any software, data, copyright or other intellectual property of the Council or the Council's title to them, nor shall the Provider assist or allow others to do so.
- 11.6 The Provider shall at all times during the Term maintain a written Business Continuity Plan that describes how it would maintain service delivery in the event of interruption or disruption of any kind. The Provider will supply a copy of the Business Continuity Plan to the Council on or before the Commencement Date and subsequently during the Term whenever the plan is amended.
- 11.7 The Provider shall maintain an internal quality assurance system and shall give the Council clear evidence of its system upon request.
- 11.8 The Provider shall ensure that all reports, data or other information provided by the Provider, including electronic information, are provided in the format the Council prescribes.
- 11.9 The Provider acknowledges that during the Term of this Contract the Council intends to evaluate the use of Electronic Recording Systems that assists the compilation of data for more effective monitoring purposes and that streamlines the invoicing and payment process. The Provider agrees to work in conjunction with the Council and have a commitment to develop, implement and use any chosen Electronic Recording System as required.

11.10 Delivery Support Plan

- 11.10.1 The Provider shall prepare and submit to the Authorised Officer a written Delivery Support Plan for each Client within 2 (two) weeks of the Client taking up occupation of the Premises. In the event that the Client is already in occupation of the Premises at the Commencement Date, the Delivery Support Plan for that Client shall be submitted to the Authorised Officer within 2 (two) weeks of the Commencement Date.
- 11.10.2 The Provider shall at the request of the Authorised Officer produce and implement a Delivery Support Plan in the event of an emergency.
- 11.10.3 The Provider shall review each Client's Delivery Support Plan at not less than 6 (six) Monthly intervals to ensure that the Client's Support Plan outcomes are being met.
- 11.10.4 The Council shall be entitled to ask the Provider to review a Client's Delivery Support Plan at any time during the Term.

11.11 Surveys

The Provider shall carry out periodic surveys of Client levels of satisfaction, and any other surveys reasonably requested by the Council in relation to the Service and the Provider shall co-operate with any surveys that the Council may, acting reasonable, carry out. Subject to the requirements of the Law, or as otherwise required by this Contract or the Specification, the form, frequency and reporting of such surveys shall be as agreed between the Parties from time to time.

12 Registration with the Relevant Registration Authority

- 12.1 The Provider shall be registered with the relevant Registration Authority for the provision of the Service throughout the duration of this Contract.
- 12.2 The Provider shall re-register with relevant Registration Authority in the event of any change of ownership, management or business name.
- 12.3 If the Provider changes the nature of its registration, the name under which it is registered or ceases to be registered it shall notify the Council immediately.
- 12.4 The Provider acknowledges that the Council and the appropriate Registration Authority may share information related to the quality of the Service provision. The Provider acknowledges that the Council may also share information related to the Service with other Commissioners.

13 Staff

- 13.1 The Provider shall at all times during the period of this Contract employ sufficient Staff with sufficient abilities, training and experience to ensure that the Service is provided at all times and in all respects in accordance with the terms of this Contract. Without prejudice to the generality of this obligation it shall be the duty of the Provider to ensure that a sufficient reserve of staff is available to provide the Service during staff holidays, maternity or paternity leave, or absence through sickness or to attend training or voluntary absence or otherwise.
- 13.2 Without prejudice to any other clause of this Contract, the Provider shall ensure that every person employed by the Provider in and about the carrying out of the Service is at all times properly and sufficiently trained and instructed with regard to:
 - 13.2.1 The task or tasks that that person has to perform; and
 - 13.2.2 All relevant provisions of this Contact; and
 - 13.2.3 All relevant rules, Standing Orders, procedures and standards of the Council notified to the Provider by the Authorised Officer; and
 - 13.2.4 Health and Safety at work; and

- 13.2.5 Fire risks and fire precautions; and
 - 13.2.6 The need to observe the highest standards of professionalism, courtesy and consideration; and
 - 13.2.7 The need to report to the Authorised Officer situations which involve an actual or potential danger of personal injury to any person at the Premises and
 - 13.2.8 The need in the event of an emergency immediately to contact the Contract Manager who shall forthwith notify the Authorised Officer
- 13.3 The Provider shall ensure that all Staff are trained to the level required in the Service Specification at its own expense throughout the Term. The Council shall provide advice and support to the Provider in relation to it obtaining appropriate training and qualifications for its Staff;
 - 13.4 The Provider shall ensure that Staff comply and maintain an up-to-date awareness and understanding of all relevant rules, codes, policies, procedures and standards of the Council which are current and which have been notified to the Provider by the Council from time to time and with relevant statutes, statutory orders and regulations;
 - 13.5 The Provider shall ensure that Staff are well presented and dress appropriately for the Service they are delivering.
 - 13.6 The Provider shall ensure that Staff observe any no smoking policy whilst engaged in the provision of the Service.
 - 13.7 The Provider shall ensure that all Staff will wear an up to date photographic identification card at all times when on duty clearly showing the employee's name and the name of the employer. Photographic identification cards shall be renewed every 3 (three) years.
 - 13.8 The Provider shall ensure that Staff do not enter the Premises or rooms therein without the consent of the Client in receipt of the Service. The Provider acknowledges that such maybe withdrawn at any time. The Provider shall immediately notify the Authorised Officer if a member of its Staff is refused access to the Premises to carry out the Service.
 - 13.9 The Provider shall ensure that the appropriate members of Staff are available to attend meetings or reviews.
 - 13.10 The Provider shall provide all necessary assistance reasonably requested by the Adult Social Care Housing Panel and Council Staff responsible for determining access to the Service.
 - 13.11 The Provider shall ensure that all of its Staff carry out their duties and otherwise conduct themselves in such a way as to cause no unreasonable or unnecessary disruption to Clients or others.
 - 13.12 Neither the Provider nor any of its Staff may in any circumstances accept any gratuity, tip or other form of money taking or reward, collection or charge from any person in connection with the provision of all or part of the Service(s) other than pursuant to the terms of this Contract.
 - 13.13 In circumstances where the provision of the Service(s) includes the handling of Client's finances the Provider shall have in a place throughout the duration of the Contract a policy for the handling of Clients' finances. The Provider shall ensure that the proper records and receipts of all transactions are kept at all times and the strictest levels of confidentiality are observed by Staff in relation the Clients' Finances.

- 13.14 The Provider shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind, the cost of criminal record checks and provision of staff uniform where applicable relating to or arising out of the employment of any person employed by the Provider and shall fully and promptly indemnify the Council against any liability in respect thereof. The Provider shall not charge its staff for the cost of criminal record checks or provision of staff uniform.
- 13.15 The Provider shall be responsible for payment of redundancy compensation for which Staff may be eligible on expiry or termination of the Contract. The form of each employment contract is a matter for the Provider so long as all responsibilities and liabilities for the Service rest solely with the Provider.
- 13.16 The Provider shall ensure that every individual deployed under the Contract in the provision of the Service is instructed in relation to all relevant provisions of the Contract.
- 13.17 The Provider shall ensure all Staff are supervised in accordance with the Relevant Registration Authority's Guidance for Compliance for Supported Living Services and will share evidence of such supervision with the Council at the Council's request.
- 13.18 The Provider shall appoint a person to be the Contract Manager to exercise its rights and powers under this Contract in accordance with the provisions of clause 4. The Provider shall also appoint a person to be the Service Manager and will notify the Council in writing of this appointment at the Commencement Date of the Contract. The Service Manager will be responsible for the day-to-day operation of the Service. The Contract Manager and the Service Manager may or may not be the same person.

14 Transport

- 14.1 If, under the terms of this Contract the Provider's Staff use their own vehicles to transport Clients, the Provider shall ensure that its Staff has valid business insurance on their vehicles.
- 14.2 For any transport (excluding public transport) provided for Clients by Staff, the Provider must ensure that:
- 14.2.1 the driver holds a valid licence and current vehicle insurance for the type of Services being provided. The number of passengers must never exceed the insured or licensed maximum;
 - 14.2.2 the vehicle has a current valid road fund licence;
 - 14.2.3 the vehicle has a current MOT certificate if appropriate;
 - 14.2.4 the vehicle (and any additional equipment in the vehicle) is maintained and serviced in accordance with the manufacturer's instructions, with full records being kept to verify this;
 - 14.2.5 the vehicle is suitable for the type and condition of passengers to be carried, including having seat belts or personal restraints which conform to the relevant British Standard/EU Standard;
 - 14.2.6 the driver is properly trained in handling the type of vehicle and the nature of the passengers to be carried;
 - 14.2.7 all vehicles carry a first aid kit that conforms to legislation, and fire extinguishers that are maintained in accordance with the manufacturer's instructions;
 - 14.2.8 all vehicles are kept clean and free from litter.
- 14.3 When transporting Clients, Staff must:
- 14.3.1 ensure that Clients using the transport are wearing a properly adjusted secure three-point lap and diagonal seat belt before the vehicle moves unless the Client has given them a 'Certificate of Exemption from Compulsory Seat Belt Wearing';

- 14.3.2 always drive the vehicle safely and with consideration to the Client's needs. This includes conforming to all road traffic legislation and never driving whilst under the influence of any amount of alcohol, drugs or medication;
 - 14.3.4 always park so that the Client alights on the footpath and not in the carriageway;
 - 14.3.5 never smoke in the vehicle and ensure that no other person(s) smokes whilst being conveyed;
 - 14.3.6 never give food to the Client because of the risk of choking;
 - 14.3.7 check the vehicle at the end of each trip for any property belonging to the Client.
- 14.4 Staff must take immediate steps to call an ambulance where appropriate in the event that a Client has an accident/ medical emergency.

15 Premises and Equipment

- 15.1 The Provider is not responsible for managing the Premises, however the Council does expect the provider to conduct regular health and safety checks of the premises and inform the housing provider of any repairs required and ensure that they are actioned. Premises are identified in Schedule VI 'Premises'.
- 15.2 Not used.
- 15.3 Not used.

16 Safeguarding Adults (Adult Protection)

- 16.1 Safeguarding Adults is everybody's business. The 'Berkshire Safeguarding Adults Policy and Procedures' (the 'Procedure') relates to all those adults who may be eligible for community care services i.e. those whose independence and well-being would be at risk if they did not receive appropriate support and who may be at risk of abuse or neglect. A copy of the current Procedure is available for downloading on the Council's public website 'www.Reading.gov.uk'

The Provider shall ensure that the importance of the procedure is made clear to Staff via induction, training, development, staff meetings and on-going supervision. Appropriate governance structures must be in place to cooperate with any safeguarding investigation.
- 16.2 The Provider will implement and adhere to the procedure and will verbally notify the Council's Safeguarding Adults Team and the Authorised Officer within one Working Day of any event defined in the procedure as being adult abuse, which befalls ANY Client, and will send written confirmation to the Council as soon as practicable as detailed in the procedure .
- 16.3 The Provider will comply fully with any request by the West of Berkshire Safeguarding Adults Partnership Board to supply an Individual Management Review as part of a Serious Case Review including adherence to timescales, investigation by an appropriate senior member of management staff and access to records.
- 16.4 The Provider shall ensure that all Staff, including any temporary agency staff and volunteers, shall be employed only following the Provider's completion of a satisfactory enhanced CRB check and satisfactory checks of the Disclosure and Barring Service list of people barred from working with vulnerable adults. The CRB checks shall be renewed whenever Staff are first employed by the Provider, or re-employed after a break in service, and every 3 (three) years as a minimum at the Provider's own cost.
- 16.5 To assist the Provider with staff retention the Council is prepared to allow new staff to start work before the necessary CRB disclosure has been obtained, providing the following criteria are met:

- 16.5.1 That the staff member is required to start work urgently (within 2 weeks of successful appointment)
- 16.5.2 That the Disclosure and Barring Service check has been received and is satisfactory.
- 16.5.3 That satisfactory references have been received.
- 16.5.4 That a Medical Check been completed (as per the Provider's policies and procedures)
- 16.5.5 That a risk assessment for the Staff member is completed and recorded, and the risk assessed is low and is manageable.
- 16.5.6 That Staff have received induction training, as per Provider's policies and procedures
- 16.6 Until such time that satisfactory CRB checks have been received, Staff appointed under clause 16.5 above must be properly supervised at all times and can never be left alone with a Client.
- 16.7 The Provider will refer any Staff or volunteers to the Disclosure and Barring Service if they are disciplined over a matter related to safeguarding that results in their dismissal or if they leave/resign during a disciplinary for the Disclosure and Barring Service to make a decision whether they should be barred from working with vulnerable groups.
- 16.8 Any member of Staff of the Provider whose alleged conduct places a vulnerable adult at risk or might bring the Provider or the Council into disrepute will be the subject of immediate investigation by the Provider and dealt with appropriately and to the reasonable satisfaction of the Council.
- 16.9 The Council's Safeguarding Adults Team can be contacted on 01189 373 737.

17 Safeguarding Children

- 17.1 The Provider may in the course of the delivery of the Service(s) within this Contract come into contact with children. Safeguarding children is everybody's business.
- 17.2 The Provider shall comply with all legislation, policy and guidance relating to safeguarding children as may be issued from time to time and shall operate within the BLSCB (Berkshire Local Safeguarding Children's Board). The Provider shall ensure that policies and procedures relating for safeguarding children are made clear to Staff via induction, training, development, staff meetings and on-going supervision.
- 17.3 The Provider must ensure that at all times Staff and other persons who may work unsupervised or have access to information about Children have current enhanced CRB clearance (or equivalent), which includes the Children's Barred List and that this is repeated a minimum of every 3 (three) years.
- 17.4 Any member of Staff of the Provider whose alleged conduct places a Child at risk or might bring the Provider or Council into disrepute will be the subject of immediate investigation by the Provider and dealt with appropriately and to the reasonable satisfaction of the Council.
- 17.5 If the Provider fails to comply with clause 17.3 or/and 17.4 then the Council may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

C PAYMENT AND CONTRACT PRICE

18 The Contract Price

- 18.1 Subject to the Provider carrying out its obligations under this Contract and in consideration of the Provider properly performing the Service the Council shall pay the Provider the relevant Contract Price calculated in accordance with Schedule II 'The Contract Price for the Service' and Schedule 9 (Clients Schedule) and in accordance with clauses 18, 19 and 20.

- 18.2 There will be no review of the Contract Price for the Service during the term of this contract. The Contract Price shall remain fixed throughout the Initial Contract Period and throughout the period of any extension/s.
- 18.3 The Council shall not pay the Provider any transportation costs other than those set out in the Client's Support Plan.
- 18.4 The Provider shall maintain records of time spent in carrying out the Service or any other expenditure incurred by it in doing so in such form as the Authorised Officer may require in order to enable the Council to verify the amount claimed for payment. The Provider shall allow the Council to audit all records, accounts, data and detailed and other matters relating to the performance of the Service at such times and such places as the Council may reasonably requests within 10 (ten) Working Days of the Council's request.
- 18.5 For the avoidance of doubt the Council is only responsible for payments made in relation to Community Care elements of the Clients service. The relevant Primary Care Trust or successor body is responsible for the payment of the Health Service Payment (if any) to the Provider. Invoices for fully or partly health care funded clients should be submitted directly to the relevant PCT (or successor body).
- 18.6 The Provider must ensure that neither it, nor any of its Staff make any charges to the Clients or their families in respect of this Contract.

19 Invoicing and Payments

- 19.1 Subject to the Council being satisfied that the Service has been properly carried out the Council shall pay the Provider the Contract Price in accordance with Schedule 2 (The Contract Price for the Service).
- 19.2 If the Council is late in making any payment of the Contract Price then the Council must pay the Provider interest on the amount of any such late payment (unless the unpaid sum is in dispute between the parties). The interest will be calculated on a daily basis, from the date when payment should have been made to the date when payment is actually made. The interest rate which will apply will be the base lending rate of the Co-operative Bank PLC from time to time, plus 2 (two) per cent per annum. For the avoidance of doubt, the Council is not late in paying the Provider if the Provider has failed to provide the Council with suitable documentation eg: a valid VAT invoice/receipt.
- 19.3 The service provided should equal the number of hours agreed in the clients service placement confirmed in writing by the Council. However, should the service delivered differ from the service placement then invoices should only reflect the service delivered.
- 19.4 The Council may at its discretion change it's invoicing and payment systems during the life of this Contract. It will consult with the Provider prior to the introduction of any new system, and Providers shall comply with any additional or changed requirements.

20 VAT

- 20.1 The Contract Price does not include VAT. If VAT is chargeable then the Council must pay this in addition to the Contract Price provided that the Provider supplies the Council with a valid VAT invoice as per the requirements of HMRC.
- 20.2 Should VAT not be liable on the Service the Provider will reimburse the Council with any amount incorrectly charged as VAT.

- 20.3 The Provider will indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to any VAT relating to payments made to the Provider or its subcontractor/s under this Contract. Any amounts due under this clause 20 'VAT', shall be paid by the Provider to the Council not less than 5 (five) Working Days before the date upon which the tax or other liability is payable by the Council.

21 Recovery of sums due

- 21.1 Whenever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay the Council for any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Council.
- 21.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 21.3 The Provider shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 21.4 All payments due shall be made within 30 (thirty) days of becoming lawfully due unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

22 Contract Price on Extension

- 22.1 There will be no review of the Contract Price for the Service during the term of this contract. The Contract Price shall remain fixed throughout the Initial Contract Period and throughout the period of any extension/s given.

D STATUTORY OBLIGATIONS AND REGULATIONS

23 Statutory Duties

- 23.1 Nothing in this Contract shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.
- 23.2 The Council has various statutory duties in relation to this Contract (for example under Part 1 of the Local Government Act 1999 (Best Value) as amended) to carry out a regular review of the Service.
- 23.3 The Provider must fully co-operate with the Council in carrying out such statutory duty and subject to clause 31 'Data Protection Act' the Provider must make available to the Council such facilities and such assistance as the Council may reasonably request provided the Council has given the Provider reasonable notice and provided this does not put the Provider to what it considers, acting reasonably, at unreasonable cost.
- 23.4 For example, the Provider must allow the Council's employees or authorised agents access to:
- 23.4.1 The Provider's Staff; and
- 23.4.2 All information, reports, financial accounts, documents, records (whether in human or machine readable form) and data which the Provider holds or has access to which are relevant to the Contract or the Service.
- 23.5 The Provider must also allow the Council to take copies of the information, reports, etc referred to in clause 23.4.2

- 23.6 Any information, reports etc made available to the Council under this clause 23 'Statutory Duties' shall be treated by the Council as Confidential Information and therefore subject to the provisions of clause 32 'Confidentiality' but subject always to the overriding provisions of clause 23 'Statutory Duties'.

24 Statutory Requirements

- 24.1 The Provider shall comply with all statutes, orders, regulations bye-laws and codes of practice applicable to the performance of the Service and shall indemnify the Council against any losses, claims, liabilities, costs, expenses, proceedings or otherwise as a result of the Provider's non-compliance with them.
- 24.2 The Provider shall be expected to monitor new legislation and amendments to existing legislation applicable to the performance of the Service, and shall ensure the Service continues to comply with statutory requirements.

25 Discrimination

- 25.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995 and 2005, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 25.2 The Provider shall take all reasonable steps to secure the observance of clause 25.1 by all Staff.
- 25.3 The Provider will notify the Authorised Officer immediately in writing as soon as it becomes aware of any investigation of it or proceedings brought against it under Equal Opportunities Legislation. The Provider will co-operate fully and promptly in every way required by the person or body conducting any such investigation and it will notify the Council immediately of the outcome.

26 Human Rights

- 26.1 The Provider shall comply with the Human Rights Act 1998 (HRA) as if it were a 'Public Authority' within the meaning of the legislation.
- 26.2 The Provider shall indemnify the Council against any liability, loss, claim or proceedings arising out of any violation of the HRA by the Provider in the course of the provision of the Service under this Contract.
- 26.3 If any court of tribunal, or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) should make any finding of unlawful discrimination against the Provider, then the Provider shall immediately inform the Council of such a finding.
- 26.4 The Provider shall take all necessary steps to prevent reoccurrence of such unlawful discrimination. The Provider will provide the Council with details of the steps taken to prevent such a reoccurrence.
- 26.5 In the event of a reoccurrence, the Council shall have a right to terminate this Contract if after having discussed the matter with the Provider, the Council is of the opinion that the actions of the Provider leading up to the reoccurrence were sufficiently serious as to undermine it's compliance with clause 26.1 above.

- 26.6 In the event that the Council does not exercise its right of termination under clause 26.5 the Provider shall discuss with the Council the appropriate steps the Provider needs to take to prevent repetition of the unlawful discrimination and shall provide the Council with details of any such steps taken.

27 Health and Safety

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

28 Best Value

- 28.1 The Provider acknowledges that the Council is subject to the Best Value Duty.
- 28.2 The Provider shall, throughout the Term and at its own cost, be subject to the Best Value Duty in the same way as if it were the Council.
- 28.3 In discharging the Best Value Duty the Provider shall comply with the provisions of this clause and shall undertake or refrain from undertaking such actions as the Council shall request to enable the Council to comply with the Best Value Duty including:
- 28.3.1 actively promoting, supporting and assisting the Council in meeting its Best Value Duty in respect of the Services including the Council conducting Best Value Reviews and preparing Best Value Performance Plans;
 - 28.3.2 complying with all requests by the Council for assistance in preparing its Best Value Performance Plans; and
 - 28.3.3 complying with requests for information, data or other assistance made by the Council in pursuance of its Best Value Duty including:
 - i. to facilitate the inspection of the Council's compliance with its Best Value Duty pursuant to Part 1 of the 1999 Act; and
 - ii. to assist the Council in relation to any action taken by the Secretary of State under Section 15 of the Local Government Act 1999;
 - iii. to enable the Council to comply with the Publication of Information Direction 1999 (England);
 - iv. comply with all requests by the Council to procure the attendance of specific employees at any meeting of the council at which the Agreement is to be discussed.
- 28.4 The Council shall at all times act reasonably in making or refraining from making requests of the Provider in connection with the performance, satisfaction and discharge of the Council's Best Value Duty.

29 Local Involvement Networks/Healthwatch England and Local Healthwatch

- 29.1 The Provider acknowledges that it is an independent provider as defined in the 'Directions about the Arrangements to be made by Relevant Bodies in respect of Local Involvement Networks 2008'. The Provider shall comply with the requirements of the Directions and those of the Local Involvement Network (Duty of Providers to Allow Entry) Regulations 2008 ("the Links Directions and Regulations").
- 29.2 The Provider shall comply with the requirements directions and regulations of Healthwatch England and those of the Local Healthwatch from the date such scheme replaces the Local Involvement Networks.

30 Rights of Third Parties

- 30.1 No person who is not a Party to the Contract shall have any right to enforce any of its provisions which confer a benefit on them, either expressly or by implication, without the prior written agreement of both Parties. For the avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Contract.

E PROTECTION OF INFORMATION**31 Data Protection Act**

- 31.1 The Provider shall comply with its obligations under the Data Protection Act together with any subsequent amendment or re-enactment thereof and Data Protection Principles and any guidelines issued by the Information Commissioner in storing and processing personal data obtained from the Council, an outgoing Provider or acquired during the performance the Service gives.
- 31.2 The Provider shall ensure that it does nothing that places the Council in breach of the Council's obligations under the Data Protection Act and shall establish systems satisfactory to the Council to ensure compliance with such obligations which shall include having in place Data Protection Act Policies and Procedures. The Provider shall provide the Authorised Officer with copies of all Data Protection Act Policies and Procedures for review at the Council's request. The Provider will provide appropriate technical and organisational measures against unauthorised or unlawful processing, and accidental loss or destruction of, or damage to, such data and properly train and supervise its employees, servants, agents, including all subcontractors and suppliers.
- 31.3 Subject to this clause 31 'Data Protection Act' and clause 32 'Confidentiality' the Parties agree that all personal data acquired by either Party from the other shall be returned to the disclosing Party on request. Both Parties hereby acknowledge that performance of a duty imposed by the Data Protection Act shall not constitute a breach of any obligation in respect of confidentiality, which may be owed to the other Party.
- 31.4 The Provider and subcontractors shall comply in all respects with the provision of the Data Protection Act and will indemnify the Council against all actions, costs expenses claims proceedings and demands which may be made or brought against the Council for breach of statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Provider and their servants and agents. For the avoidance of doubt these shall include any fines or penalties imposed by the Information Commissioner.
- 31.5 The provisions of this clause 31 'Data Protection Act' shall apply during the Term of the Contract and indefinitely after its expiry or termination.

32 Confidentiality

- 32.1 The Council and the Provider shall use all reasonable endeavours to ensure that subject to clause 33 'Freedom of Information', we each (and any person employed or engaged by either of us in connection with the provision of the Service in the course of such employment or engagement) will:

- 32.1.1 Only use Confidential Information for the purposes of this Contract; and
- 32.1.2 Not disclose any Confidential Information to any third party without the other's prior written consent (which may be refused without giving a reason).
- 32.2 Notwithstanding the provisions of clause 32.1 above either of us shall be allowed to disclose any Confidential Information to any consultant, contractor or other person engaged by either of us in connection with this Contract or the provision of the Service provided that in each such case the consultant, contractor or other person concerned has signed a confidentiality undertaking on substantially the same terms as set out in this clause.
- 32.3 Further, the restriction set out in this clause 32 'Confidentiality' shall not prevent either of us disclosing to the other (or to any other person) Confidential Information about a Client where this is in the best interests of the Client concerned or such disclosure is necessary so as to protect the health, safety or welfare of the Client or of other Clients.
- 32.4 Provided always that the restrictions set out in this clause 32 'Confidentiality' shall not apply to any such information which:
 - 31.4.1 Comes into the public domain or is subsequently disclosed to the public (otherwise than through default of either of us); or
 - 31.4.2 Is required to be disclosed by law, including but without prejudice to the generality of clause 33 'Freedom of Information Act'; or
 - 31.4.3 Was already in possession of either of us (without restrictions as to its use on the date of receipt); or
 - 31.4.4 Is independently developed by either of us without access to the other's Confidential Information; or
 - 31.4.5 Subsequently lawfully comes into the possession of either of us from a third party; or
 - 31.4.6 Is required to be disclosed by any Regulatory Body or governmental body.
 - 31.4.7 Which is required to be published and made available to the public in accordance with clause 34 'Transparency'.
- 32.5 The obligations in this clause 32 'Confidentiality' shall survive the expiration or termination (for whatever reason) of this Contract and shall continue without limit in point of time.

33 Freedom of Information (FOIA)

- 33.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act (FOIA) and other legislation governing access to information shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations. For the avoidance of doubt, the requirements of the FOIA apply to information collected and retained by the Provider in connection with the provision of the Service.
- 33.2 The Provider acknowledges that, in order to be compliant with the FOIA or other relevant legislation, the Council may be obliged, on request, to provide or consider the provision of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this clause 33, the Provider shall assist and co-operate with the Council (at the Provider's expense) to facilitate the Council's compliance with the FOIA and/or other relevant legislation in that regard. Without prejudice to the generality of its obligations under clause 33.1, the Provider shall -
 - 33.2.1 transfer any Request for Information that it or its sub-contractors receive, to the Council as soon as practicable after receipt and in any event within 2 (two) Working Days of receiving that Request for Information; and

- 33.2.2 provide the Council with a copy of all Information in its or its sub-contractor's possession or power that the Council reasonably considers is relevant to the Request in the form that the Council requires as soon as practicable and in any event within 5 (five) Working Days of the Council requesting that Information (and any follow-up Information required by the Council thereafter within 2 (two) Working Days of the Council's follow-up request).
- 33.3 The Provider further acknowledges that, notwithstanding the provisions of this clause 33, the Council may, acting in accordance with the FOIA Code, be obliged under the FOIA or other relevant legislation to disclose Information that is or may be Confidential Information –
- 33.3.1 in certain circumstances without consulting with the Provider; or
- 33.3.2 following consultation with the Provider and having taken the Provider's views into account; provided always that where clause 33.3.1 applies, the Council shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Provider prior to any disclosure.
- 33.4 Subject to the Council complying with its obligations under this clause 33, the Council shall not be liable for loss, damage, harm or other detriment suffered by the Provider or any sub-contractor arising from the disclosure of any Information, whether or not such Information is Confidential Information, falling within the scope of the FOIA or other relevant legislation.
- 33.5 The Provider shall indemnify the Council against all direct losses claims, demands, actions, costs, proceedings and liabilities that the Council incurs due to the Provider's or any sub-contractor's breach of this clause 33.
- 33.6 The Provider shall ensure that the terms of any sub-contract which it enters into with a sub-contractor replicate the provisions of this clause 33 such that the Council has the same rights against a sub-contractor as it does against the Provider under this clause 33.
- 33.7 The Provider acknowledges that the Commercially Sensitive Information listed in the 'List of Commercially Sensitive Information' at Schedule IV is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause 33.
- 33.8 The provisions of this clause 33 shall apply during the Term of the Contract and indefinitely after its expiry or termination.

34 Transparency

- 34.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 34.2 Notwithstanding any other term of this Contract, the Provider hereby gives its consent for the Council to publish the Contract in part or in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the contract, to the general public.
- 34.3 The Council owns the copyright of the Contract documentation but the Provider may obtain or make at their own expense any further copies of the Contract required by them in the performance of the Service.

35 Audit

- 35.1 The Provider shall keep and maintain until six (6) years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate and auditable computer and/hard copy records of the Contract including all matters relating to the provision of the Service supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council, records of Staff resources, complaints, and reviews. The Provider shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.

F CONTROL OF THE CONTRACT**36 Transfer, Assignment and Sub-Contracting**

- 36.1 Except where clause 36.4 and 36.5 applies, the Provider shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without the prior written consent of the Council. Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract.
- 36.2 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own. Even if the Council has given its consent to the Provider sub-contracting its obligations under this Contract, the Council can subsequently withdraw it, provided that it acts reasonably in doing so and gives the Provider reasonable notice. This means that at the end of the notice period the Provider will have to terminate the sub-contract concerned.
- 36.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.
- 36.4 Notwithstanding clause 36.1, the Provider may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Provider under this Contract (including any interest which the Council incurs under clause 19.2. Any assignment under this clause 36.4 shall be subject to:
- 36.4.1 reduction of any sums in respect of which the Council exercises its right of recovery under clause 21 'Recovery of Sums Due';
 - 36.4.2 all related rights of the Council under the contract in relation to the recovery of sums due but unpaid; and
 - 36.4.3 the Council receiving notification under both clauses 36.5 and 36.6.
- 36.5 In the event that the Provider assigns the right to receive the Contract Price under clause 36.4, the Provider or the Assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.
- 36.6 The Provider shall ensure that the Assignee notifies the Council of the Assignee's contact information and bank account details to which the Council shall make payment.
- 36.7 The provisions of clause 19 'Invoicing and Payments' and clause 20 'VAT' shall continue to apply in all other respects after the assignment and shall not be amended without the prior written consent of the Council.
- 36.8 Subject to clause 36.10, the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 36.8.1 any Contracting Authority; or

- 36.8.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
- 36.8.3 any private sector body which substantially performs the functions of the Council,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.
- 36.9 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to clause 36.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.
- 36.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 36.8 to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**).
- 36.10.1 the rights of termination of the Council in clause 52 'Termination on Insolvency and Change of Control' shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- 36.10.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Provider.
- 36.11 The Council may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 36.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.
- 36.13 The Provider will not need the Council's prior written consent in order to use agency staff to supplement its own directly employed staff. The Provider will ensure that such agency staff are properly trained and qualified in accordance with clause 13 'Staff' and they have the necessary CRB checks in accordance with clause 16 'Safeguarding Adults (Adult Protection)' and clause 17 'Safeguarding Children'.

37 Waiver

- 37.1 If either Party fails to exercise or delays in exercising any right or remedy to which it is entitled under this Contract or at law then this shall not constitute a waiver of any such right or remedy.
- 37.2 If either Party waives a Default on the part of the other then this shall not constitute a waiver of any future Default.
- 37.3 No waiver shall be effective unless it is:
- 37.3.1 expressly stated to be a waiver;
- 37.3.2 in writing in accordance with clause 5 'Notices'; and
- 37.3.3 signed by the Authorised Officer or Contract Manager as appropriate.

38 Variations to the Contract

- 38.1 A variation to this Contract (including to the scope and nature of the Service(s) and the Contract Price arising by reason of the variation) shall only be valid if it has been agreed in writing and signed by both Parties.
- 38.2 If either Party wishes to vary this Contract then it shall serve on the other a Variation Notice which shall set out the nature of the variation sought and the reasons for it.
- 38.3 If either Party receives a Variation Notice then within 28 days of receipt it shall notify the other whether or not it agrees to the variation and if not, the reasons.

39 Severability

- 39.1 If any provision of the Contract is or becomes illegal void or invalid in whole or in part, that shall not affect the legality and enforceability of the remaining provisions within the Contract.
- 39.2 Should any provision of the Contract is or becomes illegal void or invalid in whole or in part, then the Parties shall enter into good faith negotiations to amend the provision concerned in such a way that it becomes valid and enforceable, and carries out the Parties original intent to the maximum extent possible.

40 Monitoring of Contract Performance and Compliance

- 40.1 The Provider shall comply with the monitoring arrangements set out in Schedule VII 'Monitoring' including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.
- 40.2 At the Council's request, the Provider shall supply the Council with any information necessary to confirm the Provider's compliance with any aspect of the Contract.
- 40.3 In addition, the Council retains the right to make ad-hoc requests for information on any other aspects of the Service. This information may be used to develop the Council's strategies for commissioning future services or to support development of the market.
- 40.4 As a requirement in respect of a discharge of their duty, the Council may require the Provider or the Provider's sub-contractors to supply financial information concerning their continuing financial viability. The Council shall treat this information in the strictest of confidence and shall use it only for the purpose requested. Any concerns arising from the information shall be fully discussed between the Parties.

41 Complaints

- 41.1 The Provider must have in place a complaints procedure satisfactory to the Council and also comply with the requirements of any Regulatory Body to which the Provider is subject, including any change in such requirements.
- 41.2 The Provider shall operate its complaints procedure from the Commencement Date and shall not introduce any changes to the said complaints procedure without the prior written consent of the Authorised Officer which shall not be unreasonably withheld or delayed.
- 41.3 The Provider shall respond promptly (and in any event no later than 5 (five) Working Days) to any claims, complaints and enquiries received from the Council, Client or their authorised representative, any member of the public or any other source whatsoever in any way related to this Contract or the provision of the Service by the Provider. All claims and complaints received by the Provider (whether in writing or by telephone or in person) must be accurately recorded by the Provider. Any correspondence or communication in relation to the complaint must be made available to the Authorised Officer on request.

- 41.4 The Provider must notify the Council's Safeguarding Adults Manager and the Council's Authorised Officer within one Working Day of receipt of any complaints which raise any safeguarding issues in relation to a vulnerable adult, which befalls ANY Client, and will send written confirmation to the Council as soon as practicable. The Provider shall take all such steps as are necessary to protect the safety of the vulnerable adult, including but not limited to the immediate removal of any member of Staff who is the subject of a safeguarding complaint whilst any investigation takes place.
- 41.5 Complaints which have an implication for the safety of an individual or individuals either Provider's Staff or other staff in the Premises must be reported immediately to the Authorised Officer. A record of the complaint must contain full details of the claim or complaints including the date, time, name, address and telephone number of the complainant.
- 41.6 Without prejudice to any liability or indemnity provisions contained elsewhere in the Contract, the Provider shall indemnify the Council against compensation costs incurred by the Council for upheld complaints. Any disputes in relation to this provision shall be referred to the Dispute Resolution Procedure.
- 41.7 Without prejudice to its obligations hereunder to perform the Service to the standard specified in the Contract, the Provider shall comply with any reasonable instruction given by the Authorised Officer to the Provider in response to a claim, complaint or enquiry received from a member of the public which has been investigated by the Council.
- 41.8 The Provider shall ensure that its Staff are familiar with the Council's Social Services complaints procedure as amended from time to time.
- 41.9 Complaints shall be used constructively by both parties to support improvement in the delivery of the Service.
- 41.10 The Provider shall ensure that Clients are provided with information on their Complaints Procedure. The procedure is to be made available in plain English and other formats appropriate to the needs of the client group.
- 41.11 The Provider shall make clear that Clients can complain directly to them, to the Council, or to the Relevant Regulation Authority. Telephone numbers and addresses for each of these shall be included in the procedure.
- 41.12 Where a Client has complained directly to the Provider, the Provider must make it clear that the complaint can be referred to either the Council or to the Relevant Registration Authority if the Client is dissatisfied with the outcome of the Provider's investigation. The Council's address to which any complaints should be referred is:
- Complaints Manager
Complaints for Housing, Community Care, Education and Children's Services
Level 5
Reading Borough Council
PO Box 93
Civic Offices
Reading, RG1 7ZY
- Tel. 01189 372 905
Email: socialcare.complaints@reading.gov.uk
- 41.13 If a complaint is investigated by the Relevant Registration Authority, the Provider shall ensure the Council is kept informed of the investigation by providing them with progress reports and relevant correspondence. The Provider shall immediately notify the Council of the outcome of any investigation.

- 41.14 The Provider shall give the Council on request a summary of the number and type of complaints and their resulting outcomes.
- 41.15 The Council shall ensure that Clients have access to the Council's Social Services complaints procedure.
- 41.16 The Council has a statutory responsibility to investigate and respond to the public's complaints about care and support services. If a complaint is made about the Provider of the Service, the Provider will co-operate in providing the Council with information to support the investigation. The Council will inform the Provider of the outcome of the complaint and where possible supply the Provider with a copy of the Complaint response to the Provider including any recommendations that the provider will be expected to implement.
- 41.17 If Clients' belongings are lost or damaged by the Provider's Staff, Clients shall be assisted in making a claim for replacement. This may include seeking an Advocate or reminding Clients of the Complaints procedure.

G LIABILITIES

42 The Provider's Liabilities and Indemnities

- 42.1 The Provider must fully and promptly indemnify the Council against all direct (but not indirect or consequential) losses, damages, costs, expenses, liabilities, claims or proceedings, whether these arise under statute or common law, (together referred to as 'the Council's losses') which the Council suffers as a result of any negligence, Default or breach of statutory duty on the Provider's part in carrying out its obligations under this Contract or on the part of any Staff the Provider employs or engages to carry out the Provider's obligations under this Contract.
- 42.2 The Provider will not be liable to indemnify the Council as set out in clause 42.1 to the extent that the Council's losses are due to any negligence, Default or breach of statutory duty on the Council's part, or on the part of any of the Council's Staff acting in the course of their employment.
- 42.3 The Provider's liability for any of the Council's losses, which relate to
- 42.3.1 death or personal injury caused by its negligence; or
 - 42.3.2 Fraud; or
 - 42.3.3 fraudulent misrepresentation; or
 - 42.3.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- shall be unlimited.

43 The Council's Liabilities and Indemnities

- 43.1 The Council must fully and promptly indemnify the Provider against all direct (but not indirect or consequential) losses, damages, costs, expenses, liabilities, claims or proceedings, whether these arise under statute or common law, (together referred to as 'the Provider's losses') which the Provider suffers as a result of any negligence, Default or breach of statutory duty on the Council's part in carrying out its obligations under this Contract or on the part of any Staff the Council employs or engages to carry out the Council's obligations under this Contract.
- 43.2 The Council will not be liable to indemnify the Provider as set out in clause 43.1 to the extent that the Provider's losses are due to any negligence, Default or breach of statutory duty on the Provider's part, or on the part of any of the Provider's Staff acting in the course of their employment.
- 43.3 The Council's liability for any of the Provider's losses, which relate to

- 43.3.1 death or personal injury caused by its negligence; or
- 43.3.2 Fraud; or
- 43.3.3 fraudulent misrepresentation; or
- 43.3.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

shall be unlimited.

44 Insurance

- 44.1 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 as a minimum the types and levels of insurances set out in Schedule III 'List of Insurance Requirements'. The Provider must ensure that the appropriate type and level of insurance is taken out in respect of any statutory requirement. The Provider must also ensure that any of their sub-contractors who are providing any or all of the Service on their behalf take out and maintain equivalent insurances, as a minimum.
- 44.2 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 cost of such arrangements from the Provider.
- 44.3 The Provider shall hold Public Liability insurance cover for any one occurrence or series of occurrences arising out of any one event.
- 44.4 The Provider shall hold Employer's Liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 44.5 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.
- 44.6 By accepting a commission to deliver the Service, the Council shall deem the Provider to have confirmed that they are insured to carry out all the tasks demanded by the Service and that the Provider will assign Staff competent to perform the tasks.
- 44.7 The Provider shall immediately notify the Council and the Provider's insurers of any happening or event which may give rise to a claim, demand, proceeding, damage, cost or charge which is the subject of the indemnity under clause 42 'The Provider's Liabilities and Indemnities' and this clause 44 'Insurance' and arising out of the Contract. The Provider shall indemnify the Council against any loss whatsoever which may be occasioned to the Council by the Provider's failure to give such notification.
- 44.8 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 42.1.
- 44.9 The required insurance cover specified in this clause 44 and Schedule III 'List of Insurance Requirements' may be reasonably increased from time to time at the Council's reasonable request.
- 44.10 The Provider is **specifically excluded** from providing 'advice of a professional nature' within the terms of this Contract, such as would require Professional Indemnity Insurance Cover. For the avoidance of doubt Professional Indemnity Insurance Cover is not required.

44.11 The Council may require Providers to carry out any of the tasks specified in Schedule III List of Insurance Requirements. Providers must be insured to perform these tasks and to comply with their obligations in clause 44.6, either through Medical Malpractice Insurance or through extensions to their Public Liability Insurance. Where cover is provided under Medical Malpractice insurance, such cover must together with the Public Liability insurance to provide seamless cover to ensure there are no gaps in cover. The amount of such cover shall be at least £10,000,000 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event to indemnify the Provider, the Council and all persons employed by the Provider against any claims, action, damage or loss arising out of the performance of the Service except to the extent that such claim, action, damage or loss is due to any act or neglect of the Council or of any person for whom the Council is responsible. Depending on the services required the Council reserves the right to require a higher level of cover as it considers necessary and reasonable in the circumstances. Such insurance shall be maintained for a minimum of 12 (twelve) years following the expiration or earlier termination of this Contract.

45 Warranties and Representations

45.1 The Provider warrants and represents that:

- 45.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider;
- 45.1.2 in entering the Contract it has not committed any Fraud;
- 45.1.3 if the contract has been awarded as a result of a competitive process or tender, as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- 45.1.4 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;
- 45.1.5 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;
- 45.1.6 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;
- 45.1.7 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;
- 45.1.8 in the three 3 (three) years prior to the date of the Contract:
 - (i) 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;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

H DEFAULT, DISRUPTION AND TERMINATION**46 Defaults**

- 46.1 A Performance Default means any failure by the Provider to perform properly or comply with any of the Contract Documents including, without limitation any failure of the Provider to perform the Service to the standard required under the terms of this Contract.
- 46.2 In the event of a Performance Default where in the reasonable opinion of the Authorised Officer the Performance Default/s is capable of remedy the Council may issue a notice (a Rectification Notice) to the Provider which shall identify the nature of the default or defaults and give the Provider a reasonable period of time within which to rectify the said default or defaults to the satisfaction of the Authorised Officer. If the Provider fails to rectify the default or defaults identified in the Rectification Notice to the satisfaction of the Authorised Officer or fails to do so within the time limit prescribed therein, or where in the reasonable opinion of the Authorised Officer the Performance Default/s is not capable of remedy the Authorised Officer shall be entitled to issue a Default Notice in accordance with this Clause 46.
- 46.3 Subject to clause 46.2, in the event of a Performance Default the Council may issue a notice (a Default Notice) to the Provider which shall state on its face whether in the reasonable opinion of the Authorised Officer the Performance Default is either a Critical Performance Default or Non-Critical Performance Default.
- 46.4 If the Provider disputes whether a Performance Default is a Critical Performance Default, the matter shall be referred to the Dispute Resolution Procedure and if the dispute remains unresolved to the Courts. For the avoidance of doubt the matter shall not be referred to the Mediator.

47 Critical Performance Defaults

- 47.1 In the event that a Default Notice states that a Performance Default is Critical, it shall also state how and by when the Provider at its own expense shall remedy, make good or mitigate the Performance Default. Such action and time period shall be fair, reasonable and commensurate with the nature of the Performance Default and the effect that such Performance Default had or continues to have on the provision of the Service.
- 47.2 On receipt of the Default Notice stating that the Performance Default is Critical the Provider shall take the action required by the Default Notice at its cost and own expense within the time period set out in the Default Notice. The Provider shall, in addition, attend a meeting with the Authorised Officer to discuss the Performance Default and the Contract Manager shall give an assurance in writing to the Authorised Officer that the Performance Default shall be remedied, made good or mitigated within the time scale set out in the Default Notice.
- 47.3 If the Provider considers that the time or measures stated in the Default Notice to remedy, make good or mitigate a Critical Performance Default is unreasonable or impossible to comply with, the Contract Manager shall notify the Authorised Officer within 24 (twenty-four) hours of receipt of the Default Notice and the parties shall attend a meeting at a Chief Officer and Director level to discuss the matter and to agree a time period in which and measures by which the Performance Default shall be remedied, made good or mitigated. Thereafter, if unresolved, the matter shall be referred to the Dispute Resolution Procedure.
- 47.4 If the Contractor fails to remedy a Critical Performance Default within the time period set out in the Default Notice (or subsequently agreed or determined) the matter shall be deemed a repudiatory breach of contract and the Council may, in its absolute discretion, terminate the whole or any part of the Service in accordance with the provisions of Clause 49.

48 Non Critical Performance Defaults

- 48.1 If a Rectification Notice is issued or a Default Notice stating that a Performance Default is Non Critical; the Provider shall, within 5 (five) Working Days of receipt, prepare a plan setting out the measures (an Action Plan) which the Provider shall carry out to ensure that the Performance Default is remedied, to ensure that it does not occur again and the time scales within which such an action plan shall be implemented. Such a plan shall be known as an Action Plan. The Action Plan shall be submitted to the Authorised Officer for his approval which shall not be unreasonably withheld or delayed. The Authorised Officer shall be entitled to suggest reasonable amendments to the Action Plan which the Provider shall incorporate. The Provider shall implement the approved Action Plan.

49 Escalation

- 49.1 If the Provider fails to remedy a Non-Critical Performance Default in accordance with an Action Plan or;
- 49.2 the Provider fails to remedy a Critical Performance Default in accordance with the Default Notice or as subsequently agreed or determined or;
- 49.3 any Critical Performance Default having been remedied, occurs again or;
- 49.4 more than 3 (three) Critical Default Notices or 6 (six) Non Critical Default Notices (in each case not necessarily relating to the same breach or failure) have been issued to the Provider in any continuous 6 (six) month period or;
- 49.5 more than 2 (two) Critical Default Notices or 4 (four) Non Critical Default Notices (in each case not necessarily relating to the same breach or failure) have been issued to the Contractor in any continuous 6 (six) month period.
- 49.6 then the Authorised Officer shall be entitled to serve a warning notice (a Warning Notice). The Warning Notice shall state on its face that it is a Warning Notice and shall set out the measures which the Authorised Officer requires the Provider to take to ensure that the Performance Default or Performance Defaults are remedied, do not occur again and the time scales within which the Provider is to affect such measures. The Provider shall comply with the terms of the Warning Notice.
- 49.7 In the event that the Authorised Officer serves more than 2 (two) Warning Notices within any continuous 12 (twelve) month period the Council shall be entitled to terminate the Contract in whole or in part in accordance with the provisions of Clause 53.

50 Other Remedies

- 50.1 In addition to the matters set out above, in the event the Provider commits a Performance Default (whether Critical or Non-Critical) the Council shall be entitled without prejudice to any of its rights or remedies whether in contract, tort or under statute, to take all or any of the following measures provided that the Council has first afforded the Provider a reasonable period to remedy such Performance Default and the Provider has failed to do so.
- 50.1.1 Withhold any further payments or instalments of the Contract Price until the Provider has remedied, made good or mitigated a Performance Default as stated in a Default Notice or Warning Notice.

- 50.1.2 Without terminating the Contract or any part of the Contract, itself provide or procure the provision of part of the Service until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Authorised Officer that the Provider will be able to resume performance of such part of the Service to the Contract Service Specification and during such period, the Provider's performance of such part of the Service and the Council's payment to the Provider for such part of the Service shall be suspended; and for the purposes of this Clause the Council shall prior to such suspension serve a notice on the Provider setting out those parts of the Service which the Council intends to provide or procure the provision of and the Council shall prior to any such resumption serve a notice on the Provider that the Council requires the Provider to resume the provision of part of the Service.
- 50.1.3 Deduct from any future payment to the Provider or from any future instalment of the Contract Price or recover as a debt any reasonable, justifiable and demonstrable losses, costs and expenses of the Council or any alternative Provider engaged by the Council and occasioned directly as a result of the Provider's Performance Default together with an administration charge of 10% (ten) percent of such sum or sums deducted. If there is any dispute between the Council and the Provider as to the amount of such deduction, the matter shall be referred to the Dispute Resolution Procedure.
- 50.1.4 Remedy the Performance Default itself or engage others to do so and abate the Contract Price by the reasonable cost of so doing.
- 50.2 The provisions of this Clause are without prejudice to any other right or remedy of the Council.

51 Suspension

- 51.1 If the Performance Default is a Critical Performance Default as stated in the Default Notice then the Council will be entitled to arrange for a competent person (which may be one of its employees) to carry out an investigation into the Critical Performance Default.
- 51.2 If the Council considers (acting reasonably) that:
- 51.2.1 the Critical Performance Default is of such seriousness; or
- 51.2.2 there is a continuing threat to the health, safety or welfare of any or all of the Clients
- such that in either case it is not appropriate for the Provider to carry on providing any or all of the Services then the Council will also be entitled to serve on the Provider a Suspension Notice.
- 51.3 If the Council serves a Suspension Notice then:
- 51.3.1 the Provider will cease providing the Service(s) set out in the Suspension Notice from the date specified in the Suspension Notice; and
- 51.3.2 the Council will be entitled either to provide some or all of the Service(s) or employ another person to do so on its behalf for as long as the Suspension Notice is in force; and
- 51.3.3 the provider shall promptly notify the Regulatory Body of the suspension, if appropriate.
- 51.4 Except where the suspension occurs by reason of Force Majeure, the Provider shall indemnify and keep the Council indemnified in respect of Losses directly and reasonably incurred by the Council in respect of the such suspension (including for the avoidance of doubt) Losses incurred in commissioning the suspended Service or part of a Service from another provider, and the Council shall take reasonable steps to mitigate such Losses.
- 51.5 In the event that the Service or part of a Service is suspended under this clause 51 the Provider shall for a reasonable period after the service of the Suspension Notice:

- 51.5.1 co-operate fully with the Council or any successor provider in order to ensure continuity of the Service or such part of a Service;
- 51.5.2 deliver to the Council all materials, papers, documents, operating manuals and other relevant information owned by the Council and used by the Provider in the provision of the Service.
- 51.6 The Council will ensure that any investigation is carried out as quickly as possible and it will make available to the Provider a copy of the report of the investigation's findings as soon as possible after it has been made available to the Council.
- 51.7 If the Provider has been served with a Suspension Notice then as soon as possible after the Council has received the report of the investigation it shall consider (acting reasonably) whether or not the Provider is to resume provision of the suspended Service(s).
- 51.8 If the Council considers that the Provider is to resume provision of some or all of the suspended Service(s) then it will serve on the Provider a Resumption Notice which shall set out the Service(s) to be resumed and the date upon which they are to be resumed.
- 51.9 The Council will be entitled to set out in the Resumption Notice such conditions relating to the Provider's resumption of the Service(s) as may be reasonable.
- 51.10 If the Council considers that the Provider is not to resume provision of some or all of the suspended Service(s) then:
- 51.10.1 it will be entitled to give the Provider notice terminating the application of this Contract to the Service(s) concerned, with immediate effect; or
- 51.10.2 if the Council considers, that the findings of the investigation reflect on the Provider's ability to carry out the Service(s) generally the Council will be entitled to give the Provider notice terminating this Contract as a whole, with immediate effect.

52 Termination on Insolvency and Change of Control

- 52.1 The Council will be entitled to give the Provider notice terminating this Contract, with immediate effect if:
- 52.1.1 the Provider is an individual and he is declared bankrupt, or a bankruptcy petition is filed against him at court, or he attempts to make or make a composition or arrangement for the benefit of his creditors; or
- 52.1.2 the Provider is a corporate body and it has a receiver or liquidator appointed over it; or
- 52.1.3 any event similar to those listed in clauses 52.1.1 and 52.1.2 occurs under the law of any other jurisdiction; or
- 52.1.4 the Council decide (acting reasonably) that the Provider is suffering from financial difficulties which affect or threaten to affect the performance by the Provider of his obligations hereunder.
- 52.2 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 'change of control'. The Council may terminate the Contract by notice in writing with immediate effect within six months of:
- 52.2.1 being notified that a change of control has occurred; or

- 52.2.2 where no notification has been made, the date that the Council becomes aware of the change of control,
- but shall not be permitted to terminate where an Approval was granted prior to the change of control.

53 Termination on Default

- 53.1 If any one or more of the matters in Clause 53.2 below occurs the Council shall be entitled to terminate the Contract in whole or in part with immediate effect by issuing a notice to the Provider. For the avoidance of doubt the occurrence of any one of the matters listed in Clause 53.2 below shall be deemed a repudiatory breach of the Contract by the Provider. The right of the Council to terminate shall be a contractual right pursuant to this Condition and/or a common law right accepting the Provider's repudiatory breach as the circumstances dictate.
- 53.2 The matters referred to in Clause 53.1 above are:-
- 53.2.1 The Provider or any of its employees, (whether with or without the Contractor's knowledge) shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Contract or any other contract with the Council; or
- 53.2.2 In relation to any contract with the Council, the Provider or any of its employees shall:-
- (i) have committed any offence under Bribery Act 2010, or
 - (ii) have given any reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or
- 53.2.3 The Provider commits an act of fraud or bankruptcy; or
- 53.2.4 The Provider misuses or infringes any of the Council's Property Rights or Equipment or uses the same other than in the provision of the Service; or
- 53.2.5 The Provider suffers an event of incapacity rendering the Provider unable or potentially unable to carry out its obligations under the Contract and/or to meet any liability which may arise through the Provider's negligence or breach of contract. An event of incapacity shall include the appointment of a liquidator, insolvency within the meaning of relevant Legislation, having substantial distress attachment execution or other legal process levelled enforced, sued or threatened upon any of its property, the appointment of an administrator or receiver, the suspension of any publicly offered equities or the freezing of substantial assets; or
- 53.2.6 The Provider has not remedied the Default to the satisfaction of the Council within 25 (twenty-five) Working Days, or such other period as the Council may specify, after issue of a the Default Notice; or
- 53.2.7 The Provider commits a material breach of the Contract; or
- 53.2.8 More than 2 (two) Warning Notices are issued pursuant to Clause 53; or
- 53.2.9 The Default is not, in the opinion of the Council, capable of remedy.
- 53.3 If the Contract is determined in part, the Contract Price shall be adjusted to reflect fairly the Service which remains and if the parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt the Provider shall not be entitled to recover through the adjusted Contract Price any profit that, but for the termination, would have accrued to the Provider in respect of the terminated Service.

- 53.4 The Council, in its discretion but acting reasonably and taking into account the representations of the Provider, shall be entitled to suspend part of the Service which it would otherwise be entitled to terminate pursuant to this Condition until such time as the Provider is able to demonstrate that it is able to perform the Service to the Contract Specification without default. During the period of such suspension (which shall be notified in writing by the Council) the Council shall be entitled to abate the Contract Price by such amount as is necessary for the Council to perform the Service itself or to engage a third party to do so.
- 53.5 The rights of the Council under this Condition are in addition and without prejudice to any right that either party may have against the other for prior breach and to any right the Council may have against the Provider for the breach, default, negligence or event leading to the termination.
- 53.6 The remedies of the Council under this Condition may be exercised successively in respect of any one or more defaults by the Provider.

54 Break

- 54.1 The Council may terminate:
- 54.1.1 this Contract; or
 - 54.1.2 its application to a particular Service
- by giving to the Provider not less than 6 (six) Months' written notice. If the Provider agrees, the period of notice can be shortened.
- 54.2 Termination of Individual Client Care Package
- 54.2.1 Termination of an Individual Client's Care Package may be effected by either the Council or the Provider in accordance with the provisions in Schedule 1 (Clause 10).
 - 54.2.2 The death of an individual Client terminates that care package and the Council shall pay the Provider for the period stated in Schedule 1 (Clause 10).

55 Remedies Cumulative

- 55.1 Any remedy or right which either Party may exercise in relation to a Default committed by the other Party shall be in addition to, and shall be capable of being exercised without prejudice to, all other rights and remedies available to either Party.

56 Consequence of Termination

- 56.1 Save as otherwise expressly provided in the Contract:
- 56.1.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - 56.1.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Contractor accrued under the Contract.
- 56.2 If this Contract or its application to a particular Support Service is terminated, whether under clause 51, 52, 53, or 54 then:
- 56.2.1 the provisions of clause 63 shall apply; and
 - 56.2.2 the Council must continue to pay the Provider the Contract Price throughout the notice period where the Provider is still providing the Service/s.

57 Prevention of Corruption

- 57.1 The Provider shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- 57.2 The Provider shall not commit any offence under the Bribery Act 2010 or give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 57.3 The Provider warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.
- 57.4 If the Provider, its Staff or anyone acting on the Provider's behalf, (with or without the knowledge of the Provider) engages in conduct prohibited by clauses 57.1, 57.2 or 57.3, the Council may:
- 57.4.1 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
 - 57.4.2 recover in full from the Provider any other loss sustained by the Council in consequence of any breach of those clauses.

58 Prevention of Fraud

- 58.1 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.
- 58.2 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.
- 58.3 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:
- 58.3.1 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
 - 58.3.2 recover in full from the Provider any other loss sustained by the Council in consequence of any breach of those clauses.

59 Not used

- 59.1 Not used

60 Force Majeure

- 60.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 3 (three) months, either Party may terminate the Contract with immediate effect by notice in writing.

- 60.2 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.
- 60.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in this clause 60 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

I DISPUTES AND LAW

61 Governing Law and Jurisdiction

- 61.1 Subject to the provisions of clause 62 'Dispute Resolution', the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

62 Dispute Resolution

- 62.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 (twenty) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Head of Finance (or equivalent) of each Party.
- 62.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 62.3 If the dispute cannot be resolved by the Parties pursuant to clause 62.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 62.5 unless
- 62.3.1 the council considers that the dispute is not suitable for resolution by mediation; or
- 62.3.2 the Provider does not agree to the mediation.
- 62.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- 62.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 62.5.1 a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 (ten) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 (ten) Working Days from the date of the proposal to appoint a Mediator or within 10 (ten) Working Days of notice to either Party that he is unable or unwilling to act, apply to an appropriate mediation provider to appoint a Mediator.
- 62.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from an appropriate mediation provider to provide guidance on a suitable procedure.
- 62.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

- 62.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 62.5.5 the Parties fail to reach agreement in the structured negotiations within 60 (sixty) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 62.6 The use of the dispute resolution procedures set out in this clause shall not delay or take precedence over the various provisions in this Contract for termination of the Contract.

J CONCLUSION OF CONTRACT

63 Recovery upon Termination

- 63.1 On the termination of the Contract for any reason, the Provider shall:
- 63.1.1 immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession which was obtained or produced in the course of providing the Services;
 - 63.1.2 immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Provider. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 63.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to any replacement Service Provider and or completion of any work in progress.
 - 63.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or any Replacement Service Provider to conduct due diligence.
- 63.2 If the Service Provider fails to comply with clause 63.1.1 and 63.1.2, the Council may recover possession thereof and the Service Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider where any such items may be held.
- 63.3 Where the end of the Term arises due to the Provider's Default, the Provider shall provide all assistance under clause 53 and 63 free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

64 TUPE

- 64.1 It is agreed by the Parties that the terms of European Union Directive 2001/23/EC and/or the Transfer of Undertakings (Protection of Employment) Regulations 2006 (The TUPE Regulations) as amended are likely to apply to this Contract and may also apply upon termination of this Contract, and the Provider shall be deemed to have satisfied themselves concerning their liabilities thereunder and shall be deemed to have obtained for themselves all necessary information as to risks, contingencies and all other circumstances influencing or effecting this decision.
- 64.2 At any time during or up to 2 (two) years after the expiration or termination of this Contract the Provider shall supply immediately upon request by the Council such information as may be reasonably required to comply with the TUPE Regulations and this Contract for disclosure to third parties intending to submit Tenders or otherwise offering to enter into any subsequent contract for the provision of the Service.

- 64.3 The information to be provided in accordance with this clause may include but shall not be limited to:
- information the Provider is under a duty to supply under the TUPE Regulations;
 - pensions information relating to the Transfer of Employment (Protection of Pensions) Regulations 2005; and
 - any other information in relation to those staff as may reasonably be required by the Council under this clause or generally or to comply with the Provider's statutory obligations.
- 64.4 In the event that the Council seeks the information described in this clause in connection with the re-tendering or other re-provision of the Service, the Council shall be entitled to pass any information supplied to it by the Provider to other persons selected to tender or otherwise provide the Service PROVIDED THAT the Council shall do so only on condition that such other persons undertake to use the information supplied only for the purposes of submitting a tender or otherwise providing the Service.
- 64.5 The Provider shall, in a separate list but at the same time as in clause 66.2 supply to the Council information in relation to employees of their contractors and sub-Contractors where such employees are engaged in the provision of the Service.
- 64.6 The Provider shall co-operate, and where relevant do their utmost to procure the co-operation of their Contractors and sub-Contractors, so as to secure the proper and efficient transfer of any relevant employees.
- 64.7 The Provider undertakes not to change personnel or their remuneration or service delivery structure during the last 24 (twenty-four) months of the Contract other than for bona fide economic or operational reasons related to delivery of the Service under the Contract, including but not limited to changes to preclude or promote the application of the TUPE Regulations upon termination or expiry of the Contract. Where the Provider does change personnel or the terms and conditions of employment of any of its personnel it shall inform the Council immediately thereupon.
- 64.8 The Provider shall indemnify the Council and keep it indemnified against, and hold it harmless from, all losses, costs, demands, charges, proceedings, damages, expenses and all other liabilities whatsoever in respect of any claim made by or on behalf of any person involved in the provision of the Service (whether or not transferred from their employment) and which claim arises from that person's involvement in the Service whether as their employee or any sub-Contractor of theirs or a previous Provider of the Service, or otherwise under the TUPE Regulations including for the avoidance of doubt any alleged breach of the TUPE Regulations.
- 64.9 Without Prejudice to any other provision in this clause, the Provider shall fully co-operate with and assist the Council in complying with sections 100 and 101 of the Local Government Act 2003 (staff transfer matters general/pensions) and any direction or guidance issued there under in so far as they are applicable to this Contract.
- 64.10 Payment of redundancy compensation for which the Provider's Staff may be eligible on expiry or termination of the Contract shall be the Provider's sole responsibility.
- 64.11 For the avoidance of doubt the Provider remain responsible for all costs, losses, expenses, liabilities otherwise incurred as a result of the expiry of this Contract, including but not limited to, any costs associated with the application of TUPE to this Contract.

65 Return of Contract Documentation

- 65.1 When this Contract ends, if the Council requests it, the Provider must give the Council, or to any person the Council may specify, all data, information, files, records, documents, and the like (in whatever format they may be held) which the Council supplied to the Provider for the purposes of the Contract, or which were produced or augmented by the Provider in connection with the carrying out of its obligations under this Contract.

- 65.2 The Provider shall comply with any requirements of the Relevant Registration Authority regarding retention of data, information files and records produced or augmented by the Provider in connection with the carrying out of the Services.
- 65.3 Otherwise, the Provider shall retain contract documentation in accordance with clause 35 'Audit'.
- 65.4 Clauses 65.1 and 65.2 are subject to the provisions of clauses 31 'Data Protection Act' and 32 'Confidentiality'.

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