

DATED

**SERVICE CONTRACT FOR THE PROVISION OF
CARE SERVICES IN SUPPORTED HOUSING**

between

[INSERT DETAIL OF CONTRACTING BODY]

and

[INSERT DETAIL OF PROVIDER]



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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [NAME AND ADDRESS OF CONTRACTING BODY] (**Contracting Body**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Provider**).

individually the "party" and together the "parties".

BACKGROUND

- (A) The Council has been seeking proposals for the provision of care services in supported housing for people with learning disabilities/autism, mental health needs, a physical disability or sensory impairment by means of a public tender exercise. The Council placed a contract notice in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of provision of the Services.
- (B) Following the Provider's application, the Council has appointed the Provider as a potential provider of the Services in accordance with the APL Agreement.
- (C) Following the procedure outlined in the APL Agreement, the Contracting Body has selected the Provider to provide the Services on the terms set out in this Service Contract.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Achieved Service Levels: in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 2).

Affected Services: has the meaning given in Clause 9.1(a).

Agreed Purposes: the data to be processed as part of the Services.

Agreement: means this Service Contract between the Contracting Body and the Provider together with all schedules and appendices hereto

Annual Service Development Plan (ASDP): a plan developed and agreed between the Contracting Body and the Provider setting out the Provider's obligations in relation

to Service efficiency and improvement (Appendix A to the Service Contract Data at Schedule 4)

APL: means the Approved Provider List established in accordance with the Public Contracts Regulations 2015 to which this Service Contract relates

APL Agreement: means the Approved Provider List Agreement between the Council and the Provider together with all schedules and appendices under which this Service Contract is awarded

Applicable Laws: means all applicable laws, statutes, regulations and codes from time to time in force.

Associated Company: any holding company from time to time of the Provider and any subsidiary from time to time of the Provider, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Contracting Body and the Provider, as set out in Schedule 5.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

Bribery Act: 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: the plan to be prepared and delivered by the Provider pursuant to Schedule 9 and in accordance with the principles set out at paragraph 4.4 of the Specification

Business Transition: the process by which existing care and support Services will be recommissioned through the APL over a period expected to last approximately 18 months following the commencement date of the APL Agreement

Care Plan/ Care and Support Plan / Support Plan: The individualised plan outlining the support requirements of the Service User to be issued to the Provider on award of a Service Contract.

Catastrophic Failure

- (a) any action by the Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Contracting Body's Representative has or may cause significant harm to the reputation of the Contracting Body.
- (b) there is a safeguarding issue which cannot be remedied.
- (c) the Minimum Building Standards are no longer being met in respect of the Premises where Service Users are placed.

Change: any change to this agreement including to any of the Services.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 7.

Charges: the charges which shall become due and payable by the Contracting Body to the Provider in respect of the Services in accordance with the provisions of clause 11 of this agreement and as further particularised in the Service Contract Data.

Commencement Date: the date set out in the Service Contract Data

Commercially Sensitive Information: the information listed in Schedule 11 comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Contracting Body that, if disclosed by the Contracting Body, would cause the Provider significant commercial disadvantage or material financial loss.

Confirmation: the submission, through the Council's Oracle Care Portal or an alternative system specified by the Contracting Body, of actual support hours delivered by the Provider

Consistent Failure: shall have the meaning set out in Part 3 of Schedule 2.

Contingency Hours: a requirement identified in the Care and Support Plan for support hours to enable the Provider to respond to and manage known and potential Service User risk, fluctuating needs and or crisis situations or to manage planned care and support.

Contingency Plan: the element of the Care and Support Plan relating to the provision of Contingency Hours.

Contracting Council: shall mean any contracting Council as defined in Regulation 2 of the Public Contracts Regulations 2015.

Contract Year: a period of 12 months, commencing on the Commencement Date.

Controller, Processor, Data Subject, Joint Controller, Personal Data, Personal Data Breach, Processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation in force at the time.

Core Support: has the meaning set out in the Specification.

Council: means Lancashire County Council of PO Box 78, County Hall, Preston, Lancashire PR1 8XJ.

Data Discloser: a party that discloses Shared Personal Data to the other party.

Data Protection Legislation: shall mean:

- i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
- ii) the DPA to the extent that it relates to processing of personal data and privacy;
- iii) all Applicable Law about the processing of personal data and privacy;

Default Notice: is defined in clause 5.2.

Dispute Resolution Procedure: the procedure set out in clause 20.

Disturbed Sleep: means a disturbance, or number of disturbances, equating to 30 minutes or more disturbed minutes occurring in any one night (such period being further particularised in the Service Contract Data) for Provider's staff undertaking sleep-in support in accordance with paragraph 3.4.2 of the Specification

Disturbed Sleep Payments: shall have the meaning set out in Schedule 14

DPA: means the Data Protection Act 2018 as amended from time to time.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Escalation Policy: the Adult Social Care Policy and Procedure for Managing Service Provider Quality and Performance in Commissioned Services as set out at Schedule 8

Exit Management Plan: the plan to be prepared and delivered by the Provider pursuant to clause 10 and in accordance with the principles set out in Schedule 9.

Fraud: means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the agreement or defrauding or attempting to defraud or conspiring to defraud the Contracting Body

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

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Provider, the Provider's Personnel or any other failure in the Provider's supply chain.

Frustrated Support Hours: where a Service User has cancelled support hours (not the entire Care and Support Plan) with less than 24 hours' notice to the Provider or where the Service User has unreasonably, at the determination of the Contracting Body, refused access to the Provider.

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

[Individual Service Fund or ISF: the Service User's Personal Budget (or part thereof) which they have chosen to be placed with the Service Provider under an Individual Service Fund Agreement for the provision of Services under this Agreement]

Individualised Support: has the meaning set out in the Specification

Information: has the meaning given under section 84 of FOIA.

Initial Term: the period from the Commencement Date to the date of expiry set out in the Service Contract Data, or such earlier date of termination of the agreement in accordance with the Law or the provisions of the agreement.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of the Contracting Body's, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Key Personnel: those personnel identified in the Service Contract Data who are identified by each party as being key to the success of the implementation and/or operation of the Services as a whole, as modified pursuant to clause 13.

LED: means the Law Enforcement Directive (Directive (EU) 2016/680).

Management Reports: the reports to be prepared and presented by the Provider in accordance with clause 17 and Schedule 5 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Minimum Building Standards: the Decent Home Standards as further particularised in paragraph 3.17.3 of the Specification

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

Non-Schedule Payment: payment of Charges to the Provider that are not Scheduled Payments

Non-Standard Rate: any Charges applying to the provision of Services following a mini-competition or negotiated with the Provider following a direct award of a Service Contract

Payment Plan: the plan for payment of the Charges as set out in clause 11 and as further particularised in the Service Contract Data.

Payment Period: a period of 4 (four) weeks the commencement of which will be defined by the Contracting Body and set out in a schedule to be issued to the Provider.

Permitted Recipients: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

Personal Budget: An agreed amount of money allocated to a Service User by the Contracting Body following an assessment of their care and support needs representing the sum needed to meet their eligible social care needs.

Premises: means the location from which the Services are, or can be, provided as set out in the Service Contract Data, as amended with the consent of the Contracting Body.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (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 Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Contracting Body; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Contracting Body.

Provider Party: the Provider's agents and contractors, including each Sub-Contractor.

Provider's Personnel: all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Provider's Tender: the tender submitted by the Provider to the Contracting Body in response to the Contracting Body's invitation to Providers for formal offers to supply it with the Services and other associated documentation set out in Schedule 3.

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

Regulatory Bodies those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the agreement or any other affairs of the Contracting Body and "Regulatory Body" shall be construed accordingly.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Contracting Body in accordance with clause 30.2(a).

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Contracting Body receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Contracting Body internally or by any Replacement Provider.

Replacement Provider: any third party Provider of Replacement Services appointed by the Contracting Body from time to time.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Scope: the details of the specific Services to be delivered under this agreement in accordance with the Specification as further particularised in the Service Contract Data

Scheduled Payment: Payment of Charges to the Provider at defined intervals in respect of Services delivered under this Service Contract

Service Contract Data: the document at Schedule 4 and forming part of this Service Contract and supplementing the Specification, setting out the key details and specifics of the Contracting Body's requirement for Services following the Call-Off Procedure;

Service Failure: a failure by the Provider to provide the Services in accordance with any individual Service Level.

Service Levels: the service levels to which the Services are to be provided, as set out in Schedule 2.

Services: the services to be delivered by or on behalf of the Provider under this agreement, as more particularly described in Schedule 1 (Specification).

Service User: means any individual notified by the Contracting Body to the Provider as requiring the Services.

Shared Personal Data: the personal data to be shared between the parties under clause 26.1 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a) Data Subjects to include any or all of the following: staff (including volunteers, agents and temporary workers), service users, service users' family, suppliers or any other such data subjects as detailed in the main body of the Agreement and any Schedules and Appendices as appended to it.
- b) The categories of data to be processed shall be defined only insofar as they relate to the detail of the main body of the Agreement and any Schedules and Appendices as appended to it.

Standard Rate: the Charges or prices published by the Council to take effect from the first day in April each year

Step-in Actions: has the meaning given in clause 9.1(d).

Step-in Event: means:

- a) the Provider is in material breach of the Service Levels for a consecutive period of 60 days;
- b) the Contracting Body has reasonable grounds for believing that the Provider is unable to deliver the Services, or that those Services will be in material breach of the Service Levels;
- c) a Force Majeure Event occurs that materially prevents or materially delays the performance of the Services or a substantial part of the Services by the Provider for a consecutive period of 30 Working Days;
- d) the Contracting Body is required by a regulatory body that the exercise by the Contracting Body of its rights under Clause 9 (Step-in rights) is necessary;
- e) a condition occurs that triggers the Contracting Body's right to terminate the agreement under clauses 30 or 31; or
- f) the Contracting Body has reasonable grounds for believing that there is a safeguarding concern.

Step-in Notice: has the meaning given in Clause 9.1.

Step-in Party: has the meaning given in Clause 9.1(a)

Step-in Period: has the meaning given in Clause 9.1(e) and as subsequently extended pursuant to Clause 9.8.

Step-out Plan: has the meaning given in Clause 9.4.

Sub-Contract: any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or Providers that enter into a Sub-Contract with the Provider.

Supplier Incentive Scheme: means the Council's programme to improve its pay to purchase processes to enable the Provider to benefit from the early payment of their invoices or the Charges in return for a small rebate of the Charges. If the Provider's tender submission indicated that they wished to be part of the scheme in relation to this contract, the terms of the Supplier Incentive Scheme shall be set out at Schedule 6.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body and partnerships (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes email but not faxes.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression **so far as a PARTY is aware** or **to a PARTY's knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;

- (c) the remaining schedules to this agreement other than Schedule 3;
- (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. INITIAL TERM

- 2.1 The Agreement shall take effect on the Commencement Date and shall continue for the Initial Term unless it is otherwise terminated in accordance with the provisions of the agreement, or otherwise lawfully terminated, or extended under clause 3.1 (Extending The Initial Term).

3. EXTENDING THE INITIAL TERM

- 3.1 The Contracting Body may extend this agreement beyond the Initial Term by a further period or periods as set out in the Service Contract Data. If the Contracting Body wishes to extend this agreement, it shall give the Provider at least 3 (three) months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Contracting Body gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Contracting Body does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 34 shall apply.
- 3.4 If the Contracting Body does extend the Initial Term, then it shall do so on the same terms and conditions as set out in this Agreement.

4. CONSENTS, PROVIDER'S WARRANTY AND DUE DILIGENCE

- 4.1 The Provider shall ensure that all Necessary Consents are in place to provide the Services and the Contracting Body shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 4.3 The Provider acknowledges and confirms that:
 - (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Contracting Body all the

questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;

- (b) it has received all information requested by it from the Contracting Body pursuant to clause 4.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Contracting Body pursuant to clause 4.3(b);
- (d) it has raised all relevant due diligence questions with the Contracting Body before the Commencement Date; and
- (e) it has entered into this agreement in reliance on its own due diligence.

4.4 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Contracting Body in respect of any information which is provided to the Provider by the Contracting Body and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

4.5 The Provider as at the Commencement Date, warrants and represents that:

- (a) all information contained in the Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Contracting Body prior to execution of the agreement; and
- (b) it shall promptly notify the Contracting Body in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Contracting Body during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.
- (c) it has full capacity and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the agreement and that the agreement is executed by a duly authorised representative of the Provider;
- (d) in entering the agreement it has not committed any Fraud;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the agreement;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the agreement;

- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider 's assets or revenue;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property that are necessary for the performance of its obligations under the agreement;
- (i) in the 3 years prior to the date of the agreement :
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the agreement.

4.6 The Provider shall not be entitled to recover any additional costs from the Contracting Body which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Contracting Body by the Provider in accordance with clause 4.5(b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Contracting Body and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Contracting Body or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.7 Nothing in this clause 4 shall limit or exclude the liability of the Contracting Body for Fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

5.1 The Provider shall provide the Services to the Contracting Body with effect from the date set out in the Service Contract Data and for the duration of this Agreement in accordance with the provisions of this Agreement.

- 5.2 In the event that the Provider does not comply with the provisions of clause 5.1 in any way, the Contracting Body may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**).

6. SERVICE LEVELS / KEY PERFORMANCE INDICATORS

- 6.1 The Provider shall ensure that any element of the Services which is subject to a specific Service Level or Key Performance Indicator is provided in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 6.2 The Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in the Contract Management Strategy at Schedule 5.
- 6.3 In the event that any Achieved Service Level falls short of the Target Service Level, without prejudice to any other rights the Contracting Body may have, the provisions of clause 30 (Termination) shall apply.

7. SERVICE STANDARDS

- 7.1 Without prejudice to clause 6, the Provider warrants that it shall provide the Services, or procure that they are provided:
- (a) in accordance with Best Industry Practice;
 - (b) at all times in compliance with the Contracting Body's requirements set out in this agreement;
 - (c) in all respects in accordance with the Council's policies set out in Schedule 1; and
 - (d) in accordance with all Applicable Laws.
- 7.2 Without limiting the general obligation set out in clause 7.1, the Provider shall (and shall procure that the Provider's Personnel shall) at all times when supplying the Services do so with all due skill, care and diligence and that the Provider's Personnel supplying the Services shall possess such qualifications, skills and experience as is necessary for the proper supply of the Services.
- 7.3 It shall be a condition of this agreement that the substance of the Provider's policies and procedures shall comply with all Applicable Laws and legislative requirements.
- 7.4 The Provider shall at all times comply with the Quality Standards as set out in the Specification at Schedule 1, and where applicable shall maintain accreditation with

any relevant Quality Standards authorisation body (including for the avoidance of doubt the Care Quality Commission).

- 7.5 If at any time during the term of this agreement, the Provider is inspected by the CQC and receives an overall rating by the CQC of "inadequate" or "requires improvement" or an "inadequate" rating against any one of the CQC's five key questions for the office out of which the Provider is operating, for the purposes of delivering Services under this agreement (or equivalent by any successor body or system of evaluation), the Provider shall inform the Contracting Body and the Council immediately and, within a timeframe to be stipulated by the Contracting Body (having consulted the Council), share an improvement plan with the Council and the Contracting Body. The Contracting Body shall discuss the Provider's improvement plan with the Council and if the Council (at its sole discretion) is not satisfied with the Provider's response, this shall amount to a Material Breach and the Council may suspend the award of Service Contracts to the Provider and/or the Contracting Body may terminate this Agreement pursuant to the provisions of clause 30 of this agreement.
- 7.6 Further, where the Provider receives notification of an inspection outcome from the CQC of either 'requires improvement' or 'inadequate' against any one of the CQC's five key questions for the office out of which the Provider is operating for the purpose of delivering Services under this agreement, the Contracting Body may at its sole discretion commence the Escalation Policy detailed at Schedule 8 or, in the alternate, schedule a Provider performance meeting with the Provider.
- 7.7 Where the Provider is failing to deliver the Services in accordance with this Agreement, the Contracting Body may consult with the Council and the Council, at its sole discretion and pursuant to the Suspension Policy at Schedule 12 to this agreement, may suspend the Provider and require the Provider to provide an improvement plan within a timeframe stipulated by the Council. The improvement plan (to be approved by the Council in consultation with the Contracting Body) shall stipulate the Provider's proposals to deal with any failings or concerns of the Council and/or the Contracting. If the Council, having consulted with the Contracting Body, is not satisfied with the Provider's response this shall amount to a Material Breach and the Council or the Contracting Body may follow the appropriate part of the Escalation Policy or the Contracting Body may terminate this agreement pursuant to the provisions of clause 30 of this agreement.
- 7.8 During the period of suspension:
- (a) no further Service Contracts will be awarded to the Provider;
 - (b) the Provider agrees to implement their improvement plan and meet the objectives contained within the same; and

- (c) payments to the Provider for the provision of ongoing services shall not cease.

- 7.9 The Provider acknowledges that suspensions may be notified to other authorities, commissioners and providers as the Council or the Contracting Body sees fit. Should the Provider anticipate failure to comply with the terms of the agreements between the parties and the service standards, it may, at its discretion, approach the Council and request for a voluntary suspension in line with the terms of the Escalation Policy, to take effect for a limited period to be agreed between the Council and the Provider. This will be reviewed by the Council's Contract Management team. The Provider acknowledges that the Council or the Contracting Body is at liberty to record and monitor the reason for the voluntary suspension and acknowledges that the voluntary suspension may be notified to other authorities, commissioners and providers as the Council or the Contracting Body sees fit. Any approval of voluntary suspension will be at the sole discretion of the Council.
- 7.10 Further to clause 7.9 above, any voluntary suspension sought by the Provider only has effect in relation to the award of new Service Contracts to the Provider and, for the avoidance of doubt, does not affect the Provider's existing Service Contracts.
- 7.11 Timely provision of the Services shall be of the essence in this Agreement, including in relation to the commencement and ongoing provision of Services within the time (or on a specified date) agreed by the Parties as detailed within the Service Contract Data.
- 7.12 Without prejudice to any other rights and remedies the Contracting Body may have pursuant to this Agreement or otherwise, the Provider shall reimburse the Contracting Body for all reasonable costs incurred by the Contracting Body which have arisen as a consequence of the Provider's delay or failure in the performance of its obligations under this Agreement and which delay the Provider has failed to remedy following reasonable notice from the Contracting Body.
- 7.13 The Provider shall provide the Services during the Term in accordance with this Agreement, in consideration of the mutual rights and obligations in this Agreement. The Contracting Body and or any person authorised by the Contracting Body shall have the power to visit inspect and examine (without notice) the performance of the Services at any time where the Services (or any part of them) are being performed or the Provider's nominated office.

8. HEALTH AND SAFETY

- 8.1 The Provider shall promptly notify the Contracting Body of any health and safety hazards, which may arise in connection with the performance of the agreement.
- 8.2 The Provider shall notify the Contracting Body immediately in the event of any incident occurring in the performance of the agreement where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.3 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to those Service Users at the Premises.
- 8.4 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Contracting Body on request.

9. STEP IN RIGHTS

- 9.1 Without prejudice to the Contracting Body's other rights and remedies under this Agreement and at law, if a Step-in Event occurs, the Contracting Body shall have the right to issue a written step-in notice, which shall include the following information (**Step-in Notice**):
- (a) that the Contracting Body, or a third party appointed by it, or the Contracting Body jointly with that third party (**Step-in Party**) intends to perform or manage the performance of part or all of the Services (**Affected Services**);
 - (b) the details of the Step-in Event that has triggered the exercise of the Step-in Notice;
 - (c) details of the Affected Services;
 - (d) the actions that the Step-in Party intends to take in order to rectify the Affected Services (**Step-in Actions**);
 - (e) the estimated dates on which the Step-in Actions will commence and end (**Step-in Period**);
 - (f) in the Contracting Body's reasonable opinion, the extent that the Contracting Body anticipates the Step-in Actions will have on the Provider's obligation to provide the remaining Services that are not the Affected Services; and
 - (g) any other information that the Contracting Body is reasonably able to provide in relation to how the Step-in Party intends to perform the Step-in Actions.
- 9.2 On receipt of the Step-in Notice, the Provider shall, subject to Clause 9.3 and at no additional cost, provide, enable or procure access for the Step-in Party to:
- (a) any of the Premises and facilities that the Contracting Body so requests; and
 - (b) any equipment and software that are used in the administration, management and provision of the Affected Services;

for the sole purpose of enabling the Step-in Party to perform the Step-in Actions during the Step-in Period only.

- 9.3 The Contracting Body shall use reasonable endeavours to ensure that the Step-in Party's personnel and representatives that have the access as provided for under Clause 9.2;

(a) comply with all relevant health and safety requirements for any of the Provider's Premises, such requirements as notified by the Provider;

(b) only use the facilities, equipment or software on the Provider's instructions and exercise reasonable care when using those items so as not to cause damage; and

(c) do not disrupt or interfere with the Provider's obligations to deliver the Services that are not the Affected Services.

- 9.4 Within ten Business Days of receipt of the Step-in Notice, the Provider shall submit to the Contracting Body a written plan setting out the measures the Provider intends to take after the Step-in Period in order to restore the Affected Services to satisfy the requirements of the agreement (**Step-out Plan**).

- 9.5 The Contracting Body is not liable to pay the charges relating to the Affected Services, and the Charges shall be reduced accordingly so as not to include those relating to the Affected Services.

- 9.6 During the Step-in Period, the Provider shall:

(a) be relieved of its obligations to provide the Affected Services and shall not be liable for any liability arising out of the Affected Services not meeting the Service Levels if the Supplier can show that the sole cause of that failure is due to the Step-in Party's actions;

(b) continue to provide the Services that are not the Affected Services, and shall inform the Contracting Body if the Affected Services will impact on its ability to deliver those other Services;

(c) not receive any new placements for Service Users at any Premises where the Affected Services are performed.

(d) fully cooperate and provide all reasonable assistance at no additional charge to the Step-in Party for the sole purpose of enabling the Step-in Party to perform the Step-in Actions; and

(e) use best endeavours to ensure that the relevant Provider's Personnel promptly follows the reasonable and lawful instructions of the Step-in Party in pursuance of the Step-in Actions.

- 9.7 The Contracting Body shall keep a written record of the Step-in Actions that the Step-in Party has taken and keep the Provider informed of the progress of the Step-in Actions.

- 9.8 The Contracting Body shall use reasonable endeavours to ensure that the Step-in Actions are completed during the Step-in Period, but if the Contracting Body reasonably deems it necessary to extend the Step-in Period, it shall inform the

Provider accordingly no later than ten Business Days before the Step-in Period is due to end.

- 9.9 If the Contracting Body is satisfied that the circumstances leading to the Step-in Event are no longer present and the Provider has demonstrated in the Step-out Plan that it can resume responsibility for the Affected Services, the Contracting Body will issue a written notice to the Provider that:

(a) requires the Provider to resume performance of the Affected Services;
(b) specifies the date on which the Provider shall resume such performance; and
(c) sets out the Step-in Actions that the Step-in Party actually took during the Step-in Period.

- 9.10 The Provider shall be liable to the Contracting Body for all direct costs and expenses that are reasonable and necessarily incurred by Step-in Party in taking the Step-in Actions, and the Customer shall use all reasonable endeavours to mitigate any such costs and expenses.

10. EXIT MANAGEMENT

- 10.1 The Provider shall, within six (6) weeks after the Commencement Date, prepare and supply a draft Exit Management Plan (which shall be consistent with the principles set out in Schedule 9) and deliver it to the Contracting Body for its approval in a format to be determined by the Contracting Body. Any amendments to the Exit Management Plan reasonably required by the Contracting Body shall be made by the Provider forthwith.

- 10.2 The Exit Management Plan will be reviewed and tested by the Provider as and when required by the Contracting Body.

- 10.3 Upon Exit, the Provider must carry out immediately all steps required by the Contracting Body to ensure all material information and data relating to the delivery of the Services to the Service Users and all other reasonable information as required is transferred to the Contracting Body or a Successor Provider immediately.

11. CHARGES AND PAYMENT

- 11.1 In consideration of the performance by the Provider of its obligations under the Agreement, the Authority shall pay the Charges in accordance with this clause 11 and any specific instructions included in the Request for Services / Service Contract Data Form / Care and Support Plan or agreed during Business Transition.

- 11.2 The Authority shall pay the Charges which have become payable in accordance with this Agreement and within thirty (30) calendar days from the date of receipt of the relevant undisputed Confirmations accompanied by all supporting documents as required by the Agreement and payment is to be made 4 weeks in arrears.
- 11.3 For all Services provided otherwise than pursuant to an Individual Service Fund, arrangement or where otherwise directed by the Authority, payment shall be subject to completion and receipt by the Authority of a Confirmation of the Services delivered which must be provided by the Provider within 14 calendar days of the end of the Payment Period via the Authority's Provider Portal or an alternative system specified by the Authority. The Provider shall not submit an invoice. In response to a request from the Authority, the Provider must provide such information as the Authority shall reasonably request (including but not limited to financial statements, time sheets, records receipts, invoices, reports and service performance details) to enable the Authority to verify that the sums claimed are correct.
- 11.4 In submitting a Confirmation the Provider shall be deemed to have represented to the Authority:
- a) that those Service Users in relation to which payment of the Charges is requested were in receipt of the Services on the dates specified in the confirmation (or that the Provider is otherwise entitled to payment of the Charges) and that the Charges are properly due and payable by the Authority;
 - b) that the Provider has included notification of adjustments applied in relation to a Service User that have been agreed with the Authority; and
 - c) Details of Frustrated Support Hours;
- 11.5 Where a Service User is admitted to hospital or dies, or in any other circumstances where there is an unforeseen suspension or cessation of the delivery of Services, the Provider shall notify the Authority in accordance with clause 31.6. In such circumstances, [except where a Service User is taking payment of some or all of his/her Personal Budget via an Individual Service Fund,] the Provider can claim up to 3 days of Charges pertaining to Individualised Support provided to an individual Service User following the last day of service delivery in the event that Services would have otherwise been provided.
- 11.6 The Authority will pay sums due to the Service Provider under the Agreement via the Banks Automated Clearing Services System (BACS). Details of

Service Provider's accounts will be provided to the Authority. A payment remittance will be issued with each payment.

- 11.7 The Authority will withhold payment against any Confirmation or any item shown on any confirmation which is not submitted in accordance with the Agreement or which covers or purports to relate to Services which have not been provided in accordance with the Agreement, or which it disputes for any other reason; the Authority shall notify the Service Provider within thirty 30 calendar days of receipt of the relevant confirmation giving reasons why, and any subsequent dispute shall be resolved in accordance with the provisions of Clause 20.
- 11.8 The Authority shall pay any amount withheld, which it has been agreed (or determined in accordance with Clause 20) to be payable by the Authority, within thirty (30) calendar days of such Agreement being reached or such determination being made.
- 11.9 The Service Provider shall advise the Authority forthwith of any changes, errors, overpayments, underpayments or other information which may affect the amounts paid or to be paid by the Authority for any Services under the Agreement.
- 11.10 Any overcharges will be deducted by the Authority from the next payment made to the Service Provider, overpayment of monies to the Service Provider in respect of delivery of the Services will be returned to the Authority on request. Where any sum of money shall be recoverable from or payable by the Service Provider as an overpayment, the same may be deducted by the Authority from any sum then due or which at any time thereafter may become due to the Service Provider under this or any other contract with the Service Provider. The Service Provider must notify the Authority as soon as possible and in any event no later than the Authority's next working day if -
- (a) a Service User ceases to receive a Service under this Agreement for any reason;
 - (b) the Service Provider considers that the Service User may no longer be eligible to receive the Services; and
 - (c) there is any other change in a Service User's circumstances which may affect the Charges.
- 11.11 Changes to which Clause 11.10 refer will be notified to the Authority in such form as the Authority shall require.

- 11.12 All sums due hereunder are exclusive of tax (details of which will be provided to the Authority by the Service Provider) which will be paid by the Authority at the rate and in the manner for the time being prescribed by law.
- 11.13 The Charges are stated exclusive of VAT. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this Agreement.
- 11.14 The Service Provider shall indemnify and keep the Authority fully and effectually indemnified against all losses, liabilities, damages, costs, charges, claims and expenses arising from or incurred by reason of any breach of Clause 11.11 by the Service Provider.
- 11.15 For the avoidance of doubt the parties agree and acknowledge that payment of any sums by the Authority under this Agreement shall be without prejudice to any claims or rights which the Authority may have against the Service Provider and shall not constitute any admission or waiver by the Authority as to the performance by the Service Provider of its obligations hereunder.
- 11.16 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest on any sums in dispute shall not accrue until the earlier of thirty (30) calendar days after resolution of the dispute between the parties.
- 11.17 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Agreement. Such records shall be retained for inspection by the Authority for 7 years from the end of the Contract Year to which the records relate.
- 11.18 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.

- 11.19 The Authority may retain or offset any sums owed to it by the Service Provider which have fallen due and are payable against any sums due to the Service Provider under this Agreement or any other Agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Authority.
- 11.20 Unless otherwise stated the Charges are inclusive of all costs and expenses which may be incurred by the Service Provider in carrying out its obligations hereunder and no additional charges will be payable by the Authority unless agreed in advance by the parties.
- 11.21 Late payment of the Charges by the Authority does not permit the Service Provider to delay or suspend service.
- 11.22 If applicable, and where there is a consortium of Service Providers operating, payments will be made to the lead Service Provider only. The lead Service Provider is then responsible for administering payments to consortium.
- 11.23 The Parties agree that as part of its budget setting process, the Authority's cabinet meets each year to agree the annual price uplift that apply to the contracts its commissions and this uplift (to be agreed at the time by the Authority's cabinet) may apply to the Charges each financial year or as determined in a Service Contract Data Form.
- 11.24 Without prejudice to clause 11.23, the Parties agree that during the Term of this Agreement, there may be circumstances which arise outside of the Authority's control which may result in the Authority seeking to vary the rate it pays for the Service. The Authority shall come to any such decision in accordance with the principles of equal treatment, transparency non-discrimination and proportionality.
- 11.25 Without prejudice to clause 11.23 and 11.24 the Authority will only consider additional increases to the Charges as a result of the following evidenced circumstances only and, in any event, only in circumstances where the Service Provider has incurred an increase of its costs due to factors entirely out of its control and manageability:
- a) Changes to the living wage or inflation resulting in the delivery of Services under the Agreement being unsustainable for the Service Provider;
 - b) An increase in auto-enrolment pension contributions; and

d) Any other evidenced circumstances or situation in the Authority's complete and sole discretion.

- 11.26 Prior to agreeing to any additional increase in Charges, where appropriate, the Service Provider must agree to an open book exercise to demonstrate that cost increases are due to factors outside its control and the same cannot be offset by operational efficiencies. The Authority's budgetary constraints and any such other considerations that the Authority considers are relevant may also be taken into account in assessing any rate increase request from the Service Provider.
- 11.27 The Authority makes no representation and offers no guarantee that any increase will be applied to the Charges following any review or assessment carried out.
- 11.28 In the event that the Service User or any third party makes payment in contribution to or in addition to the Charges without the prior written consent of the Authority, the Authority shall have the right to take action to recover any sums paid as if it were the payer. For the avoidance of doubt, this includes all rights of recovery, including set-off, as detailed in this Agreement.

EMERGENCY HOURS PROVISION

- 11.29 There may be occasions in which it becomes apparent that there is an urgent need for an increase in the number of hours of Services to be provided to a Service User ("Emergency Hours"), or for the addition of a specific task(s) to alleviate risk arising from an emergency situation. Examples of acceptable use of Emergency Hours include providing assistance following a fall or accompanying the Service User until the arrival of emergency services. The Provider may, in these circumstances, use his professional discretion to make a short term additional provision, up to a maximum of 4 hours in respect of any single occurrence.
- 11.30 Pursuant to clause 11.28, where Emergency Hours are delivered by the Provider on more than 6 occasions in any consecutive 3 Payment Periods and in respect of any single Service User, the Provider is required to notify (in the case of a Service Contract concluded with the Council, the Council's Customer Access Service by telephone on 0300 123 6720 or such telephone number as the Council may subsequently notify to the Provider, or in the case of a Service Contract concluded with another Contracting Body, such arrangements as are agreed between the Parties) to request a review of the Service User's needs.

- 11.31 The Provider, upon request from the Contracting Body, must be able to provide justifiable reasons for the provision of the additional care to the Service User and acknowledges that such provision should only be made in emergency circumstances and to meet urgent needs. In the event that the additional provision is reasonably considered by the Contracting Body to not be delivered in accordance with this clause, the Contracting Body may at its discretion withhold payment to the Service Provider pertaining to the additional service provision delivered.

CONTINGENCY HOURS PROVISION

- 11.32 The Contracting Body may terminate the agreed Contingency Plan with immediate effect if the Contracting Body reasonably considers that:
- a. The Provider is not complying with the Contingency Plan;
 - b. The Service User's needs and agreed outcomes are not being met as agreed in the Care and Support Plan;
 - c. The Provider exceeds the number of support hours agreed in the Contingency Plan
 - d. The Provider is utilising and claiming Contingency Hours in a way other than in accordance with the agreed Contingency Plan.
- 11.33 The Contracting Body will monitor the delivery of commissioned Contingency Hours in accordance with KPI 5.

REVIEW OF CHARGES

- 11.34 The Charges shall be reviewed by the Contracting Body in accordance with the applicable procedure set out in the Service Contract Data, based on the following options:
- (a) Where Charges are paid on the basis of a Standard Rate, the Council shall review Charges annually and shall publish, via the Council's website prior to the commencement of the next financial year, revised Charges to take effect from the first day in April of each contract year.
 - (b) Where Charges are paid on the basis of a Non-Standard Rate, the following options for review of Charges may apply:
 - (i) the Contracting Body may require the Provider to submit its Charges for each year of the Service Contract at mini-competition which will apply for the Term of the Service Contract; or

- (ii) where a Service Contract is directly awarded, the Provider and the Contracting Body may agree the Charges at the point of contract award, which will apply for the Term of the Service Contract; or

in either cases (b)(i) or (b)(ii) annual adjustments to Charges may be built into the agreed Charges, or subsequently agreed between the Contracting Body and the Provider, or an adjustment to Charges may be based on the percentage increase or decrease in the Consumer Prices Index during the previous year, to be applied from 1 April each year.

11.35 Notwithstanding the provisions of paragraph 11.33, the Provider may request a review of Charges once per calendar year. The Contracting Body will only consider increasing the rate payable to the Provider as a result of the following evidenced circumstances only and in, in any event, only in circumstances where the Provider has incurred an increase of its costs due to factors entirely out of its control, manageability and foreseeability:

- a) Changes to the living wage or inflation resulting in the delivery of Services under the agreement being unsustainable for the Provider;
- b) An increase in auto-enrolment pension contributions;
- c) An increase in the Consumer Price Index; and
- d) Any other evidenced circumstances or situation in the Contracting Body's complete and sole discretion.

11.36 Prior to agreeing to any increase in rates, where appropriate, the Provider must agree to an open book exercise to demonstrate that cost increases are due to factors outside its control, manageability and foreseeability and the same cannot be offset by operational efficiencies. The Contracting Body's budgetary constraints and any such other considerations that the Contracting Body considers are relevant may also be taken into account in assessing any rate increase request from the Provider. The Contracting Body makes no representation and offers no guarantee that any increase will be applied to the Charges following any review or assessment carried out.

11.37 A Provider request for a review of Charges must be made in advance of the relevant Contract Year to which the requested uplift of Charges relates, to take effect from the commencement of that Contract Year. For the avoidance of doubt, where the Contracting Body agrees to a Provider's requested uplift of Charges, the effective date on which the revised Charges will apply for the relevant Contract Year will be the later of the commencement date of that Contract Year or, if not requested in advance of that Contract Year, the date in that Contract Year on which the request was submitted to the Contracting Body.

SUPPLIER INCENTIVE SCHEME

- 11.38 If as part of the Provider's Tender, the Provider indicated that they wished to utilise the Supplier Incentive Scheme in relation to this agreement, the supplemental terms outlined in Schedule 6 shall apply. In the event of any conflict between the terms of Schedule 6 and this clause 11, the provisions in Schedule 6 shall take priority until expiry or termination of Schedule 6 in which case only this clause 11 shall apply

12. INDIVIDUAL SERVICE FUNDS

- 12.1 Where permitted by the Contracting Body, if a Service User takes payment of some or all of their Personal Budget via an Individual Service Fund, the Provider will manage the Individual Service Fund in accordance with the individual's ISF Care and Support Plan. The ISF governance principles set out at Schedule [] shall apply to the management by the Provider of the Individual Service Fund and the Provider shall enter into a separate form of Agreement with the Contracting Body and the Service User, the content of which will reflect the ISF governance principles and deal with any other related principles at the absolute discretion of the Contracting Body.

STAFF

13. KEY PERSONNEL

- 13.1 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Contracting Body.
- 13.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Contracting Body (which shall not be unreasonably withheld or delayed), except by reason of long-term sickness, maternity leave, paternity leave or termination of employment, resignation by the Key Personnel and other extenuating circumstances.
- 13.3 In the event that the Key Personnel stops providing the Services in accordance with clause 13.2, the Provider shall immediately notify the Contracting Body.

- 13.4 Any replacements to the Key Personnel shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 13.5 Replacements to the Key Personnel shall not have a detrimental impact on the provision of the Services. Where the Provider reasonably considers the change in Key Personnel will have a detrimental impact on the Services, it shall immediately notify the Contracting Body and the parties shall work in good faith to mitigate the risks to Service delivery.
- 13.6 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 28 Working Days (or such other reasonable period as may be agreed between the parties).
- 13.7 The Contracting Body may require the Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 13.8 If the Provider replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Provider.

14. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 14.1 At all times, the Provider shall ensure that:
- (a) each of the Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Provider's Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Provider (having regard to any authorisation procedure agreed in writing between the parties, in the event that such exists) are involved in providing the Services; and
 - (d) all of the Provider's Personnel comply with all of the Council's and/or the Contracting Body's policies including those that apply to persons who are allowed access to the applicable Council's or Contracting Body's Premises.
- 14.2 The Contracting Body may refuse to grant access to, and remove, any of the Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Provider shall replace any of the Provider's Personnel who the Contracting Body reasonably decides have failed to carry out their duties with reasonable skill and care.

Following the removal of any of the Provider's Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

- 14.4 The Provider shall maintain up-to-date personnel records on the Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Contracting Body on the Provider's Personnel. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 14.5 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 14.6 The Provider shall immediately notify the Council and the Contracting Body in the event of any significant staffing changes including, but not limited to, an unexpected increase in staff turnover or the increased use of agency staff to deliver commissioned hours.

15. SAFEGUARDING SERVICE USERS

- 15.1 The Provider shall ensure that all individuals engaged in the provision of the Services are:
 - (a) subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - (b) the Provider shall monitor the level and validity of the checks under this clause 15.1 for each member of staff.
- 15.2 The Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services would be barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 15.3 The Provider shall immediately notify the Contracting Body of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.
- 15.4 The Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.

- 15.5 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to perform the Services or who may otherwise present a risk to service users.

16. TUPE

- 16.1 The parties agree that the provisions of Schedule 10 shall apply to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

17. REPORTING AND MEETINGS

- 17.1 The Provider shall provide the Management Reports in the form and at the intervals set out in Schedule 5.
- 17.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 and the Provider shall, at each meeting, present its previously circulated Management Reports and, if appropriate, financial reports in the format set out in that Schedule.

18. MONITORING

- 18.1 The Contracting Body shall monitor the performance of the Services by the Provider in accordance with Schedule 2 and Schedule 5.
- 18.2 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Contracting Body in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Contracting Body.

19. CHANGE CONTROL

Any requirement for a Change, including the need for any Additional Services shall be subject to the Change Control Procedure.

20. DISPUTE RESOLUTION

- 20.1 Either party may call an extraordinary meeting of the parties by service of not less than 7 days' written notice (or such other period as may be agreed in writing) and each party agrees to procure that its Authorised Representative together with any

other member of Key Personnel requested to attend by the Contracting Body (if any) shall attend all extraordinary meetings called in accordance with this clause.

- 20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to the Provider's Managing Director or the Contracting Body's nominated representative (or other senior officers of the parties as may be appropriate and agreed from time to time) who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the officers referred to in this clause 20.2 fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.
- 20.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.
- 20.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

21. SUB-CONTRACTING AND ASSIGNMENT

- 21.1 The Provider shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the Contracting Body, neither may the Provider sub-contract the whole or any part of its obligations under this agreement except with the prior written consent of the Contracting Body, such consent not to be unreasonably withheld or delayed.

21.2 In the event that the Provider enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Contracting Body for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Contracting Body, of any such Sub-Contract on receipt of a request for such by the Contracting Body's Authorised Representative.

21.3. Subject to clause 21.5, the Contracting Body may assign, novate or otherwise dispose of its rights and obligations under the agreement or any part thereof to:

- (a) any Contracting Council; or
- (b) any other body established by the Contracting Body or under statute in order substantially to perform any of the functions that had previously been performed by the Contracting Body ; or
- (c) any private sector body which substantially performs the functions of the Contracting Body,

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the agreement.

21.4 Any change in the legal status of the Contracting Body such that it ceases to be a Contracting Council shall not, subject to clause 21.3, affect the validity of the agreement. In such circumstances, the agreement shall bind and inure to the benefit of any successor body to the Contracting Body.

21.5 If the rights and obligations under the agreement are assigned, novated or otherwise disposed of pursuant to a body which is not a Contracting Council or if there is a change in the legal status of the Contracting Body such that it ceases to be a Contracting Council (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

- (a) the rights of termination of the Contracting Body in clause 30 (Termination For Breach) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the agreement or any part thereof with the prior consent in writing of the Provider.

21.6 The Contracting Body may disclose to any Transferee any confidential information of the Provider which relates to the performance of the Provider's obligations under the agreement. In such circumstances the Contracting Body shall authorise the

Transferee to use such confidential information only for purposes relating to the performance of the Provider's obligations under the agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such confidential information.

- 21.7 Each party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the agreement .

LIABILITY

22. INDEMNITIES

- 22.1 Subject to Clause 22.5, the Provider shall indemnify and keep indemnified the Contracting Body against all liabilities, costs, expenses, damages and losses incurred by the Contracting Body arising out of or in connection with:

- (a) the Provider's breach or negligent performance or non-performance of this agreement;
- (b) any claim made against the Contracting Body arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Provider or Provider Personnel;
- (c) the enforcement of this agreement.

- 22.2 Subject to Clause 22.5, the Provider shall indemnify the Contracting Body against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Contracting Body arising out of or in connection with:

- (a) any claim made against the Contracting Body by a third party for death, personal injury or damage to property arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Provider, its employees, agents or subcontractors.

- 22.3 Liability under the indemnity at clause 22.2 is conditional on the Contracting Body discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Contracting Body which may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Contracting Body shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the

Provider specifying the nature of the Claim in reasonable detail;

- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Provider (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Contracting Body may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Provider but without obtaining the Provider's consent) if the Contracting Body reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - (c) give the Provider and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Contracting Body so as to enable the Provider and its professional advisers to examine them and to take copies (at the Provider's expense) for the purpose of assessing the Claim; and
 - (d) subject to the Provider providing security to the Contracting Body to the Contracting Body's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Provider may reasonably request to avoid, dispute, compromise or defend the Claim.
- 22.4 If a payment due from the Provider under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Contracting Body shall be entitled to receive from the Provider such amounts as shall ensure that the net receipt, after tax, to the Contracting Body in respect of the payment is the same as it would have been were the payment not subject to tax.
- 22.5 The indemnities provided under Clause 22.1 and 22.2 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Contracting Body are directly caused (or directly arise) from the negligence or breach of this agreement by the Contracting Body or its Representatives.
- 22.6 Nothing in this clause shall restrict or limit the Contracting Body's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this clause.

23. LIMITATION OF LIABILITY

- 23.1 Subject to clauses 22.2 and 23.5, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, savings (whether anticipated or otherwise), goodwill or business opportunities whether direct or indirect.

- 23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 23.3 Subject to clause 23.5, the Contracting Body's total aggregate liability:
- (a) in respect of the indemnities given by the Contracting Body in Schedule 10 is unlimited; and
 - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Contracting Body shall remain fully liable), shall in no event 100% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.
- 23.4 Subject to clause 23.5, the Provider's total aggregate liability:
- (a) in respect of the indemnities given by the Provider in clauses 22.2, 26.5, 29.5 and Schedule 10 is unlimited;
 - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed the greater of £1million or 150% of the aggregate Charges paid (or due to be paid) under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.
- 23.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) Fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of Data Protection Legislation;
 - (d) breach of any obligation as to title implied by statute; or
 - (e) any other act or omission, liability for which may not be limited under any Applicable Law.

24. INSURANCE

- 24.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance covering the following:-
- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in relation to any one claim arising out of each and every event without limit on the number of claims in any one year or other period and such insurance shall expressly by its terms confer its benefits on the Contracting Body. Such insurance policy shall not limit or

exclude any claims relating to sexual abuse, exploitation, molestation or emergency first aid;

- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS);
- (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- (d) appropriate compulsory motor insurance; where the Services involves the transportation of Service Users,

(the "**Required Insurances**") in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

- 24.2 The Provider shall give the Contracting Body, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Contracting Body may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the agreement.
- 24.5 The Provider shall hold and maintain the professional indemnity insurance for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

25. FREEDOM OF INFORMATION

- 25.1 The Provider acknowledges that the Contracting Body is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Contracting Body (at the Provider's expense) to enable the Contracting Body to comply with these information disclosure requirements.
- 25.2 The Provider shall and shall procure that its Sub-Contractors shall:

- (a) transfer the Request for Information to the Contracting Body as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Contracting Body with a copy of all Information in its possession or power in the form that the Contracting Body requires within five Working Days (or such other period as the Contracting Body may specify) of the Contracting Body requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Contracting Body to enable the Contracting Body to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 25.3 The Contracting Body shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
 - (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 25.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Contracting Body.
- 25.5 The Provider acknowledges that the Contracting Body may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice (issued under section 45 of the FOIA, July 2018), be obliged under the FOIA or the EIRs to disclose Information:
 - (a) without consulting with the Provider; or
 - (b) following consultation with the Provider and having taken its views into account,

provided always that where clause 25.5(b) applies the Contracting Body 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.
- 25.6 The Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Contracting Body to inspect such records as requested from time to time.
- 25.7 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Contracting Body may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.5.

26. DATA PROTECTION

- 26.1 This clause sets out the framework for the sharing of Personal Data between the parties as Controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 26.2 Each party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 26.3 Each party shall:
- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - (b) give full information to any Data Subject whose Personal Data may be processed under this agreement of the nature such Processing. This includes giving notice that, on the termination of this agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - (c) process the Shared Personal Data only for the Agreed Purposes;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, Personal Data.
 - (g) not transfer any Personal Data received from the Data Discloser outside the EEA unless the transferor:
 - (i) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a Joint Controller); and
 - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 26.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) consult with the other party about any notices given to Data Subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any Data Subject Access Request. Data subjects have a right of access and a right of correction in respect of their personal data which the Provider holds about them, in accordance with Data Protection Law and the Provider shall be the contact point for Data Subjects wishing to exercise their rights in respect of Personal Data held about them in connection with the delivery of the Services;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- (e) assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data Breach notifications, Data Protection Impact Assessments and consultations with supervisory authorities or regulators;
- (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the other party or the other party's designated auditor; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

26.5 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole Contracting Body to manage, defend and/or settle it.

27. CONFIDENTIALITY

27.1 Subject to clause 27.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

27.2 Clause 27.1 shall not apply to any disclosure of information:

- (a) required by any Applicable Law, provided that clause 25.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
- (d) by the Contracting Body of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 20;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Contracting Body to any other department, office or agency of the Government; and
- (h) by the Contracting Body relating to this agreement and in respect of which the Provider has given its prior written consent to disclosure.

27.3 On or before the Termination Date the Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Contracting Body or securely destroyed.

28. AUDIT

28.1 During the Term and for a period of 7 years after the Termination Date, the Contracting Body may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Providers (including Sub-Contractors) of the Services at the level of detail agreed in Clause 11 (Charges and Payment);
- (b) to review the integrity, confidentiality and security of any data relating to the Contracting Body or any service users;

- (c) to review the Provider's compliance with the DPA, the FOIA, in accordance with clause 26 (Data Protection) and clause 25 (Freedom of Information) and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Provider in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the Contracting Body's accounts;
 - (g) to carry out an examination pursuant to sections 7ZA of the National Audit Act 1983 (as amended) of the economy, efficiency and effectiveness with which the Contracting Body has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 28.2 Except where an audit is imposed on the Contracting Body by a Regulatory Body, the Contracting Body may not conduct an audit under this clause 28 more than twice in any calendar year.
- 28.3 The Contracting Body shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 28.4 Subject to the Contracting Body's obligations of confidentiality, the Provider shall on demand provide the Contracting Body and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Provider's Personnel.
- 28.5 The Contracting Body shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Provider in which case the Provider shall reimburse the Contracting Body for all the Contracting Body's reasonable costs incurred in the course of the audit.

- 28.7 If an audit identifies that:
- (a) the Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Contracting Body about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Contracting Body has overpaid any Charges, the Provider shall pay to the Contracting Body the amount overpaid within 20 days. The Contracting Body may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
 - (c) the Contracting Body has underpaid any Charges, the Contracting Body shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Contracting Body if this was due to a default by the Provider in relation to invoicing within 20 days.

29. INTELLECTUAL PROPERTY

- 29.1. All Intellectual Property in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the **"IP Materials"**):

- (a) furnished to or made available to the Provider by or on behalf of the Contracting Body shall remain the property of the Contracting Body; and
- (b) prepared by or for the Provider on behalf of the Contracting Body for use, or intended use, in relation to the performance by the Provider of its obligations under the agreement shall belong to the Contracting Body;

and the Provider shall not, and shall ensure that the Provider's Personnel shall not, (except when necessary for the performance of the agreement) without prior written approval of the Contracting Body, use or disclose any Intellectual Property in the IP Materials.

- 29.2 The Provider hereby assigns to the Contracting Body, with full title guarantee, all Intellectual Property which may subsist in the IP Materials prepared in accordance with clause 29.1 (b). The Provider shall execute all documentation necessary to execute this assignment.
- 29.3 The Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by the agreement or the performance of the agreement.
- 29.4 The Provider shall ensure that the third party owner of any Intellectual Property that are or which may be used to perform the agreement grants to the Contracting Body a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Contracting Body an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for

the Contracting Body to sub-license, transfer, novate or assign to other Contracting Authorities, the replacement Provider or to any other third party supplying services to the Contracting Body.

- 29.5 The Provider shall not infringe any Intellectual Property of any third party in supplying the Services and shall, during and after the agreement, indemnify and keep indemnified and hold the Contracting Body harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Body or the Contracting Body may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the Contracting Body ; or
 - (b) the use of data supplied by the Contracting Body which is not required to be verified by the Provider under any provision of the agreement.
- 29.6 The Contracting Body shall notify the Provider in writing of any claim or demand brought against the Contracting Body for infringement or alleged infringement of any Intellectual Property in materials supplied or licensed by the Provider.
- 29.7 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property in materials supplied or licensed by the Provider, provided always that it:
- (a) shall consult the Contracting Body on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Contracting Body; and
 - (c) shall not settle or compromise any claim without the prior written approval of the Contracting Body (not to be unreasonably withheld or delayed).
- 29.8 The Contracting Body shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Contracting Body or by a third party for infringement or alleged infringement of any third party Intellectual Property in connection with the performance of the Provider's obligations under the agreement and the Provider shall indemnify the Contracting Body for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not, however, be required to indemnify the Contracting Body in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 29.5(a) or (b).
- 29.9 The Contracting Body shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property by the Contracting Body or the Provider in connection with the performance of its obligations under the agreement.
- 29.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property is made in connection with the agreement or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Contracting

Body and, at its own expense and subject to the consent of the Contracting Body (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
- (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Contracting Body,

and in the event that the Provider is unable to comply with clauses 29.7(a) or (b) within 20 Working Days of receipt of the Provider's notification the Contracting Body may terminate the agreement with immediate effect by notice in writing.

- 29.11 The Provider grants to the Contracting Body a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property that the Provider owned or developed prior to the Commencement Date and which the Contracting Body reasonably requires in order exercise its rights and take the benefit of this agreement including the Services provided.

TERMINATION

30. TERMINATION ON NOTICE OR BREACH

- 30.1 Either party may voluntarily terminate this agreement by giving the other party not less than 6 months' written notice at any time after the Commencement Date.

- 30.2 The Contracting Body may terminate this agreement in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:

- (a) if the Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Contracting Body may only terminate this agreement under this clause 30.1 if the Provider has failed to remedy such breach within 14 days (or such other longer period if stipulated by the Contracting Body in writing) of receipt of notice from the Contracting Body (a **Remediation Notice**) to do so;
- (b) if a Consistent Failure has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;

- (e) if the Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Provider to which the Contracting Body reasonably objects.

30.3 The Contracting Body may terminate this agreement in accordance with the provisions of this clause 30 and clauses 31-33.

30.4 If this agreement is terminated by the Contracting Body for cause such termination shall be at no loss or cost to the Contracting Body and the Provider hereby indemnifies the Contracting Body against any such losses or costs which the Contracting Body may suffer as a result of any such termination for cause.

TERMINATION: INDIVIDUAL SERVICE USERS

TERMINATION BY THE CONTRACTING BODY

30.5 The Contracting Body may terminate the provision of Individualised Support in relation to a single Service User on seven (7) calendar days' notice to the Provider. Such termination shall be without prejudice to the rest of the Provider's continuing obligations under the Agreement including the provision of Core Support, unless the Core Support is being provided solely to the Service User in respect of whom the Individualised Support is being terminated, in which case the provision of the Core Support shall be co-terminus with the Individualised Support.

30.6 Where the Contracting Body simultaneously terminates the provision of Individualised Support in respect of more than one Service User in a single Premises or multiple Premises, 28 (twenty eight) calendar days' notice shall be required. Such termination shall be without prejudice to the rest of the Provider's continuing obligations under the Agreement including the provision of Core Support, unless the Core Support under the Agreement is being provided to all Service Users in the Premises in respect of whom the Individualised Support is being terminated, in which case the provision of the Core Support shall be co-terminus with the Individualised Support).

30.7 Where the Contracting Body terminates the provision of Individualised Support in respect of all Service Users in a Premises or multiple Premises, three calendar months' notice (or, where agreed by the Parties, a shorter period of notice) shall be provided and the provision of Core Support shall be co-terminus with the Individualised Support.

30.8 Where a Care and Support Plan specifies that the provision of the Services in relation to a particular Service User shall cease on the date specified in the Service User's Care and Support Plan, the Contracting Body shall be liable to pay the relevant Charges outstanding in relation thereto for Services provided up to the last day of actual Service delivery.

- 30.9 Where a Service User is admitted to hospital or dies or in any other circumstances where there is a change in the Services required, the Provider shall notify the Contracting Body immediately and in any event no later than the Contracting Body's next working day after any such change.
- 30.10 Where the Contracting Body is advised that a Service is no longer required because of a dispute between the Service User and the Provider the Provider will continue to make the Services available for such period as the Contracting Body may require up to a maximum of 28 (twenty eight) calendar days following receipt of such notification and shall work with the Contracting Body as closely as possible to ensure that an alternative Provider can be appointed as quickly as possible.
- 30.11 On termination of the provision of Services to any particular Service User the Provider shall take all reasonable steps (including the provision of such assistance and information as is necessary) to ensure that on termination there is a smooth and seamless transfer of the relevant Services to any Successor Provider or (at the request of the Contracting Body) there is an orderly cessation of the relevant Services. The information to be provided by the Provider to the Contracting Body pursuant to this clause must include but not be limited to the matters listed in the Exit Management Plan.
- 30.12 For the avoidance of doubt, termination of any Services under this Clause 30 shall be without prejudice to the rest of the Provider's continuing obligations under the Agreement.

TERMINATION BY THE PROVIDER

- 30.13 The Provider may terminate the provision of Individualised Support in relation to a Service User on 28 (twenty eight) calendar days' notice to the Contracting Body. Such termination shall only be permitted where the Service User in respect of whom the Individualised Support is being terminated is the only Service User living in the Premises. Provision of any Core Support under the Agreement shall be co-terminus with the Individualised Support.
- 30.14 Where the Provider terminates the provision of Individualised Support in respect of a Service User living in a Premises which is occupied by other Service Users who are in receipt of Individualised Support from the Provider, 3 (three) calendar months' notice shall be required. The consequences of such termination shall be the termination of all Individualised and Core Support to all Service Users in the Premises on the expiry of the notice period.
- 30.15 The Provider may, in exceptional circumstances, terminate the provision of Individualised Support in relation to a single Service User by notice with immediate effect where, in the reasonable opinion of the Provider and subject to the consent of the Contracting Body having reviewed the documents in (b) below (such consent not to be unreasonably withheld), the Service User's behaviour is unacceptable and;
- (a) the Service User's behaviour has not previously been recognised as a risk or a care and support need detailed in the Service User's Care and Support Plan;
 - (b) an incident investigation report and risk assessment is provided to the Contracting

Body to evidence that it is no longer safe to deliver Services to the Service User.

- 30.16 In the case of termination of Individualised Support in the circumstances described in clause 30.15 where the Premises is occupied by other Service Users who are in receipt of Individualised Support from the Provider, the provisions of clause 30.14 shall not apply and the provision of Individualised and Core Support to all remaining Service Users shall continue.
- 30.17 The Provider and the Contracting Body may by prior agreement in writing and at the Contracting Body's absolute discretion agree alternative notice periods in respect of the termination of Services.
- 30.18 The provisions of clause 30.11 shall apply to any termination of Services by the Provider.

31. TERMINATION ON MANDATORY GROUNDS

- 31.1 The Contracting Body is required by virtue of Regulation 73 of the Public Contracts Regulations 2015 to ensure that all contracts which it awards contain provisions enabling the Contracting Body to terminate those contracts under certain circumstances. Thus the Contracting Body will terminate the whole of this agreement with immediate effect by the service of a written notice on the Provider in the following circumstances:

- 31.1.1 where the agreement has been subject to a substantial modification which will include any change in the agreement irrespective of the monetary value and which meets one or more of the following conditions:

- i) materially alters the character of the agreement; or
- ii) would have allowed other potential Providers to participate in the procurement procedure other than those initially selected or allowed for the acceptance of a tender other than that originally accepted; or
- iii) attracted additional Providers in the procurement procedure; or
- iv) the modification changes the economic balance of the agreement in favour of the Provider in a manner which was not provided for in the original agreement; or
- v) the modification extends the scope of the agreement considerably; or
- vi) a new Provider replaces the Provider other than where the change arises from a clear and precise unequivocal review clause or the exercising of an option which outlines the scope and nature of the possible modification as well as the conditions under which the option can be exercised and that the option exercised does not alter the overall nature of the agreement or following a universal or partial succession into the position of the Provider following corporate restructuring such as a takeover, merger, acquisition or insolvency and provided that this does not entail other substantial

modifications and where the purpose of the modification is not aimed at circumventing procurement law.

31.1.2 where post-award of the agreement it is discovered that the Provider should have been excluded from the procurement procedure on certain mandatory exclusion grounds for a breach of Regulation 57 of the Public Contracts Regulations 2015. These exclusion grounds are where the Provider has been convicted of any of the offences that are detailed in Regulation 57.

31.1.3 where the Court of Justice of the European Union has declared the agreement was awarded in 'serious infringement' of the Contracting Body's obligations under EU law and Directive 2014/24/EU in infringement proceedings brought by the European Commission against the Member State concerned under Article 258 TFEU.

32. FORCE MAJEURE

32.1 Subject to the remaining provisions of this clause 32, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

32.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

32.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

32.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.

32.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

- 32.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 32.7 The Contracting Body may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

33. PREVENTION OF BRIBERY

- 33.1 The Provider:
- (a) shall not, and shall procure that any Provider Party and all Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;
 - (b) 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 Contracting Body, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Contracting Body before execution of this Agreement.
- 33.2 The Provider shall:
- (a) if requested, provide the Contracting Body with any reasonable assistance, at the Contracting Body's reasonable cost, to enable the Contracting Body to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - (b) within 14 Working Days of the Commencement Date, and annually thereafter, certify to the Contracting Body in writing (such certification to be signed by an officer of the Provider) compliance with this clause 33 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Contracting Body may reasonably request.
- 33.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Contracting Body) to prevent any Provider Party or Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 33.4 If any breach of clause 33.1 is suspected or known, the Provider must notify the Contracting Body immediately.

- 33.5 If the Provider notifies the Contracting Body that it suspects or knows that there may be a breach of clause 33.1, the Provider must respond promptly to the Contracting Body's enquiries, co-operate with any investigation, and allow the Contracting Body to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this Agreement.
- 33.6 The Contracting Body may terminate this Agreement by written notice with immediate effect if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 33.1. In determining whether to exercise the right of termination under this clause 33.6, the Contracting Body shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:
- (a) with the Contracting Body; or,
 - (b) with the actual knowledge;
- of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or
- (c) in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.
- 33.7 Any notice of termination under clause 33.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Contracting Body believes has committed the Prohibited Act; and
 - (c) the date on which this Agreement will terminate.
- 33.8 Notwithstanding the provisions of clause 20 (Dispute resolution), any dispute relating to:
- (a) the interpretation of clause 33; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Contracting Body and its decision shall be final and conclusive.
- 33.9 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Body.

34. CONSEQUENCES OF TERMINATION

- 34.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Provider shall co-operate fully with the Contracting Body to ensure an orderly migration of the Services to the Contracting Body or, at the Contracting Body's request, a Replacement Provider.
- 34.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Contracting Body before such completion) the Provider shall procure that all data and other material belonging to the Contracting Body (and all media of any nature containing information and data belonging to the Contracting Body or relating to the Services), shall be delivered to the Contracting Body forthwith and the Provider's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.
- 34.3 The provisions of clause 6.3 (provision of records), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 34 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

35. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the Term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

36. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Contracting Body to the Provider in respect of the Services or any omission on the part of the Contracting Body to communicate such prior acceptance or approval shall not relieve the Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

37. CULMINATION OF REMEDIES

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

38. SEVERABILITY

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

39. PARTNERSHIP OR AGENCY

At all times during for the duration of the Agreement the Provider shall be an independent contractor and nothing in the agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and accordingly neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the agreement.

40. THIRD PARTY RIGHTS

A person who is not a party to the agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

41. PUBLICITY

41.1 The Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Contracting Body's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Contracting Body.

41.2 The Provider shall take reasonable steps to ensure that their servants, employees, agents, Sub-Contractors, Providers, professional advisors and consultants comply with clause 41.1.

42. NOTICES

- 42.1 Except as otherwise expressly provided within this agreement, no notice or other communication from one party to the other shall have any validity under the agreement unless made in writing by or on behalf of the party concerned.
- 42.2 Any notice or other communication which is to be given by either party to the other shall be given by letter (sent by hand, first or second class post, recorded delivery or special delivery), or electronic mail (confirmed by letter). Such letters shall be addressed to the other party in the manner referred to in clause 42.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted (save with the exception of post delivered by second class, in which case service shall be deemed to have occurred on the third Working Day after posting), or 4 hours, in the case of electronic mail or sooner where the other party acknowledges receipt of such letters, or item of electronic mail.
- 42.3 For the purposes of clause 42.2, the address of each party shall be those set out in the Service Contract Data.
- 42.4 Either party on the giving of a minimum of 10 Working Days' notice may change its address for service by serving a notice in accordance with this clause.

43. ENTIRE AGREEMENT

This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement and understanding between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

44. DISCRIMINATION

- 44.1 The Provider shall not unlawfully discriminate either directly or indirectly within the meaning and scope of any Law. Furthermore the Provider will ensure that it provides equality of treatment for anyone who shares a protected characteristic (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise in the provision of the Services and in the employment of the Provider's Personnel) including but not limited to the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 44.2 The Provider shall take all reasonable steps to secure the observance of clause 44.1 by all Provider Personnel.

45 COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

46 GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.

This agreement has been entered into on the date stated at the beginning of it.

IN WITNESS WHEREOF this agreement has been executed by the duly authorised representatives of the parties on the date shown at the beginning of this Contract

[THE COMMON SEAL OF

LANCASHIRE COUNTY COUNCIL)

Was hereunto affixed in the presence of)]

OR

[INSERT CONTRACTING BODY'S EXECUTION CLAUSE]

SIGNED on behalf of

[the Provider])

Director/Partner/Sole Trader*)

Print name)

)

SIGNED on behalf of

[the Provider])

Director/Company Secretary/Partner/Witness*)

Print name)

Address**)

*delete as applicable

**if signing as a witness

Schedule 1 Specification

[Included as Appendix 7 to the Invitation to Participate]

Schedule 2 - Service Levels / Key Performance Indicators

Part 1. Service Levels

Service	Method of calculating service delivery	Service level
Service User outcome measures (Outcomes being achieved)	As detailed in KPI 1 of the Key Performance Indicators	Minimum Performance Level 75%
Spot check visits	As detailed in KPI 2 of the Key Performance Indicators	Minimum Performance Level 50%
Complaints and Concerns	As detailed in KPI 3 of the Key Performance Indicators	Minimum Performance Level 80%
Supporting people to obtain or retain employment	As detailed in KPI 4 of the Key Performance Indicators	Minimum Performance Level 75%
Delivery of Commissioned Hours	As detailed in KPI 5 of the Key Performance Indicators	Minimum Performance Level 75%
Staff turnover	As detailed in KPI 6 of the Key Performance Indicators	Less than 20%

Part 2. Key Performance Indicators

The Contracting Body will require Providers to evidence service delivery and quality of service through a programme of contract management. This will include a combination of contract management approaches including annual reports, contract reviews, contract monitoring and key performance indicators.

The below key performance indicators will be required to be sent to the Contracting Body by the Providers in order to measure the effectiveness of service delivery by the Provider, and wider market performance, on key objectives.

The Contracting Body may review the minimum performance levels set below. Any changes to key performance indicator targets will be reviewed in engagement with Providers and will be set at no more than 10% above or below the benchmark of KPI performance prior to the review.

Ref	Title	Providing Organisation	Collection Interval
KPI 1	Service User outcome measures (Outcomes being achieved)	Provider	Six Monthly
KPI 2	Spot check visits	Provider	Quarterly
KPI 3	Complaints and Concerns	Provider	Quarterly
KPI 4	Supporting people to obtain or retain employment	Provider	Annually
KPI 5	Delivery of Commissioned Hours	Provider	Quarterly
KPI 6	Staff turnover	Provider	Quarterly

KPI 1 Service User outcome measures (Outcomes being achieved)

Rationale	The Contracting Body requires Providers to evidence that they are committed to improving the quality of the Service they provide. Monitoring the Provider's performance in terms of achieving outcomes agreed with Service Users will ensure that Providers are working to improve in this area.				
Definition	% Service Users that have achieved one or more outcomes.				
Numerator	A – Number of Service Users with care commissioned by the Contracting Body that have achieved one or more outcomes when reviewed.				
Denominator	B – Number of Service Users with care commissioned by the Contracting Body who have been reviewed during the period.				
Formula	$(A \div B) \times 100 = \% \text{outturn}$				
Good	Good performance is typified by	Collection	Six Monthly	Data Source	Care and Support Plan

Performance	a higher percentage	Interval			
Return Format	Numerator Denominator and Percentage	Target	75%	Reporting Organisation	Provider

KPI 2 Spot check visits

Rationale	<p>The Contracting Body requires Providers to evidence that they are committed to assessing, monitoring and improving the quality and safety of the Service they provide.</p> <p>The Provider will be required to spot check staff during service delivery to ensure care is being delivered as commissioned in the care and support plan, and to ensure quality of care being delivered.</p>				
Definition	% Support Workers providing support commissioned by the Contracting Body that have received a spot check during the provision of support				
Numerator	A – Number of Support Workers providing support commissioned by the Contracting Body that have received a spot check during the reporting period				
Denominator	B – Total number of Support Workers				
Formula	$(A \div B) \times 100 = \% \text{outturn}$				
Good Performance	Good performance is typified by a higher percentage	Collection Interval	Quarterly	Data Source	Provider records
Return Format	Numerator, Denominator and Percentage	Target	50%	Reporting Organisation	Provider

KPI 3 Complaints and Concerns

Rationale	<p>The Contracting Body requires Providers to evidence that they are committed to Service User involvement and empowerment, fair access, diversity and inclusion. In addition to reviewing complaints and Concerns during contract monitoring, monitoring the Provider's performance in dealing with all formal written and verbal complaints and concerns that have been received during the reporting period, relating to Service Users whose</p>				
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	support is commissioned by the Contracting Body, in a timely manner will evidence that a Provider ensures that Service Users' views are taken seriously.				
Definition	% of complaints and concerns that have been completed /resolved within 28 days				
Numerator	<p>A– Number of complaints and concerns that have been completed/resolved within 28 days</p> <p>B – Number of complaints and concerns that have been received in the reporting period</p>				
Denominator	C – Number of complaints and concerns that have been completed/resolved within the reporting period				
Formula	$(A \div C) \times 100 = \% \text{ outturn}$				
Good Performance	Good performance is typified by a higher percentage	Collection Interval	Quarterly	Data Source	Provider records
Return Format	Numerator, Denominator and Percentage	Target	80%	Reporting Organisation	Provider

KPI 4 Supporting people to obtain or retain employment

Rationale	<p>The Contracting Body must assure itself that care and support delivered within its footprint is person-centred, outcome focused, adaptable and supports adults to access employment where this is a desired outcome.</p> <p>The vision for this KPI is to assure that adults have the opportunity, and receive the right support, to gain access to paid or unpaid employment in order to: find employment when they want, maintain a family and social life, contribute to community life and to avoid loneliness or isolation. This will provide for increased skills, independence, and community engagement and will ensure care and support is targeted at improving the lives of supported adults.</p>
Definition	The number of service users with either paid or voluntary work identified as a care and support outcome in their support plan and have been successfully supported into either paid or voluntary work, excluding circumstances where the supported adult completes unpaid work within the provider's own company/ organisation.

Numerator	A - The number of supported adults in paid employment B - The number of supported adults in voluntary employment, excluding circumstances where the supported adult completes unpaid work within the provider's own company/ organisation				
Denominator	C - The number of supported adults with either paid or voluntary work identified as a care and support outcome in their support plan				
Formula	$(A + B) \div C \times 100 = \% \text{ outturn}$				
Good Performance	Good performance is typified by a higher percentage	Collection Interval	Annually	Data Source	Provider records
Return Format	Numerator, Denominator and Percentage	Target	75%	Reporting Organisation	Provider

KPI 5 Delivery of Commissioned Hours

Rationale	Service Users should expect to receive care in accordance with their Care and Support Plan. The KPI Measures the reliability of provision, by capturing care delivered within the reporting period, Contingency hours used and identifying hours not delivered.
Definition	The percentage of hours commissioned by the Contracting Body that were delivered as planned.
Numerator	A= Number of hours commissioned by the Contracting Body delivered in reporting period B= Number of Contingency hours used by the Provider in reporting period C = Number of hours commissioned by the Contracting Body not delivered due to provider non-delivery in reporting period D = Number of hours commissioned by the Contracting Body not delivered due to service user cancellation in reporting period
Denominator	E = The number of hours commissioned by the Contracting Body in reporting period
Formula	$(A \div E) \times 100 = \% \text{ outturn}$

Good Performance	Good performance is typified by a higher percentage	Collection Interval	Quarterly	Data Source	Provider records
Return Format	Numerator, Denominator and Percentage	Minimum Performance Level	75%	Reporting Organisation	Provider

KPI 6 Staff turnover

Rationale	<p>Monitoring staff retention within the organisation will evidence if Providers are improving the stability and reliability of the workforce.</p> <p>Staff turnover information should give a rounded picture of the Provider's ability to retain staff, have low sickness rates, good induction and training.</p>				
Definition	Percentage of Care Workers who are leaving the Provider during the reporting period.				
Numerator	A – Number of Care Workers that have left the Provider during the period.				
Denominator	<p>B – Number of Care Workers in post at start of reporting period</p> <p>C – Number of Care Workers in post at end of reporting period.</p>				
Formula	$(A \div ((B+C)/2)) \times 100 = \% \text{ Staff turnover}$				
Good Performance	Good performance is typified by a lower percentage	Collection Interval	Quarterly	Data Source	Provider records
Return Format	Numerator, denominator and Percentage	Minimum Performance Level	Less than 20%	Reporting Organisation	Provider

PART 3. CONSISTENT FAILURE

In this agreement, **consistent failure** shall mean: the Contracting Body serving 4 Default Notices in a rolling 12 Month period.

Schedule 3 Provider's Tender

Schedule 4 - Service Contract Data

[Included as Appendix 8 to the Invitation to Participate]

Form of Annual Service Development Plan included as Appendix 12 to the Invitation to Participate]

Schedule 5 - Contract Management Strategy

[Included as Appendix 9 to the Invitation to Participate]

Schedule 6 SUPPLIER INCENTIVE SCHEME

[TO ONLY BE INCLUDED WHERE THIS SCHEME IS OFFERED WITHIN THE ITT AND THE PROVIDER HAS INDICATED IN THE ITT THAT THEY WISH TO BE A MEMBER OF THIS SCHEME]

1. DEFINITIONS

In this Schedule the following words and expressions have the following meanings unless the context otherwise requires:

“Debt”	the gross amount (including, without limitation, all fees, charges, expenses and other sums invoiced, including any applicable VAT and other taxes), that is invoiced to the Council by the Provider, or otherwise due to the Provider under the terms of this agreement.
“Rebate”	shall have the definition given to it in clause 3.1.1 of this Schedule 6.

2. TERM

This Schedule 6 shall be in force for a minimum period of two (2) years from the Commencement Date and will continue thereafter unless and until:

- (a) terminated by either party giving not less than six (6) months' written notice to that effect to the other party, such termination to be effective no earlier than the date that is two (2) years from the Commencement Date; or
- (b) This agreement as a whole is terminated or expires in accordance with its terms.

3. PARTICIPATION IN SUPPLIER INCENTIVE SCHEME

3.1 The parties agree that the terms in this Schedule 6 take precedence over those terms of the agreement which relate to payments (and the timing of payments) as follows:

3.1.1 the Provider acknowledges and agrees that in consideration of the Council paying a Debt owed to the Provider under or in connection the agreement prior to the date by which such payment would otherwise be required to be made under the terms of the agreement, the Council shall be entitled to deduct and retain from that Debt, for its own benefit, such percentage of that Debt (the **“Rebate”**) that is calculated in accordance with clause 7.5 of this Schedule 6.

3.2 For the avoidance of doubt, nothing in this agreement shall:

- 3.2.1 affect the date by which payment of a Debt is required to be made by the Council; or
- 3.2.2 require the Council to make early payment to the Provider in respect of any Debt.

- 3.3 The terms of this Schedule shall continue to apply to all Debts that remain unpaid up to and including the date of expiry or termination of the agreement (including where the agreement has terminated or expired). The terms of this agreement shall survive termination in respect of such Debts until payment has been effected.

4. INCORRECT APPLICATION OF REBATES

- 4.1 In the event the Provider, acting reasonably, considers that the Council has incorrectly applied a Rebate it shall raise a query in respect of that Rebate with the Council's accounts payable team (whose details will be provided to the Provider by the Council, as updated from time to time) within seven (7) days of the relevant payment being received by the Provider.
- 4.2 If the Provider does not raise a genuine query under clause 4.1 within seven (7) days of the relevant Rebate being applied, the Council shall be deemed to have applied the Rebate correctly in that instance and shall be entitled to retain that Rebate.
- 4.3 The parties shall use reasonable endeavours to resolve any query raised in accordance with clause 4.1 in a timely manner, including making relevant personnel available for the purpose.

5. E-INVOICING

The Council may make proposals to implement e-invoicing with the Provider and the Provider agrees to consider such proposals in good faith and not refuse reasonable amendments to this Schedule to reflect such proposals.

6. SET OFF

The Council may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under the agreement.

7. REBATES WHICH THE CUSTOMER MAY DEDUCT AND RETAIN

- 7.1 For any undisputed Debt received by way of an invoice, the Calculation Trigger Date shall be the date the relevant invoice is received by the Council, such date being the date recorded in the Council's accounts payable system as the registration date. For any other Debt the Calculation Trigger Date shall be the last day of the month in respect of the relevant Service received. For any disputed Debt, the Calculation Trigger Date shall be the date on which the dispute has been resolved to the mutual satisfaction of the parties.
- 7.2 The **Payment Date** shall be the date on which the Council executes its payment run in respect of the relevant Debt.

Calculation of the Rebate

- 7.3 The Rebate is calculated by establishing the number of days that have elapsed between the Calculation Trigger Date and the Payment Date and comparing the number of days elapsed within the first column of the table below to determine the Rebate to be applied to the invoiced amounts. The Rebate percentage (%) is

calculated to 14 decimal places and it is this value that is applied in all calculations. However, for simplicity, the Rebate % displayed in the table below has been rounded to 2 decimal places.

- 7.4 Rebates applied to invoices are calculated at an invoice line item level. Rebates are applied in the manner described at clause 7.3, against the value of each line item. The result of this calculation is rounded to the nearest pence. Once the Rebates for all line items have been calculated, they are aggregated to provide the total Rebate value to be deducted from the Supplier's invoice on early payment of the invoice.
- 7.5 The Council shall issue a debit note indicating the value of the Rebate that has been applied.

Number of days elapsed between the Calculation Trigger Date and the Payment Date	% of the amount owed that may be deducted and retained by the Customer as the Rebate
0	[●]%
1	[●]%
2	[●]%
3	[●]%
4	[●]%
5	[●]%
6	[●]%
7	[●]%
8	[●]%
9	[●]%
10	[●]%
11	[●]%
12	[●]%
13	[●]%
14	[●]%
15	[●]%
16	[●]%
17	[●]%
18	[●]%
19	[●]%
20	[●]%
21	[●]%
22	[●]%
23	[●]%
24	[●]%
25	[●]%
26	[●]%
27	[●]%

28	[●]%
29	[●]%
30	[●]%

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Schedule 7 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Contracting Body or the Provider sees a need to change this agreement, the Contracting Body may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Contracting Body and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Contracting Body and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Provider and the Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Provider.

2. PROCEDURE

- 2.1 Discussion between the Contracting Body and the Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Contracting Body; or
 - (c) a recommendation to change this agreement by the Provider.
- 2.2 Where a written request for an amendment is received from the Contracting Body, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Contracting Body within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Provider shall be submitted directly to the Contracting Body in the form of two copies of a Change Control Note

signed by the Provider at the time of such recommendation. The Contracting Body shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Contracting Body and the Provider.

2.5 For each Change Control Note submitted by the Provider the Contracting Body shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Contracting Body and return one of the copies to the Provider; or
 - (iii) notify the Provider of the rejection of the Change Control Note.

- 2.6 A Change Control Note signed by the Contracting Body and by the Provider shall constitute an amendment to this agreement.

Schedule 8 – Escalation Policy

[Included as Appendix 10 to the Invitation to Participate]

Schedule 9 Exit Management Principles

The Exit Management Plan shall include (without limitation) the following:

1. a list, by reference to each part of the Services, of the Provider's Personnel, resources and Key Personnel (if any) used to provide such Services;
2. a detailed programme for the transfer process for use in conjunction with the Contracting Body or (as the case may be) a Successor Provider in the event that the Services (or their equivalent or any part thereof) are to be transferred to the Contracting Body or (as the case may be) a Successor Provider including details of:
 - 2.1 the means to be used to ensure an orderly and prompt transfer of responsibility for providing the relevant Services to the Successor Provider while maintaining continuing provision of the Services throughout the transfer process;
 - 2.2 the process for handing responsibility for any work in progress and/or ongoing liabilities to the Successor Provider;
 - 2.3 the management structure to be employed during transfer; and
 - 2.4 arrangements for the transfer of any rights and/or obligations under the agreement with the Provider to a Successor Provider including for the avoidance of doubt the Contracting Body;
 - 2.5 plans for communication with the Provider (and the Provider's Personnel) and the Contracting Body's staff and suppliers and Service Users, to avoid any detrimental impact on the Contracting Body's operations as a result of termination of the Agreement;
 - 2.6 rules and procedures which will be adopted by the Provider to ensure that it does not make inappropriate use of, or gain an unfair advantage as a result of, any information gained by the Provider during any process for the tender of the Services (or their equivalent or any part thereof); and
 - 2.7 Plans for provision of contingent support and meeting with the Contracting Body or a Successor Provider for a reasonable period after transfer for the purposes of providing services replacing the Services.
3. Business Continuity Plan

- 3.1 The Provider shall comply with the provisions relating to Business Continuity, in particular those provisions contained at paragraph 4.4 of the Specification.
- 3.2 Upon exit, should the Provider fail to provide to the Contracting Body all material information and data relating to the delivery of the Services to the Service User, the Contracting Body will have the right to immediately access the Provider's premises to obtain the information required and the Provider will be obligated to assist in all material ways in order for the Contracting Body to obtain the information required in an efficient manner.

Schedule 10 TUPE

1. DEFINITIONS

The definitions in this paragraph apply in this Schedule 10:

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from the Contracting Body or any Third Party Employer to the Provider or Sub-contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-contractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Redundancy Costs: statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Provider to the Redundant Transferring Employees, but

excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

Redundant Transferring Employees: Transferring Employees whom the Provider has dismissed following a lawful redundancy within 12 months of the Effective Date.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Contracting Body or a Replacement Provider by virtue of the application of TUPE.

Provider's Final Staff List: the list of all the Provider's and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Provider's Provisional Staff List: the list prepared and updated by the Provider of all the Provider's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Provider or Sub-contractor to the Contracting Body or any Replacement Provider.

Staffing Information: in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Contracting Body may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Provider or Sub-contractor by virtue of the application of TUPE.

Third Party Employer: a Provider engaged by the Contracting Body to provide [some of the] Services to the Contracting Body and whose employees will transfer to the Provider on the Effective Date.

Transferring Employees: employees of the Contracting Body whose contracts of employment transfer with effect from the Effective Date to the Provider by virtue of the application of TUPE.

2. TRANSFER OF EMPLOYEES TO THE PROVIDER

2.1 The Contracting Body and the Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Provider or Sub-contractor. The Provider shall comply and shall procure that each Sub-

Contractor shall comply with their obligations under TUPE. The Relevant Transfer shall occur on the Effective Date.

2.2 The Contracting Body shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date. The Contracting Body shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Provider, as required by TUPE. The Contracting Body shall warrant that such information is complete and accurate as it is aware or should reasonably have been aware as at the date it is disclosed.

2.3 Subject to paragraph 2.4, the Contracting Body shall indemnify and keep indemnified the Provider against any losses, except indirect losses incurred by the Provider or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Contracting Body in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Provider or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.

2.4 The Provider shall be liable for and indemnify and keep indemnified the Contracting Body and any Third Party Employer against Employment Liabilities arising from or as a consequence of:

- (a) any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider taking on or after the Effective Date;
- (b) any of the employees informing the Contracting Body and any Third Party Employer they object to being employed by the Provider or Sub-Contractor; and
- (c) any change in identity of the Transferring Employees' and Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Commencement Date.

2.5 The Provider shall be liable for and indemnify and keep indemnified the Contracting Body and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, the Third Party Employees, and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.

2.6 The Provider shall immediately on request by the Contracting Body and/or the Third Party Employer provide details of any measures that the Provider or any Sub-Contractor of the

Provider envisages it will take in relation to any Transferring Employees and the employees of any Third Party Employer including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact, and shall indemnify the Contracting Body and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3. EMPLOYMENT EXIT PROVISIONS

3.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Contracting Body or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.2 The Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Contract or otherwise on request from the Contracting Body and at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Contracting Body, including information as to the application of TUPE to the employees. The Provider shall notify the Contracting Body of any material changes to this information as and when they occur.

3.3 At least 14 days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Contracting Body and/or, at the direction of the Contracting Body, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees.

3.4 The Contracting Body shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as (or any part of) the Services.

3.5 The Provider warrants that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.

3.6 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Contracting Body's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Sub-Contractor shall supply to the Contracting Body full particulars of such proposed changes and the Contracting Body shall be afforded reasonable time to consider them.

3.8 The Provider shall indemnify and keep indemnified in full the Contracting Body and at the Contracting Body's request each and every Replacement Provider against all Employment Liabilities relating to:

- (a) any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services; or
- (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor),

arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

3.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.10 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Contracting Body in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.11 Despite paragraph 3.10, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Schedule 11 Commercially sensitive information

[DETAILS OF ANY PROVIDER INFORMATION TO BE CLASSIFIED AS COMMERCIALLY SENSITIVE]

Schedule 12 – Suspension Policy

[Included as Appendix 13 to the Invitation to Participate]

**Schedule 13 – ISF Governance Principles and Template
Tripartite Agreement**

(to be inserted if ISF provision is to continue, following formal consultation process)

Schedule 14 – Disturbed Sleep Payments

1. The Provider may claim payment for a Disturbed Sleep in increments of 15 minutes. Claims for Disturbed Sleep payments shall be limited to a maximum of four hours per night (such period being further particularised in the Service Contract Data) per Premises.
2. The payment for a Disturbed Sleep shall amount to the difference between the sleep-in element of the Standard Rate, and the waking element of the Standard Rate.
3. Claims for payment for Disturbed Sleep shall be payable irrespective of alternative payment mechanisms established by the Service Contract in respect of the Charges.
4. To claim payment for a Disturbed Sleep the Provider must initially submit a request, in respect of the Service User concerned, via the Oracle Care Portal (or such other system as the Contracting Body may specify) to set up the Disturbed Sleep payment levels upon the first occurrence of a Disturbed Sleep.
5. Claims for payment against the Disturbed Sleep payment levels for a particular Service User must be claimed during each Payment Period using the pro-forma to be supplied by the Contracting Body.
6. In submitting a claim for payment for Disturbed Sleep the Provider shall be deemed to have complied with clause 11.6 of this Service Contract and have made an accurate record of the Sleep Disturbance(s) which will be made available to the Contracting Body upon request.
7. Payment of claims for Disturbed Sleep shall be made in accordance with the provisions of clause 11.6 of this Service Contract