

**Schedule 5 - Terms and Conditions (Contract)**

Dated

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD
- (2) [SERVICE PROVIDER]

**Contract for the Provision of  
Care and Support Services at Reardon Court**

DRAFT

## Contents

1	Definitions and Interpretation .....	4
2	Term .....	19
3	Provision of the Services.....	19
4	KPIs .....	20
5	Standard of Performance .....	20
6	Charges and Payment .....	21
7	Service Instruction Procedure.....	24
8	Access to Site and working with Housing Management.....	25
9	Occupation of Site Offices and use of Council Assets on the Site .....	26
10	Service Provider Personnel .....	27
11	Refusal of Admission .....	30
12	Contract delay .....	30
13	Change .....	30
14	Best Value.....	31
15	Not Used .....	33
16	Service Provider Warranties and Undertakings.....	33
17	Termination.....	35
18	Remediation Plan Process .....	36
19	Consequences of termination/expiry .....	37
20	Force Majeure .....	37
21	Survival of termination .....	38
22	Step-In.....	38
23	Indemnities .....	39
24	NOT USED .....	40
25	Duty to mitigate .....	40
26	Right of Set-off.....	40
27	Insurance.....	40
28	IPR .....	41
29	Freedom of information and confidentiality .....	41
30	Data Protection Legislation .....	42
31	Bribery and Fraud.....	47
32	Health and Safety Requirements .....	48
33	Hazardous Substances.....	48
34	Equality and Discrimination .....	49
35	Sub-contracting .....	50
36	Human Rights.....	50
37	Conflict of Interest .....	51
38	Assignment/Novation.....	51

39	Records and Open Book Accounting .....	51
40	Audit .....	53
41	Resources, Training and Policies .....	53
42	Change in Law .....	53
43	Compliance with Policies .....	54
44	Mistakes in information/inspection of premises .....	54
45	Security .....	55
46	TUPE and Relevant Employees .....	55
47	Not Used .....	56
48	Safeguarding Children and Vulnerable Adults .....	56
49	Carbon reduction .....	56
50	Collusion .....	56
51	Canvassing .....	57
52	Capacity .....	57
53	Co-operation.....	57
54	Public Relations and Publicity .....	57
55	Dispute resolution .....	57
56	Authorised Representatives .....	59
57	NOT USED .....	60
58	No Agency.....	60
59	Notices .....	60
60	Change in Currency .....	61
61	Severability .....	61
62	Waiver .....	61
63	Assistance in legal proceedings .....	62
64	NOT USED .....	62
65	Compliance with Anti-Slavery and Human Trafficking Laws.....	62
66	Third Party Rights.....	63
67	Entire Agreement .....	63
68	Double recovery.....	63
69	Counterparts.....	63
70	Law and jurisdiction.....	63
	Schedule 1 .....	64
	Specification.....	64
	Schedule 2 .....	65
	Housing Management Terms .....	65
	Schedule 3 .....	66
	Charges and Payment .....	66
	Schedule 4.....	69

Service Provider's Tender .....	69
Schedule 5 .....	70
Not Used .....	70
Schedule 6 .....	71
Exit Management Plan .....	71
Schedule 7 .....	1
TUPE .....	1
Schedule 8 .....	5
Contract Management.....	5
Schedule 9 .....	6
Business Continuity and Disaster Recovery .....	6
Schedule 10 .....	7
NOT USED .....	7
Schedule 11 .....	8
Processing Personal Data .....	8
Schedule 12 .....	11
LONDON MULTI-AGENCY ADULT SAFEGUARDING POLICY & PROCEDURES.....	11
Council Policies .....	13

DRAFT

**Date:**

**Parties:**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD** acting by the Council of the London Borough of Enfield, Civic Centre, PO Box 60, Silver Street, Enfield, London EN1 3XY (**Council**); and
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Service Provider**),

each a “**Party**” and together the “**Parties**”.

## **Introduction**

- A The Council sought proposals for the provision of Care and Support Services by means of a public tender exercise. The Council placed a contract notice [2023/S 000-008565](#) on 23 March 2023 in the Find a Tender service (FTS) seeking expressions of interest from potential providers for the provision of Extra Care Services at Reardon Court, 26 Cosgrove Court, Winchmore Hill, London N21 3BH.
- B The Council has, through a competitive process, selected the Service Provider to provide the Services (as defined herein) and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

## **AGREED TERMS**

### **1 Definitions and Interpretation**

#### **1.1 Definitions**

##### **Achieved KPIs**

means in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 21 (Specification));

##### **Affected Party**

means the Party seeking to claim relief in respect of a Force Majeure Event;

##### **Annual Service Plan**

has the meaning given in clause 14.4.4;

##### **Authorised Officer**

means the Council’s Authorised Representative Service Delivery or (in his absence) the Council’s Deputy Authorised Representative Service Delivery as detailed in Schedule 8 (Contract Management) and/or appointed in accordance with clause 56 (Authorised Representatives);

##### **Authorised Representatives**

means the Authorised Representatives appointed by the Parties in accordance with clause 56 (Authorised Representatives), and each an Authorised Representative;

##### **Best Industry Practice**

means the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar

to the Services or the relevant part of them, having regard to factors such as the nature and size of the Service Provider, the KPIs, the term, the pricing structure and any other relevant factors;

**Best Value Duty**

means the statutory duty for local authorities to ensure best value for the use of public funds;

**Best Value Service Change Notice**

means a written notice served by the Council on the Service Provider in accordance with clause 14.4.3;

**Business Day**

means a day other than a Saturday, Sunday or public holiday in England;

**Business Hours**

means between the hours of 09:00 and 17:00 on any Business Day;

**Care Plan**

means the plan resulting from the Service Provider carrying out an assessment of a Service User in accordance with the terms of this Contract and the Council's Care Plan of agreed care tasks issued by the Council in respect of individual Service Users detailing the care required to be provided by the Service Provider;

**Catastrophic Failure**

means:

- (a) a failure by the Service Provider for whatever reason to implement the Business Continuity and Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster; or
- (b) any action by the Service Provider, whether in relation to the Services and this Contract or otherwise, which in the reasonable opinion of the Council's Authorised Officer has or may cause significant harm to the reputation of the Council;

**Change in Law**

means any change in Law which impacts on the performance of the Services and which comes into force after the Commencement Date;

**Charges**

means the charges payable by the Council to the Service Provider under the terms of this Contract, more particularly described at Schedule 3 (Charges and Payment) and clause 6 (Charges and Payment);

**Commencement Date**

means the [INSERT DATE] which shall be the date the Mobilisation Services detailed in Schedule 1 (Specification) will commence;

**Confidential Information**

means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored)

including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and Service Providers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Legislation ;

**Conflict of Interest**

means any actual or potential conflict of interests between the personal or pecuniary interests of two or more Parties to this Contract;

**Consistent Failure**

means:

- a. A failure by the Service Provider to meet four (4) or more of the KPIs in a rolling three (3) month period; **OR**
- b. The Council serving two (2) Remediation Notices in a rolling six (6) month period; **OR**
- c. The Service Provider repeatedly breaching any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

**Contract Manager**

means the Service Provider's Authorised Representative appointed in accordance with clause 56 (Authorised Representative);

**Contract Year**

means a period of twelve (12) months from 1 April to 31 March during the Term provided that the first Contract Year shall be from the Commencement Date until 31 March immediately following the Commencement Date and the last Contract Year shall be from 1 April prior to the expiry or termination until the Expiry Date or termination of the Contract;

**Council Assets**

means all assets over which the Council is the legal and beneficial owner, including:

- (a) any land or buildings;
- (b) any equipment, fixtures and fittings;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how); and
- (d) any Intellectual Property Rights;

**Data Controller, Data Processor, Personal Data Breach, Data Protection Officer**

take the meaning given in the UK GDPR;

**Data Protection Impact Assessment**

means an assessment by the Data Controller carried out in accordance with section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018;

**Data Protection Legislation**

means (i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Laws about the processing of Personal Data and privacy; (iv) (to the extent that it may be applicable) the EU GDPR; and (v) all applicable guidance and codes of practice issued by the information commissioner or other relevant regulatory authority as may be amended from time to time;

**Data Subject**

takes the meaning given in the DPA 2018;

**Data Subject Request**

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

**Data Loss Event**

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

**Default**

means any default of either Party (or any party for which they are responsible) in complying with its obligations under this Contract, excluding (in the case of the Service Provider) any Service Failure;

**Deputy Authorised Officer**

means the Council's Authorised Representative detailed in Schedule 8 (Contract Management) and/or appointed in accordance with clause 56 (Authorised Representatives who shall act in the absence of the Authorised Officer or under instructions from the Authorised Officer;



<b>Deputy Contract Manager</b>	means the Service Provider's Authorised Representative appointed in accordance with 56 (Authorised Representative);
<b>Disaster</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable, or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable;
<b>Business Continuity and Disaster Recovery Plan</b>	means a plan which sets out the procedures to be adopted by the Service Provider in the event that the Service Provider is unable to provide the Services by reason of a Disaster (including the procedures to be taken by the Service Provider in planning and providing for any such event) as set out in the Business Continuity and Disaster Recovery Plan submitted as part of the Service Provider's Tender and appended to this Contract at Schedule 9 (Business Continuity and Disaster Recovery);
<b>Discloser</b>	has the meaning given in clause 29.1;
<b>Dispute</b>	Has the meaning given to it in clause 55 (Dispute Resolution);
<b>DPA 2018</b>	Data Protection Act 2018;
<b>EIR</b>	has the meaning given in clause 29.1.2(d);
<b>Emergency</b>	means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;
<b>Exit Management Plan</b>	means the plan set out at 0 (Exit Management Plan);
<b>Expiry Date</b>	has the meaning given in to it clause 2.1;
<b>Extension Period</b>	has the meaning given to it in clause 2.2;

<b>EU GDPR</b>	has the meaning given to it in section 3(10A) of the DPA 2018;
<b>Flats</b>	mean the premises within the Site comprising of 70 flats occupied by the Service Users under the terms of a tenancy agreement with the Council;
<b>FOIA</b>	has the meaning given to it in clause 29.1.2(d);
<b>Force Majeure Event</b>	means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, pandemic events, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Service Provider or any other failure in the Service Provider's or any Sup-Service Provider's supply chain;
<b>Future Service Provider</b>	means a provider of services equivalent to the Services immediately following expiry or termination of this Service Provider;
<b>General Change in law</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a comparable supply of similar services to a third party;
<b>HRA</b>	has the meaning given in clause 36 (Human Rights);
<b>Hourly Rate</b>	has the meaning given to it in Schedule 3 (Charges and Payments);
<b>Housing Management</b>	means the Council's housing management Service responsible for the housing management of the Site on behalf of the Council as the landlord and licensor of the Site. Housing Management, Enfield Council Housing Service and Council Housing Service shall have the same meaning wherever used in this Contract;
<b>Housing Management Terms</b>	means the terms that set out the service level agreement between the Council and Service Provider for the management of facilities and the Site as detailed in Schedule 2;
<b>Initial Term</b>	has the meaning given in clause 2.1;

## Insolvency Event

means where:

- (a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply];
- (b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (g) the Service Provider (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or

a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);
- (j) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) the Service Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;

**Intellectual Property Rights**

means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information, the right to sue for passing off, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Service Provider or any Sub-Contractor for the purposes of providing the Services and/or otherwise for the purposes of this Contract;

**KPI**

means the key performance indicators set out in Schedule 1 (the Specification);

**Law**

means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, rule of Court or directives or requirements of any competent Council, delegated or subordinate legislation;

has the meaning given to it in Schedule 3 (Charges and Payments);

**Maximum Weekly Rate**

<b>Mobilisation Phase</b>	means a period of three (3) months (unless the Council advises otherwise in writing ) during which the Mobilisation Services will be provided, which shall commence on the Commencement Date and ending on Service Commencement Date;
<b>Mobilisation Services</b>	means the mobilisation Services set out in the mobilisation plan in accordance with the Specification and the Service Provider's Tender;
<b>Mobilisation Services Fees</b>	<p>mean the Charges payable by the Council to the Service Provider in accordance with the following:</p> <p>(i) First month of the Mobilisation Phase - 30% of the Maximum Weekly Charges each week;</p> <p>(ii) Second month of the Mobilisation Phase 30% of the Maximum Weekly Charges each week;</p> <p>(iii) Third month of the Mobilisation Phase and subsequent months thereafter during the Mobilisation Phase until the Service Commencement Date -75% of the Maximum Weekly Charges each week.</p>
<b>London Living Wage</b>	means a basic hourly wage as updated from time to time by the Greater London Authority Economics Unit or any relevant replacement organisation and as notified to the Service Provider;
<b>Losses</b>	means all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses);
<b>Management Reports</b>	means the reports to be prepared and presented by the Service Provider in accordance with Schedule 1 (Specification) and Schedule 8 (Housing Management Terms);
<b>Non-Collusion Certificate</b>	has the meaning given to it in clause 50 (Collusion);
<b>Personal Data</b>	has the meaning given to it in the UK GDPR;
<b>Policies</b>	means the Council policies and procedures notified to the Service Provider from time to time (including, without limitation, those annexed hereto);
<b>Processor Personnel</b>	means all directors, officers, employees, agents, Service Providers and contractors of the Data Processor and/or of any Sub-Processor engaged in

the performance of its obligations under this Contract;

**Protective Measures**

means appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Contract, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

**Prohibited Act**

- (a) offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation the obtaining of execution of the agreement or any other contract with the Council;
- (b) showing, or forbearing to show, favour or disfavour to any person in relation to any person in relation to this Council or any other agreement with the Council or if any like acts shall have been done by any person employed by the Service Provider, or acting on the Service Provider's behalf (whether with or without the knowledge of the Service Provider);
- (c) in relation to any contract with the Council the Service Provider, or any person employed by the Service Provider, or acting on the Service Provider's behalf commits any offence under the Bribery Act 2010 or any amendment to it;
- (d) gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972;
- (e) paying commission or agreeing to pay any commission to any employee or representative of the Council, or any employee or representative of the Service Provider doing the same;
- (f) offering, giving or agreeing to give to any employee, officer or member of the Council any gift or consideration of any kind as an inducement or reward;
- (g) for doing or not doing (or for having done or not having done) any act in relation to the

obtaining or performance of this Contract or any other contract with the Council;

- (h) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;
- (i) entering into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;
- (j) committing any offence:
  - (i) under Law creating offences in respect of fraudulent acts; or
  - (ii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or
- (k) defrauding or attempting to defraud or conspiring to defraud the Council;

**Recipient**

has the meaning given in clause 29.1;

**Regulated Activity**

in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider**

shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Regulatory Bodies**

means the Care Quality Commission (CQC) and all those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council or the Service Provider and “**Regulatory Body**” shall be construed accordingly;

**Relevant Employees**

mean an employee who is subject to a Relevant Transfer whose contract of employment will be transferred to the Council or a Future Service

	Provider pursuant to TUPE on expiry or termination of this Contract;
<b>Relevant Transfer</b>	means a relevant transfer for the purpose of TUPE;
<b>Remediation Notice</b>	a written notice given by the Council to the Service Provider pursuant to clause 18 (Remediation Plan Process) to initiate the Remediation Plan Process;
<b>Remediation Plan</b>	the plan agreed in accordance with clause 18 (Remediation Plan Process) for the resolution of a Service Provider's Default;
<b>Remediation Plan Process</b>	the process for resolving certain of the Service Provider's Defaults as set out in clause 18 (Remediation Plan Process);
<b>Request for Information</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
<b>Services Commencement Date</b>	means three (3) months from the Commencement Date (or such period as the Council shall confirm in writing) which shall be the date that the Service Provider commences provision of the Services;
<b>Service Delivery Proposals</b>	means those proposals for the delivery of the Services as set out in the Service Provider's Tender;
<b>Service Failure</b>	means a failure by the Service Provider to provide the Services in accordance with any Target KPI;
<b>Service Instruction</b>	means an instruction issued to the Service Provider by the Council for the provision of the Services in accordance with the Service Instructions procedure in clause 7 and the Specification;
<b>Services</b>	means the domiciliary-based extra care services to Service Users from the seventy (70) social rented Flats at the Site to be delivered by or on behalf of the Service Provider under this Contract and in accordance with the Specification detailed in Schedule 1 (Specification) and this Contract;
<b>Service Transfer Date:</b>	means the date on which the Services (or any part of the Services), for whatever reason transfer from



the Service Provider to the Council or any Future Service Provider;

### **Staffing Information**

means in relation to all persons detailed on the Service Provider's Provisional Staff List, such information as the Council may reasonably request (subject to a applicable Data Protection Legislation), but including in an anonymised format:

- a) their ages, dates of commencement of employment or engagement and gender;
- b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- c) the identity of their employer or relevant contracting party;
- d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
- g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

### **Service User**

means individuals occupying the Flats at the Site with Care Plans and receiving all or part of the Services directly from the Service Provider;

<b>Site</b>	means the extra care property known as Reardon Court located at 26 Cosgrove Court, Winchmore Hill, London N21 3BH;
<b>Site Offices</b>	means the office space located at the Site (Reardon Court located at 26 Cosgrove Court, Winchmore Hill, London N21 3BH) being the shared office space made available by the Council to the Service Provider for use by the Service Provider for the provision of the Services;
<b>Specification</b>	means the specification for the Services in Part 1 of Schedule 1 (Specification) and shall include the Housing Management Terms in Schedule 1;
<b>Sub-Contract</b>	means any contract entered into by the Service Provider with a third party for the provision of any of the Services or goods or equipment in relation to the Services;
<b>Sub-processor</b>	means any third party appointed to process Personal Data on behalf of the Processor related to this Contract;
<b>Sub-Contractor</b>	means any contractors or Service Providers that enter into a Sub-Contract with the Service Provider;
<b>Sub-Contractor Personnel</b>	means all employees, workers, staff, agents and Service Providers of the Sub-Contractor engaged in the provision of the Services at any time;
<b>Service Provider's Authorised Representative</b>	means the person designated as such by the Service Provider as the Contract Manager and Deputy Contract Manager, the first of which is set out at Schedule 8 (Contract Management);
<b>Service Provider Personnel</b>	means all employees, workers, staff, agents and Service Providers of the Service Provider engaged in the provision of the Services at any time;
<b>Service Provider's Final Staff List</b>	means the list of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;
<b>Service Provider's Provisional Staff List</b>	means the list prepared and updated by the Service Provider of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;
<b>Service Provider's Tender</b>	means the responses of the Service Provider submitted to the Council as part of the competitive procurement process for the provision of the Services appended to this Contract at Schedule 4 (Service Provider's Tender);

<b>Target KPI</b>	means the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Schedule 1 (Specification);
<b>Term</b>	means together the Initial Term (as defined in clause 2.1) and any Extension Period (as defined in clause 2.2);
<b>Total Annual Charges</b>	has the meaning given to it in Schedule 3 (Charges and Payments);
<b>TUPE</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive; and
<b>UK GDPR</b>	the UK General Data Protection Regulation which has the meaning given to it in section 3(10) of the DPA 2018.

In this Contract, unless the context otherwise requires:

- 1.2 headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Contract;
- 1.3 all references to clauses and Schedules are references to the clauses of and the Schedules to this Contract unless otherwise stated;
- 1.4 the Schedules form part of this Contract;
- 1.5 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, documents or other instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.6 all references to any Law shall include references to that Law as amended, extended, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;
- 1.7 words importing the singular include the plural and vice versa;
- 1.8 words importing a gender include all genders;
- 1.9 “**person**” includes an individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
- 1.10 the words “**include**” and “**including**” are to be construed without limitation and the rule of construction known as ejusdem generis shall not apply to this Contract;
- 1.11 references to Sub-Contractors shall be to Sub-Contractors of any tier;
- 1.12 any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.13 subject to any express provisions of this Contract to the contrary, the obligations of any Party are to be performed at that Party’s own expense.

## 2 Term

- 2.1 This Contract shall commence on **[INSERT DATE]** (“the Commencement Date” and shall continue in full force and effect for a period of five (5) years until **[INSERT DATE]** (“Expiry Date”) or until it is otherwise terminated or extended in accordance with the provisions of this Contract (“Initial Term”). For the avoidance of doubt:
- 2.1.1 The Commencement Date shall be the date for the commencement of the Mobilisation Services and the Service Commencement Date shall be the date for the commencement of the Services; and
- 2.1.2 The Council reserves the right to extend and/or amend the period of the Mobilisation Phase by written notice to the Service Provider.
- 2.2 Prior to the expiry of the Initial Term, the Council may, at its absolute discretion, serve notice on the Service Provider in writing extending the term of this Contract for a further period or further periods of up to **two (2) years** (“Extension Period”), to a maximum Contract period of **seven (7) years**. In the event that the Council serves notice under this clause 2.2 the term of this Contract will be extended in accordance with the notice.
- 2.3 If the Contract is further extended under clause 2.2, the Contract shall terminate automatically at the end of the Extension Period without further notice unless terminated earlier in accordance with the provisions of this Contract.

## 3 Provision of the Services

- 3.1 Without prejudice to the provisions of the Specification and the rest of this Contract, the Service Provider shall provide:
- 3.1.1 the Mobilisation Services during the Mobilisation Phase; and
- 3.1.2 the Services with effect from the Services Commencement Date.
- 3.2 The Service Provider shall at its own cost be solely responsible for procuring that the Services are performed to the following standards (the “Service Standard”):
- 3.2.1 the Services shall be provided throughout the Term in accordance with the provisions of this Contract, including, without limitation, the provisions of Schedule 1 (Specification), Schedule 2 (Housing Management Terms), Schedule 4 (Service Provider’s Tender), Best Industry Practice, relevant Guidance and all Policies and Law with effect from the Commencement Date; and
- 3.2.2 the Services are at all times performed:
- (a) using all reasonable skill care and diligence;
  - (b) in a manner that is not reasonably likely to be injurious to health or to cause damage to property;
  - (c) in a manner consistent with the Council discharging its statutory duties to the extent that these may have an effect on the Services;
  - (d) in a manner consistent with and to ensure compliance with any applicable Laws; and
  - (e) in compliance with all instructions issued in accordance with this Contract by or on behalf of the Council by the Authorised Representatives and which he is empowered to issue under this Contract, provided that all such instructions are reasonable and compliance will not cause the Service Provider to be in breach of this Contract.
- 3.3 The Services shall be provided by the Service Provider at the Site as specified in the Service Specification and Housing Management Terms in Schedule 1 or as specified by the

Authorised Officer or, if related to the Housing Management Terms, by the Housing Management Authorised Representative.

- 3.4 The Service Provider shall, at all times, cooperate and promptly liaise with Housing Management, the Housing Management Authorised Representative and Service Users on any matter relating to the Housing Management function. The Service Provider shall, at all times, carry out its obligations in accordance with the Housing Management Terms in Schedule 2.
- 3.5 The Service Provider will be responsible for providing and maintaining the Services to the Service Standard at all times and will ensure continuity of supply (at no extra cost to the Council)" in accordance with the Specification (Schedule 1) and the Housing Management Terms (Schedule 2). The Service Provider must, at all times, have in place contingency plans and arrangements which have the approval of the Council to ensure continuity of supply of the Services.

#### **4 KPIs**

- 4.1 The Service Provider shall provide the Services in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 4.2 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within the KPIs in Schedule 2.
- 4.3 In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights or remedies the Council may have, the performance management provisions in the Specification will apply in the first instance via quarterly performance monitoring meetings and reporting.
- 4.4 Where, in the opinion of the Council, the quarterly review as detailed in the Specification fails to improve the performance of the Service Provider relating to one or more KPIs, without prejudice to any other rights or remedies the Council may have under this Contract or otherwise at common law, the Authorised Officer may escalate the performance monitoring to the Service Manager Adult Social Care Services of the Council and the Service Manager, Adult Social Care Services shall decide on the relevant remedies or next steps.

#### **5 Standard of Performance**

- 5.1 Without prejudice to the generality of clause 5.2 the Service Provider will at all times ensure that the Services comply with and meet all the requirements of this Contract (including without limitation Schedule 1 (Specification) and Schedule 2 (Housing Management Terms), the Service Delivery Proposals, Best Industry Practice, Guidance and all applicable Policies and Law with effect from the Commencement Date.
- 5.2 The Service Provider shall, at all times in connection with this Contract act in:
  - 5.2.1 good faith in the best interests of the Council;
  - 5.2.2 accordance with Best Industry Practice; and
  - 5.2.3 accordance with all relevant Law.
- 5.3 The Service Provider shall ensure, and shall procure that any Service Provider Personnel or Sub-Contractor or Sub-Contractor Personnel shall ensure, that the Services are carried out in compliance with the terms of this Contract and all Policies and applicable Law.
- 5.4 In providing the Services the Service Provider must:
  - 5.4.1 Ensure the health, safety and welfare of its staff and the Service Users;

- 5.4.2 Ensure compliance throughout the Term with the Care Quality Commission's (or any successor body/bodies) National Standards for , End of Life Care Gold Standard Framework, the London Multi-Agency Adult Safeguarding Policy and Procedures appended at Schedule 12, and any provisions which amend, extend, consolidate or replace the same;
  - 5.4.3 Comply with the Specification and referral procedures set out in Schedule 1 or as may be advised by the Council during the term;
  - 5.4.4 Assess and review the Service Users' support needs as set out in the Specification (Schedule 1) or as specified by the Council to ensure that the Services are relevant to their needs in accordance with the Care Plan and Service Plan; and
- 5.5 The Service Provider shall be responsible for supplying at its own cost all consumables to be used in connection with the Services.
- 5.6 The Service Provider shall notify the Council within one month where there has been a significant change to the care needs of the Service User and the Service Provider reaches the view that those care needs can no longer be met at the Site. The Council will review the care needs of the Service User and any move in these circumstances must be agreed with the Council.
- 5.7 In the event of a major incident (as determined by the Council from time to time) the Service Provider shall perform the Services in accordance with the Business Continuity and Disaster Recovery Plan.
- 5.8 The Service Provider must maintain registration with the Care Quality Commission or such successor body for the provision of extra care services throughout the Term and must maintain such other registrations as are required under the Specification and this Contract.

## **6 Charges and Payment**

- 6.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this Contract (including its Schedules), the Council shall, with effect from the Service Commencement Date, pay the Charges to the Service Provider in accordance with the provisions set out in Schedule 3 (Charges and Payment) and this clause 6 (Charges and Payment). In consideration of the provision of the Mobilisation Services by the Service Provider in accordance with the terms and conditions of this Contract (including its Schedules), the Council shall, with effect from the Commencement Date, pay to the Service Provider the Mobilisation Services Fees for the duration of the Mobilisation Phase.
- 6.2 The Service Provider shall invoice the Council for payment of the Charges monthly in arrears for the duration of the Term or at the time the Charges are otherwise expressed to be payable in accordance with the provisions set out at Schedule 3 (Charges and Payment). All invoices and supporting information sent by email shall be sent to [EnfieldTeam@restoredigital.co.uk](mailto:EnfieldTeam@restoredigital.co.uk) and [ASCPurchaseorders@enfield.gov.uk](mailto:ASCPurchaseorders@enfield.gov.uk). Invoices attached to letters shall have the Council's address shown in the Parties section of this Contract typed clearly on the invoice.
- 6.3 Invoices must not have copies attached and shall contain the following:
- 6.3.1 the title of the Contract or Service;
  - 6.3.2 the Council's contract/order number; and
  - 6.3.3 VAT shall be shown separately.

Only valid VAT invoices shall be processed for payment. Any invoice which does not meet VAT criteria shall be rejected.

- 6.4 If the Council fails to comply with its payment obligations under this clause 6 (Charges and Payment), the Service Provider shall:
- 6.4.1 notify the Council's Authorised Officer in writing of such failure to pay and provide details of the invoice concerned;
  - 6.4.2 allow the Council to make prompt payment of such undisputed sums; and
  - 6.4.3 allow the Council to provide details of the grounds for why the invoice is disputed.
- 6.5 Any queries regarding invoicing and progress of payments should be directed to the Council's Authorised Officer.
- 6.6 The Council shall pay the Service Provider any sums due under an invoice no later than 30 (thirty) days from the date on which it is deemed valid.
- 6.7 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:
- 6.7.1 provisions having the same effect as clause 6.6 to clause 6.9 of this Contract; and
  - 6.7.2 a provision requiring the counterparty to that Sub-Contract to include in any sub-contract which it awards provisions having the same effect as clause 6.6 to clause 6.9 of this Contract.
- 6.8 Where any Party disputes any sum to be paid by it under this Contract then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 55 (Dispute Resolution). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 (thirty) days after resolution of the dispute between the Parties.
- 6.9 Subject to clause 6.8, the Service Provider may charge interest on the late payment of any undisputed Charges properly invoiced under this Contract on the outstanding sum from the due date until payment is made at the then applicable statutory interest rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended, extended or re-enacted from time to time). The Service Provider shall not suspend the supply of the Services if any payment is overdue.
- 6.10 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Service Provider shall indemnify the Council 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 Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this Contract.
- 6.11 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council for seven (7) years from the end of the Contract Year to which the records relate.
- 6.12 The Council may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this Contract or any other agreement pursuant to which the Service Provider provides goods or services to the Council.

- 6.13 If the Council wishes to set off any amount owed by the Service Provider to the Council against any amount due to the Service Provider pursuant to clause 6.12 it shall give notice to the Service Provider within thirty (30) days of receipt of the relevant invoice, setting out the Council's reasons for withholding or retaining the relevant Charges.
- 6.14 The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.
- 6.15 Subject to clause 6.16:
- 6.15.1 With effect from 1 April 2024, and on 1 April of each subsequent Contract Year during the Term (each such review being an "Annual Price Review"), the Council shall apply an adjustment of the Hourly Rate for the Charges for the relevant Contract Year in accordance with the following percentages:
- 6.15.1.1 70% of the Hourly Rate to be subject to an uplift based on the percentage (%) change in the National Living Wage in the relevant Contract Year ("National Living Wage Uplift"); and
- 6.15.1.2 30% of the Hourly Rate to be subject to an uplift based on changes in the Consumer Price Index (CPI) to be calculated using the average of the CPI published for the three (3) months ended on 31 December immediately preceding the relevant Contract Year ("CPI Uplift"), together the "Annual Uplift".
- 6.15.2 At least fifteen (15) Business Days prior to the first day of a Contract Year (with effect from 1 April 2024), the Council will, by written notice to the Service Provider, confirm the Annual Uplift (split into the National Living Wage Uplift and the CPI Uplift), the Hourly Rate and the Total Annual Charges for the following Contract Year calculated in accordance with clause 6.15.1.
- 6.15.3 Should the Service Provider dispute the CPI Uplift advised by the Council under clause 6.15.2 and calculated in accordance with 6.15.1.2, the Service Provider must no later than ten (10) Business Days prior to 1 April of the relevant Contract Year, submit to the Council:
- (i) a cost workbook (in a form advised by the Council); and
- (ii) satisfactory documentary evidence (in the reasonable opinion of the Council),
- being evidence of the Service Provider's increased overhead and management costs. The cost workbook and any documentary evidence provided to the Council under this clause 6.15.3 must demonstrate that the increase in overhead and management costs is reasonable and based on actual costs incurred by the Service Provider in the relevant Contract Year.
- 6.15.4 Upon receipt of the cost workbook and satisfactory documentary evidence under clause 6.15.3, the Council will consider the cost workbook and documentary evidence and advise the Service Provider, in writing, if the CPI Uplift will be adjusted or not. If the Council considers that the CPI Uplift (advised under clause 6.15.2 and calculated in accordance with clause 6.15.1.2) is to be adjusted, the Council will, at its sole discretion, determine the basis for calculation of the uplift relating to 30% of the Hourly Rate under clause 6.15.1.2 and shall advise the Service Provider of the new Annual Uplift, Hourly Rate and Total Annual Charges. If the Council considers that the CPI Uplift (advised under clause 6.15.2 and calculated in accordance with clause 6.15.1.2) is not to be adjusted, it shall advise the Service Provider that the Annual Uplift advised under clause 6.15.2 and calculated under clause 6.15.1.2 shall apply.



- 6.15.5 The Annual Uplift, Hourly Rate and Total Annual Charges advised by the Council under clause 6.15.2 or clause 6.15.4 (if applicable) shall be the agreed Annual Uplift, Hourly Rate and Total Annual Charges for the relevant Contract Year.

6.16 For the avoidance of doubt:

- 6.16.1 The Council shall take the final decision on the Annual Uplift applicable to each Contract Year and the Annual Uplift, Hourly Rate and Total Annual Charges advised by the Council under clause 6.15.2 or 6.15.4 (if applicable) shall be the applicable Annual Uplift, Hourly Rate and Total Annual Charges for the relevant Contract Year.
- 6.16.2 Any Annual Price Review or Annual Uplift under clause 6.15 shall be subject to the budget awarded to the Council's Health and Adult Social Care department for the Services in the relevant Contract Year.
- 6.16.3 The Hourly Rate and the Charges shall remain fixed until 31 March 2024, when the first Annual Price Review will apply. Subsequent Annual Price Review(s) shall be applied from 1 April each subsequent Contract Year until the expiry or earlier termination of the Contract.
- 6.16.4 An Annual Price Review shall only be carried out following an increase in National Living Wage or CPI in accordance with clause 6.15. Should the CPI rate (calculated under clause 6.15.1.2) decrease and there is no change in the National Living Wage, there will be no Annual Price Review for the relevant Contract Year.
- 6.16.5 The first Annual Price Review will be based on the Hourly Rate at the Contract Commencement Date (as detailed in Schedule 3 (Charges and Payment)). Each subsequent Annual Price Review will be calculated on the Hourly Rate applicable to the Contract Year preceding the relevant Annual Price Review.
- 6.16.6 Annual Price Reviews shall not be carried out on the Commencement Date or anniversaries of the Commencement Date.
- 6.16.7 Except as set out in this clause 6, the Charges or Hourly Rate shall not be adjusted to take account of any inflation, change in exchange rate, change to exchange rate, change to interest rate or any factor or element which might otherwise increase the cost of the Service Provider in the performance of its obligations under the Contract.

## 7 Service Instruction Procedure

- 7.1 Subject to clause 7.4, the Council may issue a written Service Instruction at any time during the Term for the provision of the Services from the Service Provider to a Service User.
- 7.2 Service Instructions shall contain a copy of the Service User's service requirements in the form of a Care Plan containing without limitation such details as the tasks and estimated duration of time required for each service delivery. The Council reserves the right, at its absolute discretion, to amend the format of the Service Instruction on giving the Service Provider seven (7) days written notice of its intention to do so.
- 7.3 The Service Provider shall agree to undertake any Service Instructions in accordance with the Specification.

- 7.4 The Council reserves the right to verbally instruct the Service Provider to provide the Services where the Council, at its absolute discretion, deems there to be an emergency. The Service Provider will accept such verbal instruction from the Authorised Officer and will respond to such request and provide such Services immediately on receipt of the verbal instruction or Care Plan from the Council. The Council shall provide a written Service Instruction to the Service Provider by the close of business on the first Business Day following the verbal request for emergency Services.
- 7.5 The Council reserves the right to terminate with immediate effect the Services or any discrete part of the Services contained within a Service Instruction in accordance with clause 17.
- 7.6 These terms and conditions shall apply to all Service Instructions placed with the Service Provider by the Council.

## **8 Access to Site and working with Housing Management**

- 8.1 Subject to clause 9, the Council shall allow the Service Provider to use the Site Offices and provide access to such parts of the Site as the Service Provider may reasonably require in order to comply with its Service delivery obligations hereunder.
- 8.2 The Service Provider shall be responsible for liaising with Service Users directly to obtain any licence required to access the Flats or such parts of the Site that have been sub-let to Service Users by the Council for the purpose of delivering the Services to the Service Users. For the avoidance of doubt, nothing in this Contract or in the licence shall create a lease, tenancy or relationship of landlord and tenant between the Council and the Service Provider over the Site Offices or any part of the Site.
- 8.3 The Service Provider shall comply with all obligations of the Service Provider set out in the Housing Management Terms in a timely manner and in accordance with the timescales set out in the Housing Management Terms. For all matters relating to the Site Offices or the Site, the Service Provider shall liaise with the Authorised Representative Housing Management of the Council.
- 8.4 The Service Provider shall ensure that only those of the Service Provider Personnel and the Sub-Contractor's Personnel that are duly authorised to enter upon the Site for the purposes of providing the Services do so.
- 8.5 Whilst on the Site, or if applicable any other Council land or premises which the Service Provider is required to access for the provision of the Services, the Service Provider shall, and shall procure that any Sub-Contractor shall:
- 8.5.1 adhere to all reasonable requests and instructions of the Council as may be provided from time to time;
  - 8.5.2 take steps to minimise and keep to a minimum interference with any other activities taking place;
  - 8.5.3 ensure that all Service Provider Personnel and Sub-Contractor Personnel are aware of and comply with the Council's Policies, including without limitation the Council's Health and Safety Policy, and are aware of any potential risks to health and safety in relation to the Site or any other land or premises to which access is required for the purposes of providing the Services;
  - 8.5.4 comply with all security measures implemented by the Council in relation to the Site, including the provision of all Service Provider Personnel and Sub-Contractor Personnel entering the Site with a form of identification

acceptable to the Council, which shall be displayed visibly on that person's clothing at all times whilst they are on the Site or other premises used for the provision of the Services; and

- 8.5.5 immediately remove any Service Provider or Sub-Contractor Personnel from the Site or other premises used for the provision of the Services where the Council requests this.
- 8.6 Whilst on the Site, the Council reserves the right to search any Service Provider or Sub-Contractor Personnel, their vehicles or any other vehicles brought on to the Site or other premises used for the provision of the Services.
- 8.7 Subject to the provisions of the Exit Management Plan set out at 0 (Exit Management Plan), on expiry or termination of this Contract the Council shall notify the Service Provider that it is to remove its equipment from the Site. All such equipment shall be promptly removed by the Service Provider and in any event within ten (10) Business Days of the termination or expiry of this Contract, howsoever caused. The Council shall provide the Service Provider with such access as the Service Provider reasonably requires to the Site to remove any of the Service Provider's equipment, at a time which shall be convenient to the Council.
- 8.8 For the avoidance of doubt, if at any time the Service Provider requires access to the Site which has been sublet by the Council to Service Users or to acquire any additional rights beyond those which the Service Provider has in relation to any part of the Site under this Contract, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Service Provider.

## **9 Occupation of Site Offices and use of Council Assets on the Site**

- 9.1 The Council shall provide the Service Provider with a licence to use the shared space in the Site Offices for the delivery of the Services. The Site Offices shall be shared between the Service Provider and Council officers. The permission given to the Service Provider to use the Site Offices is personal to Service Provider and the Service Provider Personnel and shall cease immediately upon the Contract ceasing to be in force and/or upon completion, termination or expiry of this Contract. For the avoidance of doubt, nothing in this clause 9 or elsewhere in this Contract shall create a lease, tenancy or relationship of landlord and tenant between the Council and the Service Provider over the Site Offices or any part of the Site. Only the Service Provider Personnel and persons making deliveries to the Service Provider in connection with the provision of the Services may enter or use any part of the Site or Site Offices without the approval of the Authorised Representatives of the Council.
- 9.2 The Service Provider shall ensure that:
  - 9.2.1 the Site Offices and any Council Assets at the Site are used solely for the purposes of performing the Contract and shall remain the property of the Council;
  - 9.2.2 the Service Provider and the Service Provider Personnel comply with any policies, rules or relations or the provisions of any insurance policies from time to time in force in relation to the use of the Site Offices and Council Assets on the Site, and shall procure that any Sub-Contractor or Sub-Contractor Personnel shall comply with the same;
  - 9.2.3 where the Site Offices or any Council Assets are used by the Service Provider they are kept properly secure and it will comply and co-operate with the Council's reasonable directions regarding the security of the same; and
  - 9.2.4 any Council Assets used by the Service Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Site Offices or

the Site unless expressly permitted under this Contract or by the Council's Authorised Officer or the Housing Management Authorised Representative.

- 9.3 The Council will provide a supply of water, gas and electricity to the Site Offices which in the Council's reasonable opinion is sufficient to operate equipment used to provide the Services and will arrange for the disposal of refuse and waste from authorised collection points as so determined necessary for the Site Offices by the Housing Representative. In consideration of the services, the Council shall charge the Service Provider service charges for the shared space within the Site Offices, such charges to be based on a fair apportionment basis to be calculated by the Council.
- 9.4 The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Service Provider or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Service Provider as a debt in addition to any service charges payable by the Service Provider under clause 9.3.
- 9.5 The Service Provider shall notify the Council immediately on becoming aware of any damage caused by the Service Provider, Service Provider Personnel or any Sub-Contractor or Sub-Contractor Personnel to any property of the Council, any Council Asset or to any of the Site Offices or to any property of any Service User in the course of providing the Services.
- 9.6 The Service Provider shall procure that in occupying the Site Offices or having access to the Site, there shall be no act or omission by the Service Provider, or Sub-Contractor, or any Service Provider or Sub-Contractor Personnel which shall give rise to a right for any person to obtain title to or any right or interest over the Site Offices or any part of it and/or cause any material disruption to the provision of the Services.
- 9.7 Except as otherwise expressly provided in this Contract the Service Provider shall take the Site Offices in its state and condition in all respects as at the date of this Contract and nothing in this Contract or otherwise shall constitute or imply a warranty by or on the part of the Contract as to the fitness and suitability of the Site Offices or any part thereof for the provision of the Services or for any other purpose.
- 9.8 The Service Provider shall observe and comply with any Service User or third party rights (including public rights) which may exist from time to time in respect of the Site or of land comprising and adjoining the Site, and the Service Provider shall ensure that the Services are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.
- 9.9 To the extent permissible by Law, the Council will not accept liability for equipment or material left or stored on the Site or Site Offices or any other premises used for the purposes of providing the Services.

## **10 Service Provider Personnel**

- 10.1 Whilst engaged at the Site the Service Provider shall and shall procure that any Sub-Contractor shall comply with the Council's Policies relating to the conduct of Service Provider Personnel and security arrangements. The Council (acting reasonably) may:
- 10.1.1 instruct the Service Provider that disciplinary action is taken against any employee of the Service Provider or any Sub-Contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Council

shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

- 10.1.2 where the Council has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).
- 10.2 The Service Provider shall procure that all Service Provider Personnel performing any of the Services during the Term who will or may in the course of their employment or engagement have access to Service Users, children or other vulnerable persons:
  - 10.2.1 are subject to and obtain an Enhanced Disclosure and Barring Service Check concerning any convictions, cautions and warnings prior to offering any employment or using any such Service Provider Personnel in the delivery of the Services; and
  - 10.2.2 obtain enhanced disclosures from the Disclosure and Barring Service in accordance with Part V of the Police Act 1997 including a check against the adults' barred list or the children's barred list, as appropriate before the Service Provider engages the potential staff or persons in the provision of the Services. The Service Provider shall ensure that such potential Staff or persons obtain enhanced disclosures from the Disclosure and Barring Service including, without limitation, the Service Provider being registered with the Disclosure and Barring Service (the "DBS"); These checks should be reviewed every three years.
- 10.3 The Service Provider shall not and shall procure that the Service Provider Personnel shall not:
  - 10.3.1 corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under this Contract;
  - 10.3.2 be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of their obligations under this Contract;
  - 10.3.3 act in a manner reasonably likely to bring discredit upon the Council;
  - 10.3.4 at any time be on duty under the influence of alcohol or illicit drugs or prescribed drugs that may, in the opinion of the Council, adversely affect the ability of the Service Provider Personnel to deliver the Services to the Service Standards;
  - 10.3.5 neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract;
  - 10.3.6 misuse or abuse the Site or Council Assets;
  - 10.3.7 smoke while at the Site.
- 10.4 The Service Provider shall provide the Service Provider Personnel with a form of identification that is acceptable to the Council and which Service Provider Personnel shall display on their clothing at all times when they are at the Site.
- 10.5 The Council shall not be liable for loss of or damage to, the personal property of Service Provider's Personnel, howsoever caused.

- 10.6 The Service Provider shall ensure that the Service Provider Personnel are medically and physically fit in so far as the requirements of the work are concerned taking into account any reasonable adjustments in accordance with the Equality Act 2010.
- 10.7 The Service Provider shall ensure that Service Provider Personnel maintain, at all times, proper standards of appearance and deportment whilst providing Services to the Council expected of that of a professional in the delivery of health services.
- 10.8 The Service Provider shall:
- 10.8.1 observe, and procure that the Service Provider's Personnel observe, all health and safety rules and regulations and any other security requirements that apply at the Site;
  - 10.8.2 notify the Council as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services;
  - 10.8.3 prior to the Commencement Date, obtain and at all times maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services; and
  - 10.8.4 meet the Service Provider's own health and safety requirements in the management of the Service Provider Personnel, especially in relation to meeting any costs or charges incurred from reasonable adjustments needed to office items, display screen equipment, workstation assessments and the Council shall not be liable for conducting any such health and safety requirements.
- 10.9 Whilst engaged at the Site, the Service Provider shall and shall procure that any Sub-Contractor shall comply with the Council's Policies relating to the conduct of Service Provider Personnel and security arrangements.
- 10.10 The Service Provider will at all times ensure that the Services are performed by appropriately qualified and trained personnel and that sufficient number of Service Provider Personnel are engaged at all times during the Term to ensure effective delivery of the Services. The Council may require the Service Provider to remove and replace any Service Provider Personnel that that Council acting reasonably considers to be unsuitable for engagement in the delivery of the Services.
- 10.11 Resources and training
- The Service Provider shall procure that:
- 10.11.1 there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and
  - 10.11.2 all staff receive such training and supervision as is necessary to ensure the proper performance of the Services under this Contract.
- 10.12 Conduct of Staff
- 10.12.1 Whilst delivering the Services, the Service Provider shall, and shall procure that any Sub-Contractor shall, comply with the Council's Policies relating to the

conduct of staff and security arrangements. Where a Service Provider Personnel or Sub-Contractor Personnel engages in actions that are likely to result in a misconduct or are a misconduct or is otherwise incompetent or negligent in his/her duties, the Service Provider shall ensure (or if a Sub-Contractor Personnel shall procure) that an investigation is carried out promptly. The Authorised Officer (acting reasonably) may further instruct the Service Provider to carry out an investigation in relation to any such Service Provider Personnel, a Sub-Contractor or Sub-Contractor Personnel involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned). The Service Provider must promptly notify the Council of the outcome of the investigation, including any disciplinary action and/or exclusion from any location or from delivering the Services.

- 10.12.2 The Council may, where necessary, require the Service Provider to set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment and conduct of its own staff whilst carrying out their duties in relation to the Contract at the Site. This shall include, but not be limited to, disciplinary and grievance procedures. The Service Provider shall provide the Council with copies of such policies, rules, procedures and quality standards (and shall promptly inform the Council of any amendments to such documents). For the avoidance of doubt the Council shall have no liability whatsoever to the Service Provider in relation to the implementation of any such policies, rules, procedures and quality standards.

## **11 Refusal of Admission**

- 11.1 The Council reserves the right for it to refuse to admit to the Site any person, employed or engaged by the Service Provider or a Sub-Contractor, whose admission would, in the opinion of the Council present a risk to the Council, a Service User, any third party or the Council's property and shall not be obliged to give any reasons for such refusal.
- 11.2 The decision of the Council as to whether any person is to be refused admission to the Site pursuant to clause 11.1 shall be final and conclusive.
- 11.3 The Service Provider shall comply with and/or procure compliance with any notice issued by the Council from time to time requiring the removal from the Site of any person employed thereon who in the opinion of the Council is not acceptable on the grounds of a risk to the Council, any Service User, any third party or the Council Assets and that such persons shall not be employed again in relation to the provision of Services without the written consent of the Council.

## **12 Contract delay**

- 12.1 If, at any time, the Service Provider becomes aware of any circumstance or occurrence which may lead to a delay in the provision of the Services or otherwise adversely affect the Service Provider's performance of its obligations under this Contract it shall immediately notify the Council in writing, providing details of the potential or actual delay.
- 12.2 The Service Provider shall use its best endeavours to avoid and mitigate the impact of any circumstance or occurrence referred to in clause 12.1 upon the Council.

## **13 Change**

- 13.1 Should the Council wish to change any aspect of the provision of Services it shall provide the Service Provider with written notice of the proposed change including sufficient detail to enable the Service Provider to comply with its obligations under clause 13.2.

- 13.2 Within fifteen (15) Business Days of receipt of the notice referred to in clause 13.1 the Service Provider shall provide the Council with details of the proposed timetable for implementation and details of any changes to the Charges arising as a result of the proposed change on a transparent and open-book basis.
- 13.3 In calculating any changes to the Charges the Service Provider shall ensure that any alteration:
- 13.3.1 reflects a fair and proportionate change based upon the reasonable costs of a well-run provider of Services and the current profit margin achieved by the Service Provider; and
  - 13.3.2 Does not result in the Council's annual budget for care services being exceeded.
- 13.4 After receipt of the information referred in clause 13.2 the Council shall be entitled to abandon or continue with the proposed change. Should the Council decide to continue with the proposed change the Parties shall take such steps as are reasonably necessary to agree a variation to this Contract to reflect the proposed change.

## **14 Best Value**

- 14.1 The Service Provider acknowledges that:
- 14.1.1 the Council is subject to the Best Value Duty;
  - 14.1.2 the provisions of this clause 14 (Best Value) are intended to assist the Council in discharging its Best Value Duty in relation to the Services; and
  - 14.1.3 the provisions of this clause 14.1 shall apply in respect of the obligations of the Service Provider and the Council concerning the Best Value Duty.
- 14.2 The Service Provider shall, throughout the Term, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 14.3 The Service Provider shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with its Best Value Duty, including:
- 14.3.1 complying with all requests by the Council to procure the attendance of specific officers or employees of the Service Provider or any Sub-Contractor (or to procure attendance of any of its or their sub-contractors) at any meetings of the Council at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than twice in any one (1) Contract Year); and
  - 14.3.2 permitting any officer or employee of the Council at all reasonable times and upon reasonable notice, access to:
    - (a) any document or data relating to the Services; and
    - (b) any Service Provider Personnel or Sub-Contractor Personnel.
- 14.4 **Annual Service Report and Annual Service Plan**
- 14.4.1 Without prejudice to any other provision in this Contract the Service Provider shall, no later than the anniversary of the Commencement Date in the first Contract Year and no later than the same date in each Contract Year



thereafter, at its own cost, provide to the Council a written report (“**Annual Service Report**”) in accordance with the requirements of the Specification.

- 14.4.2 The Service Provider shall upon a written request from the Council promptly provide such written evidence or other supporting information as the Council may reasonably require to verify and audit the information and other material contained in the Annual Service Report.
  - 14.4.3 If, in the Council’s reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Council may serve a Best Value Service Change Notice stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Council desires.
  - 14.4.4 The Service Provider shall, within twenty (20) Business Days of the date of receipt of the Best Value Service Change Notice, provide the Council at its own cost with a written statement (“**Annual Service Plan**”) containing the Service Delivery Proposals to achieve the change to the Services (or the relevant part) in accordance with the Best Value Service Change Notice.
  - 14.4.5 As soon as practicable after the Council receives the Annual Service Plan, the Parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Council may modify the Best Value Service Change Notice, in which case the Service Provider shall, as soon as practicable, and in any event not more than twenty (20) Business Days after the receipt of such modification, notify the Council of any consequential changes to the Annual Service Plan.
  - 14.4.6 If the Parties cannot agree on the contents of the Annual Service Plan then the dispute will be determined in accordance with the Disputes Resolution Procedure.
  - 14.4.7 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the dispute resolution procedure the Council shall:
    - (a) confirm in writing the Annual Service Plan; or
    - (b) withdraw the Best Value Service Change Notice.
  - 14.4.8 If the Council either withdraws the Best Value Service Change Notice or does not confirm the Annual Service Plan within twenty (20) Business Days of the Annual Service Plan having been agreed or determined pursuant to the Disputes Resolution Procedure, then the Annual Service Plan and the Best Value Service Change Notice shall be deemed to have been withdrawn.
  - 14.4.9 If the Council confirms the Annual Service Plan then the Council shall issue a change notice (which shall include the information set out in the Best Value Service Change Notice) in accordance with clause 13 (Change).
  - 14.4.10 To the extent that the implementation of the proposals in the Annual Service Plan will result in a decrease in the costs of the Service Provider, the Charges shall be adjusted downwards.
  - 14.4.11 To the extent that the implementation of the proposals in the Annual Service Plan will result in an increase in the costs of the Service Provider, the Charges shall be adjusted upwards.
- 14.5 The Service Provider shall take all reasonable steps to mitigate any costs and maximise any savings arising as a consequence of a Best Value Service Change Notice and a change notice served pursuant to clause 14.4.9.

15 Not Used

16 Service Provider Warranties and Undertakings

16.1 The Service Provider warrants, represents and undertakes to the Council that on the date hereof:

- 16.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 16.1.2 the information contained in the Service Provider's Tender remains true and accurate unless and to the extent that any changes have been notified to the Council in writing and the Council has agreed to the provision of the Services on the basis of those changes and no others, and that it shall promptly notify the Council in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Council which materially and adversely affects its ability to perform the Services or meet any Target KPIs;
- 16.1.3 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
- 16.1.4 all action necessary on the part of the Service Provider to authorise the execution of and the performance of its obligations under this Contract has been taken;
- 16.1.5 the obligations expressed to be assumed by the Service Provider under this Contract are legal, valid, binding and enforceable to the extent permitted by Law and is in the proper form for enforcement in England;
- 16.1.6 the execution, delivery and performance by it of this Contract does not contravene any provision of:
  - (a) any existing Law either in force, or enacted but not yet in force binding on the Service Provider;
  - (b) the Memorandum and Articles of Association of the Service Provider;
  - (c) any order or decree of any court or arbitrator which is binding on the Service Provider; or
  - (d) any obligation which is binding upon the Service Provider or upon any of its assets or revenues;
- 16.1.7 the Service Provider warrants that all data and information provided to the Council in connection with the provision of the Services, including (without limitation) information provided as part of the Service Provider's Tender, is true and accurate in all respects;
- 16.1.8 (where the Service Provider is a special purpose vehicle to be used for the delivery of the Services) the Service Provider has not, other than in connection with the Services, traded at any time since its incorporation as a company pursuant to the Companies Act 2006;
- 16.1.9 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Service Provider, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Service Provider to perform its obligations under this Contract;

- 16.1.10 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Service Provider to perform its obligations under this Contract;
- 16.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Service Provider, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
- 16.1.12 it has not paid commission or agreed to pay any commission to any employee, agent, Sub-Service Provider, officer or member of the Council either directly or through another on its behalf,

and the Council relies upon such warranties and representations.

16.2 The Service Provider warrants and undertakes to the Council that for so long as this Contract remains in full force:

- 16.2.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or relevant council may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware the same may be threatened or pending or with twenty (20) Business Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor) give the Council notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the delivery of the Services, the Service Provider's ability to perform its obligations under this Contract;
- 16.2.2 it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Service Provider to perform its obligations under this Contract;
- 16.2.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
- 16.2.4 it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor;
- 16.2.5 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services;
- 16.2.6 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business; and
- 16.2.7 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.

- 16.3 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Service Provider in this Contract are cumulative and none shall be given a limited construction by reference to any other.

## 17 Termination

- 17.1 The Council may terminate this Contract in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances where:

- 17.1.1 the Service Provider is in breach of any material obligation under this Contract, provided that if the breach is in the reasonable opinion of the Council capable of remedy the Council may only terminate this Contract under this clause 17.1 if the Service Provider has been notified of the breach by the Council and had the opportunity to remedy it and has failed to remedy such breach within twenty eight (28) days of receipt of notice from the Council (a **Remediation Notice**) to do so;
- 17.1.2 the Service Provider has repeatedly breached any one or more of the Service Provider's obligations under this Contract in such a manner as to reasonably justify the Council's opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- 17.1.3 a Consistent Failure has occurred;
- 17.1.4 a Catastrophic Failure has occurred;
- 17.1.5 the Care Quality Commission (or any successor body) serves a notice of closure on the Service or following a "requires improvement rating" by the Care Quality Commission, the Service Provider has failed to demonstrate the improvements within three (3) months;
- 17.1.6 a notice has been served by the Regulatory Body for social housing due to the failure of the Service Provider to carry out its obligations under this Contract;
- 17.1.7 the Service Provider fails to comply with the registration and inspection requirements in this Contract;
- 17.1.8 the Service Provider fails to comply with the London Multi-Agency Adult Safeguarding Policy and Procedures appended at Schedule 12 or a breach of safeguarding has occurred or the Council has reasonable grounds to suspect that a breach of safeguarding has occurred;
- 17.1.9 the Service Provider does or permits to be done anything which would make the insurance cover required to be taken out pursuant to this Contract void or voidable;
- 17.1.10 the Service Provider's act or omission has caused or is likely to cause a serious risk to the health or safety of persons or property or to the environment;
- 17.1.11 the Service Provider has failed to discharge a statutory duty;
- 17.1.12 there is an Insolvency Event;
- 17.1.13 there is a change of control of the Service Provider within the meaning of section 1124 of the Corporation Tax Act 2010;
- 17.1.14 this Contract has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;

17.1.15 the Service Provider was, at the time when this Contract was awarded, in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and therefore should not have been awarded this Contract; or

17.1.16 any competent court makes an award for ineffectiveness of this Contract under the Public Contracts Regulations 2015.

17.2 The Council may terminate this Contract in accordance with the provisions of clause 31 (Bribery and Fraud), clause 34 (Equality and Discrimination), clause 36 (Human rights) and 37 (Conflict of interest).

17.3 If this Contract is terminated by the Council under clause 17.1 (with the exception of clauses 17.1.15 and 17.1.16) or clause 17.2 such termination shall be at no loss or cost to the Council and the Service Provider hereby indemnifies the Council against any such Losses which the Council may suffer as a result of any such termination for cause.

17.4 Termination on notice

Without affecting any other right or remedy available to it, either Party may, without incurring any liability, terminate this Contract at any time by giving four (4) months' written notice to the other Party.

## **18 Remediation Plan Process**

18.1 If the Service Provider commits a material breach of any of its obligations under this Contract, and that breach is capable of remedy, the Council may give a Remediation Notice to the Service Provider which shall specify the Default in outline and the actions the Service Provider needs to take with respect to remedying the Default.

18.2 Within twenty (20) Business Days of receipt of a Remediation Notice, the Service Provider shall either:

18.2.1 submit a draft Remediation Plan; or

18.2.2 inform the Council that it does not intend to submit a Remediation Plan, in which event the Council shall be entitled to serve a Termination Notice.

18.3 The Council shall either approve the draft Remediation Plan within twenty (20) Business Days of its receipt pursuant to clause 18.2, or it shall inform the Service Provider why it cannot accept the draft Remediation Plan. In such circumstances, the Parties shall work together in good faith to agree a revised Remediation Plan. If no such notice is given, the Service Provider's draft Remediation Plan shall be deemed to be agreed.

18.4 Once agreed, the Service Provider shall immediately start work on the actions set out in the Remediation Plan.

18.5 If, despite the measures taken under clause 18.3, a Remediation Plan cannot be agreed within twenty (20) Business Days then the Council may elect to end the Remediation Plan Process and serve a Termination Notice or invoke its rights under clause 22 (Step-In).

18.6 If a Remediation Plan is agreed between the Parties, but the Service Provider fails to implement or successfully complete the Remediation Plan by the required Remediation Plan completion date (as specified therein), the Council may:

18.6.1 terminate this Contract by serving a Termination Notice;

18.6.2 give the Service Provider a further opportunity to resume full implementation of the Remediation Plan; or

- 18.6.3 escalate any issues arising out of the failure to implement the Remediation Plan to the Service Provider's Services Manager under the Dispute Resolution Procedure.
- 18.7 If, despite the measures taken under clause 18.6, the Service Provider fails to implement the Remediation Plan in accordance with its terms, the Council may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 18.8 The Council shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same Default as had previously been addressed in a Remediation Plan within a period of three (3) months following the conclusion of such previous Remediation Plan. In such event, the Council may serve a Termination Notice.

## **19 Consequences of termination/expiry**

- 19.1 In the event that this Contract is terminated in accordance with clause 17.1 with the exception of clauses 17.1.15 and 17.1.16 or clause 17.2 the provisions of clause 17.3 shall apply.
- 19.2 The Losses referred to in clause 23.2 shall include:
- 19.2.1 any additional costs incurred by the Council in procuring replacement services (including any difference in purchase price); and
  - 19.2.2 any costs incurred by the Council in procuring an alternative supplier to provide services similar to the Services.
- 19.3 In the event that this Contract is terminated in accordance with clause 17.1.15 ,17.1.16 or 17.4 each Party shall bear its own costs and shall have no liability to the other Party.
- 19.4 On the expiry of the Term, or if this Contract is terminated in whole or in part for any reason, the provisions of the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, to a Future Service Provider.
- 19.5 On termination of this Contract and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Service Provider shall ensure that all Council Assets shall be delivered to the Council (or as otherwise directed by the Council) forthwith and the Service Provider's Contract Manager or Deputy Contract Manager shall certify full compliance with this clause.
- 19.6 If the Service Provider fails to comply with clause 19.4 or clause 19.5 then the Council or its representatives may enter the Service Provider's premises and take possession of any Council Assets in the Service Provider's possession or control. Until such time as they have been delivered or returned, the Service Provider shall be solely responsible for the safekeeping of the Council Assets in its possession or control and will not use them for any purpose not connected to the Contract.
- 19.7 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of Contract which existed at or before the date of termination or expiry.

## **20 Force Majeure**

- 20.1 Subject to the remaining provisions of this clause 20 (Force Majeure), either Party may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- 20.2 The Service Provider cannot claim relief if the Force Majeure Event is attributable to its:

- 20.2.1 wilful act;
  - 20.2.2 neglect; or
  - 20.2.3 failure to take reasonable precautions against the relevant Force Majeure Event; or
  - 20.2.4 failure to comply with a business recovery plan required under this Contract or otherwise agreed with the Council during the Term.
- 20.3 The Service Provider cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 20.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 20.5 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract including meeting an agreeing a mechanism to adjust the Charges. Where the Service Provider is the Affected Party, it shall take all steps in accordance with Best Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 20.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 20.7 The Charges payable by the Council shall be reduced proportionately to the reduction in Service provision to the extent that the Council does not receive the Services or part thereof as a result of the Force Majeure Event.
- 20.8 if the performance of the Affected Party's obligations under the Contract is prevented by circumstances of a Force Majeure Event for a period of three (3) months or more then the Council may by giving written notice to the Service Provider terminate the Contract forthwith.

## **21 Survival of termination**

- 21.1 On termination or expiry of this Contract, the following clauses shall continue in force: clauses 11, 16, 19, 23-27, 28, 29, 46, 53-55, 59, 63 and 70.

## **22 Step-In**

- 22.1 If the Council reasonably believes that it needs to take action in connection with the Services:
- 22.1.1 because of a material breach by the Service Provider of its obligations that has not been rectified in accordance with the Remediation Plan;
  - 22.1.2 because a serious risk exists to the health or safety of persons or property or to the environment;
  - 22.1.3 to discharge a statutory duty;

- 22.1.4 because an emergency has arisen;
- 22.1.5 because the Service Provider has failed to demonstrate the improvements within three (3) months following a “requires improvement rating” by the Care Quality Commission as detailed in the Specification;
- 22.1.6 because a breach of safeguarding has occurred or the Council has reasonable grounds to suspect that a breach of safeguarding has occurred;
- 22.1.7 because of the occurrence of an Emergency; or
- 22.1.8 because (in the reasonable opinion of the Council) there is a risk that an Insolvency Event is likely to occur,

then, without prejudice to any other rights it may have, the Council may take action in accordance with clauses 22.2 to 22.5.

22.2 If clause 22.1 applies and the Council wishes to take action, the Council shall notify the Service Provider in writing of the following:

- 22.2.1 the action it wishes to take;
- 22.2.2 the reason for such action;
- 22.2.3 the date it wishes to commence such action;
- 22.2.4 the time period which it believes will be necessary for such action; and
- 22.2.5 to the extent practicable, the reasonably foreseeable effect on the Service Provider and its obligation to provide the Services during the period such action is being taken.

22.3 Following service of such notice, the Council may take such action as notified under clause 22.2 and any consequential additional action as it reasonably believes is necessary (together, the “**Required Action**”) and the Service Provider shall give all reasonable assistance to the Council while it is taking the Required Action. The Council shall, to the extent that the Required Action is taken, provide the Service Provider with notice of completion of such Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

22.4 Where the Required Action has been taken otherwise than as a result of a Default by the Service Provider, the Council shall undertake the Required Action in accordance with Good Industry Practice.

22.5 For so long as and to the extent that the Required Action is taken, and this prevents the Service Provider from providing any part of the Services, then the Service Provider shall be relieved from its obligations to provide such part of the Services and the Council shall be relieved of its obligation to pay the applicable Charges to the Service Provider in respect of the affected Services.

## 23 Indemnities

23.1 Neither Party excludes or limits liability to the other Party for:

- 23.1.1 death or personal injury;
- 23.1.2 fraud; or
- 23.1.3 fraudulent misrepresentation.

23.2 The Service Provider shall indemnify the Council against all Losses suffered or incurred by the Council arising out of or in connection with:



- 23.2.1 the Service Provider's breach, negligent performance or non-performance of any of its obligations under this Contract;
- 23.2.2 any breach of statutory duty arising in relation to this Contract;
- 23.2.3 the enforcement of this Contract;
- 23.2.4 any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any act or omission by the Service Provider, Service Provider Personnel, Sub-Contractors or Sub-Contractor Personnel, professional advisors and Service Providers in the delivery of its obligations under this Contract; or
- 23.2.5 any claim made against the Council by a third party arising out of or in connection with this Contract to the extent that such claim arises out of the performance, breach, negligent performance or failure or delay in performance of this Contract by, or presence at any Site of, the Service Provider, Service Provider Personnel, Sub-Contractors or Sub-Contractor Personnel, professional advisors and Service Providers.

**24 NOT USED**

**25 Duty to mitigate**

Both Parties shall at all times throughout the duration of this Contract use reasonable endeavours to mitigate any loss, damage, costs or expenses suffered as a result of any acts or omissions of the other Party in relation to the performance of obligations under this Contract.

**26 Right of Set-off**

The Council may retain or set off any amount owed to it by the Service Provider against any amount due to the Service Provider under this Contract or under any other agreement between the Service Provider and the Council.

**27 Insurance**

- 27.1 The Service Provider shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adequate to cover its liability under this Contract, and any other insurances required in order to comply with the Law for the duration of the Term. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 27.2 The insurances referred to at clause 27.1 shall include but not be limited to the following, in each case for any one occurrence or series of occurrences arising out of one event:
  - 27.2.1 Medical Indemnity (Medical Malpractice) Insurance to the value of £10m;
  - 27.2.2 Employers' Liability Insurance to the value of £10m; and
  - 27.2.3 Public Liability Insurance to the value of £10m.
- 27.3 The Service Provider shall provide to the Council on request, copies of all insurance policies referred to in this clause 27 (Insurance) 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.
- 27.4 The Service Provider shall not take any action or fail to take any reasonable action, or permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy referred to in clause 27.1.

- 27.5 Should the Service Provider fail to take out any insurances in accordance the clause 27.1 the Council may purchase such insurances and recover the costs of such insurances from the Service Provider.

## 28 IPR

### 28.1 All Intellectual Property Rights:

- 28.1.1 furnished to or made available to the Service Provider by the Council shall remain the property of the Council; and
- 28.1.2 prepared by or for the Service Provider for use, or intended use, in relation to the performance of its obligations under the Contract shall belong to the Council,

and the Service Provider shall not, and shall procure that the Service Provider Personnel and Sub-Contractors shall not, (except when necessary for the implementation of the Contract) without obtaining the Council's prior written approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Contract) which the Service Provider may obtain in performing the Contract except information which is in the public domain.

- 28.2 The Service Provider shall obtain the Council's prior written approval before using any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Service Provider shall procure that the owner of such rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- 28.3 Where a claim or proceeding is made or brought against the Council which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with this Contract infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Council otherwise than in accordance with the terms of this Contract, the Service Provider shall indemnify the Council at all times from and against all such claims and proceedings in accordance with clause 23.2.
- 28.4 The Service Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced in the performance of the Contract.

## 29 Freedom of information and confidentiality

- 29.1 In respect of any Confidential Information it may receive from the other Party ("**Discloser**") and subject always to the remainder of this clause 29 (Freedom of Information and Confidentiality) , each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 29.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Contract;
- 29.1.2 the provisions of this clause 29.1 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;

- (b) is obtained by a third party who is lawfully authorised to disclose such information;
- (c) is authorised for release by the prior written consent of the Discloser; or
- (d) the disclosure of which is required to ensure the compliance of the Council with the Freedom of Information Act 2000 (the “FOIA”) the Environmental Information Regulations 2004 (the “EIR”) or the Local Government Transparency Code 2014/2015; and

29.1.3 the Council may, at its sole discretion, elect to publish this Contract (including any variations to this Contract) in its entirety.

29.2 Nothing in this clause 29 (Freedom of Information and Confidentiality) shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, provided that the information is subject to confidentiality undertakings equivalent to those set out in clause 29.1, to its professional advisors or insurers.

29.3 The Service Provider acknowledges that the Council is subject to the FOIA and the EIR. The Service Provider notes and acknowledges the FOIA, the EIR and the Codes of Practice under section 45 and 46 of the FOIA. The Service Provider will act in accordance with the FOIA, the EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Service Provider from time to time) to the extent that they apply to the Service Provider’s performance under this Contract.

29.4 The Service Provider agrees that:

29.4.1 without prejudice to the generality of clause 29 (Freedom of Information and Confidentiality), the provisions of this clause 29.4 are subject to the obligations and commitments of the Council under the FOIA and the Codes of Practice issued under section 45 and 46 of the FOIA.

29.4.2 where it considers that any information should not be available for disclosure, it will:

- (a) identify it specifically; and
- (b) explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.

29.5 All decisions regarding disclosure of information following a Request for Information will be made at the sole discretion of the Council. The Service Provider acknowledges that, even where the Service Provider has indicated that information is commercially sensitive, the Council may be required to disclose it under the FOIA or EIA, with or without consulting the Service Provider and although the Council will use reasonable endeavours to consult with the Service Provider prior to any disclosure, the Council shall not be under any further obligation to consult the Service Provider prior to disclosure.

29.6 The Service Provider shall transfer to the Council any Request for Information it should receive, as soon as practicable after receipt and in any event within five (5) Business Days of receiving a Request for Information.

29.7 Where the Council is managing a request as referred to in clause 29.5, the Service Provider shall co-operate with the Council and shall respond together with copies of any documentation so requested within five (5) Business Days of any request by it for assistance.

- 30.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Service Provider is the Data Processor.
- 30.2 The Parties agree that the only processing of the Personal Data the Service Provider is authorised to do is listed in Schedule 11 (Processing Personal Data) by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.
- 30.3 The Parties agree that the processing of the Personal Data by the Service Provider shall be in strict accordance with the provisions of this Clause 30 and Schedule 11, and in accordance with any specific instructions from the Council (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Council to the Service Provider).
- 30.4 The Service Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 30.5 The Service Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- 30.5.1 A systematic description of the envisaged processing operations and the purpose of the processing;
  - 30.5.2 An assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 30.5.3 An assessment of the risks to the rights and freedoms of the Data Subjects; and
  - 30.5.4 The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 30.6 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 30.6.1 comply with all applicable Data Protection Legislation in its capacity as a Data Processor.
  - 30.6.2 process the Personal Data only in accordance with Schedule 11 (Processing Personal Data), unless the Service Provider is required to do otherwise by Law. If it is so required, the Service Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law.
  - 30.6.3 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council as Data Controller may reasonably reject. In the event of the Council reasonably rejecting Protective Measures put in place by the Service Provider, the Service Provider must propose alternative Protective Measures to the satisfaction of the Council. Failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures. Protective measures must take account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from the Data Loss Event;
    - (c) state of technological development; and
    - (d) cost of implementing any measures.
  - 30.6.4 ensure that:

- (a) the Processor Personnel do not process Personal Data except in accordance and for the purposes of this Contract (and in particular Schedule 11).
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data, and ensure that they:
  - (i) are aware of and comply with the Service Provider's duties under this Clause 30;
  - (ii) are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.

30.6.5 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UKGDPR or section 74 of the DPA 2018;
- (b) the Council or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Council;
- (c) the Data Subject has enforceable rights and effective legal remedies;
- (d) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations as Data Controller); and
- (e) the Service Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data.

30.6.6 at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Service Provider is required by Law to retain that Personal Data.

30.7 Subject to clause 30.8, the Service Provider shall immediately notify the Council if the Service Provider/Sub-Processor receives or becomes aware of:

30.7.1 a Data Subject Request (or purported Data Subject Request);

30.7.2 a request to rectify, block or erase any Personal Data;

- 30.7.3 any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 30.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 30.7.5 a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
  - 30.7.6 a Data Loss Event;
  - 30.7.7 any accidental or unauthorised access;
  - 30.7.8 any complaint, investigation or request relating to the Council's compliance with the Data Protection Legislation;
  - 30.7.9 any request received directly from a data subject without responding to that request, unless it has been authorised to do so; and
  - 30.7.10 any complaint relating to the Service Provider's or the Council's compliance with DPA 2018;  
  
and at its own cost, provide the Council with such assistance as is reasonably requested by the Council including the provision of further information to the Council in phases, as details become available.
- 30.8 The Service Provider's obligation to notify under clause 30.7 shall include the provision of further information to the Council, as details become available.
- 30.9 Taking into account the nature of the processing, the Service Provider shall, at its own cost, provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 30.7 (and insofar as possible within the timescales reasonably required by the Council) including but not limited to promptly providing :
- 30.9.1 the Council with full details and copies of the complaint, communication or request;
  - 30.9.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 30.9.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 30.9.4 assistance as requested by the Council following any Data Loss Event; and
  - 30.9.5 assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 30.10 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
- 30.10.1 the Council determines that the processing is not occasional;
  - 30.10.2 the Council determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or

- 30.10.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of the Data Subjects.
- 30.11 The Service Provider shall allow for audits of its Data processing activity by the Council or the Council's designated auditor.
- 30.12 The Service Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 30.13 Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 30.14 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:
- 30.14.1 Notify the Council in writing of the intended Sub-processor and processing;
  - 30.14.2 Obtain the written consent of the Council;
  - 30.14.3 Enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause such that they apply to that Sub-Processor; and
  - 30.14.4 Provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 30.15 The Service Provider and any Sub-processor shall:
- 30.15.1 bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of Service Provider Personnel having access to the Personal Data;
  - 30.15.2 deal promptly and properly with all inquiries from the Council relating to its processing of the Personal Data and abide by the advice of the Information Commissioner's Office with regard to the processing of the Personal Data;
  - 30.15.3 take any and all measures as required to enable it to process the Personal Data in compliance with obligations equivalent to those imposed on the Council by Data Protection Legislation and especially to ensure the security and integrity of all Personal Data which is under the care and control of the Service Provider and to protect against the unauthorised or unlawful processing or the accidental loss or damage of the Personal Data;
- 30.16 The Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Service Provider or the Sub-processors (where applicable) referred to in this clause 30. Within fifteen (15) Business Days of such a request, the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Council can determine whether or not, in connection with the Personal Data, the Service Provider is complying with Data Protection Legislation.
- 30.17 The Service Provider shall not disclose Personal Data to any third parties other than:
- 30.17.1 to any of its Processor Personnel and Sub-processors to whom such disclosure is necessary in order for the Service Provider to carry out its obligations under this Contract; or
  - 30.17.2 to the extent required under a court order,

- 30.17.3 provided that disclosure under clause 30.17.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause and that the Service Provider shall give notice in writing to the Council of any disclosure of Personal Data which either the Service Provider or a Sub-processor is required to make under clause 30.17.1 immediately upon becoming aware of such a requirement.
- 30.18 The Council shall not be liable to the Service Provider for any claim brought by a data subject arising from any action or omission by the Council to the extent that such action or omission resulted directly from the Service Provider's instructions nor for any failure to carry out an instruction of the Service Provider if the Council has notified the Service Provider that do so would be in breach of Data Protection Legislation.
- 30.19 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may, on not less than 30 Business Days' notice to the Service Provider, amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 30.20 In addition to the obligations contained in clause 30.6.3 above, the Service Provider shall ensure that:
- 30.20.1 all devices containing Personal Data (including but not limited to laptops, servers whether physical or cloud, phones, memory sticks, CD/DVD media and other storage devices) are encrypted to ensure that they cannot be accessed by any third party if lost or stolen; and
  - 30.20.2 all Personal Data in transit across any network is encrypted in line with general industry practice.
- 30.21 The Service Provider shall ensure that access to any Personal Data must require either biometric or password authentication, and if passwords are used, they shall meet the Council's latest guidelines and may not be stored with the device.

## **31 Bribery and Fraud**

- 31.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider Personnel, have at any time prior to the Commencement Date:
- 31.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 31.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 31.2 The Service Provider shall not during the term of this Contract:
- 31.2.1 commit a Prohibited Act; and/or
  - 31.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, Service Providers, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 31.3 The Service Provider shall during the term of this Contract:
- 31.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate



to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

- 31.3.2 keep appropriate records of its compliance with its obligations under clause 31.3.1 and make such records available to the Council on request.

31.4 The Service Provider shall immediately notify the Council in writing if it becomes aware of any breach of clause 31.1 and/or 31.2, or has reason to believe that it has or any of the Service Provider Personnel have:

- 31.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- 31.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

- 31.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

31.5 If the Service Provider makes a notification to the Council pursuant to clause 31.4, the Service Provider shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 41 (Resources, Training and Policies).

31.6 If the Service Provider is in Default under clauses 31.3.1 and/or 31.2, the Council may by notice:

- 31.6.1 require the Service Provider to remove from performance of this Contract any Service Provider Personnel whose acts or omissions have caused the Default; or

- 31.6.2 immediately terminate this Contract.

31.7 Any notice served by the Council under clause 31.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).

## **32 Health and Safety Requirements**

32.1 The Service Provider shall (and shall ensure that all Sub-Contractors and other related parties shall) at all times comply with all relevant health and safety procedures which shall include the requirements of the Health and Safety at Work etc Act 1974, all other applicable Legislation, its own health and safety policies and safe working systems (to be produced to the Council on request), any relevant health and safety plans for the Site and, in respect of the Council's Personnel and others who may be affected by the provision of the Services, the Council's health and safety Policies and procedures.

32.2 The Service Provider shall promptly notify the Council of any incidents on the Site or otherwise related to the provision of the Services which are or may give rise to a health and safety or an environmental hazard.

## **33 Hazardous Substances**

33.1 The Service Provider shall ensure that any hazardous materials or equipment used or intended to be used in the carrying out of the provision of the Services are kept under control and in safe keeping in accordance with all relevant Legislation and Best Industry

Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Council of all such materials being used or stored at the Site and shall comply with any other reasonable requirement of the Council in respect of such materials and equipment.

33.2 The Service Provider shall ensure that all hazardous materials and waste are disposed of in a manner that does not cause harm to any person or the environment and in accordance with all statutory duties.

33.3 The Service Provider shall maintain a COSHH register in relation to the Site and shall ensure that a copy of each register is held at the Site, at the Service Provider's registered office and that a copy is given to the Council. The Council shall notify the Service Provider of any items which it or any council related party is using or storing at the Site and which requires to be included in such register.

## **34 Equality and Discrimination**

34.1 The Service Provider shall perform its obligations under this Contract with regard to and in compliance with:

34.1.1 all applicable equality and discrimination Law (whether in relation to race, disability, sex, sexual orientation, gender reassignment, marriage and civil partnership, age, religion or belief, pregnancy, maternity or otherwise);

34.1.2 the Council's equality and diversity policies appended as part of the Annex as updated from time to time;

34.1.3 the Council's Equalities in Procurement and Service Provider Guide as updated from time to time;

34.1.4 the Equality and Human Rights Commission's "Employment: Statutory Code of Practice", as updated from time to time and any other relevant statutory code of practice in relation to equalities legislation or prevention of discrimination in the workplace;

34.1.5 any other requirements and instructions which the Council imposes in connection with any applicable equality and discrimination Law or under the Council's own policies or rules.

34.2 The Service Provider shall not unlawfully discriminate, either directly or indirectly, against any person.

34.3 To the extent that the Service Provider's obligations under this Contract involve the exercise of public functions of the Council, the Service Provider shall comply with the provisions of:

34.3.1 Sections 28 and 29 of the Equality Act 2010; and

34.3.2 Part 11 of Chapter 1 of the Equality Act 2010, as if they were a body within the meaning of Schedule 19 of that Act.

34.4 The Service Provider acknowledges that the Authority is under a duty under section 149 of the Equality Act 2010 to demonstrate it has paid due regard to the need to:

34.4.1 eliminate unlawful discrimination and harassment;

34.4.2 advance equality of opportunity between groups who share protected characteristics and those that do not, in particular, minimise disadvantage suffered by the equality groups; taking steps to meet the needs of equality groups that are different from the needs of others; encouraging equality

groups to participate in public life or in any other activity in which their participation is disproportionately low; and

34.4.3 foster good relations between people who share a protected characteristic and those that do not.

34.5 In undertaking any activity concerning or related to this Contract the Service Provider shall assist and cooperate with the Council in satisfying the Council's duties under section 149 of the Equality Act 2010.

34.6 The Service Provider shall adopt a policy to comply with its statutory obligations under the equality and discrimination Law or provide a policy statement outlining the Service Provider's equality objectives and their delivery.

34.7 The Service Provider shall assist the Council in its performance of its obligations under the Equality Act 2010, including but not limited to the provision of information that the Council shall require in order to monitor:

34.7.1 equality of access to the Goods/Services; and

34.7.2 compliance with the Council's obligation under the equality and discrimination Law.

34.8 The Service Provider shall provide to the Council such information as the Council may require within ten (10) Business Days of receipt of a request from the Council's Authorised Officer.

34.9 The Service Provider shall take all reasonable steps to ensure the compliance with the provisions of this clause 34 by all Service Provider Personnel, Service Provider's agents, consultants and any Sub-Contractor and Sub-Contractor Personnel.

34.10 Breach of this clause 34 by the Service Provider shall entitle the Council to terminate the Contract with immediate effect.

## **35 Sub-contracting**

35.1 The Service Provider shall not, without the prior written consent of the Council, Sub-Contract, whether in whole or in part, any one or more of its obligations under this Contract.

35.2 In relation to any sub-contracting pursuant to clause 35.1:

35.2.1 the Service Provider shall be responsible to the Council in Law or otherwise for all such Sub-Contracted work and/or services and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Service Provider under this Contract and/or at Law or otherwise;

35.2.2 the Service Provider's remuneration shall not be increased by any amounts payable by the Service Provider to its Sub-Contractors; and

35.2.3 the Service Provider shall be liable for the tortious acts and omissions of the person performing any Sub-Contracted work and/or Services.

## **36 Human Rights**

36.1 The Service Provider shall, and shall procure that the Service Provider Personnel and any Sub-Contractor shall, at all times comply with the provisions of the Human Rights Act 1998 ("HRA 1998") in the performance of this Contract.

- 36.2 The Service Provider shall undertake or refrain from undertaking, and shall procure that the Service Provider Personnel and any Sub-Contractor shall undertake or refrain from undertaking, such acts as the Council requests in order to enable the Council to comply with its obligations under the HRA 1998.
- 36.3 In the event that the Service Provider, any Service Provider Personnel or any Sub-Contractor does or omits to do, or permits or allows anything to be done which is incompatible with the provisions of the HRA 1998 which causes or may cause the Council to be in breach of its obligations under the HRA 1998 the Service Provider shall immediately notify the Council in writing and the Council may terminate this Contract immediately upon notice in writing in its absolute discretion.
- 36.4 The Service Provider shall indemnify the Council against any Losses or liability (including any interest, penalties or costs incurred) which arises as a result of a breach by the Service Provider of its obligations under this clause 36 (Human Rights).

### **37 Conflict of Interest**

- 37.1 The Service Provider acknowledges and agrees that no Conflict of Interest exists between the Service Provider and or any Sub-Contractor and the Council at the date stated on the face of this Contract. In the event that the Service Provider becomes aware of a Conflict of Interest between its own interests or those of a Sub-Contractor and the Council, it shall notify the Council of the full details of any such Conflict of Interest immediately.
- 37.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or take such steps as it shall deem necessary should it become aware of a Conflict of Interest between itself and the Service Provider or a Sub-Contractor.

### **38 Assignment/Novation**

- 38.1 The rights and obligations of the Council under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Council under this Contract being:
- 38.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
  - 38.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Council under this Contract; or
  - 38.1.3 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Service Provider) by the Council or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Council under this Contract.
- 38.2 The Service Provider shall not assign, novate, or otherwise transfer its rights and obligations under this Contract in whole or in part except with the prior written consent of the Council.

### **39 Records and Open Book Accounting**

- 39.1 The Service Provider shall:
- 39.1.1 comply at all times with the requirements set out in Schedule 1 (Specification), Schedule 2 (Housing Management Terms) and Schedule 8 (Contract Management);

- 39.1.2 at all times maintain a full record of particulars of the costs of performing its obligations under this Contract and, upon request by the Council, provide a written summary of such costs, including details of any funds held by the Service Provider specifically to cover such costs, in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Service Provider of its obligations under this Contract; and
- 39.1.3 provide such access as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 39.1.
- 39.2 Compliance with clause 39 (Records and Open Book Accounting) shall (without limitation) require the Service Provider to keep books of account in accordance with best accountancy practices and the provisions of Schedule 1 (Specification) and Schedule 2 (Housing Management Terms) with respect to this Contract, showing in detail (without limitation):
- 39.2.1 administrative overheads;
- 39.2.2 where applicable, any payments made to Sub-Contractors;
- 39.2.3 capital and revenue expenditure; and
- 39.2.4 such other items as the Council may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract,
- and the Service Provider shall have the books of account evidencing the items listed in sub-clauses 39.2.1-39.2.4 inclusive, available for inspection by the Council (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Council as and when requested from time to time.
- 39.3 The Service Provider shall maintain or procure detailed records relating to the performance of its obligations under this Contract, in each case in accordance with Best Industry Practice and any applicable Law, and shall (without limitation) provide the Management Reports in the form provided at Schedule 1 (Specification) and Schedule 2 (Housing Management Terms).
- 39.4 Without prejudice to clause 39.1, the Service Provider shall maintain or shall procure that the following are maintained:
- 39.4.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
- 39.4.2 full records of all maintenance procedures carried out during the term of this Contract,
- and the Service Provider shall have the items referred to in clause 39.4 available for inspection by the Council (and its advisers) upon reasonable notice, and shall present a report of them to the Council as and when requested from time to time.
- 39.5 The records referred to in this clause 39 (Records and Open Book Accounting) shall be retained for a period of at least seven (7) years after the Service Provider's obligations under this Contract have come to an end.
- 39.6 All information referred to in this clause 39 is subject to the obligations set out in clause 29 (Freedom of Information and Confidentiality).

## **40 Audit**

- 40.1 The Council, or any third party nominated by the Council (and notified to the Service Provider in accordance with the provisions of clause 59 (Notices), shall at any time within Business Hours and on request:
- 40.1.1 have access to any place of business at which the Service Provider is carrying out work in relation to this Contract;
  - 40.1.2 be able to inspect, audit and obtain copies of all records, invoices, accounts, reports, designs, drawings, manuals, estimates, bills of quantities, Sub-Contract quotations and other documents, used, intended to be used, or stored in connection with work being carried out by the Service Provider under this Contract; and
  - 40.1.3 be able to inspect, audit and obtain copies of the Service Provider's quality management system and have access to any records and documentation relating to any management processes and procedures which are relevant to work being carried out by the Service Provider under this Contract.
- 40.2 The Service Provider shall provide the Council with all reasonable assistance in obtaining the right to such access and inspection, and shall provide any copies of records so required without charge.

## **41 Resources, Training and Policies**

- 41.1 The Service Provider shall procure that:
- 41.1.1 there shall be at all times a sufficient number of Service Provider Personnel (including all relevant grades of supervisory personnel) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient Service Provider Personnel to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and
  - 41.1.2 all employees receive such training and supervision as is necessary to ensure the proper performance of the Services under this Contract.
- 41.2 The Service Provider shall procure that there are set up and maintained by it and by all Sub-Contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Service Provider shall procure that the terms and implementation of such policies and procedures comply with Law and Best Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Council.

## **42 Change in Law**

- 42.1 The Service Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the Charges as the result of:
- 42.1.1 a General Change in Law; or
  - 42.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.
- 42.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 42.1.2), the Service Provider shall notify the Council of the likely effects of that change, including:

- 42.2.1 whether any Change is required to the Services, the Charges or this Contract; and
  - 42.2.2 whether any relief from compliance with the Service Provider's obligations is required, including (without limitation) any obligation to meet KPIs.
- 42.3 A soon as practicable after any notification in accordance with clause 42.2, the Parties shall discuss and seek to agree the matters referred to in that clause and any ways in which the Service Provider can mitigate the effect of the Specific Change of Law, including:
  - 42.3.1 providing evidence that the Service Provider has minimised any increase in costs or maximised any reduction in costs including in respect of the costs of its Sub-Contractors;
  - 42.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Service Provider before it occurred;
  - 42.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
  - 42.3.4 demonstrating that any expenditure that has been avoided, [for example which would have been required under the provisions of clause 14 (Best Value), has been taken into account in amending the Charges.
- 42.4 Any increase in the Charges or relief from the Service Provider's obligations agreed by the Parties pursuant to clause 42.3 shall be implemented in accordance with clause 13 (Change).

#### **43 Compliance with Policies**

- 43.1 The Service Provider shall ensure that each of the Service Provider Personnel shall comply at all times with each of the Council's policies (which shall include (without limitation) rules, codes of practice, procedures and standards) as amended or updated from time to time and any additional policies which the Council may adopt from time to time, copies of which can be found at <http://www.enfield.gov.uk>.
- 43.2 The Service Provider Personnel shall include any Sub-Contractors engaged by the Service Provider at any time for the provision of the Services.
- 43.3 The Service Provider shall procure that any Sub-Contractor engaged in the provision of the Services shall ensure that the Sub-Contractor's Personnel shall comply with this clause 43 (Compliance with Policies).
- 43.4 The Service Provider acknowledges and agrees to support the Council's commitment to reduce CO2 emissions, which shall include compliance with the Council's environmental policy and sustainable community strategy, a copy of which has been provided to the Service Provider.

#### **44 Mistakes in information/inspection of premises**

- 44.1 The Service Provider acknowledges and confirms that prior to entering into this Contract:
  - 44.1.1 it has been offered the opportunity to inspect and carry out due diligence in relation to the Site and Site Offices to be used by the Service Provider in relation to the provision of the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services from the Site and Site Offices in accordance with the terms of this Contract;
  - 44.1.2 it has received all information requested by it from the Council pursuant to clause 44.1.1 to enable it to determine whether it is able to provide the

Services from the Site and Site Offices in accordance with the terms of this Contract;

- 44.1.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 44.1.2;
  - 44.1.4 it has raised all relevant due diligence questions with the Council before the Commencement Date; and
  - 44.1.5 it has entered into this Contract in reliance on its own due diligence.
- 44.2 The Service Provider is deemed to have inspected the Site and Site Offices before entering into this Contract and is deemed to have understood and be satisfied with all matters in relation to the Site and Site Offices and the provision of the Services from the Site and Site Offices before entering into this Contract.

## **45 Security**

- 45.1 The Service Provider shall, and shall procure that any Sub-Contractor and Service Provider and Sub-Contractor Personnel shall:
- 45.1.1 comply with the Council's security policy and any other rules or policies in relation to the Site appended hereto or otherwise provided to the Service Provider, as amended or updated from time to time;
  - 45.1.2 comply with the provisions of any Law or statutory guidance in relation to security which may be applicable to the provision of the Services; and
  - 45.1.3 comply and co-operate with any investigation carried out by the Council or any other person responsible to the Council relation to security which shall include:
    - (a) making Service Provider or Sub-Contractor Personnel available for interview for the purposes of the investigation (such persons shall have the right to be accompanied by the Service Provider's Authorised Officer and to be advised or represented by such other person whose presence at the interview is acceptable to the Council's Authorised Officer;
    - (b) providing all documents or information, in whatever format and howsoever stored as may be required by the Council for the purposes of the investigation. The Council may retain such material for use in connection with the investigation and shall so far as possible provide the Service Provider with a copy of any material retained. Any material retained shall be subject to clause 29 (Freedom of Information and Confidentiality).

## **46 TUPE and Relevant Employees**

- 46.1 The Council and the Service Provider agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Council.
- 46.2 The Council and the Service Provider have agreed the terms and conditions which shall apply in relation to Relevant Employees and TUPE at the end of the Contract in Schedule 7 (TUPE) and both parties shall comply with the provisions of that Schedule.



**47 Not Used**

**48 Safeguarding Children and Vulnerable Adults**

- 48.1 The Parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 (each having the meaning given in that Act).
- 48.2 The Service Provider shall:
- 48.2.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (“DBS”);
  - 48.2.2 monitor the level and validity of the checks under this clause 48.2 for each such member of staff; and
  - 48.2.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 48.3 The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 48.4 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 48 (Safeguarding children and vulnerable adults) have been met.
- 48.5 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users OR children OR vulnerable adults.

**49 Carbon reduction**

- 49.1 The Service Provider acknowledges and agrees to support the Council’s commitment to reduce CO2 emissions, which shall include compliance with the Council’s environmental policy and Sustainable Community Strategy, a copy of which has been provided to the Service Provider.
- 49.2 Where requested by the Council, the Service Provider shall provide to the Council any such information as may be required by the Council in order to demonstrate the Service Provider’s compliance with clause 49.1.
- 49.3 The Service Provider shall participate in the development of local or regional multi-agency climate change quality indicators and or carbon reduction plans where required by the Council.

**50 Collusion**

The Service Provider warrants that (in accordance with the Non-Collusion Certificate submitted as part of its Service Provider Tender and enclosed at Schedule 4 Part 1 (where a tender has

been submitted)), up until the date of this Contract it has not engaged in collusion of any kind with any of the other bidders in relation to this Contract.

## **51 Canvassing**

The Service Provider warrants that, up until the date of this Contract, it has not directly or indirectly canvassed any member, official or employee of the Council or their advisers in relation to this Contract or its subject matter.

## **52 Capacity**

Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Service Provider.

## **53 Co-operation**

Each Party agrees to co-operate, at its own expense (but without being compelled to incur material additional expenditure), with the other Party in the fulfilment of the purposes and intent of this Contract. To avoid doubt, neither Party shall be under any obligation to perform any of the other's obligations under this Contract.

## **54 Public Relations and Publicity**

- 54.1 The Service Provider shall not make any announcement (including advertisements) in relation to or publicise in any way either the Contract (or any part thereof) or its activities under the Contract without obtaining the prior approval of the Council. Such approval shall not be unreasonably withheld and, if applicable, will be notified to the Service Provider in accordance with the provisions of clause 59 (Notices).
- 54.2 The Service Provider shall ensure that Service Provider Personnel, Sub-Contractor Personnel and professional advisors and Service Providers comply with the provisions of this clause 54 (Public Relations and Publicity).
- 54.3 In circumstances where an announcement is required by Law, any governmental or regulatory Council, or by any court or other competent Council, the Party required to make the announcement shall notify the other Party as soon as is reasonably practicable in accordance with the provisions of clause 59 (Notices). The Party subject to the requirement shall use reasonable endeavours to agree the content of the announcement with the other Party before making it.
- 54.4 The provisions of this clause 54 (Public Relations and Public) shall apply throughout the duration of this Contract and indefinitely beyond either its expiry or termination.

## **55 Dispute resolution**

- 55.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute (“Dispute”) between them arising out of or in connection with the Contract within ten (10) Business Days of either Party notifying the other of the dispute.
- 55.2 In the event that the Dispute cannot be resolved within ten (10) Business Days of notification being provided in accordance with clause 55.1 the Parties shall escalate the dispute to the Director of Adult Social Care of the Council and the Managing Director/Chief Executive (or equivalent) of the Service Provider.
- 55.3 If the Dispute cannot be resolved by the Parties pursuant to clauses 55.1 and 55.2 within twenty (20) Business Days of notification being provided in accordance with clause 55.1

the Dispute shall be referred to mediation pursuant to the procedure set out in clause 55.4 unless:

55.3.1 the Council considers that the Dispute is not suitable for resolution by mediation; or

55.3.2 the Service Provider does not agree to mediation,

in which case the provisions of clause 55.4.6 will apply.

55.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

55.4.1 a neutral adviser or mediator ("**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Business Days from the date of the proposal to appoint a Mediator or within ten (10) Business Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator.

55.4.2 the Parties shall within ten (10) Business 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 CEDR to provide guidance on a suitable procedure.

55.4.3 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.

55.4.4 if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is executed by their duly authorised officers.

55.4.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

55.4.6 If:

(a) the Parties fail to reach agreement in the structured negotiations within sixty (60) Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties; or

(b) the provisions of clauses 55.3.1 or 55.3.2 apply,

then the provisions of clause 55.5 shall apply.

55.4.7 The performance of the Contract shall not be suspended, cease or be delayed by the application of the procedures set out in this clause 55 (Dispute Resolution) and Service Provider shall comply fully with the requirements of the Contract at all times.

55.5 If the Dispute cannot be resolved by the Parties pursuant to clauses 55.1, 55.2 and 55.4 then before the Service Provider may commence any court proceedings it shall serve written notice on the Council of its intention and the Council shall have fifteen (15)

Business Days from receipt of the Service Provider's notice in which to reply requiring the Dispute to be referred to arbitration in accordance with the provisions in clause 55.7.

55.6 In its notice to the Council pursuant to clause 55.5, the Service Provider may request that the Dispute is referred to arbitration, to which the Council may, in its sole discretion, consent.

55.7 If:

55.7.1 the Council requires the Dispute to be referred to arbitration in accordance with clause 55.5; or

55.7.2 the Council consents to the Service Provider's request to refer the Dispute to arbitration in accordance with clause 55.6,

the Dispute shall be referred to arbitration and the Parties shall comply with the following provisions:

55.7.3 the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the London Court of International Arbitration ("LCIA") procedural rules shall be applied and are deemed to be incorporated into this Contract (save that in the event of any conflict between those rules and this Contract, this Contract shall prevail);

55.7.4 the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);

55.7.5 the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Business Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA; and

55.7.6 the arbitration proceedings shall take place in London.

55.8 Nothing in this clause 55 (Dispute Resolution) shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

## **56 Authorised Representatives**

56.1 The Council shall, prior to the Commencement Date, appoint both an Authorised Officer and a Deputy Authorised Officer (to act in those instances where the Authorised Officer is unavailable) to act as its Authorised Representatives for the purpose of this Contract and the Specification in Part 1 of Schedule 1. The Council shall further appoint a Housing Management Authorised Representative and Deputy Housing Management Authorised Representative who shall be responsible for monitoring the Housing Management function in accordance with the Housing Management Terms at Schedule 2.

56.2 The Service Provider shall, prior to the Commencement Date, appoint both a Contract Manager and a Deputy Contract Manager (to act in those instances where the Contract Manager is unavailable) to act as its Authorised Representatives for the purpose of this Contract.

56.3 The identity and contact details for the Authorised Representatives are as listed at Schedule 8 (Contract Management).

56.4 For the avoidance of doubt, the Authorised Representatives for the Council shall comprise of:

(i) the Authorised Officer and, in his absence, Deputy Authorised Officer who shall be responsible for the management of the Contract as a whole including but not limited to the Specification in Part 1 of Schedule 1 and the KPIs in Schedule 2, but excluding the Housing Management Terms; and

(ii) the Housing Management Authorised Representative and, in his absence, the Deputy Housing Management Authorised Representative who shall be responsible for the management of the Housing Management Terms in Schedule 2.

56.5 Any changes to the contact details under clause 56.3 shall be notified to the other Party as soon as is reasonably practicable in accordance with the provisions of clause 59 (Notices).

56.6 The Authorised Representatives shall have authority to act on behalf of the Council and the Service Provider respectively (as applicable) for all purposes in connection with this Contract unless otherwise notified to the other Party in writing in accordance with clause 59 (Notices).

56.7 The Authorised Representatives shall each be entitled to give directions to/receive notices and instructions from each other as direct representatives of the Parties from time to time for any purpose under or in connection with this Contract, except as otherwise notified by one Party to the other in writing in accordance with clause 59 (Notices).

56.8 The Council reserves the right to reject the appointment of any individual as Contract Manager who, at the absolute discretion of the Council, either does not possess the necessary experience in the provision of the Services or is any other way unsuitable for the role.

## **57 NOT USED**

## **58 No Agency**

58.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Council and the Service Provider.

58.2 Save as expressly provided otherwise in this Contract, the Service Provider shall not be, or be deemed to be, an agent of the Council and the Service Provider shall not hold itself out as having authority or power to bind the Council in any way.

58.3 Without limitation to its actual knowledge, the Service Provider shall for all purposes of this Contract, be deemed to have such knowledge in respect of the provision of the Services as is held (or ought reasonably to be held) by any Service Provider Personnel or Sub-Contractor or Sub-Contractor Personnel.

## **59 Notices**

59.1 A notice (or any other communication) from one Party to the other under or in connection with this Contract shall be:

59.1.1 in writing;

59.1.2 signed on behalf of the Party giving it;

59.1.3 marked for the attention of the representative of the receiving Party which shall be the Authorised Officer for all notices to the Council and the Contract Manager for all notices to the Service Provider; and

59.1.4 sent by a delivery method listed in clause 59.2.

59.2 The table below sets out the delivery methods by which a notice (or any other communication) in connection with this Contract may be sent as well as the corresponding dates and times of deemed delivery that shall apply:

Delivery Method	Deemed Delivery
By hand	On signature of a delivery receipt.
By pre-paid first class post, recorded delivery or other next Business Day delivery service	At 09:00 on the second Business Day after posting.
By electronic mail	Save for when returned as undelivered, either at the time of sending or, if transmitted outside of Business Hours, at 09:00 on the next Business Day.

59.3 All references to the time of deemed delivery in clause 59.2 are to local time in the place of deemed receipt.

59.4 This clause shall not apply to the service of proceedings or any other document in connection with any legal action or, if applicable, in connection with any other method of dispute resolution as provided for in clause 55 (Dispute Resolution).

## 60 Change in Currency

60.1 All payments under this Contract shall be in pounds sterling (£GBP). If £GBP ceases to be used as a currency in England or the government of England recognises a currency other than £GBP (“New Currency”) as the lawful currency of England then:

60.1.1 all payments under this Contract shall be in the New Currency from the date of its adoption by England;

60.1.2 (unless prohibited by Law) any conversion from the Pound to the New Currency shall be at the official rate of exchange recognised by the government of England;

60.1.3 this Contract shall be subject to such reasonable changes in interpretation as may be appropriate to minimise the economic effect on the Parties to this Contract of the adoption by the government of England of the New Currency; and

60.1.4 any changes required under this clause 60 (Change in Currency) shall be implemented by the Service Provider at no cost to the Council.

## 61 Severability

61.1 If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

## 62 Waiver

62.1 A waiver of any right or remedy either by Law or under this Contract shall only be effective if it is notified to the other Party in accordance with the provisions of clause 59 (Notices) and is expressly stated to be a waiver.

62.2 No waiver of any right or remedy arising from a breach of this Contract shall be deemed to be a waiver of any right or remedy relating to any subsequent breach of this Contract.

- 62.3 Any failure or delay by a Party to exercise any right or remedy either by law or under this Contract shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy either by law or under this Contract shall prevent or restrict the further exercise of that or any other right or remedy.

### **63 Assistance in legal proceedings**

- 63.1 The Service Provider shall, when reasonably requested to do so by the Council, provide all information that is relevant to the performance of its obligations under this Contract to the Council free of charge in connection with any actual or expected legal proceedings in which the Council is or may be involved or any relevant internal disciplinary hearing at the Council.
- 63.2 The Service Provider shall ensure that its servants, employees, agents, Sub-Contractors, suppliers, professional advisors and Service Providers are available to be interviewed in connection with or to give evidence in relation to such proceedings or hearings.
- 63.3 In circumstances where:
- 63.3.1 it is reported that Losses (incurred by any person or body) have either been caused by or have been contributed to by an act or omission on the part of the Service Provider; and
  - 63.3.2 the Council decides to, in light of such finding, make a payment to or provide some other benefit to such person or body,
- then the Service Provider shall either reimburse the Council the amount of any such payment or pay to the Council the reasonable cost of any such benefit as is applicable and proportionate to the act or omission of the Service Provider. The Council may also deduct any such amounts from any payment otherwise due to the Service Provider under this Contract.

### **64 NOT USED**

### **65 Compliance with Anti-Slavery and Human Trafficking Laws**

- 65.1 In performing its obligations under this Contract, the Service Provider shall:
- 65.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
  - 65.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
  - 65.1.3 include in contracts with its Sub-Contractor provisions which are at least as onerous as those set out in this clause;
  - 65.1.4 notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract; and
  - 65.1.5 maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with this Contract; and
  - 65.1.6 permit the Council and its third party representatives to inspect the Service Provider's premises, records, and to meet the Service Provider's personnel to audit the Service Provider's compliance with its obligations under this Clause 65.

- 65.2 The Service Provider represents and warrants that at the date of this Contract it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 65.3 In the event that any of the circumstances described in clause 65.2 arise the Service Provider agrees to disclose such circumstances to the Council within a reasonable period of time and in any event no later than 7 days from the Service Provider's knowledge of such circumstances.
- 65.4 The Council may terminate this Contract with immediate effect by giving written notice to the Service Provider if the Service Provider commits a breach of this Clause 65.

## **66 Third Party Rights**

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.

## **67 Entire Agreement**

- 67.1 This Contract, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters.
- 67.2 The Service Provider acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.
- 67.3 Nothing in this clause 67 (Entire Agreement) shall operate to exclude any liability for fraud.

## **68 Double recovery**

Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to the provisions of this Contract or otherwise.

## **69 Counterparts**

- 69.1 This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.
- 69.2 No single counterpart shall be effective until each Party has executed and delivered at least one counterpart.

## **70 Law and jurisdiction**

- 70.1 This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 70.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.



**Schedule 1**

**Specification**

[INSERT]

DRAFT

## Schedule 2

### Housing Management Terms

[INSERT]

DRAFT

## Schedule 3

### Charges and Payment

1. The Charges shall be based on a block contract arrangement covering a maximum of 960 hours to be delivered per week. This must cover the outcomes stated in the Specification in relation to care and support.
2. The weekly contract Charges shall be based on the rate of [(£ TENDER PRICE TO BE INSERTED) ] (Hourly Rate) multiplied by number of hours delivered in the week (subject to a maximum of 960 hours per week) (Maximum Weekly Charges). The Total Annual Charges is the Maximum Weekly Charges multiplied by 52.14 weeks (regardless of leap years) rounded up to nearest £1000. The Total Annual Charges and the Hourly Rate shall be as detailed in the Pricing Schedule appended to this Schedule 3 at Appendix 1.
3. The Hourly Rate shall not include amounts that are less than a penny when calculating this value from the Total Annual Charges. Each year's Hourly Rate and Total Annual Charges over the Term will be adjusted in accordance with clauses 6.15 and 6.16 of the Contract.
4. In consideration of the Mobilisation Services during the Mobilisation Phase, the Council shall pay the Mobilisation Services Fees as detailed in this Contract during the Mobilisation Phase. The Mobilisation Services Fees shall be as follows:
  - (i) First month of the Mobilisation Phase - 30% of the Maximum Weekly Charges each week set out in Schedule 3 (Payment and Charges);
  - (ii) Second month of the Mobilisation Phase - 30% of the Maximum Weekly Charges set out in Schedule 3 (Payment and Charges) each week;
  - (iii) Third month of the Mobilisation Phase and subsequent months thereafter -during the Mobilisation Phase until the Service Commencement Date -75% of the Maximum Weekly Charges set out in Schedule 3 (Payment and Charges) each week.
5. If the occupancy rate of the Flats does not reach 60% of the total number of Flats on the Site by the Service Commencement Date, the Charges payable by the Council from the Service Commencement Date shall be 75% of the Maximum Weekly Charges for a period of three (3) months or until the occupancy rate reaches 100%, whichever is earlier.
6. The Service Provider will send to the Council on a weekly basis details of the hours of care delivered on the day of the week advised by the Council. This information shall be broken down by each Service User and highlight any changes in Service User packages, starts stops, increases, reductions in care provided along with any other applicable information.
7. The Council will adjust individual packages in order to allow accurate recharging/invoicing for Service Users who pay a contribution for the care services they receive in accordance with the terms of this Contract. Service Users with increasing healthcare needs may be entitled to Continuing Care funding, which means the costs of a person's healthcare, social care and accommodation becomes the responsibility of NHS North Central London ICB rather than the Council and payments from the Council will cease. Any privately funded care or continuing health care will cease to be part of the contract Charges and invoices shall not include privately funded or continuing healthcare funded hours.
8. The packages appearing on Eclipse (and any subsequent social care case management systems the Council may implement from time to time) are packages for information only and not used for payment of the Service Provider but allow for the invoicing of Service Users who pay a contribution.
9. The Service Provider will invoice the Council in accordance with Clause 6. The invoice shall be received by the Commissioning Team and [enfieldteam@restoredigital.co.uk](mailto:enfieldteam@restoredigital.co.uk) who shall ensure the details appearing on the invoice correspond with the information provided for care services delivered.

10. The payment is a 'block calendar month payment' but any long term increases or reductions in care hours provided (over the quarter - rather than week by week) will be discussed at the quarterly monitoring meeting.

DRAFT

DRAFT

## Schedule 4

### Service Provider's Tender

[INSERT BOTH ITT AND SQ SUBMISSION]

DRAFT

Schedule 5

Not Used

DRAFT

## Schedule 6

### Exit Management Plan

A European Court of Human Rights ruling on a Care Home resident being moved stated that “there is a professional burden on practitioners to identify hazards and minimise risks by adopting best practice in preparing residents and their families.” If the preparation, planning and implementation of an exit strategy become necessary within the provider concern process, all stakeholders will be entering a highly pressurized and uncertain period.

This section is designed to provide a map of the key issues that need to be considered and Enfield Council’s response to these issues.

#### **Context:**

There are three situations where an exit strategy is necessary:

1. CQC take the decision to de-register a Service Provider
2. The local authority decides that the Service Provider is not meeting the needs of the service users that have been placed there.

An exit strategy requires the safety of service users, their belongings and any information regarding their care/support needs from the Failing Service Provider to another Service Provider and the Council.

Exit strategies can be: immediate, semi-planned or planned, depending on the notice period the Provider Concerns Strategy group has been given. The pressures and priorities for each type of exit strategy cover the same dimensions: initiation, engagement, information, co-ordination, implementation and review.

#### **Initiation:**

Once the Provider Concerns Strategy group has agreed that preparations for an exit strategy are necessary, an Exit Strategy group needs to be established. This group will include: the Provider Concerns Strategy group chair, co-ordinator, placing authority representatives, health representative, exit strategy co-ordinator (who will focus on information gathering and sharing, and logistics), and anyone else the chair feels is necessary, based on the specifics on the exit strategy. LBE have an emergency planning service which may be key within this partnership where an immediate closure is required.

#### **Engagement:**

There are a variety of stakeholders that may be engaged. Many of the stakeholders will already be part of Provider Concerns Strategy meeting.

However, to ensure a well-informed, co-ordinated and safe exit strategy the following representatives must be contacted as appropriate and briefed regularly:

- Residents and their families and friends and or advocates, IMCAs and registered attorneys.
- Provider (at various levels depending on size of provider)
- Senior managers of the lead Local Authority
- Other placing authorities
- Health colleagues (Pharmacist, GPs)
- Ambulance service/private ambulances
- Police
- Lead local Authority’s care teams
- Lead local Authority’s OTs and equipment providers
- Lead local Authority’s Emergency planning teams
- Lead local Authority’s Press office
- Lead local Authority’s Legal and Insurance teams
- Lead local Authority’s Transport services
- Lead local Authority’s Adult social care Procurement/Brokerage
- Lead local Authority’s Emergency Planning Service



Once an exit strategy has been initiated all or some of these stakeholders need to be contacted and advised that an exit strategy, with the relevant timescales, is underway.

The role of these stakeholders will be discussed in greater detail below, under co-ordination. Depending on their role within the exit strategy they will have to be contacted at regular intervals. The frequency of contact with the stakeholders must be agreed by the Exit Strategy group and noted as part of a communication plan.

### **Information:**

Gathering accurate information is crucial for the exit strategy to work effectively. It is the basis for the co-ordination element of the exit strategy process and facilitates effective risk management and planning. The information will help identify the service users identified as high risk for a variety of reasons. These service users will need the most and or specialist support for a successful transition.

The following information is needed to effectively manage an exit strategy:

#### **•• Resident care information**

- Including, most recent reviews and OT assessments covering information such as mobility; continence; eating and drinking; epilepsy/seizures; challenging behaviour;
- OT assessment information, carried out specifically for move; equipment requirements; moving and handling notes;
- Residents assessed as high risk to be highlighted;
- Transition plan.

#### **•• Resident health info**

- Continuing care reviews for clients with nursing needs, detailing health specific needs;
- GP details;
- Medication, controlled medication;
- Pressure care.

#### **•• Resident capacity**

- DoLS in place;
- Orientation/confusion;
- Advocacy/IMCA requirements.

#### **•• Location within the Scheme**

- Floor/room number.

#### **•• Equipment requirements**

- Equipment/support needed to– hoist/wheelchair;
- 

#### **•• Family information**

- To ensure that all aspects of support have been taken into account (culturally specific information);

This is not an exhaustive list. The detail that is required and the time pressures for analysing and disseminating this information will vary depending on whether the move is immediate, semi-planned, or planned. However, the above list provides an indication of the key areas that must be considered.

The information will need to be compiled into a variety of different formats to support different functions during the exit strategy: resident packs to stay with the support worker;

### **Co-ordination:**

Once an Exit Strategy group has been established, it will need to work through the tasks below. These tasks represent the minimum requirement, and the Exit Strategy group will need to decide if additional tasks are required to effectively implement the exit strategy.

#### Task 1: Develop robust project plan

As part of the department's emergency planning processes, a draft project plan outlining the key tasks, roles, responsibilities and processes needed should already be developed. The parameters of the project then need to be modified to reflect the time scale and complexities of the exit.

Dependencies:

- Provider Concerns Strategy meeting
- Exit Strategy group has approved
- Key information about the residents and the move have been gathered

#### Task 2: Briefing for staff members responsible for task

. Key concerns will be addressed.

Dependencies:

- Staff identified and agreed by senior managers.
- Staff notified and prepared for emergency scenario
- Time table finalised

#### Task 3: Contacting Residents and their families and friends and placement prior to move

Key Responsible Officer will need to contact service users and their family and friends to make them aware of the change of Service Provider. This will be undertaken formally in writing and through meetings. The Responsible officer will need to let service users know what will happen and the timescales .

Dependencies:

- If time has permitted, family members and friends and main carers will have already been briefed.

#### Task 4: Equipment to be identified by OT reviews

#### Task 6: Briefing for other Lead Local Authority partners

The Local Authorities Press Office, Legal Team and Emergency planning are to be notified, and updated as often as feasibly. These partners will be able to assist with unknown elements of the change in Service Provider (for example, press desk on site; emergency provision and so on). The Local Authority's Insurance officer needs to be contacted to understand the key risks and what the Local Authority is covered for. Transport need to be advised that significant requirements will be necessary. Legal team to review correspondence and statements made to the public domain to ensure information is accurate and legally compliant.

#### Task 7: Preparing staff resources in case care home staff walk out

At Enfield Council, our In-house provider services have made staff available to provide emergency cover if necessary Procurement/Brokerage will also need to be engaged if there is a total staff exodus.

#### Task 8: External Partners need to be engaged (GPs)

GPs will need to be advised and a pharmacist identified to dispense medication if required. The existing Service Provider to have a list of useful contact details should they be required or need additional support.

Timescales:

- Partners should be engaged as soon as possible. Where feasible, they should be invited to staff briefings.

#### Task 9: Partnership working with placing authorities

#### Task 10: Supplier need to be forewarned of demand without specifics (Ambulance, removal, company bus, etc)

Suppliers will need to be briefed (without being told of specifics) so that adequate provisions can be made. Any additional requirements can be sourced with an emergency P-card.

If an exit strategy becomes necessary,

.

## Schedule 7

### TUPE

#### 1. Employment exit provisions

1.1 This Contract envisages that subsequent to the commencement of this Contract, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of expiry or termination of this Contract, or part, or otherwise) resulting in a transfer of the Services in whole or in part for the purpose of TUPE (“Service Transfer”). The Council and the Service Provider agree that the following events:

(a) the transfer of Services on the Service Transfer Date (meaning the date upon which the responsibility as an employer of the Relevant Employees moves from the transferor to the transferee); and

(b) where a service provision change occurs in accordance with TUPE

shall constitute a Service Transfer and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 4(7) of Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended “TUPE”) thereafter as if originally made between those employees and the new provider. On the occasion of a Service Transfer, the Service Provider shall procure that any former and new Sub-Contractors shall comply with their obligations under TUPE and the provisions in this Schedule shall apply.

1.2 Upon expiry or termination of this Contract or in the event that the Council conducts a re-tendering exercise for the Services, the Service Provider hereby procures that it (and any Sub-Contractor) shall fully co-operate with the Council in relation to the provision of all information relating to any Relevant Employees.

1.3 The Service Provider agrees that, subject to compliance with all applicable Data Protection Legislation:

(a) within 20 days of the earliest of:

(i) receipt of a notification from the Council of a Relevant Transfer or intended Relevant Transfer;

(ii) receipt of the giving of notice of early termination of this Contract or any part thereof; or

(iii) the date which is 12 months before the expiry of the Term,

and, in any event, on receipt of a written request of the Council at any time, it shall provide the Service Provider's Provisional Staff List to the Council or, at the direction of the Council, to a Future Service Provider and it shall provide an updated Service Provider's Provisional Staff List when reasonably requested by the Council or any Future Service Provider;

(b) at least 28 days before the Service Transfer Date, the Service Provider shall prepare and provide to the Council and/or, at the direction of the Council,

to the Future Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's Personnel named are Eligible Employees;

- (c) the Council shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List for informing any tenderer or other prospective Future Service Provider for any services which are substantially the same type of services (or any part thereof) as the Services; and
- (d) on reasonable request by the Council the Service Provider shall provide the Council or at the request of the Council, the Future Service Provider, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Council reasonably requests.
- (e) it shall promptly notify the Council or, at the direction of the Council, the Future Service Provider of any notice to terminate employment received from any persons listed on the Service Provider's Provisional Staff List regardless of when such notice takes effect

1.4 From the date of the earliest event referred to in paragraph 1.3 of this Schedule, the Service Provider agrees that it shall not without the prior written consent of the Council, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Service Provider's Provisional Staff List and shall not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed):

- (a) increase the total number of employees listed on the Service Provider's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Council;
- (b) make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Service Provider's Provisional Staff List;
- (c) increase the proportion of working time spent on the Services (or the relevant part) by any of the Service Provider's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Council;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Staff List; and
- (e) replace any of the Service Provider's Personnel listed on the Service Provider's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Staff List.

- 1.5 At least twenty eight (28) days before the expected Service Transfer Date, the Service Provider shall provide to the Council or any Future Service Provider, in respect of each person (subject to compliance with all applicable Data Protection Legislation) on the Service Provider's Final Staff List who is a transferring employee, their:
- (a) pay slip data for the most recent month;
  - (b) cumulative pay for tax and pension purposes;
  - (c) cumulative tax paid;
  - (d) tax code;
  - (e) voluntary deductions from pay; and
  - (f) bank or building society account details for payroll purposes.
- 1.6 In connection with a relevant transfer to which TUPE applies, the parties agree that the Service Provider shall perform and discharge all its obligations in respect of all the transferring employees and their representatives for its own account up to and including the Service Transfer Date. The Service Provider shall indemnify the Council and any Future Service Provider in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Council or any Future Service Provider including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- (i) the Service Provider's failure to perform and discharge any such obligation;
  - (ii) any act or omission by the Service Provider on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
  - (iii) all and any claims in respect of all emoluments and outgoings in relation to the transferring employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;
  - (iv) any claim arising out of the provision of, or proposal by the Service Provider to offer any change to any benefit, term or condition or working condition of any transferring employee arising on or before the Service Transfer Date;
  - (v) any claim made by or in respect of any person employed or engaged or formerly employed or engaged by the Service Provider other than a transferring employee for which it is alleged the Council or any Future Service Provider may be liable by virtue of this Contract and/or the Employment Regulations;

- (vi) any act or omission of the Service Provider in relation to its obligations under regulation 11 of TUPE, or in respect of an award of compensation under regulation 12 of TUPE except to the extent that the liability arises from the Council or Future Service Provider's failure to comply with regulation 11 of TUPE; and
- (vii) any statement communicated to or action done by the Service Provider or in respect of any Relevant Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Council in writing.

1.7 The Service Provider shall indemnify the Council and any Future Service Provider in respect of any claims arising from any act or omission of the Service Provider in relation to any other Service Provider's Personnel who is not a Relevant Employee during any period whether before, on or after the Service Transfer Date.

1.8 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Schedule to the extent necessary to ensure that any Future Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Future Service Provider by the Service Provider under this Schedule 5 in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

1.9 Notwithstanding paragraph 1.8, it is expressly agreed that the Parties may by agreement rescind or vary this Schedule or any term of this Schedule without the consent of any other person who has the right to enforce the terms of this Schedule or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

1.10 Pension Issues on Expiry or Termination

1.10.1 The Service Provider shall comply with all Laws that apply to it in relation to pensions.

1.10.2 The Service Provider shall, and shall procure that any relevant Sub-Contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Relevant Employees);
- (b) promptly provide to the Council and a Future Service Provider such documents and information mentioned in clause 1.12.1(a) which the Council may reasonably request in advance of the expiry or termination of this Contract; and
- (c) fully co-operate (and procure that the trustees of the Service Provider's pension scheme shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.

## Schedule 8

### Contract Management

#### d. Authorised Representatives

##### d.1 Council:

d.1.1 Authorised Representative Service Delivery: [INSERT DETAILS]

d.1.2 Deputy Authorised Representative Service Delivery: [INSERT DETAILS]

d.1.3 Housing Management Authorised Representative: [INSERT DETAILS]

d.1.4 Deputy Housing Management Authorised Representative (Housing Management): [INSERT DETAILS]

##### d.2 Service Provider:

d.2.1 Contract Manager: [INSERT DETAILS]

d.2.2 Deputy Contract Manager: [INSERT DETAILS]

#### e. Service Provider Key personnel

[ ]

#### f. Meetings

f.1 As set out in the Specification (Schedule 1)

#### g. Reports

g.1 As set out in the Specification (Schedule 1)



## **Schedule 9**

### **Business Continuity and Disaster Recovery**

[TO BE INSERTED FROM THE SERVICE PROVIDER'S TENDER]

DRAFT

## Schedule 10

NOT USED

DRAFT

## Schedule 11

### Processing Personal Data

- 1.1 This Schedule shall be completed by the Data Controller, who may take account of the view of the Data Processors, however the final decision as to the content of this Schedule shall be with the Council at its absolute discretion.
- 1.2 The contact details of the Council's Data Protection Officer are: **Enfield.Data.Protection.Officer@enfield.gov.uk**
- 1.3 The contact details of the Service Provider's Data Protection Officer are: [Insert Contact details]
- 1.4 The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
- 1.5 Any such further instructions shall be incorporated into this Schedule.

No	Description	Details
1	Identity of Data Controller and Processor for each Category of Personal Data	<p><b>The Council is Data Controller and the Service Provider is Data Processor</b></p> <p>The Parties acknowledge that in accordance with Clause 30 and for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Service Provider is the Data Processor of the following Personal Data:</p> <p>Personal data to include, name, gender, ethnic origin and health and care needs of Service Users will be shared in order that the appropriate care is provided in accordance to the Care Act 2014 assessed need</p>
2	Subject matter of the processing	The processing is needed in order to ensure that the Processor can effectively deliver the Contract to provide personal care, domestic, shopping, social activities and support
3	Duration of the processing	<i>Data will be processed for the duration of the contract and returned within six (6) weeks of the contract expiry. Financial information will be stored for up to 7 years.</i>

4	Nature and purposes of the processing	<i>To provide and manage care and support services at Reardon Court to the London Borough of Enfield's Adult Social Care clients. Data will be processed and stored for this purpose only. Data will be held within the Council's Eclipse system and within the Client data base system held at Reardon Court.</i>
5	Type of Personal Data	<i>Name</i> <i>Age</i> <i>Gender</i> <i>Ethnic origin</i> <i>Religion</i> <i>Health Data</i> <i>Care Needs</i>
6	Categories of Data Subject	<i>Service Users</i>
7	International transfers and legal gateway	<i>Not applicable</i>
8	Plan for return and destruction of the data once the processing is complete UNLESS requirement by Law to preserve that type of data	<i>Data shall be held for the period of the contract life and returned within six (6) weeks from the expiry of the contract. The information will be retained within the Council Eclipse system for up to 7 years.</i>

DRAFT

## Schedule 12

### LONDON MULTI-AGENCY ADULT SAFEGUARDING POLICY & PROCEDURES



2019.04.23-Review -  
of-the-Multi-Agency

<https://londonadass.org.uk/wp-content/uploads/2019/05/2019.04.23-Review-of-the-Multi-Agency-Adult-Safeguarding-policy-and-procedures-2019-final-1-1.pdf>

DRAFT

Executed as a DEED by affixing the common seal of THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD in the presence of:

.....  
Authorised Signatory

EXECUTED as a DEED by [NAME OF SERVICE PROVIDER], acting by )  
NAME OF DIRECTOR], a director, in )  
the presence of:

.....  
Signature of Director

Director/Company Secretary

Signature: .....

Print Name: .....

Address: .....  
.....

Occupation: .....

## ANNEX

### Council Policies

In accordance with clause 5 (Standard of Performance) the Service Provider has been given notice of, and must comply with (without limitation) the following Policies, and any other Policies provided to it during the Term, as amended or updated:

- Data Protection
- Security
- Equality and Diversity
- FOI
- Environmental policy and sustainable community strategy
- Health & Safety
- Dignity at Work
- Staff Information Security
- Whistleblowing
- Publicity
- Anti-Fraud / Money Laundering
- LONDON MULTI-AGENCY ADULT SAFEGUARDING POLICY & PROCEDURES