

TERMS AND CONDITIONS

Southend-on-Sea Borough Council

CONTRACT FOR THE PROVISION OF

**Accommodation and Support for Care Leavers
Using a Dynamic Purchasing System**

BETWEEN

Southend-on-Sea Borough Council

AND

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CONDITIONS OF CONTRACT

A. GENERAL PROVISIONS

1. DEFINITIONS

“Admission Agreement”	means the agreement in relation to an LGPS pension between the Council and the Service Provider as required under Clause 32
“Affected Party”	means a party affected by a Force Majeure Event;
“Agreement”	this contract
“Appropriate Pension Provision”	in respect of Eligible Employees, either: (a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or (b) membership or eligibility for membership of a pension scheme, which is certified by the GAD as being broadly comparable to the terms of their Legacy Scheme;
“Approval”	means the written consent of the Contract Manager or any person authorised by the Contract Manager. (“Approved” or “Approve” shall be construed accordingly);
“Authorisation”	means an authorisation given by the Council after completion of the statutory assessment process in relation to a Service User, giving lawful authority to deprive a person of their liberty;
“Basic Disclosure”	means a Basic Disclosure carried out through Disclosure Scotland, which is required where a Service Provider is engaged in a position of trust but is not eligible for a Standard Disclosure check, Enhanced with Barred List Check or Enhanced without Barred List Check;
“Best Value Duty”	means the duty imposed on the Council by Part 1 of the Local Government Act 1999 (“1999 Act”) (as may be amended from time to time) and under which the Council is under a statutory duty to continuously improve the way its functions are exercised having regard to a combination of economy efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation
“Bribery Act”	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
“Business Continuity Plan”	means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;
“Calendar Days”	means a day reckoned from midnight to midnight and shall

	include weekends and bank holidays in England and Wales;
“Capacity Opinion Letter”	means the document attached as Schedule 9 and must be provided by the Service Provider where their company is registered outside the UK;
“Change Control Procedure”	means the change control procedure set out in Clause 14 (Variations and Change Control) and Schedule 3 (Change Control Procedure) ;
“Change in Law”	means the coming into effect after the Commencement Date of this Contract of: (a) Legislation, other than any legislation which on the Commencement Date of this Contract has been published: i. In a Bill as part of a Government Departmental Consultation Paper ii. In a Bill iii. In a draft statutory instrument or iv. Published as a proposal in the Official Journal of the European Communities (b) Any legal guidance; or (c) Any applicable judgment of a relevant Court of law which changes or establishes a binding precedent;
“Charging Period”	Means the 28 day period when an invoice is required to be submitted by the Service Provider to the Council;
“Clause”	means the Clause(s) contained within the Conditions of Contract;
“Commencement Date”	means the date specified in Clause 3.1 of the Contract;
“Conditions of Contract”	means these terms and conditions of Contract referred to as “Clauses” and/or any variation duly agreed in writing in accordance with Clause 14 (Variations and Change Control) ;
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA;
“Consumer Price Index” or “CPI”	means the official measure of inflation against consumer prices in the United Kingdom;
“Continuous Improvement Plan”	means the continuous improvement plan detailed in Clause 4.6 agreed between the Parties;
“Contract”	means the agreement entered into between the Council and the Service Provider including the Conditions of Contract and Schedules 1-15 any agreed contract <i>clarification</i> attached to

	the Conditions of Contract;
“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 (as amended) other than the Council;
“Contractor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement
“Contract Manager”	means the representative appointed by the Council pursuant to Clause 6 (<i>The Council’s Personnel and Staff</i>);
“Contract Manager Representative(s)”	means representatives appointed by the Contract Manager pursuant to Clause 6 (<i>The Council’s Personnel and Staff</i>);
“Contract Period”	means the period during which this Contract shall remain in force and effect pursuant to Clause 3 (<i>Duration of Contract</i>) and shall be the Initial Term as may be extended in accordance with Clause 3 (<i>Duration of Contract</i>);
“Controller”	means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;
“Council”	means Southend-on-Sea Borough Council or its successor body as applicable;
“Council’s Data”	means (i) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Service Provider or provided to the Service Provider for processing under this Contract which at all times shall remain the property of the Council or; (ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever media;
“Council’s Environmental Policy”	means the Council’s document so titled, available on the Council’s website ;
“Council’s Equipment”	means all equipment, parts, materials, articles and/or mechanisms provided by the Council for use in connection with the Services;
“Council’s Premises”	means any premises owned by the Council or for which the Council has legal responsibility;
“Court”	means a court of competent jurisdiction within the United Kingdom and the European Court of Justice and acts or directions of the European Union Commission;

“Criminal Records Checks	means one of four checks carried out (as appropriate) under the bureau established pursuant to the Protection of Freedoms Act 2012, <input type="checkbox"/> Enhanced Disclosure with a Barred List Check <input type="checkbox"/> Enhanced Disclosure without a Barred List Check <input type="checkbox"/> Standard Disclosure <input type="checkbox"/> Basic Disclosure
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;
“Data Protection Officer”	an expert on data privacy who works independently to ensure that an entity is adhering to the policies and procedures set forth in the GDPR
“Data Subject”	a natural person whose personal data is processed by a controller or processor
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“Deprivation of Liberty”/”DoL”	means the framework of safeguards set out in Schedule A1 of the Mental Capacity Act 2005 (as amended);
"Directives"	means the EC Acquired Rights Directive 2001/23/EC (as amended);
“Disclosure & Barring Service (“DBS”) ”	means the Non-Departmental Public Body which helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups, including children and vulnerable adults;
“DBS Check(s)	means a Criminal Records Check on an individual carried out through the DBS;
“DBS Adult First”	means the service provided by the DBS that can be used in exceptional cases where, and in accordance with Department of Health guidance, a person is permitted to start work with adults before a DBS certificate has been obtained.
“DBS Update Service”	means a service available through the DBS, where an individual has subscribed for the update service, for a free, instant online check to be carried out by an employer on an individual to see if any new information has come to light since the criminal records certificate was first issued in respect of an individual;

“Disclosure Scotland”	is an executive agency of the Scottish Government, providing criminal records disclosure services by way of a Basic Disclosure check for employers and voluntary sector organisations;
“Discriminatory Change in Law”	means a Change in Law, the terms of which will apply expressly to: (a) this Contract and not to similar contracts procured under best value (b) the Service Provider and not to other persons;
“Dispute Resolution Procedure”	means the procedure set out in Clause 40 (<i>Dispute Resolution</i>) of this Contract;
“DPA 2018”	means the Data Protection Act 2018
“Eligible Employees”	Means the Transferring Employees and/or Transferring Original Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer as cited in the Admission Agreement;
“Enhanced With Barred List Check”	means a type of Criminal Records Check, which includes a check of the DBS barred lists and any additional information held by the police that is reasonably considered relevant to the role being applied for and includes roles that do not work with children or vulnerable adults specifically but potentially both and should be used for jobs that involve caring for, supervising or being in sole charge of children and/or vulnerable adults;
“Enhanced Disclosure without Barred List Check”	means a type of Criminal Records Check, which includes an enhanced disclosure check without a barred list check that is required where a service providers is engaged in a role that meets the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations;
“Expiry Date”	means the date this Contract will expire in accordance with Clause 3 (<i>Duration of Contract</i>);
“Force Majeure Event”	means any event materially affecting the performance by a Party of its obligations under this Contract arising from any act, event, omission, happening or non-happening beyond its reasonable control including, but not limited to: fire, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; terrorist attack; nuclear, chemical or biological contamination; compliance with any governmental order, governmental rule or governmental regulation which comes into effect after the Commencement Date; loss at sea; extreme adverse weather conditions; interruption or failure of utility service;
“Former Service Provider”	means any service provider who provided services the same as or similar to the Services to the Council immediately

	prior to the Commencement Date;
“GAD”	means the Government Actuary Department;
“GDPR”	GDPR : the General Data Protection Regulation (Regulation (EU) 2016/679)
“General Change in Law”	means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;
“Guarantee”	means the parent company guarantee in the form set out in Schedule 5 (<i>Instructions to Tenderers</i>);
“Guarantor”	means any person granting a Guarantee pursuant to Clause 11 (<i>Performance Bond and Parent Company Guarantee</i>);
“Initial Term”	means the initial term of the Contract from the Commencement Date to 28 th February 2021;
“Instructions to Tenderers”	means the instructions to tenderers issued by the Council on 22.12.17 and attached as Schedule 5 (<i>Instructions to Tenders</i>);
“Intellectual Property Rights” or “IPR”	means all intellectual and industrial property rights including patents, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;
“Key Performance Indicators”	means the key performance indicators as defined and set out in Schedule 2 (<i>Performance Monitoring/KPI's</i>);
“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
“LED”	Law Enforcement Directive (Directive (EU) 2016/680)
“Legacy Scheme”	means the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer date;
“Healthwatch”	means the body, structure or arrangement set up in accordance with section 221(1) of the Local Government and Public Involvement in Health Act 2007. Healthwatch aim to give citizens a stronger voice in how their health and social care services are delivered. Run by local individuals and groups and independently supported, the role of Healthwatch is to find out

	what people want, monitor local services and to use their powers to hold them to account. Each local authority (that provides social services) has been given funding and is under a legal duty to make contractual arrangements that enables Healthwatch activities to take place;
“Local Government Ombudsman”	means a local commissioner (known as the Local Government Ombudsman) who is responsible for conducting investigations for the Commission for Local Administration in England (CLAE), which is a body of commissioners established under the Local Government Act 1974 and which, has the power to investigate complaints about councils (and certain other bodies) in England;
“LGPS Regulations”	means the relevant LGPS pension regulations in force at the time this Contract is entered into;
“Managing Authority”	means Managing Authority as defined in the Mental Capacity Act 2005 (as amended);
“Month”	means calendar month;
“Party”	means a party to this Contract and “Parties” shall be construed accordingly;
“Pension Bond”	means the bond required for the Admission Agreement in accordance with Clause 32 and one of the forms of surety required as required under the Local Government Pensions Scheme (Administration) Regulations 2008 (as amended);
“LGPS”	means Local Government Pension Scheme made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 (as amended);
“Performance Bond”	means a bond substantially in the form set out in Schedule 5 (<i>Instructions to Tenderers</i>) and granted by a reputable surety within the European Community to the Council in the sum of [amount to be agreed] pounds sterling (£[amount to be agreed]) for the duration of the Contract Period;
“Persistent Breach”	means where the Service Provider commits the same (or similar) breach of the terms of this Contract at least [three (3)] times in any rolling three (3) Month period or at least [six (6)] times in any rolling twelve (12) Month period;
“Personal Data”	means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person
“Personal Data Breach”	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or

	access to, personal data transmitted, stored or otherwise processed
“Prescribed Rate”	means interest at the rate of eight percent (8%) per annum over the Bank of England Official Bank Rate;
“Processor”	means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller.
“Prohibited Act”	<p>the following constitute prohibited acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act;</p> <p>(ii) under legislation creating offences concerning fraudulent acts;</p> <p>(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or</p> <p>(iv) defrauding, attempting to defraud or conspiring to defraud the Council.</p>
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
“Qualifying Change in Law”	Means <p>(a) a Discriminatory Change in Law; or</p> <p>(b) a Specific Change in Law which was not foreseeable at the date of this Contract;</p>
“Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or modified from time to time);
“Relevant Transfer”	means a relevant transfer for the purposes of the Regulations;
“Replacement Service Provider”	means any third party appointed by the Council from time to time to provide all or any of services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial

	termination of this Contract whether those services are provided by the Council internally and/or by any third party;
“Request”	shall have the meaning specified in Clause 20 (<i>Freedom of Information</i>);
“Review Date”	means a date six (6) months before the first anniversary of the Commencement Date and annually thereafter;
“Schedules”	means the Schedules attached to this Contract consisting of Schedules 1-15;
“Service Provider”	means contracted Provider of service(s) for the provision of Direct Payment Support Services;
“Service Provider’s Authorised Representative”	means such person nominated in writing by the Service Provider to act as the Service Provider’s representative in relation to this Contract and approved by the Contract Manager;
“Service Provider’s Equipment”	means all equipment, parts, materials, articles and/or mechanisms provided by the Service Provider for use in the provision of the Services;
“Service Provider’s Premises”	means any premises owned by the Service Provider or for which the Service Provider has legal responsibility;
“Service User”	means a person who is the beneficiary of the Services to be provided by the Service Provider;
“Service(s)”	means the Services to be provided pursuant to this Contract, more particularly described in the Specification and Service shall be construed accordingly;
“Significant Decision”	means a decision that needs to be made relating to serious medical treatment or change of accommodation of a Service User in circumstances in which there are no friends or family who it would be appropriate to consult on the decision;
“Specific Change in Law”	means any Change in Law which specifically refers to the provision of a service being the same as or similar to the Services or to the holding of shares in companies whose main business is providing a service being the same as or similar to the Services;
“Specification”	means the description of the Services to be provided under this Contract in Schedule 1 (<i>Specification</i>);
“Staff”	means all persons employed or engaged by the Service Provider to perform this Contract together with the Service Provider’s servants, suppliers, agents, volunteers and sub-contractors used in the performance of this Contract and/or the provision of the Services;
“Standard Disclosure”	means a type of Criminal Records Check for spent and unspent

	convictions, cautions, reprimands and final warnings, which is required where the role is included in the list of eligible roles detailed in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and the role does not required an enhanced DBS check;
“Sub-processor”	any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement
“SVG”	Safeguarding Vulnerable Groups Act 2006 (as amended under the Protection of Freedoms Act 2012);
“Tender Response Document”	means the Service Provider’s proposal to meet the Specification setting out the methods to be used by the Service Provider to provide the Services under this Contract as set out in Schedule 6 (<i>Tender Response Document</i>);
"Transferring Employees"	means the employees listed in Schedule 13 and are: (i) all employees who immediately prior to the Commencement Date are assigned to the organised grouping of resources and employees to the Services and which are the subject of transfer in accordance with the Regulations and who shall transfer by the virtue of the application of the Regulations to the Service Provider; (ii) all employees who immediately prior to the Service Transfer Date are assigned to the organised grouping of resources and employees to the Services and which are the subject of transfer in accordance with the Regulations and who shall transfer by the virtue of the application of the Regulations to the Replacement Service Provider;
“Transferring Original Employees”	means the employees listed in Schedule 14 who previously transferred to the employment of the Former Service Provider and who will transfer to the employment of the Service Provider as a result of the application of the Regulations in relation to this Contract;
“VAT”	means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function;
“Variation”	means any change to: (i) the terms and Conditions of Contract or Schedules (ii) the Services or any of them (iii) the standard of performance required of a Party materially over and above that expressly stated or provided for under this Contract provided such variation or change is in accordance with Clause 14 (<i>Variations and Change Control</i>);
“Working Day”	means Monday to Friday excluding public and bank holidays in England and Wales;
“Working Hours”	means [to be completed on a case by case basis depending on the nature of the service.

2. INTERPRETATION OF THIS CONTRACT

- 2.1 Except as otherwise expressly provided, the documents comprising this Contract are to be taken as mutually explanatory of one another.
- 2.2 Any references to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force, and to include any bylaws, licenses, statutory instruments, rules, regulations, orders, notices, directions, European Union legislation made thereunder, and any condition attaching thereto.
- 2.3 The headings in this Contract are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 2.4 The expression 'person' used in this Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- 2.5 In this Contract, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- 2.6 References to Clauses or Schedules shall be to Clauses and Schedules of this Contract.
- 2.7 Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the control of the Service Provider.
- 2.8 In the event of any inconsistency or conflict between the main body of this Contract and the Schedules, the order or precedence as set out below shall prevail:
- a) Council responses to general clarification questions and clarification questions from the Service Provider;
 - b) The Conditions of this Contract;
 - c) **Schedule 1** (*Specification*);
 - d) Remaining Schedules of this Contract with the exception of **Schedule 6** (*Tender Response Document*)
 - e) **Schedule 6** (*Tender Response Document* including any clarification questions issued by the Council and responses provided by the Service Provider)
- 2.9 In the event of a conflict (or any inconsistency) between the provisions of **Clause 2.8** above and any Variations made to this Contract after the Commencement Date, the Variation as agreed between the Parties shall take precedence.

B. THE SERVICES AND PERSONNEL

3. DURATION OF CONTRACT

- 3.1 This Dynamic Purchasing System shall commence on the 1st day of March 2018 and shall continue for the Initial Term unless terminated sooner in accordance with the provisions of this Contract or extended in accordance with **Clauses 3.2-3.4** at the sole discretion of the Council for up to any period or periods of up to four (4) years in 12 month blocks or any part thereof, by giving at least six (6) Months' prior notice in writing.
- 3.2 If there is provision under **Clause 3.1** to extend the Dynamic Purchasing System and the Council notifies the Service Provider of its desire to extend the Contract beyond the Initial Term pursuant to **Clause 3.1** then the terms and conditions of this Contract apply, save for the Price which may be revised and must be agreed by both Parties provided the change to the Price is not a material change to the Contract.
- 3.3 If the Service Provider fails to provide a response to the Council in respect of the notification by the Council to extend the Contract or notifies the Council that it does not wish to accept the extension of the Contract or accepts the extension subject to amendments to the Price that are not acceptable to the Council, the Contract shall expire at the end of the Initial Term.
- 3.4 Subject to satisfactory performance by the Service Provider during the initial contract term, if the Service Provider does accept the Contract extension on terms that are acceptable to the Council, this Contract shall remain in full force and effect for the duration of the Contract extension, save that all references to the Contract Period shall be deemed to include any such Contract extension until 29th February 2024, and the Expiry Date shall be amended as agreed between the Parties to give effect to the Contract extension, save that the Expiry Date shall in no event be a date after 29th February 2024.

4. THE SERVICES

- 4.1 The Service Provider shall provide the Services during the Contract Period in accordance with the Contract and in particular **Schedule 1 (Specification)**, which forms part of the Contract.
- 4.2 The Service Provider shall discharge its obligations under this Contract with all due skill, care and diligence by appropriate, competent, qualified and trained Staff. Except as otherwise specified in this Contract, the Service Provider shall provide all Staff and a sufficient number of Staff, the Service Provider's Equipment, information and data and anything else whatsoever required for the provision of the Services including any Variations to this obligation pursuant to **Clause 14 (Variations and Change Control)**. Except as specified in writing, the Service Provider shall not in any circumstances use the Council's Premises and/or Council's Equipment.
- 4.3 In recognition of the best value duty placed on the Council by the Local Government Act 1999, the Parties to this Contract shall work together to identify how the Services can be continuously improved. Reviews shall be conducted in accordance with **Clause 15 (Performance Monitoring and Contract Review)** and these Clauses generally. The Service Provider agrees to co-operate fully and

assist the Council at no extra charge in any manner reasonably required by the Council in connection with the Council's performance of its Best Value duty. The Service Provider shall observe and facilitate the Council's request of cost savings. Where appropriate, a Variation shall then be made in accordance with **Clause 14 (Variations and Change Control)**, provided that such Variation does not constitute a material change to the Contract.

4.4 Pursuant to **Clause 4.3**, the Service Provider shall throughout the Contract Period and in accordance with its obligations under this Contract, provide a service that represents value for money.

4.5 Not used

4.6 The Service Provider's Continuous Improvement Plan (in **Tender Return**) to secure continuous improvement in the way in which the Services are provided shall be reviewed by the Council in accordance with the provisions specified in the **Schedule 2 (Performance Monitoring and KPI's)**.

4.7 The Service Provider shall at all times comply with all relevant Council policies and codes of practice provided a copy has been given by the Council to the Service Provider.

4.8 Not used

5. SERVICE PROVIDER'S WARRANTY, RESPONSIBILITY AND KNOWLEDGE

5.1 The Service Provider warrants and represents that:

5.1.1 It has the full capacity and authority and all necessary consents to enter into and perform this Contract;

5.1.2 It is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

5.1.3 It has not directly or indirectly canvassed any member or official of the Council with a view to gaining more favourable consideration of its tender submission for this Contract and has complied in all respects with the conditions and instructions of tendering; and

5.1.4 All information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Service Provider in connection with the tendering process are true, complete and accurate in all respects.

5.1.5 In the three (3) years prior to the Commencement Date:

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

ii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-

going business concern or its ability to fulfil its obligations under the Contract.

5.2 The Service Provider shall be deemed to have examined the documents constituting the Contract, including the Conditions of Contract, **Schedule 1 (Specification)** and the other Schedules and to have satisfied itself before tendering as to the correctness and sufficiency of its tender submission to cover all its obligations under this Contract and for all matters and things necessary for the proper completion of the Services.

5.3 The Service Provider shall be responsible for the accuracy of all documentation and information or anything else supplied to the Council by the Service Provider and the Service Provider shall pay the Council any extra costs incurred by the Council as a result of any discrepancies, errors or omissions therein.

6. THE COUNCIL'S PERSONNEL AND THE STAFF

6.1 The Council shall appoint a Contract Manager to administer this Contract and act as its representative in connection with this Contract. The Contract Manager shall exercise the functions allocated to him/her under this Contract. The Council may from time to time remove and replace the Contract Manager, such removals or replacements being notified immediately in writing to the Service Provider's Authorised Representative.

6.2 The Contract Manager may appoint from time to time representatives to oversee the day-to-day operation of the Contract who shall be the Contract Manager's Representatives. The Council shall notify the Service Provider in writing immediately upon any such appointment.

6.3 The Service Provider shall at all times comply with any decision of the Contract Manager or Contract Manager's Representatives (as appropriate) in the exercise of their own functions under this Contract unless and until such decision is altered or amended by an agreed settlement following a reference under **Clause 14 (Variations and Change Control)**.

6.4 The Council will require the Service Provider to provide in writing the name, telephone number and contact address for the Service Provider's Authorised Representative who will be responsible for the management of this Contract. The Service Provider's Authorised Representative must be empowered by the Service Provider to take decisions in respect of this Contract and must be available to the Council during Working Hours.

6.5 The Service Provider's Authorised Representative must have sufficient knowledge of this Contract and the Services to deal with all the Council's requirements in respect of the performance of this Contract. The Council may acting reasonably direct that any nominated Service Provider's Authorised Representative who is unsuitable in respect of skill and knowledge to carry out the functions on behalf of the Service Provider specified in this Contract is no longer involved in the Services. However, the final decision in relation to a Staff member shall remain the responsibility of the Service Provider.

6.6 The Service Provider's Staff shall be properly and suitably qualified, competent, skilled, honest, instructed, trained, experienced and supervised and shall at all times exercise due care in the execution of their duties as well as:

- 6.6.1 Comply with the relevant provisions of the Contract; and
- 6.6.2 Comply with all relevant Law, policies, codes, rules, procedures and standards of the Service Provider and all relevant rules, codes, policies, procedures and standards of the Council, notified to the Service Provider by the Contract Manager from time to time.
- 6.7 The Service Provider shall be liable for any acts, omissions or defaults of its Staff howsoever arising in connection with the Services.
- 6.8 If and when directed by the Council, the Service Provider shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with this Contract to any of the Council's Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Council may reasonably desire.
- 6.9 The Council reserves the right under this Contract to refuse to admit to, or to withdraw permission to remain on the Council's Premises any Staff member whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- 6.10 The Council shall allow representation to be made by the Service Provider before any Staff member is to be refused access to any of the Council's Premises.
- 6.11 The Service Provider shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Service Provider by the Council for entry to any Council Premises and shall only permit such keys, passes and other means of access to be used in accordance with the Contract Manager's instructions and then only to the extent required for the purposes of providing the Services.
- 6.12 The Service Provider shall ensure that the Contract Manager is informed as soon as reasonably practicable of the loss of any keys, passes and other means of access to or around the Council's Premises and shall reimburse to the Council any cost of replacement and/or any reasonable security measures implemented as a direct or indirect result of such loss.

PRE-EMPLOYMENT CHECKS

- 6.13 The Service Provider shall carry out appropriate pre-employment checks, prior to the appointment of an individual in connection with the Services, (including but not limited to references, medical clearance, proof of right to work in the UK, professional registration/qualifications, and an appropriate Disclosure and Barring Service Check). Where appropriate and subject to the Council's Approval, the Service Provider may employ a potential member of Staff where the Service Provider has applied for and received the results of a DBS Adult First check, on the condition that a check has been made and the potential Staff member is not identified on the list and all legal requirements including informing the Council and the Service User are complied with as well as compliance with the guidance in **Schedule 10**]. Prior to making any offer of employment, the Service Provider shall carry out a risk assessment in a form equal to or exceeds the risk assessment form referred to in **Schedule 10**, in relation to any non-UK citizen and any UK citizen, who lived abroad in the 2 year period prior to being considered for appointment in connection with the Services.

- 6.14 The Service Provider shall obtain consent, prior to the commencement of any work of each Staff member employed to work in connection with this Contract, to carry out all necessary checks under Clause 6.13 and obtain consent of the Staff member to provide evidence upon the request of the Council that such checks have been carried out.
- 6.15 Any Staff member whose conduct places any of the Council's personnel, any member of the public and/or any third party or any Service User at risk or which might bring the Council into disrepute when working in connection with the provision of the Services shall be the subject of immediate investigation by the Service Provider and dealt with to the satisfaction of the Council which might direct that the Staff member be removed from working in connection with the Services
- 6.16 The Service Provider through monitoring of its compliance with this **Clause 6** shall ensure that the Council is kept advised at all times of any Staff member who, subsequent to his/her commencement of and during employment as a Staff member, commits any criminal act whatsoever or whose previous convictions become known to the Service Provider or commits any act which puts or could put a Service User at risk or could bring the Council into disrepute.
- 6.17 The Council reserves the right to visit the Service Provider's Premises to audit and check disclosure information as specified in **Clause 6** to ensure and confirm evidence provided by the Service Provider of compliance with this **Clause 6**.

SAFEGUARDING IN EMPLOYMENT

- 6.18 The Service Provider shall maintain and keep up to date appropriate policies on child protection and the protection of adults at risk. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health guidelines and also with policies, procedures and guidelines issued by the Council. The Service Provider shall ensure that these policies, procedures and guidelines are communicated to Staff and that appropriate training is provided to Staff in relation to them.
- 6.19 The Service Provider must have in place comprehensive procedures for reporting of and managing allegations against Staff which demonstrates the promotion of the safety and welfare of children and/or adults at risk and are compliant with statutory requirements. The Service Provider must be able to evidence safe and robust recruitment procedures and practice for all Staff working with children and/or adults at risk. The Service Provider shall ensure that Staff know about and comply with the requirements to make accurate, factual and contemporaneous records to ensure compliance with this **Clause 6**.
- 6.20 The Service Provider should fulfil its legal obligations in relation to carrying out Criminal Records Checks and checking Staff through the DBS or Disclosure Scotland (as appropriate) and the relevant national or local safeguarding authority, where necessary and appropriate and complete a risk assessment form in respect of each Staff member when making decisions in relation to convictions revealed by the Criminal Records Check, using a form equivalent to or exceeds the risk assessment form referred to in **Schedule 10** . The Service Provider is required to pay the full cost of any such registration and related costs. The Service Provider acknowledges that the Council has legal responsibilities under the SVG and that the Service Provider must check the Protection of

Children list and the Protection of Vulnerable Adults list and comply with all other relevant Law in relation to safeguarding children and/or vulnerable adults and shall provide such evidence of compliance with this **Clause 6** as the Council shall reasonably require. The Service Provider shall repeat the checks specified in this **Clause 6.20** on every three (3) year anniversary from the Commencement Date or carry out regular checks using the DBS Update Service (where applicable).

- 6.21 The Service Provider shall nominate and name a designated senior officer or manager and make arrangements during the provision of the Services under this Contract to ensure that it complies with the provisions of the SVG.
- 6.22 The designated senior officer or manager referred to in **Clause 6.21** above shall comply with the provisions of "*Working together*" for safeguarding children, young people and adults in dealing with allegations of abuse made against the Service Provider's employees who work with children, young people and adults. The Service Provider shall have in place a safeguarding policy, which is equal to or exceeds the Safeguarding Policy included in **Schedule 10** (except where a conflict arises between the Safeguarding Policy at **Schedule 10** with the Conditions and/or the Specification, in which case the order of precedence of documents specified in **Clause 2.8** shall apply).
- 6.23 The Service Provider shall be entirely responsible for the employment and conditions of service of its Staff and all obligations relating thereto. In addition to the pre-employment checks to be carried out under this **Clause 6**, the Service Provider shall ensure that suitable references reflecting the Staff member's suitability to work with children and/or vulnerable adults are taken up as part of the recruitment process. [All Staff members proposed for the Service shall be subject to an appropriate Criminal Records Check, which should be carried out and results obtained prior to the Staff member being employed in connection with the Service.] Should an adverse entry be revealed as a result of the Criminal Records Check and/or should any convictions including those that would otherwise be spent under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 be revealed, the Service Provider shall notify the Contract Manager of these immediately. The Council shall have a right to veto the employment or engagement of any Staff member proposed for the Service as a result of the adverse entry/convictions, but not unreasonably or vexatiously.
- 6.24 The Service Provider shall use one of the following methods for the advice, processing and storage of each Criminal Records Check:
- 6.24.1 Not used
- 6.24.2 by the Service Provider directly (if DBS registered); or
- 6.24.3 through an external DBS umbrella body.
- 6.25 The Service Provider shall comply with and observe all relevant Law in relation to Criminal Records Checks and follow all recommendations and general guidance issued including by any Central Government Department on Criminal Records Checks and carrying out Criminal Records Checks in relation to any person engaged in a role that meet the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations. When deciding whether the outcome of the

Criminal Records Check is satisfactory and whether the individual concerned is suitable to carry out the role in connection with the Services.

- 6.26 The Service Provider shall maintain and disclose to the Council a record of the outcome of the Criminal Records Check, in relation to each Staff member where a Criminal Records Check is required, setting out the disclosure number and date the disclosure was made. The Service Provider shall store the record of the disclosure securely within the Service Provider's organisation in accordance with the Data Protection Act 1998 and DBS Code of Practice. The Service Provider warrants to the Council that each disclosure number will be unique and can, if necessary, be reconciled against a Staff member's name engaged or appointed in connection with the Services.
- 6.27 The Service Provider must have a robust system which evidences that when Staff are suspended or dismissed and safeguarding children and/or vulnerable adults guidance including government guidance is followed and relevant professional bodies informed in the event of non-compliance. The Service Provider will ensure that it has appropriate procedures in place that support:
 - 6.27.1 The immediate reporting to the Contract Manager of concerns and details of any incidents and/or convictions in relation to Staff members; and
 - 6.27.2 Other action necessary to support the Council's policies, including the possible mandatory participation in child protection meetings and actions.
- 6.28 The Service Provider shall have codes of conduct in place for all Staff that set out clear standards of conduct especially in relation to personal and sexual relationships between Staff and Service Users or other children and/or vulnerable adults.
- 6.29 The Service Provider must provide evidence of robust and effective complaints and whistle-blowing policies including a guarantee to Staff and Service Users that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.
- 6.30 If abuse of an individual is taking or has taken place or is suspected the Service Provider must comply with the "duty to refer" by immediately notifying the Contract Manager and/or safeguarding children and adults lead of the Council as well as the Service Provider's safeguarding children and vulnerable adults lead and should consider suspension of the Staff member(s) and take emergency measures (for example, inform police/seek medical assessment/treatment (as appropriate)). The Service Provider must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Contract Manager. The Service Provider must also notify the DBS and/or Disclosure Scotland (as appropriate) if a Staff member is dismissed or removed from working in connection with the Services for the reasons described in the "Duty to Refer" section of **Schedule 10**.
- 6.31 The Service Provider shall obtain the consent of each Service User to forward the Service User's records to the Council on termination or expiry of the Contract.

REQUESTS FOR INFORMATION FROM THE DISCLOSURE AND BARRING SERVICE (DBS)

- 6.32 The Council shall be entitled under its duty to the DBS to respond to requests from the DBS for further information already held by the Council in relation to the Staff.
- 6.33 The Service Provider shall respond to requests from the Council within a reasonable time about Criminal Records Checks in relation to the Staff and shall cooperate with the Council to enable the Council to comply with its duty to the DBS.
- 6.34 Failure by the Service Provider to comply with the safeguarding provisions of this **Clause 6** shall entitle the Council to terminate the Contract in accordance with **Clause 41.1.5.5**.

7. OFFER OF EMPLOYMENT

- 7.1 For the duration of this Contract and for a period of twelve (12) Months after the Expiry Date or earlier termination of this Contract, the Service Provider shall not employ or offer employment to any of the Council's employees and/or personnel who have been associated with the procurement and/or the contract management of the Services. This Clause shall not affect an offer of employment which results from a response by the employee and/or personnel member to any public advertisement.

C. FINANCIAL ARRANGEMENTS

8. CONTRACT PRICE AND PAYMENT

- 8.1 The Authority shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of electronic invoices, for work completed to the satisfaction of the Authority.
- 8.2 The Authority may reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 8.2 The invoice shall include details of all calculations to show how the sums charged have been calculated (including any deductions or discounts that have been applied) and VAT information required in accordance with **Clause 10** (*Value Added Tax*). The process for payment of the Contract Price shall be as specified in **Schedule 15**.

UNDISPUTED INVOICES

- 8.3 Each uniquely numbered invoice shall contain all appropriate references including [the Council's official order number and] a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice.
- 8.4 Within thirty (30) Calendar Days of receipt of an invoice the Council will arrange payment by BACS (Bankers Automated Clearing Services) of the undisputed sums due for Services provided in accordance with the Contract. The Council will only confirm payment electronically provided an e-mail address has been provided by the Service Provider to the Council to facilitate this.
- 8.5 Payment is deemed to have been made when the Council transmits payment for processing to its BACS Bureau and the Service Provider accepts that if a non-Working Day falls near the transmission of payment that this may extend the period before the payment will arrive in the Service Provider's account.
- 8.6 Not used
- 8.7 Not used
- 8.8 Not used

DISPUTED INVOICES

- 8.9 The Council may withhold payment of any disputed amount pending agreement or determination of the Service Provider's entitlement to the disputed amount. In the event of any dispute regarding an invoice which has been notified to the Service Provider, the Service Provider shall issue a new invoice for the disputed amount and a new separate invoice for the undisputed amount.
- 8.10 Within thirty (30) Calendar Days of receipt from the Service Provider in accordance with **Clause 8.9**, the Council shall check the invoice and if the Council disputes the Service Provider's entitlement to any part of the amount claimed the Council shall notify the Service Provider in writing that part of the

amount (insofar as the Council is reasonably able to quantify it at that point in time) which the Council disputes and submit to the Service Provider such supporting evidence as it may have.

- 8.11 Once a disputed invoice has been agreed between the Parties, payment shall be due from the Council to the Service Provider within thirty (30) Calendar Days of receipt by the Council of a revised invoice ("**Due Date**"). If the Council fails to make payment by the Due Date of an undisputed invoice, the Service Provider may charge interest at the Prescribed Rate from the day falling fifteen (15) Working Days after the Due Date. The Service Provider must raise a separate invoice in order to initiate any such payment for interest.
- 8.12 Any dispute which remains unresolved between the Parties arising from the provisions of this **Clause 8** shall be resolved in accordance with **Clause 40** (*Dispute Resolution*). If the determination of any such dispute shows that:
- 8.12.1 the Council has withheld any amount which the Service Provider was entitled to be paid, the Council shall pay such amount to the Service Provider;
- 8.12.2 the Service Provider has been overpaid, the Service Provider shall repay such overpaid amount to the Council with interest in each case on that amount at the Prescribed Rate from the date on which payment should have been made (in the case of failure to pay by the Council) or from the date on which payment was made (in the case of excessive claims by the Service Provider) until all relevant monies have been paid in full and whether before or after judgment.
- 8.13 The Council may reduce payment in respect of any Services which the Service Provider has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.
- 8.14 The Service Provider shall not suspend the provision of Services for failure by the Council to pay disputed charges in connection with this Contract.
- 8.15 No debt incurred in the delivery of this Contract may be assigned without the prior written permission of the Council.

PRICE REVIEW

- 8.16 The Price may be reviewed annually. Such Price review shall be carried out in accordance with **Clauses 8.17 to 8.21** (inclusive) if requested by either Party to the Contract.
- 8.17 The Council reserves the right to request a reduction in price if the CPI or any other index which has been agreed between the Parties results in a deflationary rate in accordance with the formula specified in **Clause 8.21**.
- 8.18 The Service Provider may request an adjustment to the Price provided that:
- 8.18.1 There is a maximum of one (1) request per annum;
- 8.18.2 Any request is made in writing;
- 8.18.3 Documentary evidence is presented to support such a request;
- 8.18.4 The request follows the formula specified in **Clause 8.21** or follows a formula

specified in the in the Tender Response Document and subsequently agreed in writing by the Council;

- 8.18.5 The change to Price does not constitute a material change to the Contract.
- 8.19 Any request made under **Clause 8.18** must be received by the Council for consideration at least three (3) months prior to the annual anniversary of the Commencement Date. If approved by the Council the adjustment to the Price will come into effect on the annual anniversary of the Commencement Date and will remain fixed for twelve (12) months.
- 8.20 When considering a request under **Clause 8.18** the Council will have regard to the following:
 - 8.20.1 The general level of competitiveness of the market as any price adjustments agreed during the Contract Period should result in prices equally competitive in the current situation as at the time of tender.
 - 8.20.2 Whether the Service Provider has put in place a Continuous Improvement Plan (**Clause 4.6**) and Efficiency Gain Plan (**Clause 4.5**) which has resulted in decreasing the Service Provider's running costs in relation to this Contract and has/will result in a price reduction to the Council per annum year on year.
- 8.21 No price adjustment requested under **Clause 8.18** will be higher than the CPI, or other index agreed by the Parties, in the quarter in which the price adjustment was considered, unless there are exceptional circumstances which must be supported by documentary evidence subject to the approval of the Council. Adjustments to rates in accordance with movements in CPI or other agreed index may also be deflationary resulting in reduction in rates.

9. RECOVERY OF SUMS DUE

- 9.1 Wherever under this Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of this Contract), the Council may deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under this Contract or any other contract with the Service Provider.
- 9.2 Any overpayment by the Council to the Service Provider shall be recoverable by the Council.
- 9.3 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 obtained the prior Approval of the Council to such deduction.

10. VALUE ADDED TAX *[to be used if VAT applicable]*

- 10.1 Any consideration due in respect of taxable supplies under this Contract is exclusive of VAT.

- 10.2 If this Contract or anything in it gives rise to a taxable supply for VAT purposes on the production of a valid VAT invoice the appropriate Party shall pay to the other a sum equal to that VAT in addition to the relevant consideration.
- 10.3 The appropriate Party shall provide to the other any information reasonably requested in relation to the amount of VAT chargeable in accordance with this Contract.
- 10.4 A VAT invoice will not be valid for the purposes of charging VAT if more than forty-eight (48) Months have elapsed since the time of supply.
- 10.5 It is agreed that neither Party shall be liable for any penalties or interest arising from the accounting nor the failure of the other to account to HM Revenue and Customs at the correct time for any VAT correctly due in relation to the consideration referred to in this **Clause 10**. The Service Provider shall be liable to the Council for any losses, costs, expenses the Council incurs as a result of the Service Provider accounting nor the failure of the other to account to HM Revenue and Customs at the correct time for any VAT correctly due in connection with this Contract.
- 11. PERFORMANCE BOND/PARENT COMPANY GUARANTEE - not used.**
- 12. EURO – not used.**

D. CONTROL OF THIS CONTRACT

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 The Service Provider shall not assign or in any way dispose of this Contract or any part thereof.
- 13.2 The Service Provider shall not sub-contract the whole or any part of this Contract to any person without the prior Approval of the Council (such Approval not to be unreasonably withheld or delayed) provided the Council was made aware of the use of the specific sub-contractor in the Tender Response Document submitted to the Council.
- 13.3 If the Service Provider should sub-contract the provision of the Services or any part thereof to any person, that shall not relieve the Service Provider from any liability or obligation under this Contract and the Service Provider shall be responsible for the acts, defaults or neglect of any sub-contractor or agents in all respects as if they were the acts, defaults or neglect of the Service Provider.
- 13.4 Where the Council has Approved the use of a sub-contractor, such sub-contract(s) shall reflect the same terms of this Contract and for the avoidance of doubt the sub-contract(s) shall not contain any terms which are incompatible and/or conflict with this Contract.
- 13.5 The Council shall be entitled to:
- 13.5.1 assign, novate or otherwise dispose of its rights and obligations under this Contract either in whole or part to any Contracting Authority or Replacement Service Provider which shall not increase the burden of the Service Provider's obligations pursuant to this Contract;
- or
- 13.5.2 novate this Contract to any body established by statute in order substantially to perform any of the functions that previously had been performed by the Council which shall not increase the burden of the Service Provider's obligations pursuant to this Contract.
- 13.6 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to **Clause 13.7**, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.
- 13.7 If this Contract (whether in whole or part) is novated pursuant to **Clause 13.5** to an undertaking that is not a Contracting Authority, or if an undertaking that is not a Contracting Authority becomes the Council (for the purposes of this **Clause 13.7** both such undertakings are referred to as the "Transferee"):
- 13.7.1 The rights of termination of the Council in **Clause 41** (*Termination*) shall be available, to the Service Provider if applicable to the Transferee; and
- 13.7.2 The Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Service Provider, such consent not to be unreasonably withheld or delayed.

13.8 The Council reserves the right to jointly attend any meeting between the Service Provider and its authorised sub-contractor in connection with the Services.

14. VARIATIONS AND CHANGE CONTROL

14.1 Any very minor change to this Contract, as determined by the Contract Manager, shall be agreed by the Parties in accordance with **Schedule 3** (*Change Control Procedure*).

14.2 All changes to the Contract other than those specified in **Clause 14.1** above shall be agreed by the Parties in writing as a Variation to the Contract.

14.3 The Council may request a Variation to the Contract provided that such Variation does not amount to a material change to the Contract. If the Council wishes to request a Variation it must notify the Service Provider in writing of:

14.3.1 Details of the proposed the Variation and giving the Service Provider sufficient information to assess the extent of the Variation proposed;

14.3.2 Details of any change to the Price required in order to implement the Variation. Such Variation in the Price shall be calculated by the Service Provider and agreed in writing with the Council and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. The Council shall provide such information as may be reasonably required to enable such varied Price to be calculated. If the Price cannot be agreed, the issue will be referred for dispute resolution under **Clause 40** (*Dispute Resolution*); and

14.3.3 The time limit within which the Supplier shall respond to the request for a Variation and such time limits shall be reasonable having regard to the nature of the Variation.

14.4 No Variation of this Contract shall be binding on either Party unless made in writing and signed by duly authorised representatives of each of the Parties or sealed/executed as a deed by the Parties (as appropriate).

15. PERFORMANCE MONITORING AND CONTRACT REVIEW

15.1 Contract review meetings will be held between the Service Provider's Authorised Representative and the Contract Manager at regular intervals specified in advance by the Council to monitor the Service Provider's performance both on this Contract as a whole and against performance targets specified in **Schedule 2** (*Performance Monitoring and KPI's*) (including provisions of **Clause 4.5 to 4.6** inclusive). The Service Provider shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews and provide all reasonable information required at no additional cost to the Council.

15.2 The Service Provider shall monitor its performance in the delivery of the Services in accordance with the procedure set out in **Schedule 1** (*Specification*) and **Schedule 2** (*Performance Monitoring and KPI's*) and provide all information required therein in the format required.

15.3 Provided that the Service Provider's Authorised Representative is given reasonable notice of the same, the Service Provider's Authorised Representative shall attend meetings where an issue related to the Services is to be considered

unless an emergency situation arises, as determined by the Contract Manager in which case the Service Provider's Authorised Representative may be required to attend a meeting with the Contract Manager at short notice.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 All Intellectual Property Rights in any Council Data, specifications, instructions, data, databases, models, reports or other material:
 - 16.1.1 furnished to or made available to the Service Provider by the Council by way of an exclusive licence during the Contract Period shall remain the property of the Council;
 - 16.1.2 prepared by or for the Service Provider for use, or intended use, in relation to the performance of the Contract shall belong to the Council and the Service Provider shall not, and shall procure that the Staff shall not, (except when necessary for the implementation of the Contract) without prior 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 already in the public domain.
- 16.2 The Service Provider shall procure that the owner of the third party Intellectual Property 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-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Service Provider or to any other third party providing services to the Council, and shall be granted at no additional cost to the Council.
- 16.3 The Service Provider shall during and after the expiration of this Contract, on written demand indemnify and keep indemnified the Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this Clause by the Service Provider and/or any of its Staff, except where any such claim relates to: the use of data supplied by the Council which is not required to be verified by the Service Provider under any provision of this Contract.
- 16.4 Nothing in this Contract shall in any way derogate from the rights of the Council under any Law relating to copyright.
- 16.5 The Council shall notify the Service Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Service Provider. The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Service Provider, provided always that the Service Provider:
 - 16.5.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 16.5.2 shall take due and proper account of the interests of the Council; and

- 16.5.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 16.6 The Council shall at the request of the Service Provider afford to the Service Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Service Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Contract.

17. AUDIT RIGHTS

- 17.1 The Service Provider shall permit or procure permission for any authorised representative of the Council (including the Council's internal auditors and external auditors) to have reasonable access for audit purposes to information, documents, data, systems, the Service Provider's Premises and/or the Service Provider's Equipment used in the provision of the Services and any information, documents, reports or anything else reasonably required for inspection by the Council and/or its authorised representatives.
- 17.2 Access shall include (without limiting the generality of the foregoing):
- 17.2.1 Reasonable access to the Staff of the Service Provider who are engaged in the provision of the Services;
- 17.2.2 Inspection of the arrangements being made by the Service Provider to comply with its obligations under this Contract;
- 17.2.3 Access to such financial and other records kept as part of the provision of the Services by the Service Provider as may be reasonably required from time to time by the Council to enable the Council to verify the sums due and payable under the terms of this Contract. The Service Provider shall keep and maintain for a period of six (6) years after the Contract Period, or a longer period as may be agreed between the Parties, full and accurate records of this Contract including Services provided under it, all expenditure reimbursed by the Council and all payments made by the Council. For the avoidance of doubt this Clause is in addition to any legal requirement and does not negate the need for any such retention of records;
- 17.2.4 Access to records relating to Service Users within a timeframe specified by the Council.
- 17.3 Access may be at any time without notice provided there is good cause for access without notice and provided that the Contract Manager and/or the Contract Manager's Representatives shall comply with all reasonable requirements of the Service Provider for the purpose of protecting the confidentiality of the information of third parties and no information will be divulged to any third party save in pursuance of statutory obligations.
- 17.4 The Council reserves the right to carry out an audit jointly with the Service Provider of the performance of authorised sub-contractors used in connection with the Services.

18. RECORDS

- 18.1 The Service Provider shall maintain current and accurate records of all work carried out in the provision of the Services and shall ensure that these records shall be available for inspection by an authorised representative of the Council at all reasonable times in accordance with **Clause 17**.
- 18.2 The Service Provider shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of records irrespective of the storage media which are under the Service Provider's control as part of the Services including the Council's Data. Such safeguards shall include an obligation on the Service Provider to ensure that access to records is only obtained by such Staff as may be specifically designated by the Contract Manager and access to records by Staff is provided only as necessary in connection with the provision of Services.
- 18.3 If any records are accidentally or wilfully destroyed otherwise than by the Council or on the authorisation of the Council in the event that the Service Provider does not have in place a method for reinstatement or replacement of such records within seven (7) Working Days of receipt of a notice from the Council and without prejudice to the Council's other rights at law the Service Provider shall reimburse the Council's reasonable costs in restoring such records and/or the Council's Data such costs to be accounted for during the term of this Contract by way of rebate in subsequent invoices for the sums paid pursuant hereto.

19. PUBLICITY

- 19.1 Except with the prior Approval of the Council, the Service Provider shall not make any press announcements or publicise this Contract or any part thereof in any way.
- 19.2 The Service Provider shall take reasonable steps to ensure the observance of the provisions of **Clause 19.1** by all of its' Staff.
- 19.3 The Council shall consult with the Service Provider to inform its decision regarding any redactions required by the Service Provider prior to publication, however the final decision regarding publication shall lie with the Council taking into account the guidance for dealing with Requests.
- 19.4 The Council shall be entitled to publicise and/or release a copy or copies of the Contract in accordance with any legal obligation upon the Council and/or compliance with a Court order, including any examination of this Contract by an auditor or otherwise.
- 19.5 The Service Provider shall assist and cooperate with the Council to enable the Council to publish this Contract.

E. FREEDOM OF INFORMATION CONFIDENTIALITY AND DATA PROTECTION

20. FREEDOM OF INFORMATION

- 20.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 20.2 The Provider shall and shall procure that any Sub-Contractors shall;
- a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;
 - b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within [five] Working Days (or such other period as the Council may specify) of the Council's request; and
 - c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 20.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- 20.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorized to do so by the Council.
- 20.5 The Provider acknowledges that (notwithstanding the provisions of Clause 20) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:
- (a) without consulting the Provider; or
 - (b) following consultation with the Provider and having taken their views into account;
- 20.6 provided always that where 20.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing

that, to draw the disclosure to the Provider's attention after any such disclosure.

20.7 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

20.8 The Provider acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause 20.

21. CONFIDENTIAL INFORMATION

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

(a) treat the other party's Confidential Information as confidential[and safeguard it accordingly]; and

(b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

21.2 Clause 21.1 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 20 (Freedom of Information);

(b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

(e) it is independently developed without access to the other party's Confidential Information.

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

- 21.4 The Provider shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.
- 21.5 [At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement].
- 21.6 Nothing in this Agreement shall prevent the Council from disclosing the Provider's Confidential Information:
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - (b) to any consultant, Provider or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
 - (c) for the purpose of the examination and certification of the Council's accounts; or
 - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 21.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 21.6 is made aware of the Council's obligations of confidentiality.
- 21.8 Nothing in this clause 21 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

The Parties to this Contract each agree to keep confidential all information that ought to be considered as confidential that is shared between them (however it is conveyed or on whatever media it is stored) in relation to the Service [and/or the Service Users].

22. DATA PROTECTION

- 22.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 16 by the Customer and may not be determined by the Contractor.
- 22.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 22.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 22.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule 16, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 16);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party

- unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) Contractor 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 Customer in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

22.5 Subject to clause 22.6, the Contractor shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives 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; or
- (f) becomes aware of a Data Loss Event.

22.6 The Contractor's obligation to notify under clause 22.5 shall include the provision of further information to the Customer in phases, as details become available.

22.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 22.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

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

- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following any Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

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

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

22.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

22.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

22.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) notify the Customer in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [22] such that they apply to the Sub-processor; and
- (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

22.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

22.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

22.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989

22.15 The Provider shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

22.16 In the event that the Provider or its Staff fails to comply with this clause, the Council reserves the right to terminate the Contract by giving notice in writing to the Provider.

F. ADDITIONAL STATUTORY OBLIGATIONS AND REGULATIONS

23. BRIBERY CORRUPTION AND FRAUD

23.1 The Service Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

23.2 The Service Provider shall take all reasonable steps to prevent any fraudulent activity (including but not limited to the submission of inaccurate, incomplete, misleading or falsified management information) by the Staff, the Service Provider (including its shareholders, members and directors) and/or any of the Service Provider's suppliers, in connection with the receipt of monies from the Council.

23.3 Where the Council has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Services and payments made hereunder, the Council shall have the right of access to the Service Provider's Premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview the Staff engaged in connection with the Services.

23.4 The Service Provider:

23.4.1 shall not, and shall procure that its Staff shall not, in connection with this Contract commit a Prohibited Act; and

23.4.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

23.5 The Service Provider shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency for the purpose of compliance with the Bribery Act.

23.6 The Service Provider shall have an anti-bribery policy.

23.7 The Council shall be entitled to immediately terminate the Contract or any part of it and to recover from the Service Provider the amount of any loss resulting, plus

the value of any gift or consideration if in relation to the Contract or any other contract with the Council if the Service Provider and or any of its Staff:-

- 23.7.1 (whether with or without that Service Provider's knowledge) shall have offered, or given, or agreed to give, to any person, any gift, or consideration, inducement or reward of any kind, for doing or not doing any action (except in accordance with a permitted and lawful subcontract), or
- 23.7.2 Committed any offence under the Prevention of Corruption Acts 1889 to 1916 and/or Bribery Act 2010; or
- 23.7.3 Given any fee or reward, the receipt of which is an offence under Section 117 (2) of the Local Government Act, 1972.
- 23.8 If any breach of this **Condition 23** is suspected or known, the Service Provider must notify the Council immediately.
- 23.9 The Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation in relation to this **Clause 23** including allowing the Council to audit books, records and any other relevant documentation.

24. RE-USE OF PUBLIC SECTOR INFORMATION

- 24.1 The Service Provider acknowledges that the Council has legal responsibilities to allow re-use of public sector information in accordance with the Re-Use of Public Sector Information Regulations 2005.
- 24.2 The Council shall not authorise re-use of information which is exempt from disclosure under the FOIA and the EIR.
- 24.3 The Council shall not authorise re-use of information where the Service Provider owns the Intellectual Property Rights in that information, unless re-use is required by Law and/or compliance with a Court order.
- 24.4 Where information is jointly owned by the Council and the Service Provider and it is impossible to identify the Intellectual Property Right elements owned by each Party the Council shall consult the Service Provider before authorising re-use, however the final decision shall lie with the Council.

25. EQUAL OPPORTUNITIES

- 25.1 In the performance of the Services, the Service Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination including the Equality Act 2010 (as amended from time to time) whether in race, gender, religion, belief, disability, sexual orientation, gender reassignment, marriage, or civil partnership, age, human rights, pregnancy or maternity or otherwise in employment and shall have regard to other official guidance and code of practice in relation to promotion of equality in employment.
- 25.2 The Service Provider shall comply with the provisions of the National Minimum Wage Act 1998 (as amended) in relation to the payment of its Staff.

- 25.3 The Service Provider shall have an equal opportunities policy approved by the Council or shall have adopted the Council's own equal opportunities policy and procedures which is available on the Council's Website as may be amended from time to time and notified to the Service Provider.
- 25.4 The Service Provider shall take all reasonable steps to secure the observance of this **Clause 25** by its Staff employed in connection with the Contract.
- 25.5 The Service Provider shall provide such information as the Council may reasonably require for the purpose of assessing the Service Provider's continued compliance with this **Clause 25**. From time to time the Council may request and the Service Provider shall produce and send to the Council an audit in writing on an annual basis of an anonymised random sample of employees (the size of sample to be specified by the Council) demonstrating that the National Minimum Wage has been paid and taking into account travel time under Regulation 15 and training under Regulation 19 of the National Minimum Wage Regulations 1999.
- 25.6 If any Court or tribunal, or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) should make any finding of unlawful discrimination against the Service Provider, then the Service Provider shall immediately inform the Council of such a finding and the Council shall have the right to terminate this Contract in accordance with **Clause 41.1.5.6** if, having discussed the matter with the Service Provider, it is of the opinion that the actions of the Service Provider leading up to the finding were sufficiently serious as to undermine its compliance with this **Clause 25**.
- 25.7 In the event that the Council does not exercise its right of termination under **Clause 41 (Termination)** the Service Provider shall discuss with the Council the appropriate steps the Service Provider needs to take to prevent repetition of the unlawful discrimination and shall provide the Council with details of any such steps taken within a time limit specified by the Council.
- 26. HEALTH AND SAFETY**
- 26.1 In relation to the Staff, the Service Provider shall at all times comply with the requirement of the Health and Safety at Work Act 1974 and any other legislation or order pertaining to the health and safety of employees and others who may be affected by the Service Provider's acts or omissions in providing the Services under this Contract.
- 26.2 The Service Provider shall comply with all health and safety requirements affecting the Service Provider's Premises and when working on any Council Premises and the Council's health and safety rules for Service Providers set out in **Schedule 4 (The Council's Policy Statements)**, as appropriate. The Service Provider shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Services and the acts of its Staff. The Service Provider shall notify the Council in writing if any method or practice set out in any Method Statement within the **Schedule 6 (Tender Response Document)** shall be or shall become an unsafe method of practice.
- 26.3 The Service Provider shall throughout the Contract Period have full regard for the safety of all persons, including its Staff and shall keep any Council's Premises it uses, the Service Provider's Premises, stores, the Council's Equipment (so far as the same shall be under its control) and the Service Provider's Equipment in an orderly state appropriate to the avoidance of danger

to all persons, and shall provide and maintain at its own cost adequate warning signs when and where necessary or required by the Council or by any competent statutory or other authority for the protection or for the safety and convenience of the public or others.

- 26.4 The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Service Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work Act 1974 and provisions within this **Clause 26**.

27. WHISTLEBLOWING

- 27.1 The Service Provider confirms that the Contract Manager is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 ("**PID Act**") and declares that any of its Staff making a protected disclosure (as defined by PID Act) shall not be subjected to any detriment and the Staff will be made aware of this provision. The Service Provider further declares that any provision in any contract purporting to preclude a member of its Staff from making a protected disclosure is void.
- 27.2 The Service Provider shall review its Whistleblowing policy and procedure on an annual basis and shall reflect the Council's Whistleblowing Procedure and Guidance which can be found on the Council website in its own policy.

28. OBSERVANCE OF STATUTORY REQUIREMENTS

- 28.1 Without prejudice to the particularity of the foregoing or the particularity of the Clauses in this Contract each of the Parties shall comply with all requirements of the Law to be observed and performed in connection with the Services and a defaulting Party shall indemnify the non-defaulting Party against all actions, claims, demand, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by it or any of its Staff of this **Clause 28**. The Service Provider shall notify the Council of any breach of any statutory or other provision relating in any way to the provision of or connected with the Services.
- 28.2 The Council will consider any representation made by the Service Provider in relation to this Clause. The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Service Provider is, in the reasonable opinion of the Council, in contravention of the Law including those provisions referred to in this Clause or at any time enacted or notified to the Service Provider during the course of this Contract.
- 28.3 If the right reserved in **Clause 28.2** is exercised then the Council may employ and pay a Replacement Service Provider to provide the Services required and, where appropriate, may recover from the Service Provider any additional costs in so doing.

MENTAL CAPACITY ACT AND DEPRIVATION OF LIBERTY SAFEGUARDS

- 28.4 In relation to the Mental Capacity Act 2005 (as amended) ("**MCA**"):
- 28.4.1 The Service Provider, including its Staff shall comply with the provisions set out in the MCA when delivering Services.

- 28.4.2 The Service Provider shall have a clear written policy approved by the Council on its approach to the MCA. The policy may be reviewed by the Council from time to time and shall ensure that any reasonable amendments requested by the Council are incorporated into its diversity policy within twenty one (21) Calendar Days of request by the Council.
- 28.4.3 All Staff must be trained at induction to follow the reporting procedures specified in the policy and that training should be updated at least annually.
- 28.4.4 The Service Provider shall notify the Council immediately where a Service User may lack capacity and a Significant Decision is to be made.
- 28.5 In relation to the Deprivation of Liberty Safeguards:
- 28.5.1 The Service Provider shall have regard to the MCA Code of Practice including the supplementary DoL Safeguards Code of Practice in its role as a Managing Authority.
- 28.5.2 The Service Provider shall have a clear written policy approved by the Council and reviewed from time to time on its approach to the DoL, which includes but is not limited to the following:
- 28.5.2.1 A clear procedure for the recording of information;
- 28.5.2.2 The process for applying for an Authorisation to the Council;
- 28.5.2.3 The process once a Authorisation request has been made;
- 28.5.3 The Service Provider shall appoint a lead contact to act on behalf of the Service Provider for all purposes connected with the MCA and DoL. The Service Provider shall notify the Council of the lead contact details prior to the Commencement Date.
- 28.5.4 The Service Provider shall forthwith give notice in writing to the Council of any change in the identity, address, e-mail and telephone numbers of the person appointed as lead contact The Service Provider shall give maximum possible notice to the Council before changing its lead contact.

28.6 HEALTHWATCH

- 28.6.1 The Service Provider shall upon reasonable notice permit or procure permission for the authorised representatives of the relevant Healthwatch to have access to and observe the carrying-on of activities on premises controlled by that Service Provider and provide information to the Healthwatch.

Clause 28.6.1 shall not apply if:

- 28.6.1.1 The presence of the authorised representative on the premises or that part of it would compromise the effective provision of direct payment support services or the privacy or dignity of any person;
- 28.6.1.2 The authorised representative undertakes viewing or observation on the premises which is not related to the function of Healthwatch;

- 28.6.1.3 It is in a non-communal part of the Service Provider's Premises, is part of the Service Provider's Premises which is a Service User's home or is used as accommodation by employees;
- 28.6.1.4 A request is made to view an excluded activity; 28.6.1.5 the request applies to a part of the Service Provider's Premises where direct payment support services are not provided;
- 28.6.1.6 In the view of the Service Provider's Premises the authorised representative is not acting reasonably and proportionately, or
- 28.6.1.7 The authorised representative does not provide the Service Provider with evidence that they are authorised in accordance with Regulation 4 of the Local Involvement Networks (Duty of Service Providers to Allow Entry) Regulations 2008.
- 28.7 The Service Provider shall notify the Council within five (5) Working Days after the inspection of any notices served by Healthwatch with respect to the Service Provider, or their Staff.

29. ENVIRONMENTAL REQUIREMENTS

- 29.1 The Service Provider shall when carrying out the Service and/or working on the Service Provider's Premises and/or Council Premises perform this Contract in accordance with the Council's Environmental Policy, including a requirement to conserve energy, water, wood, paper and other resources to reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases volatile organic compounds and other substances damaging to health and the environment.

30. HUMAN RIGHTS ACT 1998

- 30.1 In the performance of the Services the Service Provider shall comply with the Human Rights Act 1998 as if it was a "Public Authority" within the meaning of the Human Rights Act 1998.
- 30.2 If a third party threatens or commences proceedings or complaint against the Council on the grounds that there has been a breach of any person's rights under the Human Rights Act 1998 in connection with this Contract, the Service Provider shall use all reasonable endeavours to co-operate with the Council so as to enable the Council:
 - 30.2.1 To achieve the aim of successfully averting or defending the proceedings or complaint; and/or
 - 30.2.2 To comply with any order, judgment or direction made pursuant to the same by any duly authorised authority.
- 30.3 The Council may additionally in its discretion determine such modifications to this Contract as may be required to enable it to comply with the provisions of the

Human Rights Act 1998 and the Service Provider shall forthwith comply with such modifications.

31. CHANGE IN LAW

31.1 The Service Provider shall take all steps reasonably necessary to ensure that the Services are performed in accordance with the terms of this Contract following any Change in Law.

GENERAL CHANGE IN LAW

31.2 The Service Provider shall comply with any General Change in Law at the Service Provider's sole risk and cost.

QUALIFYING CHANGE IN LAW

31.3 If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

31.3.1 Any necessary change in the Services and the Price of this Contract;

31.3.2 Whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;

31.3.3 Whether relief from compliance with the obligations is required, including the obligation of the Service Provider to achieve the Commencement Date, milestones or to meet any Service level requirements at any time.

31.4 As soon as practicable after any notification in accordance with **Clause 31.3** the Parties shall discuss and agree the matters referred to in that Clause and any way in which the Service Provider shall provide evidence of how it can mitigate the effect of the Change in Law, including:

31.4.1 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-contractor;

31.4.2 Demonstrating that a foreseeable Qualifying Change in Law had been taken into account by the Service Provider before it occurred;

31.4.3 Giving evidence as to how the Qualifying Change in Law has affected the cost of providing the Services; and

31.4.4 Demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

31.5 Any increase in the Price, relief from the Service Provider's obligations agreed by the Parties or any change to the Contract required pursuant to this **Clause 31** shall be considered and implemented, if agreed, in accordance with **Clause 14** (*Variations and Change Control*).

32. TRANSFER OF UNDERTAKINGS

32.1 APPLICATION OF TUPE

- 32.1.1 The Parties agree that the provisions of the Regulations may apply to this Contract.
- 32.1.2 The Parties agree that, where the identity of a Service Provider of any of the Service is changed pursuant to this Contract (including on expiry of the Term), the change shall constitute a Relevant Transfer.
- 32.1.3 On the occasion of a Relevant Transfer, the Service Provider shall comply with its obligations under the Regulations and the Directive in respect of the Transferring Employees and the Transferring Original Employees.

32.2 EMOLUMENTS AND OUTGOINGS

- 32.2.1 The Service Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees and the Transferring Original Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of any Relevant Transfer.

32.3 INDEMNITIES

- 32.3.1 The Service Provider shall indemnify the Former Service Provider and/or Replacement Service Provider from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee and any Transferring Original Employee arising out of the employment of such employee provided that this arises from any act, fault or omission of the Service Provider on or after the date of the Relevant Transfer.
- 32.3.2 The Service Provider shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee and any Transferring Original Employees arising out of the employment of such employee provided that this arises from any act, fault or omission of the Service Provider on or after the date of the Relevant Transfer.
- 32.3.3 The Service Provider shall indemnify and hold harmless the Former Service Provider and/or any Replacement Service Provider from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Service Provider) in respect of all or any of the Transferring Employees and any Transferring Original Employees arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, staff associated or other employee representative under the Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.
- 32.3.4 The Service Provider shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee

representative (whether or not recognised by the Service Provider in respect of all or any of the Transferring Employees and any Transferring Original Employees) arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, staff associated or other employee representative under the Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.

- 32.3.5 The Council shall not be liable under this **Clause 32** in the event that:-
- 32.3.5.1 any information provided in **Schedule 13** (*Transferring Employees*) and/or **Schedule 14** (*Transferring Original Employees*) for the purpose of the Regulations transpires to be inaccurate;
 - 32.3.5.2 any employee of the Service Provider who has transferred to the Service Provider's employment under the Regulations brings a claim against the Service Provider that relates wholly or partially to his or her employment with the Service Provider; and/or
 - 32.3.5.3 at the end of the Contract Period, if the Service Provider does not secure a further contract with the Council.
- 32.4.1 The Service Provider shall or shall procure that any relevant sub-Service Provider shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Relevant Transfer date up to and including the date of the expiry or earlier termination of this Contract.
- 32.4.2 The provisions of **Clauses 32.4, and 32.5** shall be directly enforceable by an affected employee against the Service Provider or any relevant sub-contractor and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Service Provider or sub-contractor under those Clauses in his/her own right under Section 1(1) of the Contracts Rights of Third Parties Act 1999.
- 32.5 SERVICE PROVIDER PENSION SCHEME**
- 32.5.1 Where the Service Provider or its sub-contractor is prevented from offering all or some of the Eligible Employees membership or continued membership of an occupational pension scheme, the Service Provider shall or shall procure that any relevant sub-Service Provider shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Relevant Transfer date. Such an occupational pension scheme must be:
- 32.5.1.1 established no later than three (3) months prior to the date of the Relevant Transfer; and
 - 32.5.2 The Service Provider shall and shall procure that each relevant sub-Service Provider shall:
 - 32.5.2.1 maintain such documents and information as will be reasonably required to manage the pension rights of and 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 Eligible Employees);

- 32.5.2.2 promptly provide to the Council such documents and information mentioned in **Clause 32.5.2.1**, which the Council may reasonably request in advance of the expiry or termination of this Contract; and
- 32.5.3 fully cooperate (and procure that the trustees of the Service Provider's scheme shall fully cooperate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and 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 expiry or earlier termination of the Contract.

32.6 **SUB-CONTRACTORS**

- 32.6.1 In the event that the Service Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its subcontractor on the same terms as those imposed on it pursuant to this **Clause 32**.
- 32.6.2 The Service Provider authorises the Council to use all the information provided pursuant to **Clause 32.6.1** for the purposes of its business or for informing any potential tenderer for the Services or any part thereof and shall enable and assist the Council and such other persons as the Council may determine to communicate with and meet the Staff and their trade unions or other employee representatives or staff associations as when and where the Council may determine.
- 32.6.3 The Council shall treat such information as Confidential Information, save as required by Law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Service in succession to the Service Provider.
- 32.6.4 The Service Provider warrants that until the handover on the Relevant Transfer Date of the Transferring Employees and Transferring Original Employees to the Replacement Service Provider in accordance with the provisions of this **Clause 32**, it shall provide sufficient Staff to cover provision of the Services and failure to comply with the provision of this Clause shall result in a substantial breach of Contract by the Service Provider and the Service Provider shall indemnify the Council against any liability arising from failure to comply with this **Clause 32.6.4**. For the avoidance of doubt, this **Clause 32.6.4** is without prejudice to any other remedies available to the Council whether under this Contract or otherwise.

32.7 **TUPE COMPLIANCE ON TERMINATION**

- 32.7.1 During the twelve (12) months prior to the Expiry Date or after the Council has given notice to terminate this Contract and within twenty eight (28) Calendar Days of being so requested to do so, the Service Provider shall fully and accurately disclose to the Council any and all information in relation to all persons engaged in providing the Service including:
 - 32.7.1.1 a list in electronic format of each employee employed by the Service Provider in the provision of the Service including each employee's start date;

- 32.7.1.2 a list of agency workers, agents and independent service providers engaged by the Service Provider in the provision of the Service;
- 32.7.1.3 the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of each employee included in the list to be provided under **Clause 32.7.1.1**; and
- 32.7.1.4 The terms and conditions of employment of each Transferring Employee; their age and identity; the information that must be included in the employee's written statement of employment particulars under s.1 of the Employment Rights Act 1996; information on any disciplinary procedure taken in relation to the employee or grievance procedure taken by the employee within the previous two (2) years in relation to which the ACAS code of practice on disciplinary and grievance procedures applies; information on any Court or tribunal claim brought by the employee against the transferor within the previous two (2) years and any potential claim against the transferee arising out of the employee's employment with the transferor; information about any collective agreements that will have effect after the transfer in relation to the Transferring Employee.
- 32.7.2 During the twelve (12) months prior to Expiry Date or where notice to terminate this Contract for whatever reason has been given, the Service Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:
 - 32.7.2.1 vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Service;
 - 32.7.2.2 materially increase or decrease the number of employees employed in connection with the Service;
 - 32.7.2.3 increase the remuneration of employees;
 - 32.7.2.4 assign or re-deploy any employee employed in connection with the Service to other duties unconnected with the Service; or
 - 32.7.2.5 otherwise improve terms and conditions of employment of any of its employees without economic justification towards the Expiry Date with a view to discouraging other potential bidders.

G. INSURANCE AND INDEMNITY

33. INSURANCE

- 33.1 Without prejudice to the general indemnity given at **Clause 34 (Indemnity)** and without thereby limiting its responsibilities under this **Clause 33** the Service Provider shall insure with a reputable insurance company against any damage loss or injury which may occur to any property or to any person by or arising out of or in consequence of the Service Provider's execution of its obligations under this Contract or in carrying out of this Contract and shall take out and maintain the following insurance policies:-

PUBLIC LIABILITY INSURANCE

- 33.1.1 Public liability insurance of a minimum of [five million pounds (£5,000,000)] or such greater sum as the Service Provider may choose in respect of any one incident.

EMPLOYERS LIABILITY INSURANCE

- 33.1.2 Employers Liability Insurance of a minimum of [ten million pounds (£10,000,000)] or such greater sum as the Service Provider may choose in respect of any one incident.

PROFESSIONAL INDEMNITY INSURANCE

- 33.1.3 Professional Indemnity Insurance in respect of the Service Provider's obligations to provide the Services with reasonable skill care and diligence in an amount of not less than two million pounds (£2,000,000) for any one occurrence or a series of occurrences arising out of any one event for a period of twelve (12) years from the completion date of this Contract.

- 33.2 Should the Service Provider cease to be insured due to such insurance ceasing to be available to service providers of the same profession or discipline the Council may but not unreasonably or vexatiously without prejudice to any accrued rights or remedies under this Contract terminate this Contract by notice in writing having immediate effect.

- 33.3 The Service Provider shall supply to the Council at the commencement of the Contract forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming that the Service Provider's insurance policies comply with **Clauses 33.1.1, 33.1.2 and 33.1.3.**

34. INDEMNITY

- 34.1 None of the Parties shall exclude or limit its own liability for:-

- 34.1.1 Death or personal injury caused by its negligence, or that of its own personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors);

- 34.1.2 Acts of fraud or fraudulent misrepresentation by it or its personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors); or

- 34.1.3 Breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

- 34.2 The Service Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its employees and agents, (unless caused as a result of default or negligence by the Council or the Council's employees or agents) against all liabilities, demands, proceedings, actions, damages, costs (including legal costs), losses, claims, charges, expenses, consequential loss or damage and any other liabilities whatsoever in any way arising out of or in connection with the Services and/or this Contract and including but not limited to -:

- 34.2.1 Any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any

other loss which is caused directly or indirectly by any act or omission of the Service Provider;

- 34.2.2 The Service Provider's failure to provide all or any part of the Service in accordance with the Contract or at all;
 - 34.2.3 Any breach by the Service Provider of any of the provisions of the Contract;
 - 34.2.4 The use or occupation by the Service Provider of any of the Council's Premises;
 - 34.2.5 The use by the Service Provider of the Council's Equipment;
 - 34.2.6 Any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Service Provider.
- 34.3 The liability set out in **Clause 34.2** shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services so far as the management of, or instructions issued to, such third parties is the responsibility of the Service Provider.

H. REMEDIES FOR POOR PERFORMANCE AND TERMINATION

35. FORCE MAJEURE

- 35.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out all or a material part of its obligations under this Contract by that Force Majeure Event.
- 35.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party before the expiration of twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 35.3 Within forty-eight (48) hours, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 35.4 If the Force Majeure continues for more than thirty (30) Calendar Days the Council may terminate this Contract by giving thirty (30) Calendar Days' written notice. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Contract occurring prior to such termination.
- 35.5 This **Clause 35** does not affect the Council's rights to terminate this Contract in accordance with **Clause 41** (*Termination*) in respect of any ground for termination which does not arise from a delay in or failure of the Service Provider in the performance of its obligations under this Contract where such delay or failure has not arisen as a result of a Force Majeure Event.

36. INDUSTRIAL ACTION

- 36.1 The Service Provider shall give the maximum possible advance warning of prospective industrial action and/or industrial dispute by its Staff likely to affect the performance of this Contract adversely.
- 36.2 In the event that:
- 36.2.1 Industrial action is taken by any Staff member such as that the provision of the Services are, in the opinion of the Council, materially disrupted; or
- 36.2.2 Action is taken by the Service Provider so as to prevent its Staff from providing the Services, the Service Provider shall make every attempt to ensure its Staff continue to provide the Services in accordance with the Contract. The occurrence of industrial action by the Staff shall not relieve the Service Provider from any of its obligations set out in this Contract. The Council reserves the right to make alternative arrangements for the provision of the Services and to charge the Service Provider for any difference in resultant cost including the cost of a Replacement Service Provider or terminate this Contract by notice in writing to the Service Provider in accordance with **Clause 41.1.4.1**.

37. BUSINESS CONTINUITY

- 37.1 The Parties shall agree no later than sixty (60) Working Days after the Commencement Date a Business Continuity Plan which shall ensure that the Service Provider can restore or regenerate full business activity in the event of an internal or external threat within a reasonable period of time as specified by the Council.
- 37.2 The Business Continuity Plan shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of a major failure of the Services or any part thereof, as determined by the Contract Manager.
- 37.3 The Service Provider shall review and assess the Business Continuity Plan every twelve (12) Months and produce a report to the Council of the success or failure. If the Council is not satisfied with the Business Continuity Plan provided by the Service Provider, the Council reserves the right to ask for the review and assessment to be repeated at the Service Provider's expense.
- 37.4 Any costs incurred in the preparation and implementation of the Business Continuity Plan shall be the responsibility of the Service Provider.

38. COMPLAINTS

- 38.1 The Service Provider shall ensure that it has a complaints procedure in place from the Commencement Date in respect of complaints about the Services, which shall be approved by the Council from time to time.
- 38.2 The Service Provider shall ensure that the information specified below is included in its complaints procedure:
- 38.2.1 That the Service being provided is being provided on behalf of the Council;
- 38.2.2 That in the event any Service User of the Services, or any member of the general public is dissatisfied with the manner in which or the standard to which the Service is being provided, they may (but only after exhausting the Service Provider's complaints procedure) make a formal complaint to the Contract Manager; and
- 38.2.3 The address and telephone number of the Contract Manager.
- 38.3 The Service Provider shall notify the Council within two (2) Working Days if it receives any complaints in relation to the Services with details of how the Service Provider proposes to resolve the complaint. If the complaint is not resolved to the satisfaction of the Contract Manager within the time specified by the Contract Manager, the Contract Manager may take action in accordance with **Clause 39** (*Remedies for Poor Performance*).

39. REMEDIES FOR POOR PERFORMANCE

- 39.1 If the Contract Manager informs the Service Provider's Authorised Representative in writing that the Council considers that any part of the Services provided do not meet the requirements of this Contract or differ in any way from specified requirements, and this is other than as a result of default or negligence on the part of the Council, and the breach or failure to provide any all or any part of the Service is capable of remedy, the Service Provider shall, at its own

expense produce a plan of corrective action specifying timescales for the plan of action to be put into place (the "Action Plan").

- 39.2 If the Service Provider fails to produce the Action Plan within the time limit specified by the Council or if there are any elements of the Action Plan that the Contract Manager disagrees with then the Contract Manager shall specify amendments to the Action Plan and the Service Provider shall pay to the Council the costs of preparation of any such amendments made by the Council.
- 39.3 Approval of the Action Plan will be confirmed in writing by the Contract Manager to the Service Provider's Authorised Representative.
- 39.4 Improvements in performance will be monitored in accordance with the Action Plan by each of the Parties.
- 39.5 If the Service Provider fails to satisfy the Council within the time limit specified by the Council that the areas of concern raised in the Action Plan have been remedied then the Council shall be entitled to terminate all or any part of this Contract by notifying the Service Provider in writing of the problem and giving notice to terminate in thirty (30) days from the date of the notice or in respect of the Service or any part of the Service and the provisions of **Clause 42** (*Consequences of Termination*) of this Contract shall apply.
- 39.6 The Council may at its sole discretion stop making new placement of Service Users with the Service Provider until satisfactory resolution of the default in accordance with this **Clause 39**.
- 39.7 Without prejudice to any other rights and remedies the Council may have pursuant to this Contract the Service Provider shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Service Provider's delay in the performance of its obligations under this Contract and which delay the Service Provider has failed to remedy following reasonable notice from the Council.
- 39.8 If the breach by the Service Provider or failure to provide all or any part of the Services is not capable of remedy, as determined by the Contract Manager, it shall be dealt with in accordance with **Clause 41** (*Termination Clause*)

40. DISPUTE RESOLUTION

- 40.1 The Parties shall each use reasonable endeavours to resolve any dispute by means of prompt bona fide discussion first between the Contract Manager and the Service Provider's Authorised Representative. Failure to agree a settlement within three (3) Working Days shall result in the dispute being escalated to both Parties managerial level appropriate to the dispute in question. In the event that such a dispute is not resolved within three (3) Working Days, thereafter it shall be escalated to each Parties appropriate director for resolution. The respective directors shall meet within four (4) Working Days to resolve the dispute. Failure to reach a settlement shall invoke the rest of this **Clause 40**.
- 40.2 Nothing in this **Clause 40** 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.

- 40.3 If the dispute cannot be resolved by the Parties pursuant to **Clause 40.1** the dispute shall be referred to mediation pursuant to the procedure set out in **Clause 40.5** unless:
- 40.3.1 The Council considers that the dispute is not suitable for resolution by mediation;
or
- 40.4.2 The Service Provider does not agree to mediation.
- 40.4 The performance of this Contract by the Service Provider shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and its Staff shall comply fully with the requirements of this Contract at all times.
- 40.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 40.5.1 a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he/she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
- 40.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him/her 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.
- 40.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 40.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be confirmed in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 40.5.5 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 agreement without the prior written consent of both Parties.
- 40.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 40.6 Unless agreed otherwise in any mediation each Party shall bear its own costs of such mediation.

41. TERMINATION

- 41.1 The Council may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Contract in whole if any one of the events set out in this **Clause 41.1** occurs -:
- 41.1.1 If the Service Provider breaches the provisions of **Clause 23** (*Bribery, Corruption, Gratuities and Fraud*);
- 41.1.2 Has offered or agreed to pay or gave or did pay or give any sum of money inducement or valuable consideration directly or indirectly to any person in respect of an act or omission in relation to any other tenderer or proposed tenderer for the Services;
- 41.1.3 If at any time it is discovered by the Council that the Service Provider:-
- 41.1.3.1 Has fixed or adjusted the amount of its tender for this Contract by or in accordance with any Contract or arrangement with any other person; or
- 41.1.3.2 Not used;
- 41.1.3.3 Entered into any contract or arrangement with any other person that it would refrain from tendering or as to the amount of any tender to be submitted; or
- 41.1.4 If the Service Provider:-
- 41.1.4.1 ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services;
- 41.1.4.2 the majority of shares carrying a right to vote in the Service Provider or its Holding Company are acquired by a person who is not at the Commencement Date a majority shareholder;
- 41.1.4.3 has an application made under the Insolvency Act 1986 in its respect to the Court for the appointment of an administrative receiver;
- 41.1.4.4 has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 41.1.4.5 has a liquidator receiver or manager of its business or undertaking duly appointed;
- 41.1.4.6 has an administrative receiver as defined in the Insolvency Act 1986 or the Companies Act 2006 appointed;
- 41.1.4.7 has a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of the Service Provider's affairs approved in accordance with the Insolvency Act 1986;
- 41.1.4.8 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;

- 41.1.4.9 is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitles the Court to make a winding-up order;
- 41.1.4.10 has an administration order made in respect of it;
- 41.1.4.11 the Service Provider undergoes a change of control, within the meaning of section 450 of the Corporation Tax 2010, which in the opinion of the Council impacts adversely and materially on the performance of this Contract. The Council at its sole discretion may appoint a Replacement Service Provider on the same terms and conditions as this Contract as a result of corporate restructuring, including takeover, merger, acquisition or insolvency of the Service Provider provided that the Replacement Service Provider meets the pre-qualification criteria *and* the change in service provider does not result in any other substantial amendments to the Contract.
- 41.1.5 The Council may terminate this Contract in whole or in part by notice in writing with immediate effect if at any time the Service Provider-:
 - 41.1.5.1 fails to achieve at least 50% of the KPIs for a period of six (6) consecutive Months or in two (2) or more quarters in any rolling twelve (12) Month period;
 - 41.1.5.2 fails to comply with any statutory duty or requirement in so far as such duty or requirement affects or relates to the Services, including the loss of any statutory licence or certification which is required for the performance of the Services or as otherwise required by the Contract;
 - 41.1.5.3 does anything which has the effect of putting the Council in breach of a statutory duty or any licence held by the Council;
 - 41.1.5.4 fails to comply with or breaches **Clause 22** (*Data Protection*);
 - 41.1.5.5 fails to comply with or breaches the safeguarding provisions of **Clause 6**;
 - 41.1.5.6 fails to comply with or breaches **Clause 25** (*Equal Opportunities*);
 - 41.1.5.7 fails to provide a Guarantee or Performance Bond approved by the Council before the Commencement Date in accordance with **Clause 11** (*Performance Bond or Guarantee*) or prior to the commencement of any extension of the Initial Term in accordance with **Clause 3** (*Duration of Contract*).
 - 41.1.5.8 If at any time the Service Provider commits a Persistent Breach or Persistent Breaches of any of the terms of this Contract, and where the Persistent Breach or Persistent Breaches are capable of remedy but are not remedied by the Service Provider in accordance with **Clause 39** (*Remedies for Poor Performance*).
 - 41.1.5.9 If at any time the Service Provider commits a substantial breach of any of the terms of this Contract and the Contract Manager reasonably regards such a breach as incapable of being remedied.

41.1.6 BREAK CLAUSE

- 41.1.6.1 In addition to its rights of termination under the Contract, the Council shall be entitled to terminate this Contract by giving to the Service Provider not less than three (3) Months advance notice to that effect.
- 41.1.6.2 In the event of such notice being given the Council shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as it considers expedient:
- 41.1.6.2.1 to direct the Service Provider, where the Service has not been commenced, to refrain from commencing the Service;
- 41.1.6.2.2 to direct the Service Provider to complete in accordance with the Contract all or any part of the Service, which shall be paid for as specified in with the Contract for Services provided in accordance with the Contract.
- 41.1.6.3 Neither Party shall be liable to the other for the consequences of exercising its rights to terminate this Contract using this **Clause 41**.

41.1.7 TERMINATION WHERE THE COURT DECLARES THIS CONTRACT INEFFECTIVE

- 41.1.7.1 If for any reason the Court declares this Contract ineffective (or where the Court sets this Contract aside) the Council shall pay to the Service Provider the sum equal to:
- 41.1.7.2 The reasonable costs incurred by the Service Provider during the procurement (tender process) of this Contract;
- 41.1.7.3 The Price for Services already provided under this Contract from the Commencement Date of the date of such declaration of ineffectiveness;
- 41.1.7.4 Reasonable costs incurred by the Service Provider in assisting the Council to prepare its defence to the claim of ineffectiveness brought against it;
- 41.1.7.5 The Council reserves its right to request the Service Provider to provide documentary evidence to support its claim and mitigate its losses before any payments in this **Clause 41.1.7** is paid by the Council to the Service Provider.
- 41.1.7.6 For the avoidance of doubt **Clause 41.1.7** is without prejudice to any other remedies available to each of the Parties whether under this Contract or otherwise.
- 41.1.7.7 The sums paid to the Service Provider by the Council under **Clause 41.1.7** above shall be in full and final settlement of the Council's liability for any loss and/or expense incurred by the Service Provider as a result of the Court declaring this Contract ineffective.
- 41.1.7.8 If the declaration of ineffectiveness by the Court results in the termination of this Contract, then the provisions of **Clause 42** (*Consequences of Termination*) shall apply in so far as they are compatible with the provisions of this Clause.

- 41.1.7.9 Reference to the declaration of ineffectiveness under this Clause shall have the meaning ascribed under The Public Contracts Regulations 2015 (as amended).
- 41.1.8 If a notice to terminate is served by the Council under this **Clause 41**, the effective date of the notice to terminate may be extended at the sole discretion of the Council to enable all Service Users to be placed by the Service Provider in suitable alternative care accommodation. The Service Provider shall ensure minimum disruption to Service Users in the event that the Contract is terminated and shall use its best endeavours to support the Council in placing Service Users in suitable alternative accommodation.

42. CONSEQUENCES OF TERMINATION

- 42.1 If the Contract is terminated in accordance with **Clause 41** (*Termination*) :-
- 42.1.1 The Service Provider shall forthwith cease to perform the Services;
- 42.1.2 The Service Provider shall pay in full and promptly the cost of providing the Service or having the Service provided or any part thereof as would have been provided by the Service Provider during the remainder of the Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to the Service Provider for providing the Services if the termination is due to an act, omission, default, negligence or breach of the Service Provider or any of its Staff;
- 42.1.3 The Service Provider shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Council;
- 42.1.4 the cessation by the Service Provider of use of the Council's Data and the handing over to the Council of a complete and uncorrupted version of all Council Data and all records, information, documents whatsoever held including without limitation Service User records, correspondence with Staff, the Council's service departments, [any Service Users] and any other relevant third party and [the Council's Equipment and the Council's Premises] and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Council (in which event the Council shall reimburse to the Service Provider the Council's reasonable data conversion expenses) whether such Council Data is on hard copy or on a disk or on any computer systems.
- 42.2 If the Service Provider fails to comply with **Clause 42.1**, the Council may recover possession thereof and the Service Provider grants a licence to the Council and its authorised representatives to enter (for the purposes of such recovery) any of the Service Provider's Premises where any such items may be held.
- 42.3 the Service Provider shall at the sole option of the Council either return to the Council in an agreed form timescale and location as specified by the Council or destroy the Council's Data and all copies thereof and the Council's Premises and the Council's Equipment as instructed by the Council.
- 42.4 If the Service Provider is unable or fails to provide the Services or any part thereof in accordance with this Contract, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due to the Service

Provider under the Contract or shall be recoverable from the Service Provider by the Council as a debt. The Council's right under this **Clause 42.4** shall be without prejudice to any other rights or remedies which it may possess.

- 42.5 The Council shall be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination of the Contract, to deduct the same from any sum or sums which would but for **Clause 41** (*Termination*) have been due from the Council to the Service Provider under the Contract or any other contract or be entitled to recover the same for the Service Provider as a debt. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof when the total costs, loss and/or damage resulting or arising out of the termination of the Contract have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would but for **Clause 41** (*Termination*) have been due to the Service Provider, any balance shown as due to the Council shall be recoverable as a debt or alternatively, the Council, subject to the **Clause 9** (*Recovery of Sums Due*), shall pay the Service Provider any balance due to the Service Provider;
- 42.6 The rights of the Council under this **Clause 42** are in addition to and without prejudice to any other rights or remedies the Council may have against the Service Provider directly or pursuant to any guarantee and/or performance bond or indemnity.
- 42.7 Expiry or earlier termination of the Contract shall be without prejudice to the rights and remedies of the Service Provider and the Council accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either such Party to recover any amount outstanding at the termination or expiration.
- 42.8 Expiry or earlier termination of this Contract shall not effect the continuing rights and obligations of the Parties under **Clauses 1** (*Definitions*), **2** (*Interpretation and Construction*), **5** (*Service Provider's Warranty, Responsibility and Knowledge*), **16** (*Intellectual Property Rights*), **17** (*Audit Rights*), **20** (*Freedom of Information*), **21** (*Confidentiality*), **22** (*Data Protection*), **23** (*Bribery, Corruption and Fraud*), **24** (*Re-Use of Public Sector Information*), **32** (*Transfer of Undertakings*), **34** (*Indemnity*), **42** (*Consequences of Termination*), **43** (*Exit and Handover Arrangements*) or under any other provision of this Contract that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination.
- 43. EXIT AND HANDOVER ARRANGEMENTS**
- 43.1 The Service Provider shall not charge the Council or any Replacement Service Provider for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this **Clause 43** on expiry or earlier termination.
- 43.2 The plan for the orderly handover of the Services to the Council or its Replacement Service Providers following termination or expiry of this Contract shall include compliance by the Service Provider of the provisions specified in **Clause 42**.

- 43.3 The Service Provider shall forthwith upon the request of the Contract Manager, supply to the Council any information reasonably specified by the Council as being necessary for the re-tendering of this Contract.
- 43.4 On giving written notice to the Service Provider and after twelve (12) months of the date of the expiry or earlier termination of this Contract unless the individual is responding to a job advert the Council shall have the right:
- 43.4.1 To offer any of the Staff who has previously been involved in performing the Services employment or a contract for services with the Council and the Service Provider agrees that if such person accepts such offer the Service Provider shall release such person from any contractual restriction with it which such acceptance may otherwise contravene;
- 43.4.2 To require the Service Provider to provide for a period of four (4) Months following the date of expiry or termination such advice assistance and co-operation as the Council may reasonably require to enable the Council to provide the Services in-house or to procure their provision by a Replacement Service Provider.

I. GENERAL PROVISIONS

44. NOTICES

- 44.1 Except as otherwise expressly provided within this Contract, no notice from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
- 44.2 Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, registered post or by the recorded delivery service) such letters shall be addressed to the other Party in the manner referred to in **Clause 44.3**. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was hand delivered or posted or sooner where the Party acknowledges receipt of such letters.
- 44.3 For the purposes of **Clause 44.2**, the address of each Party shall be as follows:-
- 44.3.1 The Council:
Integrated Commissioning Support
Southend-on-Sea Borough Council
Civic Centre,
Victoria Avenue,
Southend-on-Sea,
Essex, SS6 6ER
- 44.3.2 The Service Provider:
[post title]
[address for service]

44.4 Either Party may change its address for service by serving a notice in accordance with this **Clause 44**.

45. LEGAL PROCEEDINGS

45.1 If requested to do so by the Contract Manager the Service Provider shall provide to the Council within the timescale set by the Contract Manager any relevant information (including but not limited to documents and statements from the Service Provider and/or its Staff) in connection with any legal inquiry dispute resolution or Court proceedings in which the Council may become involved or any relevant Council internal disciplinary hearing arising out of the provision of the Services or the Service Provider's presence on any of the Council's Premises and shall give evidence in such inquiries arbitration or proceedings or hearings.

45.2 Where the Service Provider or any of its Staff become aware of any incident accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services it shall notify the Contract Manager immediately in writing. Such notification shall include all relevant information to enable the Contract Manager to investigate the matter fully.

45.3 If requested to do so by one Party to the other Party, the other Party shall provide, at no cost to the recipient, any relevant information in connection with any legal enquiry, relevant disciplinary hearing, dispute resolution or Court proceedings in which it may become involved arising out of the provision of the Services under this Contract. This **Clause 45.3** shall not apply to disputes between the Council and the Service Provider, which shall be dealt with in accordance with **Clause 40** (*Dispute Resolution*).

45.4 The Service Provider shall indemnify and keep indemnified the Council against all and any liabilities incurred by reason of the Service Provider's failure to meet any timescale specified in Law and/or any reasonable timescale specified by the Council in connection with this **Clause 45**.

46. LOCAL GOVERNMENT OMBUDSMAN

46.1 In the event of a complaint to the Local Government Ombudsman involving activities the subject of this Contract, the Service Provider shall at its own expense give to the Council and to the Local Government Ombudsman every assistance in the investigation of the complaint.

46.2 Where any investigation by the Local Government Ombudsman takes place the Service Provider shall:

46.2.1 Provide any information requested in the timescale specified;

46.2.2 Attend any meetings as required and permit its Staff to attend;

46.2.3 Promptly allow access to an investigation of any documents deemed to be relevant to the investigation and/or the complaint;

46.2.4 Allow itself and any Staff deemed to be relevant to be interviewed;

- 46.2.5 Allow itself and any of its Staff to appear as witness in any ensuing proceedings; and
- 46.2.6 Co-operate fully and promptly in every way required by the Local Government Ombudsman during the course of that investigation.
- 46.3 Where any financial redress compensation or award is recommended by the Local Government Ombudsman in the course of or following any investigation, or is agreed to by the Council following a complaint to the Local Government Ombudsman, and which investigation or complaint arises directly or indirectly out of the provision of the Services or any other action or omission by the Service Provider and/or its Staff then the Council shall be entitled to recover the cost of that financial redress compensation or award from the Service Provider.
- 46.4 The Service Provider shall indemnify and keep indemnified the Council against all and any liabilities incurred by reason of the Service Provider's failure to meet any timescale specified in Law and/or any reasonable timescale specified by the Council in connection with this **Clause 46**.

47. AGENCY

- 47.1 Neither the Service Provider nor its Staff shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by this Contract.
- 47.2 Neither the Service Provider nor its Staff shall say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the Council.
- 47.3 Nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of this Contract caused by negligence of the Council and/or its staff.

48. ENTIRE AGREEMENT

- 48.1 Except where expressly provided in this Contract this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations communications negotiations and understandings (whether oral or written) concerning the subject matter of this Contract.
- 48.2 Nothing in this **Clause 48** is intended to exclude or limit liability for any statement representation or warranty made fraudulently or to any provision of this Contract which was induced by fraud for which the remedies available shall be all those available under the law governing this Contract.

49. CONFLICT OF INTEREST

- 49.1 The Service Provider shall take appropriate steps to ensure that neither it nor any of its Staff are placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Service Provider or such persons and the duties owed to the Council under the

provisions of this Contract. The Service Provider will disclose to the Council full particulars of any such conflict of interest which may arise and take all reasonable steps to remove any such conflict to the satisfaction of the Contract Manager.

50. USE OF THE COUNCIL'S CREST OR LOGO

50.1 The Service Provider shall not use the Council's crest either on its own or in combination with the Service Provider's crest or logo nor cause or permit it to be used, without prior written permission from the Council.

51. LIEN OR ENCUMBRANCE

51.1 The Service Provider will not create, or allow any other person to create, any lien or encumbrance on any property belonging to the Council, the Council's Equipment and/or on the Council's Premises.

52. SEVERANCE

52.1 If any term condition or provision contained in 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 or enforceability of the remaining parts of this Contract.

52.2 Pursuant to **Clause 52.1**, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which as nearly as possible validly gives effect to their intentions as expressed in this Contract.

52.3 The obligations of the Parties under any invalid, unlawful or unenforceable provision of this Contract shall be suspended during the negotiations referred to in **Clause 52.2**. Failure to agree on such provision as aforesaid within three (3) months of commencement of negotiations shall entitle either Party to terminate this Contract.

53. WAIVER

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

53.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of **Clause 44 (Notices)**.

53.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

54. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

54.1 No person who is not a party to this Contract shall have any right to enforce any term of this Contract, which expressly or by implication, confers a benefit on him

without the prior consent in writing of both Parties, with the exception of the rights under **Clause 32.4.2**. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contract (Rights of Third Parties) Act 1999.

55. LAW AND JURISDICTION

55.1 The Parties accept the exclusive jurisdiction of the English Courts and agree that the Contract, and all non-contractual obligations and other matters arising from or connected with the Contract, are to be governed and construed according to English Law.

J. CONTRACT SPECIFIC CONDITIONS

56. USE OR OCCUPATION OF COUNCIL'S PREMISES - Not used.

57. SERVICE PROVIDER'S EQUIPMENT AND COUNCIL'S EQUIPMENT

57.1 The Service Provider shall be responsible for the provision and maintenance of the Service Provider's Equipment during the Contract Period.

57.2 The Service Provider shall be responsible for the security of the Service Provider's Equipment and the Council shall be under no liability in respect thereof including where the Service Provider's Equipment is used and/or stored on Council Premises save where any damage or loss is caused to the Service Provider's Equipment by the acts or omissions of the Council.

57.3 The Service Provider shall ensure that any hired or leased equipment is clearly marked with the name of the hirer or owner.

57.4 The Service Provider shall upon request made by the Contract Manager at any time in relation to any item of Service Provider's Equipment used in the provision of the Service, forthwith notify Contract Manager in writing the name and address of the owner thereof.

57.5 Where in the opinion of the Council, any Service Provider's Equipment used in the performance of the Service does not comply with the requirements of this Contract, the Council may serve on the Service Provider a notice in writing requiring the Service Provider to remove such Service Provider's Equipment within such time as may be specified in the notice and to substitute proper and suitable Equipment.

57.6 The Council reserves the right to reject any Service Provider's Equipment which, in the opinion of the Council, will not achieve the standard of the Services or is unsafe.

57.7 The Service Provider shall maintain in a safe, serviceable and clean condition, all Service Provider's Equipment used in the provision of Service on the Service Provider's Premises and/or Council's Premises and on request shall allow the same to be inspected by the Contract Manager.

57.8 The Service Provider shall keep all hazardous Service Provider's Equipment and any Council Equipment provided for use by the Service Provider under proper

control and safekeeping and shall ensure that all Service Provider's Equipment and Council's Equipment is properly and clearly labelled.

57.9 Where adequate secure storage space is not provided by the Council at the Council's Premises, the Service Provider shall provide at its own expense, reasonable and suitable storage for all Service Provider's Equipment and Council's Equipment. Such storage may be provided on the Council Premises only with the consent of the Council, and in accordance with any restrictions or requirements he may impose. If secure storage facilities are not available on the Service Provider's Premises or Council's Premises (as appropriate), the Service Provider shall ensure that all Service Provider's Equipment and Council's Equipment are removed from the Service Provider's Premises or Council's Premises (as appropriate) as soon as work there ceases.

57.10 The Service Provider must return all the Council's Equipment to the Council on expiry or earlier termination of the Contract.

58. LIQUIDATED DAMAGES

58.1 Liquidated damages shall apply to the Contract and shall be calculated in accordance with the liquidated damages provisions of Schedule 2 Performance Monitoring and KPI's).

SCHEDULE 1: Specification

Please see separate documents titled:

Schedule 1: Specification for Dynamic Purchasing System for the Provision of Accommodation and Support for Care Leavers

SCHEDULE 2: Performance Monitoring and KPI's

Please see APPENDIX 1 of Schedule 1: the Specification for the Key Performance Indicators for the provision of accommodation and support for Care Leavers

To be agreed with the successful Provider and added after contract award.

SCHEDULE 3: Change Control Procedure

The change control procedure should be used by the Council and service provider to enable changes to the contract, to provide clarity and documentary evidence of the change, and agreed actions:

It is the intention of Southend-on-Sea Borough Council (the Council) and the service provider that the Services will be administered and delivered in an efficient manner and the Council and the service provider may during the term of this Agreement suggest changes or modifications to the other to achieve this aim. Where any provision of this Agreement provides that the mechanism set out in this Schedule should apply, or where the Council or the service provider proposes any change or modification of the design, specification, quality or quantity of the Services or the addition, omission or substitution of any work or the time or location at which the Services will be performed, the following provisions shall apply:

1. The party wishing to instigate any change or modification shall give written notice to the other party of the proposed change or modification, such notice to set out that party's proposals in reasonable detail. This notice shall be marked for the attention of the Contract Manager at the Council or the Key Persons at the service provider as appropriate.
2. The party on whom any notice under paragraph 1 is served shall, within the Period for Reply of receipt of that notice, give notice to the other party either accepting or rejecting the proposal.
3. If notice is sent under paragraph 2 accepting the proposal, the parties will as soon as reasonably practicable complete and sign a change control form. Any agreed change or modification will take effect on the date of signature of that form by the Contract Manager and a Key Person for each of the parties or on such other date as is set out in the relevant form.
4. If notice is sent under paragraph 2 rejecting the proposal the Contract Manager and Key Persons for each of the parties shall negotiate in good faith in order to establish whether any alternative change or modification can be agreed. If agreement is reached then the parties shall document such agreement as set out in paragraph 3. Either party may terminate any negotiations if they conclude that agreement will not be reached on the proposed change or modification.
5. Any verbal instruction given to the service provider shall have no validity unless confirmed by written instruction from the Council, or confirmed in writing by the service provider to the Council within seven Business Days of the verbal instruction and such confirmation is not disputed in writing by the Council within the Period for Reply of its receipt.
6. Changes agreed in accordance with the provisions of this Schedule shall, where this Agreement provides for the same, be valued in accordance with the provisions of this Agreement. Where this Agreement does not provide a mechanism for agreeing the valuation of any change, the value of such change will be agreed between the parties and recorded in the change control form.

SCHEDULE 4: The Council's Policy Statements

I, as Chief Executive and Town Clerk, with the Leader of the Council and my Corporate Management Team (CMT), are responsible to Southend-on-Sea Borough Council, (SBC) and all employees for the planned achievement of our health and safety management policies. My CMT and I will ensure that a management system has been developed and implemented to ensure the health, safety and wellbeing of all our staff and others who could be affected by our business activities, as well as controlling the environmental impact of our workplace activities. To meet these aims we will ensure that health and safety management objectives are an integral part of all our business activities and continuous improvement programmes.

To support this commitment we will regard current legal or statutory requirements as setting the minimum standard we must achieve. Whenever required, these will take precedence over all other operational activities, which will be suspended until appropriate control actions are implemented.

We recognise that the minimisation of all work related accidents, which result in injury, illness or damage to premises, material or the environment is a major contribution to the quality and efficiency of our business performance. For this reason all aspects of health, safety and wellbeing are management activities and this policy will be formally reviewed annually and enhanced whenever appropriate. Additional management reviews will be carried out whenever we have reason to believe that our arrangements or the level of resources provided may be inadequate to meet our responsibilities.

It is a principle duty of all managers to actively maintain and improve the health, safety and wellbeing of all persons in their area of accountability. I expect the full co-operation of employees at all times in this endeavour.

In order to meet these commitments we will ensure that we will:

- Systematically use risk assessments and establish suitable and sufficient control measures to ensure that we control workplace hazards and provide and maintain a safe place of work.
- Provide and maintain management, operational and maintenance procedures and systems of work designed to protect individuals and the environment.
- Design and maintain suitable and sufficient safety arrangements for the use, handling, storage, transport and disposal of all substances and articles.
- Ensure that workplace standards are regularly monitored by a system of planned inspections and whenever required that suitable remedial actions are implemented.
- Encourage the reporting of accidents and ensure that all reported accidents are thoroughly investigated (commensurate with the seriousness of the consequences of the accident) and suitable remedial actions are promptly and effectively implemented.

- Ensure that systems are in place to provide suitable and sufficient information, instruction and supervision.
- Regularly consult with our employees in order to monitor health, safety and environmental management performance and aid the ongoing improvement of existing standards.
- Ensure that employees have clearly assigned health, safety and environmental responsibilities.
- Ensure employees are competent to carry out delegated tasks by identifying training needs and providing suitable and sufficient training.
- Ensure the health of all personnel by controlling their exposure to hazardous substances (e.g. chemicals) and physical agents (e.g. noise, hand arm vibration).
- Devise and implement appropriate risk assessment based proactive monitoring systems supported where appropriate by employee health surveillance via our Occupational Health provider, Team Prevent.
- Positively consult with all employees to ensure that they can fully participate in the identification of hazards, assessment of risks, the development and use of suitable control measures.
- Ensure that competent technical advice is available to support the management team and staff by providing health, safety, environmental and emergency management assistance.
- Ensure that adequate financial and physical provision is made available to ensure that SBC is able to comply with its statutory health and safety duties.
- Capture and co-ordinate near miss information so that it can be used to strengthen and enhance health and safety throughout the Council.
Take all reasonable steps within its power to ensure the health and safety of persons not in its employment are not at risk of injury arising from its undertaking;

In accepting ultimate responsibility for health and safety within SBC, I and the Leader of the Council have delegated to the Corporate Director, Department for Place the authority to exercise control over strategic health and safety issues as CMT Champion for health and safety, and to the Head of Policy and People, Department for Corporate Services, the day-to-day health and safety activities as the management appointee with special responsibility for co-ordinating health and safety, who will be actively supported by Advisory Services, (People and Policy), and the Strategic Health and Safety Group.

SCHEDULE 5: Instructions to Tenderers

Please see separate document titled Schedule 5: Instructions to Tenderers.

SCHEDULE 6: Tender Response Document

Successful Provider/s Tender Response Document to be added after contract award/s.

SCHEDULE 7: Copy Contract Award Letter

Successful Provider/s Copy Contract Award Letter to be added after contract award/s.

SCHEDULE 8 Any other relevant correspondence consisting of Clarification question(s) from tenderers and response(s) issued by the Council and/or clarification responses provided by tenderers

Successful Provider/s Clarification questions and answered to be added after contract award/s.

SCHEDULE 9: Completed Capacity Opinion Letter - Not used

SCHEDULE 10: Safeguarding Policy and Disclosure and Barring Risk Assessment Form

The Provider will comply with the Authority's safeguarding policies (as updated from time to time). The latest version of such safeguarding policies can currently be found at the websites set out below:

Adults Safeguarding Guidelines

<http://www.safeguardingsouthend.co.uk/adults/index.html>

Children's Guidelines

<http://www.safeguardingsouthend.co.uk/children/index.html>

The Provider is required to work proactively to ensuring robust pathways and organisational links are in place with Southend-on-Sea Safeguarding Board.

SCHEDULE 11: Completed Performance Bond – Not used

SCHEDULE 12: Completed Parent Company Guarantee

This may be requested following the evaluation of the Supplier Questionnaire.

SCHEDULE 13: Transferring Employees – Not Used.

SCHEDULE 14: Transferring Original Employees – Not used

SCHEDULE 15: Process for payment of the Contract Price

Please see Terms and Conditions Section 8

SCHEDULE 16: Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description Details	Description Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>