

**OVERARCHING CONTRACT**

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**FOR THE PROVISION OF ADULT CARE AND SUPPORT SERVICES, INCLUDING  
RESIDENTIAL CARE, RESIDENTIAL CARE WITH NURSING, SUPPORTED LIVING  
SERVICES, COMMUNITY OPPORTUNITIES, SHORT BREAKS SERVICES AND CARE  
WITHIN THE HOME SERVICES**

**INCORPORATED BY REFERENCE INTO ALL INDIVIDUAL SPOT ORDERS**

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Surrey County Council  
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Surrey  
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(Legal Ref: 69497)  
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# GENERAL CONDITIONS OF CONTRACT

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## **SECTION 1 – PRELIMINARY**

### **INTRODUCTION**

- (A) The Council is a local authority as defined by Section 270 of the Local Government Act 1972 and has a duty under Section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. The Council has the general power of competence under Section 1 of the Localism Act 2011 to procure the Services.
- (B) The Council requires the provision of the Services and the Service Provider may provide all elements or some elements of the Services if a Spot Order (a form of which is contained in Schedule B (Service Specific Requirements (which includes the Specifications) is entered into and executed by the Parties PROVIDED ALWAYS that the Council is under no obligation to purchase any Services from the Service Provider. For the avoidance of doubt, this Contract does not affect any block contract the Service Provider may have with the Council during the term of this Contract.
- (C) This Contract is conditional upon the Service Provider successfully completing the Approval Process in respect of the Services it wishes to provide. Once the Approval Process has been successfully completed and the Council has notified the Service Provider of such, this Contract is deemed to be effective from the Commencement Date.
- (D) This Contract replaces the Council's Agreement dated May 2013 (the "Agreement") in its entirety and applies to all existing Spot Orders.
- (D) The Council wishes to purchase the Services and the Service Provider has agreed to supply and provide the Services in accordance with its obligations, requirements and commitments set out in this Contract and the Spot Order.
- (E) This Contract defines the terms under which the Service Provider shall provide care and support Services to the Council's Service Users as set out in the attached Schedules.
- (F) The Parties agree that the terms of this Contract will act as the overarching contract incorporated into the individual Spot Order by reference and will govern the provision of all the Services.

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Contract, unless the context otherwise requires, the terms set out in Schedule 1 shall have the meanings ascribed to them in Schedule 1.
- 1.2 In this Contract:
  - 1.2.1 time shall, during the summertime be British summertime or otherwise Greenwich mean-time.
  - 1.2.2 reference to any statutory provision, enactment, order, regulation of other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any European Union instrument to the extent that it is to form part of domestic law by application of Section 3 of the European (Withdrawal) Act 2018) as amended, replaced, consolidated or re-enacted

from time to time and shall (unless the reference expressly states otherwise) include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;

- 1.2.3 words importing one gender shall include the other; words in the singular shall include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa;
- 1.2.4 clause, schedule and paragraph headings and notes are for ease of reference only and do not affect the interpretation of this Contract;
- 1.2.5 a reference to a clause, schedule, section, part or appendices is a reference to a clause, schedule, section, part or appendices within these Conditions of Contract unless expressly stated otherwise;
- 1.2.6 the schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the schedules;
- 1.2.7 a reference to writing or written includes email.
- 1.2.8 In the case of ambiguities, the Council shall issue appropriate explanation and instructions in writing. If the Service Provider has any issues with the declared changes, it must be highlighted in writing to the Council within two (2) Working Days otherwise the Contract will continue as amended.
- 1.2.9 No individual employees or manager of the Council or the Service Provider shall incur any personal liability as principal for this Contract.
- 1.2.10 In the event of any inconsistency or conflict between the individual Spot Order General Conditions of Contract and the Schedules, the order or precedence as set out below shall prevail:
  - 1.2.10.1 the individual Spot Order (contained in Schedule B – (Service Specific Requirements (which includes the Specifications)));
  - 1.2.10.2 the Service Specific Requirements, Specification and Pricing Schedules or Fees including any relevant appendices;
  - 1.2.10.3 the General Conditions of Contract
  - 1.2.10.4 other Schedules to this Contract.

## **2. COMMENCEMENT, DURATION AND EXTENT OF CONTRACT**

- 2.1 This Contract shall commence on the Commencement Date This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with Section 9 (Termination), for a period of one (1) year. The term of the Contract shall automatically extend for one (1) year at the end of the Initial Term and at the end of each Extended Period, unless the Council gives three (3) months written notice to the Service Provider or the Service Provider gives six (6) months written notice to the Council, before the end of the Initial Term or the relevant Extended Period, to terminate this Agreement at the end of the Initial Term or the relevant Extended Period, as the case may be. For the avoidance of doubt, it is acknowledged by the Council that the contract term of each individual Spot Order may extend beyond the Contract Period of this Contract. The term of each individual Spot Order shall expire on the date set out in the Spot Order or the date that the Service User(s) ceases to receive Services from the

Service Provider. In such a case the terms and conditions of any new contract published by the Council in relation to the Services after the Contract Period shall apply to the Spot Order mutatis mutandis.

- 2.2 Any such Extended Period shall be on the same terms and conditions and at the same rates as under this Contract.
- 2.3 If the Council does not wish to grant any extensions, this Contract shall come to an end on expiry of the Initial Term and the relevant provisions of Section 9 (Termination) shall apply. After such expiry, the Service Provider shall still be obliged to provide the Services to the Council until such time that the Council procures a replacement service provider.
- 2.4 In the event of conflict between this Contract and the Spot Order in relation to the expiry date the end date of service set out in each individual Spot Order shall prevail.
- 2.5 All Spot Orders entered into during the term of this Contract may continue beyond the Contract Period and the Parties shall have regard to the provisions of clause 2.1.

### **3. LIAISON AND COMMUNICATION**

- 3.1 In relation to the management of their respective rights and obligations under this Contract, the Service Provider and the Council shall be represented by the Service Provider's Representative and the Council's Contract Manager or such other representatives as they may from time to time nominate in writing to the other Party. Each Party's representative shall ensure that appropriate persons are appointed and available at all reasonable times for day-to-day management of the Services (including service of notices) and liaison with each other.
- 3.2 The Council's Contract Manager and the Service Provider's Representative shall cooperate with each other to a reasonable extent to facilitate the proper and timely performance of Services under this Contract. The Parties acknowledge that authorised representatives of the Parties other than the Council's Contract Manager and the Service Provider's Representatives will be appointed or nominated (from time to time) to supervise and manage the individual Spot Order.
- 3.3 The Service Provider shall seek clarity about the Spot Order if needed from the Contract Manager or suitable representative within 7 days of the Service start date
- 3.4 The Service Provider's Representative shall provide reasonable advice support and information to the Service Provider as would be appropriate to any provider providing Services under this Contract.
- 3.5 The Service Provider's Representative shall provide the Council's Contract Manager with reasonable information and advice on all matters relating to the Service Provider or which are relevant to the Services provided under this Contract.
- 3.6 The Parties shall in relation to all matters contained or referred to in or arising in connection with this Contract act in good faith.

#### **4. RIGHTS CUMULATIVE**

- 4.1 All rights granted to either of the Parties shall be cumulative and no exercise by either of the Parties of any right hereunder shall restrict or prejudice the exercise of any other rights hereby granted or otherwise available to it.
- 4.2 Copyright in this Contract shall vest in the Council and shall be the property of the Council absolutely.
- 4.3 The Service Provider shall not in connection with the performance of the Service, use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any intellectual property rights.

### **SECTION 2 – THE SERVICES**

#### **5. PROVISION OF THE SERVICES**

- 5.1 The Service Provider shall commence provision of the Services to the Council once the Approval Process, as set out in Schedule C is completed and the Spot Order (as contained in Schedule B (Service Specific Requirements (which includes the Specifications)) commences or is completed/executed.
- 5.2 During the Contract Period the Service Provider shall provide the Services with all reasonable skill, care, prudence and foresight and in accordance with:
  - 5.2.1 the provisions of this Contract;
  - 5.2.2 the requirements of all Necessary Consents;
  - 5.2.3 all applicable Laws;
  - 5.2.4 Good Industry Practice;
  - 5.2.5 the KPIs and all reasonable instructions of the Council's Contract Manager acting in good faith and in accordance with this Contract.
- 5.3 In the event that the Service Provider does not comply with the provisions of clause 5.2 in any way, the Council may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a "Default Notice").
- 5.4 Without prejudice to any other right or remedy under this Contract, the Default Notice may require the Service Provider to remedy the default within such reasonable period as the Council's Contract Manager may determine (which unless otherwise stated shall be 2 (days) from dispatch).
- 5.5 If the Service Provider fails to remedy any default specified in a Default Notice within the reasonable period specified, the Council's Contract Manager may either:
  - 5.5.1 issue a further Default Notice every twenty-four (24) hours until the Council's Contract Manager is satisfied that the default concerned has been remedied,
  - or

- 5.5.2 following notification to the Service Provider, take action to rectify the default itself (including by instructing an alternative provider to rectify the same) and recover its additional costs of doing so from the Service Provider as a debt.
- 5.6 In addition to clause 5.5, where the failure amounts to a Persistent Breach, or is one which materially and adversely affects the performance of the Services or one which results in material damage to the reputation of the Council, notwithstanding that a Default Notice has been issued pursuant to this clause 5, the Council shall be entitled to terminate this Contract forthwith and may invoke the termination provisions in Section 9 (Termination). For the avoidance of doubt where this Contract terminates at the end of the Contract Period the contract term of each individual Spot Order may extend beyond the Contract Period of this Contract in the manner set out in clause 2.1.
- 5.7 The provision of services to third party organisations by the Service Provider shall not have an impact on the Services.
- 5.8 Timely provision of the Services shall be of the essence of this Contract unless otherwise agreed in writing.
- 5.9 The Service Provider's Staff employed in and about the provision of the Services shall at all times exercise care in the execution of their duties and the Service Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services.
- 5.10 During the Contract Period and subject to achieving Best Value including meeting the requirements of the Council and the KPIs the Service Provider shall provide the Services to the Council. If the Service Provider is unable to achieve Best Value, fails to meet the requirements of the Council and the KPIs the Council may elect at its sole discretion to procure a third party organisation to provide the Services.
- 5.11 The Service Provider shall provide all necessary operational, legal, financial information and technology to ensure that performance of the Services is maintained to the requirement of the Service Specific Requirements which includes the Specification.

### **Accessible Information Standard**

- 5.12 In providing the Services the Service Provider shall comply with Section 250 of the Health and Social Care Act 2012 and comply with the elements set out below. The Service Provider shall have regard to more information on Accessible Information Standard as set out on [www.england.nhs.uk/accessibleinfo](http://www.england.nhs.uk/accessibleinfo).
- 5.12.1 Ask Service Users if they have any information or communication needs and find out how to meet their needs
- 5.12.2 Record those needs and in a set way
- 5.12.3 Highlight or flag the Service User's file or notes so it is clear that they have information or communication needs and how to meet those needs
- 5.12.4 Share information about Service User's information and communicate needs with other providers of NHS and social care, when they have consent or permission to do so

5.12.5 Take steps to ensure that Service Users receive information which they can access and understand and receive communication support if they need it.

## **CONTINGENCIES AND INABILITY TO PERFORM**

- 5.13 The Service Provider shall as soon as practicable notify the Council's Contract Manager of any circumstance which might prejudice the Service Provider's ability to perform the Services whether temporarily or permanently.
- 5.14 Subject to clause 54 (Force Majeure) where the Service Provider is unable to perform any of its obligations under this Contract then the Council may employ another service provider to provide that part of the Services and recover its additional costs (if any) reasonably and properly incurred in doing so from the Service Provider.
- 5.15 Nothing in this Contract shall prevent the Council from instructing another service provider to undertake any part of the Services in particular where:
- 5.15.1 the Service Provider is unable to respond for any reason, or
  - 5.15.2 the Council is entitled to suspend the Services in accordance with this Contract.

## **6. NECESSARY CONSENTS**

- 6.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 6.2 Where there is any conflict or inconsistency between the provisions of this Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of this Contract.

## **7. PAYMENT**

- 7.1 Subject to the requirements of this clause 7, in consideration of the provision of the Services the Council shall pay to the Service Provider the Fee.
- 7.2 Each Spot Order will be payable by the Council in accordance with the provisions of this Clause 7 subject to the satisfactory performance of the Services in accordance with this Contract.
- 7.3 The Fee under each Spot Order is inclusive, and no additional fees or costs will be payable by the Council unless agreed in writing prior to the expense being incurred. For the avoidance of doubt, the Council shall not fund or pay for any health-related services or therapy services as such services are funded by the NHS. Costs relating to transport shall only be payable if transport costs are stated within the Spot Order.
- 7.4 The Service Provider shall ensure that an individual's/Service User's benefits are correctly attributed and used for that individual/Service User. The Service Provider is not permitted to pool several individuals'/Service Users' benefits for the benefit of the Service Provider's business.

- 7.5 Where an individual/Service User who is funded by the Council under a direct payment directly commissions the Service Provider to provide services, the Council requires that the individual/Service User will be supported on the same terms (or better terms) and rates as Service Users directly commissioned by the Council.

### **Payments for services rendered**

- 7.6 Unless otherwise agreed between the Parties in writing, the Council shall pay the Service Provider thirty (30) days in arrears for services properly rendered under this Contract in the preceding thirty (30) day period. Either Party shall pay interest on all overdue payments to the other Party accruing from day to day for the period of default at an annual rate of 2% a year above the Bank of England's base rate from time to time and at 2% a year for any period when that base rate is below 0%. It is agreed by the Parties that this clause 7.6 provides the Parties with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (interest) Act 1998.
- 7.7 Upon request the Service Provider shall provide the Council with such information that the Council requires to verify the payments being made to the Service Provider, including a breakdown of charges making up the weekly rate and all other information stipulated by the Council's Contract Manager. In the event that the Council's Contract Manager considers an overpayment has been made to the Service Provider, the Council shall be entitled to recover overpayments pursuant to clause 10.3.
- 7.8 The Council shall make all payments to the Service Provider via the Bankers' Automated Clearing Service ("BACS"). Where the Service Provider requires a remittance advice, they should notify the Council's Chief Financial Officer of the same in writing.
- 7.9 Where the Service Provider fails without due cause to provide verifiable records to the reasonable satisfaction of the Council's Contract Manager to evidence the amounts stated in the invoice then the Council shall be entitled to withhold payment until such time as such verifiable records are provided.
- 7.10 Where this Contract requires the Service Provider to make payments or to collect income on behalf of the Council, the Council's rights of audit shall be reserved as if the Service Provider was an employee of the Council, to the extent of the commitment to collect monies on behalf of the Council.
- 7.11 Each Party shall bear their own costs of and incidental to the preparation of this Contract and any Spot Order made under it.

**Schedule B contains further clauses relating to payment, specifically in relation to when an individual/Service User dies or is absent, for top up fees and for Funded Nursing Care.**

### **Invoicing**

- 7.12 The invoice shall be rendered on the Service Provider's own invoice form and shall show:
- 7.12.1 an invoice date and invoice number;

- 7.12.2 the period to which the invoice relates;
  - 7.12.3 the aspects of the Services for which payment is claimed;
  - 7.12.4 any VAT payable, with a breakdown showing the net figure, the VAT amount and the gross figure;
  - 7.12.5 a VAT registration number if VAT registered;
  - 7.12.6 the name of the Service User/Customer receiving the Services and their LAS number, or, if this is not applicable, a valid purchase order number as issued by the Council;
  - 7.12.7 the Service Provider's full business name and address; and
  - 7.12.8 the name and address of the Council.
- 7.13 Where the Service Provider is submitting electronic invoices (submitted to the Council via email) for payment it shall ensure:
- 7.13.1 the email contains the word 'Invoice' in the subject field;
  - 7.13.2 each invoice is sent as an attachment, and not within the body of the email;
  - 7.13.3 each attachment to the email only contains one invoice; and
  - 7.13.4 all invoice attachments are in PDF or TIFF format.

## **8. DISPUTED SUMS**

- 8.1 Where any Party disputes any sum to be paid by it then
- 8.1.1 For scheduled payments, a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be referred to Section 8 (Dispute Resolution).
  - 8.1.2 For invoiced payments, the sum in dispute shall be referred to Section 8 (Dispute Resolution).
- 8.2 Interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after:
- 8.2.1 resolution of the dispute between the Parties; or
  - 8.2.2 receipt of the decision of the mediator in accordance with Section 8 (Dispute Resolution).

## **9. INDEXATION**

The Fee set out in the Spot Order is set for the Contract Period subject to annual inflationary uplifts that the Council intends to award and will be agreed through the Council's annual budget setting process. Providers will be notified of inflationary awards for the next financial year (April to March) after the Council's budget for the next financial year has been approved by Full Council which typically takes place in February each year.

## **10. SET-OFF**

- 10.1 Whenever any sum of money shall be recoverable from or payable by the Service Provider to the Council under this Contract, the same may be deducted from any sum then due or which may become due to the Service Provider under this Contract or any other contract with the Council.
- 10.2 If the Service Provider is unable or fails to provide the Services or any part thereof in accordance with the requirements of this clause 10, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred as a consequence thereof may be deducted from any sums due or to become due to the Service Provider under the Contract or shall be recoverable from the Service Provider by the Council as a debt.
- 10.3 Where the Council's Contract Manager considers that an overpayment has been made to the Service Provider or that any other sum is due to the Council from the Service Provider under the terms of this Contract due to:
- 10.3.1 an error in any account which has been subject to certification for payment;
  - 10.3.2 an error in any invoice; or
  - 10.3.3 arising from any other cause,
- he or she shall serve a notice on the Service Provider indicating the amount or amounts he or she considers to have been overpaid or to be due to the Council and the grounds upon which he or she relies upon for considering that the relevant amount or amounts should be recovered from the Service Provider.

## **11. TAXES**

- 11.1 The Council shall pay to the Service Provider such VAT that may be chargeable by the Service Provider in connection with the provision of the Services and the Service Provider shall issue a tax invoice in respect thereof.
- 11.2 The Service Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under this Contract. Any amounts due under this clause 11.2 shall be paid by the Service Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.

### **VAT**

- 11.3 Any consideration due in respect of taxable supplies under this Contract is exclusive of VAT.
- 11.4 If this Contract or anything in it gives rise to a taxable supply for VAT purposes on the production of a valid VAT invoice the appropriate Party shall pay to the other a sum equal to that VAT in addition to the relevant consideration.

- 11.5 The appropriate Party shall provide to the other any information reasonably requested in relation to the amount of VAT chargeable in accordance with this Contract.
- 11.6 A VAT invoice will not be valid for the purposes of charging VAT if more than forty-eight (48) months have elapsed since the time of supply.
- 11.7 It is agreed that neither Party shall be liable to the other Party for any penalties or interest arising from the accounting nor the failure of the other to account to HM Revenue and Customs at the correct time for any VAT correctly due in relation to the consideration referred to in this clause 11.

## **12. ACCURACY OF PAYMENTS**

The Service Provider shall install and implement such apparatus and systems as the Council's Contract Manager may reasonably require from time to time to ensure that the Council is charged for and pays only such amounts as it is required to under this Contract.

## **SECTION 3 – REVIEW**

### **13. CONTRACT MANAGEMENT**

- 13.1 The Service Provider shall supply the Council with regular information on the performance of this Contract and such information will be provided to the Council in the form of a Management Report which shall contain all the information and requirements (including a summary of the Achieved KPIs) specified by the Council in writing. The frequency of reporting will be agreed between the Service Provider and the Contract Manager but will be at least annually.
- 13.2 The Council shall have the right to vary its information requirements and may do this by prior notification to the Service Provider.
- 13.3 The Council's Contract Manager and the Service Provider's Manager shall meet regularly and at agreed intervals.
- 13.4 The Council's Contract Manager will draft an agenda for each meeting and will send the draft agenda to the Service Provider's Manager in advance of each meeting giving the Service Provider an opportunity to add further items to the draft agenda, if required.
- 13.5 The Service Provider shall, when required by the Council, present its previously circulated Management Report(s) in the format required by the Council's Contract Manager.
- 13.6 The Council's requirements as set out in the Specification(s) which are contained in Schedule B (Service Specific Requirements will be discussed in detail and will be used by the Council to monitor the Service Provider's performance during the period prior to the meetings.
- 13.7 The Council shall discuss any complaint(s) it may have received in relation to the provision of the Services with the Service Provider.

- 13.8 The Parties shall if required agree a set of actions and/or provisions required to improve the Services and/or remedy the breach or poor performance. The Council shall monitor the remedial actions within the timescale agreed in writing between the Parties.
- 13.9 The Parties shall agree the Exit Plan in accordance with clause 49 (Exit Planning). The agreed Exit Plan shall form part of this Contract and shall be subject to all other sections, clauses, obligations and rights contained within this Contract. Failure to adhere to the agreed Exit Plan shall be considered a default invoking the provisions of clause 44.

### **Council's Personnel**

- 13.10 The Council's Contract Manager will have overall responsibility for the management and supervision of the Contract.
- 13.11 The Council's Representatives will have responsibility for the management and supervision of each Spot Orders, including the individual placement(s).
- 13.12 The Council's Contract Manager will be supported during the Contract Period by other Council Representatives who are in charge of Service User's individual placement(s) / Spot Orders.
- 13.13 The Council's Contract Manager and the relevant Council Representative(s) will attend the meetings.

## **14. PERFORMANCE**

- 14.1 The Services shall be subject to such monitoring systems as the Council's Contract Manager considers appropriate to undertake, including, but not limited to, the provisions of the Specification(s) which are contained in Schedule B (Service Specific Requirements and clause 13 (Contract Management).
- 14.2 The Service Provider shall cooperate, and shall procure that its Sub-Contractors shall cooperate, with the Council in carrying out the monitoring referred to in clause 14.1 at no additional cost to the Council.

### **Key Performance Indicators (KPIs)**

- 14.3 Where any part of the Services stated in the Specification(s) which are contained in Schedule B (Service Specific Requirements) are to be subject to a specific KPI, the Service Provider shall provide that part of the Services in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific KPI.
- 14.4 If existing Services are varied and/or new services are added to the Services, KPIs and relevant measures and targets for the same will be agreed and monitored. included within the Specification(s) which are contained in Schedule B (Service Specific Requirements (which includes the Specifications).
- 14.5 The Service Provider shall provide evidence in support of performance measures and Achieved KPIs as provided for in clause 13 (Contract Management).

- 14.6 Without prejudice to any other rights the Council may have, if the Service Provider commits a Service Failure the Council shall be entitled to require the Service Provider to follow the Surrey County Council Care Provider Support and Intervention Protocol (PSIP). The Council may either:
- 14.6.1 prescribe the steps to be taken by the Service Provider to remedy the Service Failure pursuant to the PSIP; or
  - 14.6.2 require the Service Provider to submit as part of the PSIP proposals for remedying the Service Failure which shall be subject to the Council's approval.
- 14.7 The Council shall notify the Service Provider in writing where it is required to submit a Service Improvement Plan (SIP) pursuant to clause 14.6 and the Service Provider shall submit the SIP within the timescale specified by the Council.
- 14.8 If there is a reasonable disagreement between the Parties as to whether a Service Failure has occurred and/or about the action to be taken and/or the timescale within which the action is to be taken, then either Party may refer the matter for resolution, in accordance with Section 8 (Dispute Resolution).

## **SOCIAL VALUE**

- 14.9 During the Contract Period the Service Provider shall deliver the Social Value Requirements in line with the Council's commitments to improving the social, economic and environmental wellbeing of the local area.
- 14.10 Six (6) months from the Commencement Date, the Council may determine in consultation with the Service Provider a Key Performance Indicator applicable to the Social Value Requirements ("**the Social Value KPI**"). For the avoidance of doubt, all references in this Contract to KPI's shall include the Social Value KPI.
- 14.11 The Service Provider shall provide to the Council the name and contact details of the Service Provider's nominated representative for all matters relating to the Social Value Requirements (the "**Social Value Rep**").
- 14.12 For the avoidance of doubt, any and all costs relating to compliance with and implementation of the Social Value Requirements or failure to comply with the Social Value KPI shall be borne at a cost to the Service Provider and shall not form part of the Fee.
- 14.13 In the event of an extension, the Council may determine in consultation with the Service Provider a revised performance indicator applicable to the Social Value Requirements during the relevant extension ("**the Updated Social Value KPI**"). For the avoidance of doubt, all references in this Contract to KPIs shall, from the commencement of the relevant extension, include the Updated Social Value KPI.

## **15. COMPLAINTS**

- 15.1 The Service Provider shall:

- 15.1.1 have a procedure for managing any complaint it receives in relation to the Services and to the satisfaction of the Council's Contract Manager.
- 15.1.2 immediately investigate any complaint it receives in relation to the Services and take appropriate corrective action.
- 15.1.3 make available (or give access) to the Council's Contract Manager the procedure dealing with complaints and the steps taken by the Service Provider to resolve the complaint upon request.
- 15.1.4 comply and adhere to the Local Government Ombudsman's guidance on handling adult social care complaints as issued on their website [www.lgo.org.uk](http://www.lgo.org.uk) and the statutory guidance for handling adult social care complaints (Regulation 16 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as issued on the Care Quality Commission ("CQC") website [www.cqc.org.uk/guidance-providers](http://www.cqc.org.uk/guidance-providers) . For the avoidance of doubt the relevant terms of the guidance are hereby incorporated into this Contract by reference.
- 15.1.5 ensure that it understands its obligations regarding responding to complaints about Services commissioned by the Council.
- 15.1.6 ensure that complaints handling procedures are easy to find, easy to use and are accessible.
- 15.1.7 Be responsible for any financial remedy recommended where a complaint is investigated and upheld by the Local Government Social Care Ombudsman.

## **NOTIFICATION OF COMPLAINTS**

- 15.2 If any person or organisation makes a complaint concerning the Services, the Service Provider shall immediately investigate the complaint and take such corrective action as is appropriate. Any complainants who feel that their complaints are not resolved by the Service Provider must be passed to the Council's Representative for their consideration regarding next steps.
- 15.3 The Service Provider shall record all complaints of any nature, received from whatever source, in a register kept for that purpose. A photocopy of the register of complaints shall be supplied by the Service Provider to the Council's Representative at such times as the Council's Representative may specify. Sufficient detail shall be recorded in the register to enable the Council's Representative to ascertain: the nature of the complaint, the name of the person making the complaint, the date and time when it was received; the action taken to remedy the complaint and the time and date when the remedy was completed; and names of the Service Provider's supervisory and other staff involved in the action complained of and its remedy.
- 15.4 The Service Provider shall have in operation a complaint procedure and shall keep a record of all complaints.
- 15.5 The Service Provider's record of complaints should include:
  - 15.5.1 The nature of the complaint;

- 15.5.2 The name of the complainant;
- 15.5.3 The date and time the complaint was received;
- 15.5.4 The action taken to remedy the complaint;
- 15.5.5 The date and time the complaint was remedied;
- 15.5.6 The names of the Service Provider's Personnel involved in the complaint and the remedy.

15.6 The record of complaints referred to in clause 15.3 above shall be available at all times for inspection on reasonable notice by the Council and any other party who has the legal power/authority to request this.

15.7 The Service Provider shall respond to all complaints regarding the delivery of the Services on behalf of the Council and will inform the Council's Representative of the existence of a complaint and what action is being taken. Upon request the Service Provider shall supply reports relating to any complaint. The Service Provider will send in quarterly reports on complaints received, outcomes and time taken to respond. Any lessons learned must be incorporated to develop and enhance the quality of the Services.

## **16. QUALITY STANDARD(S)**

16.1 The Service Provider shall, as a minimum, meet the Quality Standard(s) or the Council's requirements throughout the Contract Period.

16.2 At least once during each year of the Contract Period, the Parties shall meet to review:

16.2.1 the Services being provided;

16.2.2 the Quality Standard(s), and any other standards applicable to the Services;

16.2.3 any other relevant matters;

16.2.4 the Contract terms, if applicable; with the aim of deciding if any improvements can be made and implemented during the Contract Period. Such reviews may be included in a meeting under clause 13.3.

16.3 The Service Provider shall when providing Services to Service Users during the Contract Period ensure that the Services are provided with reasonable care and skill and any relevant guidance relating to the subject matter of the Services.

16.4 If the Service Provider does not provide the Services to the Service User with reasonable care and skill and in accordance with the provisions of this Contract and the provisions of the law, the Service Provider shall be in breach of this Contract and the Service Users shall in accordance with the provisions of law be able to bring an action for compensation against the Service Provider. For the avoidance of any doubt, the Council may take action in accordance with this Contract.

16.5 Service Providers must treat Service Users and their representatives fairly under the provisions of this Contract and under consumer law.

## **17. VARIATIONS TO THE SERVICES**

17.1 No Variation of this Contract or any individual Spot Order shall be effective unless it is in writing and signed by the Parties (or their duly authorised representatives).

## **18. SERVICE PROVIDER'S RECORDS**

18.1 In addition to the information to be supplied in accordance with the Service Specific Requirements which includes the Specifications and in relation to payments, throughout the Contract Period the Service Provider shall keep and maintain such necessary data and information and shall complete or provide such assistance as the Council may reasonably require by written notice to the Service Provider to enable the Council to complete all official returns, including, but without limitation the following:

18.1.1 returns to any Central Government body or properly authorised agency of Central Government;

18.1.2 information required by any statutory body or compliance with any statute or statutory instrument; and

18.1.3 information required pursuant to clause 38 (Equal Opportunities and Human Rights), provided in each case that the nature of such data and information and the format for the same has been agreed by the Parties or is specified by Law.

18.2 The Service Provider shall in all respects and at no additional cost to the Council co-operate promptly with the Council's reasonable requests so as to assist in enabling the Council to comply with all Laws including but not limited to the Information Laws.

## **19. FINANCIAL INFORMATION, AUDITS & COMPLIANCE WITH SELECTION CRITERIA**

19.1 The Service Provider shall, whenever so required by the Council, provide the Council with such financial information and data reasonably requested by the Council to enable the Council:

19.1.1 to comply with the Code of Practice on Local Authority Accounting in the United Kingdom 2017/18 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time);

19.1.2 examine, evaluate and be satisfied as to the Council's minimum standards of economic and financial standing, technical and professional ability and general standing required of the Service Provider with regard to the provision of the Services.

## **20. STATUTORY AND REGULATORY**

20.1 The Service Provider shall promptly notify the Council of any notice order or instruction issued or served on it by a Regulatory Body relating to the Services or this Contract.

20.2 The Service Provider will immediately notify the Council of any application to a Regulatory Body for any variation to its Necessary Consents or any change requested by a Regulatory Body. The Service Provider will not make any application of its own volition that, if granted, will mean that any aspect of the Services cannot then be provided as required under this Contract.

- 20.3 The Service Provider shall in all matters arising in the performance of this Contract comply with all Laws and with all orders, regulations, statutory instruments and by-laws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to this Contract and shall indemnify and keep indemnified the Council against the consequence of any breach of its obligations under this clause.
- 20.4 The Service Provider's Personnel shall observe any rules applicable to any premises they have entered including but not limited to the ban on smoking at premises. The Service Provider shall not in the performance of this Agreement in any manner endanger the safety or unlawfully interfere with the convenience of the public.
- 20.5 In the event that the Service Provider does not fulfil its responsibilities and obligations under this clause and the Council thereby incurs costs to which it would not otherwise be liable due to any Law or any order, regulation, statutory instrument or by-law having the force of law, the amount of such costs shall be reimbursed by the Service Provider to the Council.

## **SECTION 4 – HEALTH AND SAFETY, ASSETS & PREMISES**

### **21. HEALTH & SAFETY**

- 21.1 The Service Provider shall comply and ensure its Representatives comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work etc. Regulations 1999, the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 and all other health, safety and welfare requirements applicable to the Services including those detailed in the Specification.
- 21.2 The Service Provider shall nominate a suitably competent person to have overall responsibility for its compliance with the obligations under clause 21.1 and for ensuring that all health and safety matters concerning this Contract are dealt with in accordance with the Parties' health and safety policies.
- 21.3 Whilst on Council Premises:
- 21.3.1 the Service Provider shall ensure that its Representatives comply with the lawful requirements of the Council's Contract Manager, including a requirement to monitor the Service Provider's health and safety practices periodically;
  - 21.3.2 the Service Provider shall ensure that its Representatives observe any local arrangements for fire, health, safety, welfare, hygiene, and security; and
  - 21.3.3 the Service Provider shall report all accidents which take place on Council Premises to the Council on the same day, within Working Hours, where possible, and in any event within three (3) days of the accident/s.
- 21.4 Without prejudice to Section 9 (Termination), the Council shall be entitled to suspend the provision of the Services where the Service Provider fails to comply with this clause 21 and clause 44 shall apply.

- 21.5 Where the Council has exercised its powers under clause 21.4:
- 21.5.1 the Service Provider shall not resume provision of the Services until the Council's Contract Manager is satisfied that such non-compliance has been rectified; and
- 21.5.2 the Council shall not incur any liability for any such suspension of the Services.
- 21.6 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request. In the event of any inconsistency between the Council's health and safety policy and codes of practice and the Service Provider's health and safety's policy the Council's health and policy and codes of practice shall prevail.
- 21.7 The Service Provider shall have in place and shall comply with a health and safety policy and safe working procedures as well as appropriate risk assessments (the "**Safe Working Arrangements**") which comply with clause 21.1 and such Safe Working Arrangements shall form part of this Contract and the Service Provider shall be required to review and update the same from time to time.
- 21.8 As soon as practicable following a request by the Council's Contract Manager, the Service Provider shall provide substance data sheets setting out as a minimum, details of any hazards associated with products used in providing the Services.
- 21.9 The Service Provider shall comply with all regulations and Laws applicable to the Services including but not limited to the following during the Contract Period:
- i. The Health and Safety at Work etc. Act 1974;
  - ii. The Control of Substances Hazardous to Health Regulations 2002;
  - iii. The Occupiers' Liability Acts 1957 and 1984;
  - iv. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
  - v. The Health and Safety (First Aid) Regulations 1981;
  - vi. The Workplace (Health, Safety and Welfare) Regulations 1992;
  - vii. The Management of Health and Safety at Work Regulations 1999;
  - viii. The Personal Protective Equipment at Work Regulations 1992;
  - ix. The Provision and Use of Work Equipment Regulations 1998;
  - x. The Health and Safety (Display Screen Equipment) Regulations 1992;
  - xi. The Health and Safety Information for Employees Regulations 1989;
  - xii. Manual Handling Operations Regulations 1992;
  - xiii. The Electricity at Work Regulations 1989;
  - xiv. The Noise at Work Regulations 1989;
  - xv. The Regulatory Reform (Fire Safety) Order 2005;
  - xvi. Health and Safety (Safety, Signs and Signals) Regulations 1996; and
  - xvii. The Equality Act 2010.

## 22. ASSETS

- 22.1 Except as otherwise specified in the Specification, the Service Provider shall be responsible at its own cost for providing all equipment, vehicles, plant and materials necessary and/or used by the Service Provider in connection with the provision of the Services during the Contract Period (the "**Service Provider's Assets**").

- 22.2 The Service Provider shall maintain all Service Provider's Assets in a safe condition so that they are fit for the purpose of delivering the Services and as a minimum comply with the requirements of this Contract and any manufactures servicing and maintenance requirements.
- 22.3 The Service Provider shall keep, operate, prepare and use all Service Provider's Assets:
- 22.3.1 with due regard for fuel economy and energy saving;
  - 22.3.2 in a safe manner and under proper control, which shall include clearly and accurately labelling containers to indicate their contents, and ensure that its Representatives are properly instructed in such matters.
- 22.4 The Service Provider shall:
- 22.4.1 use all reasonable endeavours to provide the Service Provider's Assets which at least meet the standard indicated in the Council's requirements;
  - 22.4.2 be responsible for the security of all Service Provider's Assets and the Council shall not (as far as permitted by Law) be liable for loss, damage or injury in respect of the same;
  - 22.4.3 only use in the provision of the Services Service Provider's Assets owned by the Service Provider or hired under a hire agreement containing a provision permitting the Council (on a request in writing by the Council undertaking to pay all hire charges in respect thereof from such date) to hire such Service Provider's Assets on the same terms as the Service Provider's Assets were hired to the Service Provider, with provision that the Council can permit any Replacement Service Provider employed for the purpose of providing the Services to use the same. From the expiry of the Contract Period the Service Provider shall do all things necessary to enable the Council to hire such Service Provider's Assets and will pay all outstanding monies due to the owner of the Service Provider's Assets up to the date on which they are hired to the Council; and
  - 22.4.4 ensure that on the expiry of the Contract Period (or as otherwise agreed) any of the Service Provider's Assets stored or remaining at Council Premises are removed from the same.

## **23. SERVICE PROVIDER PREMISES**

- 23.1 The Service Provider shall provide all premises and/or sites necessary to provide the Services (the "**Service Provider Premises**") and shall:
- 23.1.1 be responsible for payment of all charges, rates and other outgoings or expenses in relation to the Service Provider Premises;
  - 23.1.2 be responsible for any Environmental Liability arising from or in relation to the Service Provider Premises except to the extent that such liability arises from any act, omission, default or negligence of the Council;
  - 23.1.3 operate, repair and maintain the Service Provider Premises in accordance with all Laws and Good Industry Practice including obtaining and maintaining all Necessary Consents for provision of the Services at the Service Provider Premises;

23.1.4 use all reasonable endeavours to ensure that its provision of the Services does not lead to any unnecessary nuisance or annoyance to the Council or third parties, including without limitation in relation to emissions of dust, smells, noise and vermin.

## **24. RIGHT OF ACCESS**

24.1 The Service Provider shall at all times during the Contract Period permit the Council and its Representatives access on reasonable notice during Working Hours (save in the case of emergency where no notice shall be required) to the Council Premises and Service Provider Premises for the purpose of:

24.1.1 monitoring and inspecting work being performed to provide the Services;

24.1.2 interviewing the Service Provider's Representatives engaged in connection with the provision of the Services; and

24.1.3 inspecting the Service Provider's Assets and Council assets and systems and procedures used by the Service Provider to provide the Services.

## **SECTION 5 – INDEMNITIES, INSURANCE, WARRANTIES AND ACKNOWLEDGEMENTS**

## **25. INDEMNITIES**

25.1 The Service Provider shall fully indemnify the Council and keep the Council indemnified against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation:

25.1.1 any claim by a third party for damage occurring as a result of the Service Provider's performance of the Services;

25.1.2 any breach of its obligations as set out in this Contract; or

25.1.3 any breach of Law or Necessary Consents,

to the extent that any such loss, claim or liability is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or Sub-Contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of contract or Law by the Council.

25.2 The Service Provider hereby indemnifies and holds harmless the Council from and against any and all claims losses liabilities and damages in respect of any act or default of the Service Provider, its servants or agents arising directly or indirectly as a result of the performance or non-performance of the Services or provisions of this Contract by the Service Provider.

25.3 The Service Provider hereby indemnifies and hold harmless the Council for all losses, expenses, liabilities, claims, damages and costs the Council may incur or suffer in relation to any claims or allegations by a third party that its intellectual property rights have been infringed by the Service Provider.

- 25.4 Without prejudice to its liability to indemnify the Council under this clause 25, the Service Provider shall indemnify the Council against any liability in respect of death, or injury to any person, or loss of, or damage to any property connected with the provisions.
- 25.5 The Service Provider shall indemnify the Council against and hold the Council harmless from all loss damages injury liability costs (including legal costs on a full indemnity basis) fees and expenses caused by or arising as a result of any breach of this Agreement negligence act or omission by the Service Provider its employees, directors, managers agents or contractors.
- 25.6 The Council shall not be liable for any loss or damage howsoever arising except for loss or damage directly arising from negligent acts or omissions of the Council its servants or agents, causing personal injury or death. Damages arising from negligent acts or omissions shall be limited to direct and unavoidable losses and the Service Provider shall take all reasonable steps to mitigate such losses.
- 25.7 The Council does not warrant the truth or accuracy of any representation, which may have been made to the Service Provider prior to it entering into this Contract. The Service Provider acknowledges that it did not rely upon any representation made by or on behalf of the Council when entering into the Contract but relied upon its own investigations and enquiries.

## 26. INSURANCE

- 26.1 The Service Provider shall at its own cost take out and maintain the insurances listed at clause 26.2 (the “**Required insurances**”) and any other insurances required by Law with reputable insurers who are authorised by the Financial Conduct Authority to conduct insurance business or equivalent.
- 26.2 The Required insurances referred to above are:
- 26.2.1 public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Services;
  - 26.2.2 employer’s liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Services;
  - 26.2.3 professional indemnity with a limit of cover of not less than two million pounds (£2,000,000) in relation to any one claim or series of claims arising from the Services and shall maintain such cover for six (6) years after the end of the Contract Period for all claims to which this clause 26.2.3 applies; and
  - 26.2.4 products liability insurance with a limit of cover of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Services.
- 26.3 The Required Insurances must remain in place for the Contract Period and be effective in each case not later than the date on which the relevant risk commences.

- 26.4 Where the Service Provider is in breach of clause 26.1, the Council may pay any premiums necessary to keep the Required Insurances in force or procure such insurances itself and may in either case recover such sums from the Service Provider in addition to a charge to cover the Council's administrative costs of arranging the same of up to one thousand pounds (£1,000.00) by way of deductions from amounts payable by the Council to the Service Provider under this Contract or by recovering the same as a debt due to the Council from the Service Provider.
- 26.5 As and when reasonably required in writing by the Council, the Service Provider shall provide the Council with copies of current insurance certificates or other evidence demonstrating to the satisfaction of the Council that the requirements of this clause 26 (Insurance) are being met.
- 26.6 Neither Party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or an additional insured person.
- 26.7 Within thirty (30) days of any claim arising in excess of £50,000 on any of the insurances referred to in this clause 26 (Insurance), the Service Provider shall notify the Council of the same including full details of the incident giving rise to such claim.
- 26.8 The insurance cover levels set out in this clause 26 may reasonably increase from time to time at the reasonable request of the Council, and this request shall not unreasonably be denied.
- 26.9 The Service Provider shall ensure that adequate insurances are in place for any Staff and/or any Sub-Contractor staff in accordance with this clause 26.
- 26.10 The insurance in respect of claims for personal injury to, or the death of, any person under a contract of service or apprenticeship with the Service Provider and arising out of and in the course of such person's employment shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made there under.
- 26.11 The Service Provider shall use reasonable endeavours to immediately notify the Council and its insurers of any happening or event which may give rise to a claim, demand, proceeding, damage, cost or charge which is the subject of the indemnity under this clause, and arising out of this Contract. The Service Provider shall indemnify the Council against any loss whatever which may be occasioned to the Council by the Service Provider's failure to give such notification.
- 26.12 The Service Provider shall effect and keep in force the insurance referred to above upon the same terms and conditions as the terms and conditions of the policies supplied by the Service Provider to the Council in writing prior to the Parties entering into this Contract or upon such other terms and conditions as the Council shall reasonably require or agree to in writing.

## **27. LIMITATION OF LIABILITY**

- 27.1 Subject to clauses 27.3.1 and 27.4, 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 this Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.
- 27.2 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 Contract.
- 27.3 Subject to clause 27.4, the Service Provider's total aggregate liability:
- 27.3.1 is unlimited in respect of:
- 27.3.1.1 the indemnities in clause 33.3 (Data Protection); clause 35.3 (Intellectual Property); and Schedule D (Staff Transfer and Pensions);
  - 27.3.1.2 any breach of clause 28.1.8 (Prohibited Acts);
  - 27.3.1.3 the Service Provider's wilful default.
- 27.3.2 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 Contract (other than a failure to pay any of the Fee that is properly due and payable and for which the Council shall remain fully liable), is unlimited.
- 27.4 Notwithstanding any other provision of this Contract neither Party limits or excludes its liability for:
- 27.4.1 fraud or fraudulent misrepresentation;
  - 27.4.2 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
  - 27.4.3 breach of any obligation as to title implied by statute; or
  - 27.4.4 any other act or omission, liability for which may not be limited under any applicable Law.
- 27.5 Nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of Contract or by negligence on the part of the Council or the Council's employees, servants or agents.
- 27.6 Any information given to the Service Provider is only given as a guide unless fraudulent misrepresentation or serious omission is proven against the Council. The Service Provider agrees that it has ascertained for itself the accuracy of the information and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances that might reasonably influence or affect the Service Provider's intention to enter into this Contract or provide the Services. No claim against

the Council shall be allowed whether in contract, in tort, under the Misrepresentation Act 1967, or otherwise on the ground of any inaccuracy.

## **28. SERVICE PROVIDER WARRANTIES**

28.1 The Service Provider warrants and represents that:

- 28.1.1 it has the full capacity and has taken all steps and obtained all approvals to enable it to lawfully enter into and perform its obligations under this Contract;
- 28.1.2 the Spot Order is executed by a duly authorised representative of the Service Provider;
- 28.1.3 it will continue to maintain in full force and effect such authorisations, approvals, orders, licenses, certificates, permits and licences of and from any and all governmental, regulatory and administrative bodies as are necessary to lawfully perform the Services and its obligations under this Contract including any Necessary Consents;
- 28.1.4 it has operated, and will continue to operate, in material compliance with applicable Laws and regulations;
- 28.1.5 all information concerning the Service Provider (including its Affiliates, Sub-Contractors and their respective directors, officers, principals, members, partners and employees) which the Service Provider has furnished to the Council in connection with this Contract and the procurement of the same and/or otherwise relevant to the provision of the Services does not contain any untrue statement of a material fact or omit to state any material fact required to be stated or necessary to make the statements therein not misleading in any material respect;
- 28.1.6 it is not currently the subject of, or been threatened with any legal or regulatory proceedings in any jurisdiction which may adversely impact upon or otherwise impair its ability to perform its obligations under this Contract;
- 28.1.7 there are no material facts or circumstances in relation to the financial position or operation or constitution of the Service Provider which have not been fully and fairly disclosed to the Council and which if disclosed might reasonably have been expected to affect the decision of the Council to enter into this Contract; and
- 28.1.8 it has not committed any Prohibited Act in entering into this Contract or any other agreement with the Council and will not commit any such acts in the performance of or with regard to the extension of the term of this Contract or such other agreement.

28.2 For the avoidance of doubt the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Council may have in respect of breach of that provision by the Service Provider.

28.3 The Service Provider shall immediately inform the Council if the “CQC commences any compliance or enforcement action against the Service Provider or the Service Provider is subject to an investigation by the CQC under Section 48 of the Health and Social Care Act 2008.

- 28.4 The Service Provider shall at all times comply with all relevant and up-to-date guidelines issued by the CQC as well as complying with any Food Standards Agency guidance.
- 28.5 The Service Provider shall inform the Council forthwith if the Service Provider plans to or undergoes any restructure which results or will result in a significant change of the Service Provider's structure or a change of control.
- 28.6 The Service Provider shall adhere to the "Missing Persons Protocol" found at: [SSAB-Missing-Adults-Multi-Agency-Response-Agreement.pdf \(surreysab.org.uk\)](https://surreysab.org.uk/SSAB-Missing-Adults-Multi-Agency-Response-Agreement.pdf) and follow the guidance set out in that document to ensure a coordinated response when a Vulnerable Adult is missing.

## **29. DUE DILIGENCE AND RELIANCE ON REPRESENTATIONS**

- 29.1 The Service Provider shall be deemed to have satisfied about the accuracy and sufficiency of any information provided by the Council. The Service Provider agrees that it has ascertained for itself the accuracy of the information and shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances that might reasonably influence or affect the Service Provider's provision of the Services. The Service Provider shall be deemed to have satisfied itself as to the nature and extent of the risks assumed by it under the Contract including the accuracy of the rates and prices contained in the Fee.
- 29.2 Each Party warrants it has power to enter into this Contract and has obtained all the necessary approvals to do so. Each of the Parties hereby confirms that it has not relied on any written or oral representation, warranty or undertaking of the other in entering into the Contract save for any such representation, warranty or undertaking expressly set out in this Contract. This clause 29 shall not apply so as to restrict the liability of any Party hereunder in respect of any fraud or fraudulent misrepresentation.
- 29.3 Subject to clause 29.4, the Service Provider acknowledges that the Council and its Representatives shall not be liable to the Service Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to this Contract or not).
- 29.4 Clause 29.3 shall not apply to any statement, representation or warranty made fraudulently or to any provision of this Contract, which was induced by fraud, for which the remedies available shall be all those available under Law.

## **30. FRAUD AND WHISTLE-BLOWING POLICY**

- 30.1 If the Service Provider or anyone acting on its behalf or to its knowledge (whether such person is a Service Provider Representative or a Council Representative) commits any Prohibited Act in relation to this Contract or any other agreement with the Council or in relation to any matter or activity pertaining to any public body in the United Kingdom, the Service Provider shall promptly inform the Council of the occurrence of such Prohibited Act and render all such assistance to the Council as the Council may reasonably require in investigating such acts.

30.2 The Service Provider hereby takes notice of and agrees to comply in all respects with the Council's Whistleblowing Policy found at [Our counter fraud initiatives and strategies - Surrey County Council \(surreycc.gov.uk\)](#) and Public Interest Disclosure Act (PIDA) 1998. In particular (but without limitation) the Service Provider agrees:

30.2.1 to accept and adopt the Council's Whistleblowing Policy and Guidelines as a procedure for the purposes of s.43C(2) of PIDA unless the Service Provider has its own whistleblowing policy which incorporates all substantial points of the Council's Whistleblowing Policy and Guidelines and the Service Provider agrees and acknowledges that its employees are authorised to use and rely upon the said procedure;

30.2.2 that to the extent that the Whistleblowing Policy and Guidelines impose duties on or grant rights, protections or immunities to Council employees or agents, the Service Provider agrees and irrevocably undertakes to impose similar duties and grant similar rights, protections or immunities to the Service Provider's employees and agents and to any Sub-Contractors.

30.3 Without limiting the generality of clause 30.2, the Service Provider agrees to report to the Council in accordance with the Whistleblowing Policy and Guidelines any circumstances relating to or arising out of the Agreement (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the supply of the Services, which give rise to a reasonable belief that one or more of the following matters (referred to in this Condition as "instances of malpractice") has occurred, is occurring or is likely to occur:

30.3.1 a criminal offence (including any form of child abuse, or the abuse of other vulnerable individuals);

30.3.2 a breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);

30.3.3 miscarriage of justice;

30.3.4 danger to health and safety;

30.3.5 damage to the environment;

30.3.6 any other matter designated as malpractice in the Whistle-blower Policy and Guidelines;

30.3.7 concealment of any of the above.

30.4 Without limiting the generality of clause 30.2, in the event that any employee, agent or sub-contractor of the Service Provider should make a report to the Council (or to any other person authorised by law) pursuant to this clause, the Service Provider warrants that it shall use its best endeavours to ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report.

30.5 The Service Provider agrees to indemnify the Council in respect of any loss or damage caused by or arising out of a failure on the part of the Service Provider to report, within a reasonable time, any instances of malpractice in accordance with this clause 30, the Whistleblowing Policy and Guidelines and/or PIDA 1998.

- 30.6 Where the Service Provider acting reasonably and in good faith makes a report pursuant to this clause 30, and the Council subsequently undertakes or omits to undertake a course of action wholly in reliance upon such report the Council accepts such liability as the Service Provider may incur as a direct consequence of such report.
- 30.7 The Service Provider agrees and confirms that the Council's Director of Law and Governance is authorised as persons to whom the Service Provider's Representatives may make a qualifying disclosure under the PIDA 1998 and declares that any of its Representatives making a protected disclosure (as defined by that Act) shall not for that reason be subjected to any detriment or disadvantage. The Service Provider further declares that any provision in an agreement purporting to preclude a member of its Staff from making a protected disclosure is void.
- 30.8 To the extent necessary, the Service Provider shall itself and shall procure that its Representatives familiarise themselves with the Council's Counter Fraud Strategy and Framework all of which are available and accessible from the Council's website ([Our counter fraud initiatives and strategies - Surrey County Council \(surreycc.gov.uk\)](http://Ourcounterfraudinitiativesandstrategies-SurreyCountyCouncil.surreycc.gov.uk)) or otherwise available from the Council's Contract Manager.

## **SECTION 6 – INFORMATION AND INTELLECTUAL PROPERTY RIGHTS**

### **31. CONFIDENTIALITY AND TRANSPARENCY**

- 31.1 Subject to clause 31.2, the Parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 31.2 Clause 31.1 shall not apply to any disclosure of information:
- 31.2.1 required by Law, provided that clause 32 (Freedom of Information) shall apply to any disclosures required under the Information Laws;
  - 31.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
  - 31.2.3 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 31.1;
  - 31.2.4 by the Council of any document to which it is a Party and which the Parties to this Contract have agreed contains no commercially sensitive information;
  - 31.2.5 to enable a determination to be made under Section 8 (Dispute Resolution);
  - 31.2.6 which is already lawfully in the possession of the receiving party prior to disclosure by the disclosing party;
  - 31.2.7 by the Council to any other department, office or agency of the Government; and
  - 31.2.8 by the Council relating to this Contract and in respect of which the Service Provider has given its prior written consent to disclosure.
- 31.3 The Service Provider acknowledges that the Council is subject to transparency obligations which require the Council to publish certain contract information and materials. Accordingly, and notwithstanding any other term of this Contract, the Service

Provider hereby gives its consent for the Council to publish this Contract and its schedules in its entirety, including from time to time agreed changes to this Contract (save and except such matters as the Council is by Law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Council decides. The Service Provider shall render such assistance and cooperate with the Council to enable such publication, including, if the Council so requires, assisting the Council at no additional costs to the Council in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose.

- 31.4 Subject to clause 33 (Data Protection), on or before expiry of the Contract the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which contain information relating to any of the Council's Representatives, Council Premises or Service Users/Customers including any documents in the possession, custody or control of any Sub-Contractor, are delivered up to the Council or securely destroyed, in accordance with the Data Sharing Agreement, Exit Plan or as otherwise prescribed by the Council.

## **32. FREEDOM OF INFORMATION**

- 32.1 The Service Provider acknowledges that the Council is subject to the requirements of the Information Laws and shall assist and fully and promptly cooperate with the Council to enable the Council to comply with its information disclosure obligations.
- 32.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- 32.2.1 transfer to the Council all requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a request for Information;
  - 32.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council's request; and
  - 32.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the request for Information within the time for compliance set out in the Information Laws.
- 32.3 In no event shall the Service Provider respond directly to a request for Information unless expressly authorised to do so by the Council.
- 32.4 Where the Council receives a request for Information relating to this Contract, the Service Provider or the Services that the Council reasonably considers to be commercially sensitive and/or confidential it shall not disclose the same without first:
- 32.4.1 notifying the Service Provider in writing; and
  - 32.4.2 allowing the Service Provider a reasonable opportunity (taking into account timescales set by Law) to make representations to the Council as to disclosure of such information.

32.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 32.4) the Council may, acting in accordance with the Department of Constitutional Affairs' "Code of Practice on the Discharge of the Functions of Public Authorities" under Part 1 of the Freedom of Information Act 2000 ("**the Code**") or any such other relevant code or guidelines and any directions of the Information Commissioner, be obliged under the Information Laws to disclose Information concerning this Contract, the Service Provider or the Services:

32.5.1 in certain circumstances without consulting the Service Provider;

32.5.2 or following consultation with the Service Provider and having taken their views into account, provided always that where clause 32.5.1 applies, the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider notice or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

32.5.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract, or any other agreement whether the commercially sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Information Laws.

32.6 Subject to the Service Provider's legal obligations (including under the Data Protection Legislation), the Service Provider shall at no additional cost to the Council ensure that all information is retained for disclosure in accordance with the requirements for the keeping of records under this Contract and shall permit the Council to inspect such records as requested from time to time.

32.7 In the event that the Service Provider incurs or would incur costs in actively locating, retrieving and extracting Information in assisting the Council to respond to a request for Information, the Service Provider must inform the Council of such likely costs and the Council will inform the Service Provider in writing whether or not it still requires the Service Provider to assist with complying with the request. If the Council informs the Service Provider to proceed with the request, the Council will reimburse the Service Provider for such costs as the Service Provider incurs to the extent that it is itself entitled to reimbursement of such costs in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

32.8 The Service Provider acknowledges that the commercially sensitive Information identified to the Council, if any, is of indicative value only and that the Council may be obliged to disclose it in accordance with clause 32.

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

### **33. DATA PROTECTION**

33.1 Both Parties shall, and the Service Provider shall procure that its Representatives shall, duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this Contract.

- 33.2 The Service Provider shall perform its obligations under this Contract in such a way as to ensure that it does not cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 33.3 The Service Provider shall be liable for and shall indemnify (and keep indemnified) the Council against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Council which arise directly from a breach by the Service Provider of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Service Provider or its employees, servants, agents or Sub-Contractors.
- 33.4 The Service Provider agrees to comply with the Data Sharing Agreement contained in Schedule F which sets out the Parties obligations in relation to any Personal Data which may be shared between the Parties.
- 33.5 The provisions of this clause 33 (Data Protection) shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

#### **34. COUNCIL DATA ON SERVICE PROVIDER'S IT SYSTEM(S)**

34.1 The Service Provider shall:

34.1.1 take all reasonable precautions and use all reasonable endeavours to preserve the integrity of any Council Data or other data which it stores and/or processes on behalf of the Council and to prevent any corruption or loss of such data and to have in place an appropriate archiving and back-up policy;

34.1.2 follow its detailed archiving procedures for Council Data as set out in its archiving and back-up policy, a copy of which is to be provided to the Council and as such policy may be updated by the Service Provider from time to time, which shall include as a minimum, the Service Provider making a back-up copy of Council Data at the intervals and following the process detailed in its archiving and back-up policy and recording the copy on media form which the Council Data can be reloaded if there is any corruption or loss of the Council Data;

34.1.3 in the event of any corruption of or loss or damage to the Council Data, use all reasonable endeavours to restore the lost or damaged Council Data, at its own expense, from the latest back-up of such Council Data maintained by the Service Provider in accordance with the archiving procedure described in its archiving and back-up policy or, where the Council Data has not been restored by the Service Provider within ten (10) Working Days, at the Council's option, promptly reimburse the Council for any reasonable expenses it incurs in having the Council Data restored by a third party;

34.1.4 be responsible for any loss, destruction, alteration or disclosure of Council Data caused by itself and any of its Sub-Contractors, including (but not limited to) any third parties sub-contracted by the Service Provider to perform services related to Council Data maintenance and back-up; and

34.1.5 in providing the Services, have in place and comply with its privacy and security policy relating to the privacy and security of the Council Data. The Service Provider shall provide a copy of its privacy and security policy to the Council upon request and whenever such policy is updated by the Service Provider from time to time and shall take into account any comments the Council has on such policy.

34.2 The Service Provider shall comply with Caldicott principles as the same applies to the provisions of this Contract. For the avoidance of doubt the Service Provider and any Sub-Contractor shall inform the Council as soon as possible of any potential, allegation or actual information governance breach where any GDPR or Caldicott principles may or has been breached, or when information is not treated with the appropriate level of confidentiality.

## **35. INTELLECTUAL PROPERTY RIGHTS**

35.1 Save as expressly granted under this Contract, neither the Council nor the Service Provider shall acquire any right title or interest in any Intellectual Property Rights vested in or licensed to the other Party prior to or independently of the performance by the relevant Party of its obligations under this Contract.

35.2 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Service Provider or any employee, agent or Sub-Contractor of the Service Provider:

35.2.1 in the course of performing the Services (in relation to the Council's Specification); or

35.2.2 exclusively for the purpose of performing the Services, shall by virtue of this Contract be vested in the Council on creation.

35.3 The Service Provider shall indemnify (and keep indemnified) the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that such liabilities have resulted directly from the Council's failure properly to observe its obligations under this clause 35.

## **36. PUBLICITY**

36.1 Each Party shall use all reasonable endeavours to ensure that any formal public statements made by a Party as to each other's activities or the performance of the Contract shall only be made after consultation with the other Party

36.2 The Service Provider shall not advertise or publicly announce that it is supplying Services to or undertaking work for the Council without the prior written consent of the Council,

such consent not to be unreasonably withheld. The Council shall be entitled to publicise material relating to the Contract or the Services in any media deemed appropriate by the Council.

- 36.3 Neither Party shall make use of the other Party's logo without their express written permission.
- 36.4 The Service Provider shall not do anything or cause anything to be done which may damage the reputation of the Council or bring the Council into disrepute.
- 36.5 The Service Provider shall not, and shall procure that any member of the Service Provider's Personnel shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Contract without the prior written approval of the Council.
- 36.6 Either Party may make a public statement or announcement concerning the completion of this Contract if required by:
- 36.6.1 Law; or
- 36.6.2 any Regulatory or Government body to which either Party is subject or submits, wherever situated, whether or not the requirement has the force of law PROVIDED THAT any such statement does not contravene the duty of confidentiality contained in clause 31 (Confidentiality and Transparency).
- 37.6 Subject to the provisions of clause 31 (Confidentiality and Transparency), the Council reserves the right to publish or disseminate information about this Contract and the provision of the Services as it may deem appropriate from time to time.

## **SECTION 7 – PERSONNEL**

### **37. PERSONNEL AND ADULT SAFER RECRUITMENT**

- 37.1 The Service Provider shall ensure that all Personnel/Staff and Representatives involved in the provision of the Services are of suitable character and are appropriately qualified, trained, experienced and capable in the area of work which they are to perform.
- 37.2 The Service Provider shall not employ, engage or use the service of any person who;
- 37.2.1 is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out any Regulated Activity or who may otherwise present a risk to children or Vulnerable Adults or any other person, in the provision of any part of the Services involving a Regulated Activity or access to or unsupervised contact with children or Vulnerable Adults without the Council's prior and express written consent; or
- 37.2.2 discloses that he or she has a Relevant Conviction, or who is found by the Service Provider to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service (or any successor body) procedures or otherwise), in the provision of any part of the Services involving access to or processing of financial data, or access to or processing of sensitive personal data without the Council's prior and express written consent and the Council acknowledges and agrees that with regard to the provisions of this clause 37 the

Transferring Employees and Third-Party Employees have been appropriately checked as at the Commencement Date.

- 37.3 The Service Provider shall (and shall procure that the relevant Sub-Contractor shall):
- 37.3.1 ensure that all Staff who, in providing the Services, will be engaged in the provision of Regulated Activity are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (or any successor body) including a check against the adults' barred list or the children's barred list, as appropriate; and
  - 37.3.2 monitor the level, frequency and validity of the checks required under this clause 37.3 for each member of Staff.
- 37.4 The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services:
- 37.4.1 has a Relevant Conviction; or
  - 37.4.2 is barred from carrying out Regulated Activity.
- 37.5 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 37 have been met.
- 37.6 The Service Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service (or any successor body) 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 children or Vulnerable Adults.
- 37.7 The Service Provider shall ensure that the Service Provider's Personnel/Staff and Representatives:
- 37.7.1 are adequately supervised and informed of the aspects of this Contract applicable to them so that they can comply with this Contract;
  - 37.7.2 where specifically identified to the Council, will be assigned to provide the Services;
  - 37.7.3 are appropriately attired for the duties they are undertaking including, (where necessary) wearing protective clothing and footwear;
  - 37.7.4 on request, disclose their identity to the Council or any third party;
  - 37.7.5 other than as permitted by this Contract, do not solicit or act in such a manner as to induce payment for performance of the Services;
  - 37.7.6 act in a courteous considerate manner and do not use foul or offensive language, bring offensive materials onto or consume intoxicating liquor or illegal drugs whilst on Council Premises or providing the Services; and
  - 37.7.7 do not bring animals or unauthorised persons onto Council Premises except as expressly authorised by the Council's Contract Manager.

- 37.8 The Service Provider shall provide, maintain and permit access to records of its Representatives in accordance with this Contract.
- 37.9 Subject to clause 37.10 the Council's Contract Manager may require the Service Provider, by notice in writing, which shall include his reasons for the same, to reprimand or remove from the provision of the Services any Representatives specified by such notice (including without limitation the Service Provider's Manager). Where required the Service Provider shall forthwith remove such Representatives from the provision of the Services and provide a replacement as appropriate to ensure that the Services are carried out in accordance with this Contract. Any Representatives removed from work under the provisions of this clause 37.9 may not be employed subsequently in the provision of the Services without the prior written consent of the Council's Contract Manager.
- 37.10 The Council's Contract Manager shall not require removal of the Service Provider's Personnel under clause 37.9 unless he has given due consideration as to whether the Council would (if the individual concerned were an employee of the Council) take the same action against such employee in the same or similar circumstances.
- 37.11 The Service Provider:
- 37.11.1 agrees that at all times the Service Provider shall maintain required staffing and skill levels to the satisfaction of the Council;
  - 37.11.2 agrees that it has sufficient reserves of trained and competent staff to provide the Services to the level/standard required by this Contract at all times, including sufficient reserves to provide cover for staff holidays, staff sickness or any other absence; and
  - 37.11.3 shall ensure that every person used by him in and about the provision of the Services is at all times properly instructed with regard to the Services.
- 37.12 The Service Provider shall also ensure that all Service Provider's Personnel/Staff performing the Services for the Council under this Contract comply with the Council's safeguarding requirements including the Adult Safeguarding Policy and Procedures found at: <https://www.surreysab.org.uk/information-for-professionals/ssab-policies-and-procedures/> Where an individual/Service User is in a placement which is outside the administrative area of Surrey, the Service Provider shall comply with the multi-agency procedures of the county hosting the individual/Service User.
- 37.13 With regard to police checks of Service Provider's Personnel, where required by the Council the Service Provider undertakes to ensure that the Service Provider's Personnel are police checked in accordance with all current legislation (including but not limited to the Health and Social Care Act 2008) and the Codes of Practice for Disclosure and Barring Service Registered Persons and other Recipients of Disclosure Information under Section 122 of the Police Act 1997;
- 37.14 The Council shall not be liable either to the Service Provider or to any Staff and/or Service Provider's Personnel and/or Representatives in respect of any claim, liability loss or damage occasioned by the operation of clause 37.9.

## **ADULT SAFEGUARDING**

37.15 In providing the Services the Service Provider shall have regard to the relevant provision of the Care Act 2014 including those specifically set out below:

- 37.15.1 The Service Provider shall have and shall operate an adult safeguarding policy and procedure acceptable to the Council and which complies with the requirements of any policy, procedures or guidance produced by Surrey Safeguarding Adults Board (available at <https://www.surreysab.org.uk/information-for-professionals/ssab-policies-and-procedures/> and as is updated from time to time), or where the placement is outside of Surrey the requirements of the Safeguarding Adults Board for that area;
- 37.15.2 The Service Provider shall comply with, and ensure that all the Service Provider's Personnel performing Services for the Council under this Contract understand and comply with, the Service Provider's adult safeguarding policy and procedures;
- 37.15.3 The Service Provider's adult safeguarding policy and procedure will be made available to the Council and individuals/Service Users on demand;
- 37.15.4 The Service Provider shall ensure that all Service Provider's Personnel performing Services for the Council under this Contract have had the training and support reasonably required to enable them to meet the expectations of the Service Provider's adult safeguarding policy and procedure. In addition, the Service Provider shall ensure that all Service Provider's Personnel performing Services for the Council under this Agreement attend any adult safeguarding training sessions when requested to do so by the Council's Contract Manager, with any costs associated with this to be borne by the Service Provider;
- 37.15.5 The Service Provider shall assist and comply with any Safeguarding Adults Enquiry under Section 42 Care Act 2014 which the Council instigates or is asked to cooperate with;
- 37.15.6 The Service Provider shall assist and comply with any Safeguarding Adults Review under Section 44 Care Act 2014 which is instigated by Surrey Safeguarding Adults Board or any other Safeguarding Adults Board;
- 37.15.7 If the Service Provider or any of the Service Provider's Personnel performing the Services for the Council under this Agreement become aware of any safeguarding adults concerns that may meet the statutory criteria in Section 42(1) Care Act 2014, or of improper conduct by the Service Provider's Personnel, the Service Provider shall immediately report these to the Council;

## **38. EQUAL OPPORTUNITIES AND HUMAN RIGHTS**

- 38.1 In the performance of the Services the Service Provider shall comply and shall ensure that its employees, agents and Sub-Contractors comply with all Laws (including but not limited to the Equality Act 2010) as well as statutory and other official guidance and codes of practice relating to equal opportunities.
- 38.2 The Service Provider acknowledges that the Council has a general duty under the Equality Act 2010, to have due regard to the need to eliminate unlawful discrimination and

promote equality of opportunities in carrying out their functions. The Service Provider shall be considered to have the same obligations as the Council under the Equality Act 2010 when providing the Services under this Contract. The Service Provider shall comply with the general duty under the Equality Act 2010 and any Codes of Practice issued by the Equality and Human Rights Commission including (but not limited to) the Statutory Code of Practice on Racial Equality in Employment (2006). The Service Provider shall be considered to be in breach of this Condition in the event of any non-compliance with the Equality Act 2010 and any Codes of Practice.

- 38.3 The Service Provider shall adopt the Council's own equal opportunities policies and procedures which is available at [Equality, diversity and inclusion - Surrey County Council \(surreycc.gov.uk\)](http://equality.diversityandinclusion.surreycc.gov.uk) (as the same may be adopted and amended from time to time as notified to the Service Provider) to comply with the statutory requirements of the Equality Act 2010 and accordingly shall not, when employing persons for the purpose of performing the Services, discriminate on the basis of any of the protected characteristics as defined within the Equality Act 2010, namely; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation directly, indirectly or by victimisation.
- 38.4 In making any decision in respect of an individual/Service User, the Service Provider shall make every effort to give due consideration to the individual's/Service User's gender, sexual orientation, religious persuasion, racial origin and cultural and linguistic background.
- 38.5 The Service Provider shall indemnify the Council in respect of any costs and legal expenses incurred in defending any action brought by the Equality and Human Rights Commission and/or any third party against the Council for non-compliance with the Equality Act 2010 and/or any Codes of Practice as a result of a breach of this clause by the Service Provider.
- 38.6 The Service Provider shall inform the Council's Contract Manager as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Service Provider under the Equality Act 2010 and other relevant Laws/legislation or of any judgments, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974 or "protected" convictions as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)), or settlements arising therefrom, and shall provide the Council's Contract Manager with such further information and documentation as may be required in relation thereto. The Service Provider shall have in place an equal opportunities policy. This policy must specify that the Service Provider will not treat staff less favourably on the grounds of their colour, race, ethnic or national origin, nationality (including citizenship), marital status, sex, sexual orientation, religion or belief, age or because they have a disability. The policy must also specify that the Service Provider will not tolerate behaviour, which is inconsistent with it, and detail the measures it will take if this occurs.
- 38.7 The Service Provider shall take all reasonable steps to ensure that all of its Representatives do not unlawfully discriminate and comply with the Service Provider's obligations under this clause 38.

- 38.8 In the performance of the Services and in its dealings with Service Users/Customers, Council employees and members of the general public, the Service Provider shall comply and shall ensure that its Representative's comply with;
- 38.8.1 the Human Rights Act 1998 as if the Service Provider were a public body (as defined in the Human Rights Act 1998);
  - 38.8.2 all Laws relating to equal opportunities, and
  - 38.8.3 the Council's equal opportunities policies and procedures as may be adopted and amended from time to time.
- 38.9 In the event of any finding of unlawful age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation discrimination being made against the Service Provider or its Sub-Contractor(s) during the Contract Period by any court or tribunal, or of an adverse finding in any formal investigation by the Equality and Human Rights Commission (or any successor organisation) over the same period, the Service Provider shall inform the Council of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Council to prevent repetition of the unlawful discrimination.

### **39. TUPE**

The Parties agree that the provisions of Schedule D (Staff Transfer and Pensions) will apply during the Contract Period to any transfer under TUPE of Transferring Employees or Third Party Employees.

## **SECTION 8 – DISPUTE RESOLUTION**

### **40. REFERRAL TO OFFICERS**

- 40.1 In the event of any contractual dispute arising under the terms of this Contract, the Parties will attempt, in good faith, to resolve such disputes within twenty five (25) Working Days of the receipt of a Notice by either Party of such dispute ("First Notice"). Resolution of such disputes will be by review and negotiation between senior representatives of the Parties with authority to settle disputes.
- 40.2 For the avoidance of doubt the provisions of this clause shall not apply to:
- 40.2.1 the specific operational information or service-related outcome of any review of the Support Plan;
  - 40.2.2 the type, quantity or quality of care provision required by the Social Care Practitioner;
  - 40.2.3 the indemnity provisions contained in this Contract generally.
- 40.3 If the Parties' senior representatives are unable to agree a resolution by the end of this twenty-five (25) Working Day period then either Party may give ten (10) Working Days' notice ("Second Notice") of their decision to either:
- 40.3.1 issue a notice of termination, should any applicable grounds exist under Section 9 (Termination), or
  - 40.3.2 request for the Parties to enter into mediation at the Parties' equally shared cost.

- 40.4 Upon receipt of the Second Notice the receiving Party shall respond in writing within the ten (10) Working Days' notice period either;
- 40.4.1 agreeing to the proposed intention to terminate, or
  - 40.4.2 rejecting the intention to terminate, and requiring the Parties to enter into mediation at the Parties' equally shared cost, or
  - 40.4.3 agreeing to enter into mediation at the Parties' equally shared cost.
- 40.5 If the matter is not resolved under the provisions of clause 40.1 and the Parties agree to mediation then the dispute shall be referred to mediation to be conducted by such independent third party ("the Mediator") as the Council and the Service Provider shall jointly nominate in accordance with clause 41 (Mediation).
- 40.6 The provisions of this clause 40 are without prejudice to the rights of the Parties expressed elsewhere in this Contract.
- 40.7 Subject to clause 8 (Disputed Sums), the provision of the Services and the payment of the Fee shall not be affected or suspended in the event of and during any dispute.

## **41. MEDIATION**

- 41.1 In the event that the dispute cannot be resolved by negotiation or conciliation under clause 40 (Referral to Officers) within two (2) months or such other period as may be determined by the Council in its absolute discretion both Parties shall attempt to settle it by mediation.
- 41.2 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 41.2.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one (1) Party to the other or the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") (or any successor body) to appoint a Mediator;
  - 41.2.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
  - 41.2.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - 41.2.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives; and

- 41.2.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.
- 41.3 If the Parties fail to resolve the dispute by mediation within two (2) months of the Mediator being appointed, or such longer period as may be agreed between the Parties, then any dispute or difference between them may be referred to the courts pursuant to clause 69 (Law of Contract and Jurisdiction).
- 41.4 Nothing in this clause 41 shall prevent the Parties from seeking from any Court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 41.5 For the avoidance of doubt the Parties shall exhaust the relevant provisions of this Section 8 (Dispute Resolution) before any of the termination clauses are invoked.

## **SECTION 9 – TERMINATION**

### **42. DEFAULT AND ASSISTANCE**

- 42.1 If at any time during the Contract Period the Council determines that:
- 42.1.1 the Services or any part of the Services have not been carried out in accordance with the provisions of this Contract; or
  - 42.1.2 the Service Provider has failed to comply with any requirement made by the Council (or its Contract Manager) within the terms of the Contract; or
  - 42.1.3 the Service Provider has adversely affected the image or reputation of the Council; or
  - 42.1.4 the Service Provider is in breach of any part of the Contract,
- then, without prejudice to any other right or remedy available to the Council, the Council may issue a written notice to the Provider stating the nature of the default (a “Default Notice”) and deduct sums of money in accordance with the procedures set out below.
- 42.2 Any or all of the following procedures may be used upon issue of a Default Notice to the Service Provider and the Council shall have sole and entire discretion as to which is most appropriate:
- 42.2.1 the Council may make such deduction from the payments due to the Service Provider as the Council shall reasonably calculate as compensation to the Council in respect of the Service Provider’s failure including all costs incurred by the Council supplying the Services in accordance with clause 42.2.2;
  - 42.2.2 without terminating the Contract either in whole or in part, or the relevant Spot Order, the Council may itself provide or procure from a third party the provision of the Services or any part of the Services until such time as the Service Provider demonstrates to the reasonable satisfaction of the Council that the Service Provider is able to perform the Contract to a standard acceptable to the Council;
  - 42.2.3 without terminating the whole Contract, the Council may require the Service Provider to remedy the default within a specified timescale at the discretion of the Council; or

42.2.4 the Council may terminate the whole or part of the Contract, in accordance with the termination provisions set out in clause 43 (Termination on Notice).

42.3 Any expenses incurred which are in addition to the cost of the relevant part of the Services arising as consequence of suspension of the Services or procuring a third party to provide them, shall be recovered from the Service Provider in accordance with the Contract.

42.4 Prior to any suspension or termination of the Services, the Parties shall work together to ensure a smooth transition of the Services provided under the Contract to another provider if that is in contemplation, and in particular the Service Provider shall commit sufficient resources to undertake all necessary tasks to effect any such transition so that the care and wellbeing of individuals/Service Users the subject of a Spot Order shall not be put at risk.

42.5 Without prejudice to the provisions of clauses 43 (Termination on Notice) and 44 (Termination of Spot Order(s)), where termination of the Contract or a Spot Order(s) is in contemplation, the Service Provider shall continue to deliver the Services to agreed levels of quality while assisting the Council with the necessary exit and transfer activities, which could include, for example, transfer of data and processes, cancellation, novation or assignment of sub-contracts and destruction of data not transferred.

42.6 The Contract shall terminate automatically at the end of the Initial Period unless it shall have been terminated earlier in accordance with the provisions of this Contract or has been extended in accordance with clause 2. For the avoidance of doubt the Service Provider shall not be entitled to any compensation on expiry.

### **43. TERMINATION ON NOTICE**

43.1 The Council shall be entitled to terminate this Contract forthwith either in whole or in part (without prejudice to any accrued rights or remedies under this Contract) if any of the following events occur:

- i) the Service Provider commits a breach of any term of this Contract which breach is capable of being remedied and the Service Provider has failed to remedy the said breach within ten (10) Working Days after issue of a written request by the Council to do so;
- ii) any material breach by the Service Provider of any of its obligations under the Contract;
- iii) the Service Provider consists of one or more individuals, any such individual dying, entering into a composition or arrangement for the benefit of his creditors or becomes bankrupt or is the subject of similar procedures under the law of any other state;
- iv) if the Service Provider is a body corporate, and the Service Provider has a receiver or manager or administrator or provisional liquidator appointed or has a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency

Act 1986 or being subject to similar procedures under the law of any other state save that an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this clause;

- v) if the Service Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed or is the subject of similar procedures under the law of any other state;
- vi) the Service Provider has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property comprised in, or subject to, the floating charge or is the subject of similar procedures under the law of any other state;
- vii) the Service Provider is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, or manager, or administrator, or administrative receiver or to begin similar procedures under the law of any other state; or which entitle the Court to make a winding up order or a similar order under the law of any other state;
- viii) if the Contract Manager shall certify in writing to the Council that in his opinion the Service Provider has abandoned this Contract;
- ix) if the Contract Manager shall certify in writing to the Council that the Service Provider without reasonable excuse has failed to commence the Services on the Commencement Date or has suspended the performance of the Services or a substantial part thereof for seven (7) Working Days after receiving from the Contract Manager written notice to proceed;
- x) the Service Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to the obtaining or execution of this Contract with the Council; or for showing or forbearing to show favour or disfavour, to any person in relation to the Contract, or any other contract with the Council, or if the like acts shall have been done by any person employed by the Service Provider or acting on its behalf, (whether with or without the knowledge of the Service Provider);
- xi) if in relation to any contract with the Council, the Service Provider or any person employed by it or acting on its behalf shall have committed a similar offence;
- xii) the Service Provider stops or threatens to stop trading;
- xiii) discovery of a material misrepresentation by the Service Provider;
- xiv) the Service Provider having failed to perform a substantial part of the Services or having committed any other breach of contract which in the reasonable opinion of the Contract Manager justifies termination of this Contract;

- xv) the Service Provider without reasonable cause fails to proceed diligently with the Services or fails to comply with any notices or wholly suspends the carrying out of the Services;
- xvi) the Service Provider commits any breach pursuant to the provisions of regulations relating to the subject matter of the Contract;
- xvii) if the Service Provider is a partnership and:
- xviii) the senior equity partners at the date hereof or a substantial number thereof leave the partnership; and/or
- xix) it ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services; or
- xx) if the Service Provider is the company, where the Service Provider undergoes a change of control, within the meaning of Section 450 of the Corporation Tax 2010, which in the opinion of the Council impacts adversely and materially on the performance of this Contract.

43.2 Where the Council has a right to terminate the Contract either in its entirety or in relation to a type of service the Council may (as an alternative remedy) terminate the relevant Spot Order(s) only.

43.3 If an individual Spot Order is suspended for any reason whatsoever this will be deemed as a default under this Contract and the provisions of clause 42 (Default and Assistance) shall apply to the Spot Order.

#### **44. TERMINATION OF SPOT ORDER(S)**

44.1 A Spot Order(s) can be terminated as follows:

44.1.1 If the Council gives to the Service Provider thirty (30) days prior notice in writing without obligation to pay for any Services not yet provided and agrees to pay for any and all Services already provided to the Individual/Service User in question;

44.1.2 If the Council gives to the Service Provider immediate notice following an act or omission by the Service Provider which the Council considers is a material breach of the Spot Order or where there are concerns for the well-being of the individual/Service User warranting immediate removal;

44.1.3 Save for reasons relating to the Fee, if the Service Provider gives to the Council six (6) weeks prior notice in writing where it is no longer in a position to supply the Services set out in this Contract and Service Specification;

44.1.4 If the Council gives to the Service Provider fourteen (14) days prior notice in writing that the individual/Service User will be funded by another statutory body and in that event the Service Provider shall engage in discussions to enter into a separate funding agreement with that other statutory body;

- 44.1.5 If the Council gives to the Service Provider one (1) week's prior notice to cease the Services under the Spot Order upon instruction of the individual/Service User; or their advocate/ appropriate representative;
- 44.1.6 By the Council and the Service Provider agreeing to mutually terminate a Spot Order(s); or
- 44.1.7 If the Service Provider fails to remedy any default after suspension of the Services by the Council for new placements.

#### **45. TERMINATION FOR BREACH OF WARRANTY**

- 45.1 If a Prohibited Act is committed by the Service Provider or any of its Representatives, not acting independently of the Service Provider, then the Council may without prejudice to any accrued rights or remedies under this Contract, terminate this Contract forthwith by written notice having immediate effect.
- 45.2 The Council may terminate this Contract forthwith and recover all its losses if the Service Provider is in material breach of any of its representations and warranties in clause 28 (Service Provider Warranties) (notwithstanding that such warranties and representations are expressed to be warranties).
- 45.3 Any notice of termination under this clause 45 shall specify:
  - 45.3.1 the warranty breached or the nature of the Prohibited Act;
  - 45.3.2 if a Prohibited Act, the identity of the party whom the Council believes has committed the Prohibited Act; and
  - 45.3.3 the date on which this Contract will or is deemed to have terminated, in accordance with the applicable provision of this clause 45.

#### **46. TERMINATION ON FORCE MAJEURE**

- 46.1 If a Force Majeure Event prevents either Party from performing its obligations under the Contract in any material respect for a period of three (3) consecutive months then, provided the notification requirements set out in clause 54 (Force Majeure) have been met, without prejudice to any accrued rights or remedies under this Contract, either Party may terminate this Contract by notice in writing to the other Party having immediate effect.

#### **47. TERMINATION FOR CONVENIENCE**

- 47.1 The Council may terminate this Contract or any part of this Contract for convenience at any time on giving three (3) months written notice to the Service Provider provided that it shall only do so where there are very good reasons to do so and the Council is acting reasonably in doing so.
- 47.2 The Service Provider may terminate this Contract or any part of this Contract for convenience at any time on giving six (6) months written notice to the Council.

- 47.3 Subject to any obligation to provide the Services in accordance with this Contract, the Service Provider's obligation to provide the Services shall end on the date set out in the notice delivered either under clause 47.2 or clause 45.3 above.
- 47.4 Unless otherwise stipulated by the Party in its notice of termination, any Services that have not commenced at the date of the relevant Party's notice shall be cancelled automatically.
- 47.5 This right of termination is in addition to any other rights either Party may have under this Contract and its exercise shall be without prejudice to any claim, remedy or right of action that either Party may have in relation to this Contract.

#### **48. EFFECT OF TERMINATION OR EXPIRY**

- 48.1 The termination of this Contract and each individual Spot Order(s) shall be independent of each other and the Parties shall have regard to the provisions of clause 2.1. In addition to such consequences as are set out in other provisions of this Contract:
- 48.1.1 If this Contract is terminated the Spot Order(s) shall continue and if a Spot Order(s) is terminated the Service Provider shall cease to perform the Services under the terms and conditions of the Spot Order(s);
- 48.1.2 the Service Provider shall be liable forthwith to compensate the Council for any loss or damage it has sustained in consequence of any breaches by the Service Provider;
- 48.1.3 the Service Provider shall fully and promptly indemnify the Council in respect of the cost of causing to be performed the Services or any part thirty (30) days after the date in the termination notice to the extent that such cost exceeds such sums as would have been lawfully payable to the Service Provider for performing the Services. The Council shall be at liberty to have the Services or any part thereof performed by any persons (whether or not servants of the Council), as the Council shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having the Services or part thereof performed;
- 48.1.4 the Council shall be under no obligation to make any further payment to the Service Provider for any of the Services (and in the case of termination of a Spot Order for any Services delivered under that Spot Order) and shall be entitled to retain any payments which may have fallen due to the Service Provider before termination until the costs, losses and/or damages resulting from or arising out of the termination of this Contract or Spot Order shall have been calculated; where the Parties agree that such calculation shows a sum or sums due to the Service Provider, the Council shall pay the Service Provider such sums within thirty (30) Working Days of the calculation being agreed between the Parties;
- 48.1.5 the Council shall be entitled to enter premises and repossess any of the Council's materials, equipment or other goods loaned or hired to or in the possession of the Service Provider and to exercise a lien over any of the materials, equipment or other goods belonging to the Service Provider for any sum due hereunder or otherwise due from the Service Provider to the Council;
- 48.1.6 the Service Provider shall forthwith release and hand over to the Council any records and work-in-progress, relating to the Contract (or in the case of a Spot Order, that

Spot Order) whether in the form of documents, computer data or other material in any medium;

48.1.7 the Council shall be entitled to deduct, retain or set off from any sum or sums which would but for clause 48.1.4 have been due from the Council to the Service Provider under this Contract or any other contract/agreement or be entitled to recover the same from the Service Provider as a debt, any loss or damage to the Council resulting from or arising out of the termination of the Contract. Such loss or damage shall include reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof; and

48.1.8 when the total costs, losses and/or damages resulting from or arising out of the termination of the Service Provider's employment have been calculated and deducted insofar as is practicable from any sum or sums which would but for clause 48.1.4 have been due to the Service Provider, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Service Provider any balance shown as due to the Service Provider.

48.2 Anything still to be performed under this Contract shall survive upon termination of the Contract and in particular it is hereby agreed that clause 21 (Health and Safety), clause 65 (Conflict of Interest), clause 26, (Indemnities) clause 27, (Insurance), clause 28, (Limitation of Liability), Section 8, (Dispute Resolution) and clause 45 (Termination of Spot Order(s)) of these contract conditions shall continue to apply.

48.3 For the avoidance of doubt, the rights of the Council under this clause 48 are in addition to and without prejudice to any other rights or remedies the Council may have whether against the Service Provider directly or pursuant to any guarantee, indemnity or bond.

48.4 Notwithstanding that a Party may have a right to terminate this Contract, that Party may elect to continue to treat this Contract as being in full force and effect and to enforce its rights under this Contract.

### **DUTY TO CO-OPERATE**

48.5 The Service Provider shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to any Replacement Service Provider undertaking such service, the same or similar to the Services in accordance with clause 48.7:

48.5.1 during the final six (6) months of the Contract Period or during the period of any notice of termination of this Contract; and

48.5.2 for a period of six (6) months thereafter.

48.6 Such co-operation referred to in clause 48.6 shall include:

48.6.1 liaising with the Council and/or a Replacement Service Provider, and providing reasonable assistance and advice concerning the Services and their transfer to the Council or to such Replacement Service Provider;

48.6.2 subject to the provisions of clause 31 (Confidentiality and Transparency), providing to the Council and/or to a Replacement Service Provider all and any information

concerning the Services which is required for the efficient transfer of responsibility for their performance; and

48.6.3 using all reasonable endeavours to assign or otherwise transfer the benefit of any Sub-Contract or other contract related to the performance of the Services, if so required by the Council and so permitted by other parties to the relevant Sub-Contract or other contract.

48.7 The Service Provider shall use all reasonable endeavours to facilitate the smooth transfer of responsibility for the Services to a Replacement Service Provider or the Council, as the case may be, and the Service Provider shall not act at any time during the Contract Period or thereafter in a way calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer (but this clause shall not prevent the enforcement by the Service Provider of any of its rights under this Contract or otherwise).

48.8 The Service Provider shall (and shall procure that the Sub-Contractors will) subject to and clause 31 (Confidentiality and Transparency), and clause 33 (Data Protection) comply with all reasonable requests of the Council to provide information relating to the Service Provider's costs of operating and maintaining the Services.

## **49. EXIT PLANNING**

49.1 The Service Provider shall, within six (6) months after the Commencement Date (or such other time specified by the Council), produce an Exit Plan (Exit Planning) for the orderly transition of the Services from the Service Provider to the Council and/or any Replacement Service Provider in the event of any termination or expiry of this Contract (in whole or in part). The Service Provider shall take into consideration all provisions or principles prescribed by the Council for incorporation into the Exit Plan.

49.2 The Council shall review the Exit Plan within twenty (20) Working Days of the receipt from the Service Provider and shall notify the Service Provider of any suggested revisions to the Exit Plan. Such suggested revisions shall be discussed by the Parties and resolved within ten (10) Working Days of receipt by the Service Provider of the Council's proposed revisions to the Exit Plan. The agreed Exit Plan shall be signed as approved by both Parties within thirty (30) Working Days after submission of the draft Exit Plan to the Council. If the Parties are unable to agree the contents of the Exit Plan within that thirty (30) Working Day period, the principles set out in Schedule G (Exit Planning) shall apply and the Dispute Resolution provisions shall apply.

49.3 The Service Provider shall keep the Exit Plan under continuous review. Following each update, the Service Provider shall submit the revised Exit Plan to the Council for review. The Parties shall agree the revised Exit Plan in accordance with the timescales set out in clause 49.2 save for, the Parties shall in agreeing the revised Exit Plan take into account any changes that have occurred in the Services since the Exit Plan was agreed and if the Parties are unable to agree the contents of the revised Exit Plan within that period, the previous version shall continue to apply and either Party may refer the dispute for resolution in accordance with Section 8 (Dispute Resolution).

49.4 Until the agreement of the Exit Plan, the Service Provider shall continue to provide the Services and shall follow the principles set out in Schedule G (Exit Planning) and the last

approved version of the Exit Plan, if applicable and insofar as this still applies. The Service Provider shall ensure that it is able to implement the Exit Plan at any time.

- 49.5 In the event of termination or expiry of this Contract for any reason both Parties shall comply with their respective obligations set out in the Exit Plan.
- 49.6 Within thirty (30) days after service of notice of termination of the Contract (in whole or part) by either Party or six (6) months prior to the expiration of this Contract, the Service Provider shall update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Council for review and approval. Until the agreement of the updated Exit Plan, the Service Provider shall continue to provide the Services and shall follow the last-approved version of the Exit Plan.

## **SECTION 10 – GENERAL**

### **50. SUCCESSORS**

The provisions of this Contract are binding on any successors in title of the Parties.

### **51. RELATIONSHIP OF PARTIES**

- 51.1 The Service Provider (including the Service Provider's Personnel) shall not be deemed to be a servant, an agent of the Council and the Service Provider shall not hold itself out as having authority or power to bind the Council in any way, other than expressly conferred by this Contract.
- 51.2 Nothing in this Contract shall be construed as creating a partnership within the meaning of the Partnership Act 1890, or as a contract of employment between the Service Provider and the Council.
- 51.3 Subject to the variation of this Contract by agreement and where applicable, the Service Provider and the Service Provider's Personnel are bound by the following duties during the Contract Period:
- 51.3.1 to obey the lawful instructions of the Council (to take or refrain from taking a specified action).
  - 51.3.2 to act only within the limits of its authority.
  - 51.3.3 to use reasonable diligence and care.
  - 51.3.4 not to put itself into a situation where its interests will conflict with those of the Council.
  - 51.3.5 to disclose all material facts to the Council and to refrain from divulging confidential information to third parties.
  - 51.3.6 not to make a secret profit or accept bribes.
  - 51.3.7 to account to the Council for property and money of the Council which is under its control.

51.3.8 not to delegate its authority.

51.4 The Service Provider is not and shall in no circumstances hold itself out as being authorised to enter into any contract (other than those set out under this Contract and Spot Orders) on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.

51.5 The Service Provider's Personnel including its key workers and agency personnel are not and shall not hold themselves out as being, nor shall they be held out by the Service Provider as being, servants or agents of the Council for any purposes other than those expressly conferred by this Contract.

## **52. ASSIGNMENT AND NOVATION**

52.1 The Service Provider shall not assign, novate, transfer or otherwise dispose of any of its rights or benefits under this Contract (including the Spot Order) other than:

52.1.1 with the prior written consent of the Council, which consent the Council may in its absolute discretion refuse and/or grant on terms; and

52.1.2 provided that the Service Provider undertakes to pay all reasonable expenses incurred by the Council in connection with the proposed assignment or novation whether or not the assignment or novation is completed.

52.2 The Council may (and the Service Provider shall do all things necessary to assist the Council to) assign or otherwise dispose of its rights and obligations under this Contract (Including the Spot Order) or any part thereof to another Party provided that:

52.2.1 the Council shall give prior written notice of any assignment or novation to the Service Provider;

52.2.1.1 and such assignee or novatee shall have the legal capacity and sufficient financial resources to perform the obligations of the Council under this Contract.

## **53. SUB-CONTRACTING**

53.1 The Service Provider shall not be entitled to sub-contract, sub licence or otherwise dispose of the provision of the Services or any part thereof without the prior written consent of the Council.

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

53.2.1 remain responsible to the Council for the performance of its obligations under this Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts' omissions and neglects of its Sub-Contractors;

53.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms including:

53.2.2.1 the scope of the Services to be provided by the Sub-Contractor and the price agreed for the provision of those Services;

53.2.2.2 the payment terms and timescales - for example the right for the Sub-Contractor to invoice the Service Provider weekly/monthly/quarterly (as appropriate);

53.2.2.3 a provision which requires payment to be made of all sums due by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice and appropriate late payment provisions as set out in clause 7 (Payment);

53.2.2.4 a clause which states that the Service Provider is not able to unilaterally vary the scope of the services and/or the price agreed under the Sub-Contract;

53.2.2.5 appropriate insurance provisions for the Services to be provided by the Sub-Contractor which comply with the provisions of clause 26 (Insurance); and

53.2.2.6 not vary any of the provisions referred to in clauses 53.2.2.1 to 53.2.2.5 except with the prior written consent of the Council.

53.2.2.7 provide a copy, at no charge to the Council, of any such sub-contract/third party contract on receipt of a request for such by the Council.

- 53.3 The Service Provider shall not assign the Spot Order or any part thereof.
- 53.4 The sub-contracting of any part of the Services or any Spot Order shall not relieve the Service Provider from any liability or obligation under the Contract, the Service Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, its employees and agents in all respects as if they were acts, defaults or neglect of the Service Provider itself.
- 53.5 As a condition of its consent under clause 53.4 above, the Council may require that the Service Provider and the Sub-Contractor enter into a collateral warranty agreement with the Council and the Service Provider shall do all things necessary to ensure completion of any collateral warranty within the timescales stipulated by the Council.
- 53.6 For all Sub-Contractors and where the Council has approved the use of Sub-Contractors, such Sub-Contracts shall be on the same terms as this Contract and for the avoidance of doubt the Sub-Contract shall not contain any terms which are incompatible with this Contract.
- 53.7 Where the Council has approved the use of Sub-Contractors this shall not relieve the Service Provider from any liability or obligation under this Contract and the Service Provider shall be responsible for the acts, defaults or neglect of any Sub-Contractor, its employees and agents in all respects as if they were the acts, defaults or neglect of the Service Provider itself.

## **54. FORCE MAJEURE**

- 54.1 If any Party is delayed in or prevented from performing any of its obligations under this Contract by a Force Majeure Event then, so long as that Force Majeure Event continues, that Party shall be excused from performance of such obligations to the extent it is so delayed or prevented, and the time for performance of such obligation shall be delayed accordingly.

- 54.2 On the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. Such notification shall contain details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.
- 54.3 As soon as practicable following such notification, the Parties shall consult each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the impact of the Force Majeure Event and facilitate continued performance of this Contract.
- 54.4 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer delays or prevents the affected Party from complying with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 54.5 For the duration of any suspension of the Service Provider's obligations under this clause 54 (Force Majeure), the Council shall only be liable to pay the Service Provider an amount that reflects the reduced Services (if any) being performed.
- 54.6 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, failure to meet any foreseen regulatory changes and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters or any failure in the Service Provider's supply chain, which a prudent and diligent provider could have avoided with the application of foresight, are not to be considered as events of Force Majeure.

## **55. BUSINESS CONTINUITY PLANNING AND CIVIL CONTINGENCIES**

- 55.1 The Service Provider is required to have in place adequate and appropriate measures to ensure, where reasonably practicable, that it is able to continue providing the Services within a predetermined time in the event of service disruption or a state of emergency which partially or completely interrupts the Service Provider's business critical functions and which would otherwise impact the Service Provider's provision of the Services, and:
- 55.1.1 the Service Provider may be required by the Council to provide satisfactory evidence demonstrating compliance with the key principals of the British Standard for Business Continuity (BS25999) or its equivalent; however, certification of the Service Provider to this standard, though desirable, is not mandatory.
- 55.1.2 the Council may from time to time require the Service Provider to demonstrate to the reasonable satisfaction of the Council the viability and effectiveness of the Service Provider's business continuity arrangements by providing details of its exercising and maintenance programmes.
- 55.2 Where an Emergency, as defined in Part 1 of the Civil Contingencies Act 2004 (an "Emergency"), occurs or is imminent the Service Provider shall:
- 55.2.1 immediately upon the receipt of instructions from the Council's Contract Manager, make all its resources, (including the Service Provider's Personnel/Staff, supervisory staff, plant and equipment, materials and premises) used and organised to execute this Contract, available to the Council to assist in dealing with Emergency work; and

55.2.2 carry out such Emergency work as is authorised by the Council's Contract Manager.

- 55.3 During the period in which the Service Provider is engaged in Emergency work as prescribed above, the whole or part of the work required to be carried out under this Contract may be suspended.
- 55.4 The Service Provider shall be required to negotiate payment from the Council for any authorised Emergency work done. Such payment shall be based on the actual cost of carrying out the Emergency work and may include a reasonable margin to cover overheads and profits.
- 55.5 From time to time, the Council may require members of the Service Provider's Personnel/Staff to attend and be involved in business continuity exercises and/or Emergency training exercises, and such other relevant training organised by the Council, a Borough/District Council in the County or Central Government. Reimbursement, where necessary, for involvement in training activities, pursuant to this clause, shall be on the same basis as that outlined in clause 55.4.

## **56. ASSISTANCE IN LEGAL PROCEEDINGS**

- 56.1 Where requested by the Council's Contract Manager, the Service Provider shall give all reasonable assistance and co-operation and provide to the Council any relevant information which is not confidential in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved, or any relevant disciplinary hearing internal to the Council, or any inquiry by the Local Government Ombudsman, arising out of the provision of the Services.
- 56.2 Where the Service Provider becomes aware of any incident, accident or other matter which may lead to a complaint to the Local Government Ombudsman or a claim or legal proceedings, in respect of the provision of or failure to provide the Services, it shall notify the Council's Contract Manager by telephone and in writing as soon as practicable and in any event within forty eight (48) hours of becoming aware of the same. Such written notification shall include all relevant information that is not confidential to enable the Council's Contract Manager to investigate the matter fully.
- 56.3 Such information provided or assistance rendered pursuant to the obligations in this clause 56, in whatever form, shall be at no additional cost to the Council.
- 56.4 Any liability which the Council incurs as a result of failure by the Service Provider shall be recoverable in accordance with the terms of this Contract.

## **57. PREVENT DUTY**

- 57.1 The Service Provider shall facilitate the Council's compliance with its duty pursuant to the Counter Terrorism and Security Act 2015 ("CTSA 2015") and the Service Provider shall have regard to the statutory guidance issued under Section 29 of the CTSA 2015 and in particular the Service Provider shall ensure that Staff:
- 57.1.1 understand what radicalisation means and why people may be vulnerable to being drawn into terrorism;

- 57.1.2 are aware of extremism and the relationship between extremism and terrorism;
- 57.1.3 know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extreme ideology that can be associated with it;
- 57.1.4 obtain support for people who may be exploited by radicalising influences.

- 57.2 Where the Service Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, the Service Provider must refer such person or activity to the police.
- 57.3 For the avoidance of doubt the Service Provider shall cooperate with all Channel Panel reasonable request for information whether or not it is Council led.

## **58. MODERN SLAVERY ACT**

The Service Provider shall and shall procure that its Sub-Contractors comply with the relevant provisions of the Modern Slavery Act 2015 during the Contract Period as if the same were set out in this Contract.

## **59. GOOD FAITH**

- 59.1 The Parties shall, and shall procure that their Representatives shall, at all times in relation to this Contract and the performance of the Services, act reasonably and in good faith.
- 59.2 Except where expressly stated otherwise, any decision, agreement, request, consent, approval (including whether performance is to the satisfaction a Party), action or other step of a similar nature required to be taken by a Party shall be taken reasonably and in good faith and it shall be reasonable to withhold or delay such decision, agreement et cetera on the grounds of:
  - 59.2.1 non-compliance by the other Party with Laws; or
  - 59.2.2 a materially adverse effect on the proper performance of the Services.

## **60. RIGHTS AND DUTIES RESERVED**

All rights and duties which the Council has as a local Council or which the Council's officers have as local authority officers including as a local planning authority and a waste disposal authority are reserved.

## **61. ILLEGALITY AND SEVERANCE**

In the event that any part of this Contract shall become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of the provisions of any Law or any decision of any Court or Regulatory Body having jurisdiction over the Parties of this Contract, the Parties hereby expressly agree that the remaining parts and provisions of this Contract shall continue in full force and effect with such amendments as are necessary to ensure that the balance of obligations remains as far as possible the same as under this Contract or as may be agreed between the Parties.

## **62. SURVIVAL**

Termination of this Contract for any reason shall not affect this clause 62 (Survival) and the following clauses shall continue in force after such termination: clause 1 (Definitions and Interpretation), clause 8 (Disputed Sums), clause 10 (Set-Off), clause 18 (Service Provider's Records), Section 5 (Indemnities, Insurance, Warranties and Acknowledgments), clause 31 (Confidentiality and Transparency), clause 32 (Freedom of Information), clause 33 (Data Protection), clause 39 (TUPE), Section 8 (Dispute Resolution), Section 9 (Termination), clause 52 (Assignment and Novation), clause 53 (Sub-Contracting), clause 56 (Assistance in Legal Proceedings), clause 65 (Notices); clause 69 (Law of Contract and Jurisdiction).

## **63. WAIVER**

- 63.1 No term or provision of this Contract shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, clauses or provisions of this Contract unless (and then only to the extent that) it is expressly stated in that waiver.
- 63.2 No failure or delay by a Party to exercise any right or remedy provided under this Contract or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 63.3 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in accordance with clause 65 (Notices).

## **64. THIRD PARTY RIGHTS**

Subject to Schedule D (Staff Transfer and Pensions), it is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Contract is not intended to, and does not, give to any person who is not a party to this Contract any rights to enforce any provisions contained in this Contract except for any person to whom the benefit of this Contract is assigned in accordance with clause 52 (Assignment and Novation).

## **65. NOTICES**

- 65.1 Any demand, notice, or other communication required to be given under this Contract shall, unless expressly stated otherwise, be in writing and shall be treated as validly served if:

65.1.1 served personally on the addressee;

65.1.2 sent by pre-paid post;

65.1.3 sent by email to the address set out on the Spot Order or as otherwise notified to each other;

subject to a receipt confirming delivery to the addresses of the Party referred to in this Contract or to another address which has been notified expressly in writing by that Party to the other under the provisions of this clause 65 which shall include the address of the Council's Contract Manager or Service Provider's Manager (as appropriate).

65.2 Any notice that complies with cause 65.1 shall be deemed to have been received by the addressee when delivered:

65.2.1 personally, on the date of delivery;

65.2.2 by email, at the time of transmission if sent during Working Hours and otherwise on the next Working Day,

65.2.3 in the case of delivery by post on the third Working Day after the date of posting.

## **66. CONFLICTS OF INTEREST**

66.1 Acting always in the best interest of the Council, the Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any of the Service Provider's Representatives are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or its Representatives and the duties owed to the Council under this Contract.

66.2 The Service Provider shall notify the Council and (subject to any overriding duty of confidentiality) provide full particulars to the Council immediately on becoming aware of any possible conflict of interest referred to in clause 66.1 (or any other conflict between the interests of the Council and the Service Provider or any other person to whom services are provided by the Service Provider) which may arise or potentially arise or which may have reasonably been foreseen as arising.

66.3 The Service Provider shall immediately take all reasonable action to remove or avoid the cause of any such conflict of interest to the satisfaction of the Council.

66.4 The provisions of this clause 66 (Conflicts of Interest) shall apply during the Contract Period and for a period of two (2) years after termination or expiry (howsoever caused).

## **67. ENTIRE AGREEMENT**

67.1 Except where expressly provided in this Contract this Contract constitutes the entire agreement between the Parties in connection with its subject matter and:

67.1.1 shall apply to the purchase of the Services from the Service Provider by the Council to the exclusion of all other terms including any which the Service Provider may purport to apply under any offer or similar document

67.1.2 supersedes all prior representations communications negotiations and understandings (whether oral or written) concerning the subject matter of this Contract.

67.2 Neither Party has relied on earlier statements or representations made by the other or the other's agents or advisers.

67.3 Nothing in this clause 67 is intended to exclude or limit any statement representation or warranty made fraudulently or to any provision of this Contract which was induced by fraud for which the remedies available shall be all those available under the law governing this Contract.

67.4 No subsequent amendment or variation to this Contract shall affect the provisions and operation of this clause 67.

## **68. COUNTERPARTS**

This Contract may be executed in one or more counterparts and any Party may enter into this Contract by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all the Parties shall constitute one and the same agreement and a full original of this Contract for all purposes.

## **69. LAW OF CONTRACT AND JURISDICTION**

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of England and Wales and subject to Section 8 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the courts of England.

## **70. BEST VALUE**

70.1 The Service Provider shall throughout the Contract Period and in accordance with its obligations under this Contract, provide a service that represents value for money.

70.2 Pursuant to clause 70.1 the Service Provider shall throughout the Contract Period and in accordance with its obligations under this Contract deliver to the Council a combination of economy efficiency and effectiveness.

70.3 The Service Provider shall secure continuous improvement in the way in which the Services are provided, and this shall be reviewed by the Council in accordance with the provisions specified in the Key Performance Indicator contained in the Specification.

## **71. SUSTAINABLE PROCUREMENT POLICY**

The Provider shall so far as reasonably practicable, endeavour to ensure in its performance of the Services that it uses working methods, equipment, materials and consumables that minimise environmental damage.

## **72. QUALITY ASSURANCE**

The Service Provider accepts that it is a condition of this Contract that it will adopt and utilise management control processes for its performance of the Services, and that such processes shall be fully effective and operational within the period agreed between the Parties.

## **73. INSPECTION**

At all times after the Commencement Date the Council's Contract Manager and/or other officers of the Council may organise regular and thorough inspections of the Service Provider's performance to ensure that it is complying with its obligations under this Contract.

## **74. INTERACTION WITH THIS CONTRACT**

The Parties acknowledge that this Contract may place obligations on the Service Provider to ensure that the environment in which it provides the Services is safe, fit for purpose and in compliance with the Law or to provide the Services from specified locations.

## **75. INSTRUCTIONS**

Any disagreement over the nature or contents of any instructions, or any failure to resolve ambiguities in them, shall be referred promptly to the Council's Contract Manager.

## **76. DECLARATION OF INTEREST**

The Service Provider shall inform the Council in writing of any elected member, employee or family member of an elected member or employee of the Council who is involved in any way with the Service Provider as soon as the Service Provider becomes aware.

## **77. BRIBERY, CORRUPTION AND COLLUSION**

77.1 Neither the Service Provider, the Service Provider's Personnel/Staff, the Service Provider's Representatives nor any Sub-Contractor nor any other person employed by the Service Provider or acting on the Service Provider's behalf shall commit and the Service Provider warrants, represents and undertakes that in entering this Contract neither the Service Provider nor any such person has committed any of the following (hereinafter referred to as "Prohibited Acts"):

77.1.1 directly or indirectly offer, promise, give or agree to give any person working for or engaged by the Council, any related party or any other person any gift or consideration of any kind as an inducement or reward:

77.1.1.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council; or

77.1.1.2 for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;

77.1.2 enter into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Service Provider (or anyone acting on its behalf or to its knowledge) unless before such contract is made, particulars of any such commission and the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Council;

77.1.3 commits any offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972 or under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or

77.1.4 defraud or attempt to defraud or conspire to defraud the Council.

- 77.2 If the Service Provider (or the Service Provider's Personnel or anyone acting on its behalf or to its knowledge) commits any of the Prohibited Acts with or without the knowledge of the Service Provider, in relation to this Contract then the Council shall be entitled to:
- 77.2.1 terminate this Contract by notice in writing having immediate effect upon which the provisions of Section 9 (Termination) shall apply; and/or
  - 77.2.2 require the Service Provider to procure the termination of any Sub Contract or agency agreement if the Prohibited Act is that of the Service Provider's sub-contractor or agent; and/or
  - 77.2.3 require the Service Provider to dismiss an employee of the Service Provider, if the Prohibited Act is committed by the employee acting independently of the Service Provider; and/or
  - 77.2.4 recover from the Service Provider any loss sustained in consequence of any breach of clause 77.1 by the Service Provider.
- 77.3 The Service Provider shall promptly inform the Council of the occurrence of any Prohibited Act of which it becomes aware.
- 77.4 The Service Provider shall ensure that the Service Provider's Personnel/Staff do not:
- 77.4.1 accept any gift(s) from Service Users;
  - 77.4.2 coerce or induce Service Users (in any form) to give them any gifts and/or favours;
  - 77.4.3 accept any gift(s) from any members of the Service Users' family; or
  - 77.4.4 coerce or induce any members of the Service Users' family to give them any gifts and/or favours.
- 77.5 Failure to comply with clause 77.4 is a material breach of this Contract.
- 77.6 The Service Provider shall not whether itself or by any of the Service Provider's Personnel engage in the provision of the same, solicit or accept any gratuity, tip or any form of money taking or reward, collection or charge for the provision of any part of the Services other than bona fide charges (including Service User/Customer contributions where expressly permitted) approved by the Council.

## **78. EQUIPMENT, MATERIALS AND CONSUMABLES**

The Service Provider shall at all times provide and maintain sufficient equipment, materials and consumables as are required for the proper and efficient performance of the Services. Such equipment, materials and consumables shall be at no cost to the Council.

## SCHEDULE A – DEFINITIONS

In accordance with clause 1.1, in this Contract the following words shall have the meanings set out below:

“Achieved KPI(s)”	means in respect of any part of the Services in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that part of the Services in the measurement period in question (calculated and expressed in the same way as the KPI for that part of the Services is calculated and expressed in the Specification;
“Additional Services”	means any additional services agreed in writing between the Parties as a top up to the Services;
“Adult Safeguarding”	means the Council’s general obligations in discharging its duties under section 42 of the Care Act 2014;
“Affiliate(s)”	means in relation to any company, any holding company or subsidiary of that company or any subsidiary of such holding company and “holding company” and “subsidiary” shall have the meaning given to them in Section 1159 and Schedule 6 of the Companies Act 2006;
“Approval Process”	means the process undertaken by the Council to approve potential providers which is set out in Schedule C [and includes the completion by the Service Provider of the Care Provider Resource Information Form];
“Best Value”	means the general duty the Council has to fulfil under the Local Government Act 1999 in all procurement.
“Bribery Act”	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant Government Department concerning the legislation;
“Channel Panel”	means the Channel panel which is chaired by the local authority and works with multi-agency partners to collectively assess the risk to an individual and decide whether an intervention is necessary, and works with local partners to develop an appropriate tailored support package if required. Channel forms part of Prevent and the Channel duty is set out in Section 36 of the Counter Terrorism and Security Act 2015;
“Commencement Date”	means September 2022, the date this Contract is published on the Council’s website;
“Conditions of Contract”	means clauses 1 to 78 (inclusive) of this Contract;
“Contract”	means this Contract including the Spot Order Conditions of Contract and General Conditions of Contract and all schedules and appendices referred to herein and/ or attached hereto;

“Contract Period”	means the period of the Initial Term as may be varied by any extension(s) to this Contract in accordance with clause 2 or the earlier termination of this Contract in accordance with the terms and conditions or for the duration of the Spot Order(s);
“Conviction”	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to the Order, or being placed on a list kept pursuant to Section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under Section 218(6) of the Education reform Act 1988);
“Council Data”	means: <ul style="list-style-type: none"> <li>a) the data, case management information, text, drawings, diagrams, documents, records, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are: <ul style="list-style-type: none"> <li>i. supplied or communicated to the Service Provider by or on behalf of the Council;</li> <li>ii. inputted into the Council’s IT systems or the Service Provider’s IT system by the Council or the Council’s Representatives; or</li> <li>iii. which the Service Provider is required to access, generate, process, store or transmit pursuant to this Contract, whether on the Council’s IT systems or the Service Provider’s IT system; or</li> </ul> </li> <li>b) any Personal Data for which the Council is the Data Controller;</li> </ul>
“Council Premises”	means any premises and/or sites owned, occupied or controlled by the Council;
“Council’s Contract Manager”	means the officer appointed or nominated for the overall supervision and management of this Contract supported by the Council’s Representatives (as may be replaced from time to time);
“Council’s Representatives”	means the Council’s representatives responsible for each individual placement(s) and Spot Order(s) (as may be replaced from time to time);
“Data Controller”	has the meaning given to that term in the Data Protection Legislation in force from time to time;
“Data Protection Legislation”	means the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and the General Data Protection Regulation and any legislation implemented in connection with the

	General Data Protection Regulation and any replacement legislation coming into effect from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including as where applicable the guidance and codes of practice issued by the Information Commissioner;
“Data Security Breach”	means any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;
Data Sharing Agreement	Means the Data Sharing Agreement between Data Controllers contained in Schedule F which sets out the Parties’ obligations in relation to any Personal Data which may be shared between the Parties;
“Default Notice”	as defined at clause 5.3;
“Emergency”	has the meaning given in clause 55.2;
“Environmental Liability”	means all costs, expenses, liabilities, claims, damages, penalties or fines arising from any criminal or civil liability under any Law or any obligation under any Law to take, or to pay for, remedial action or to prevent pollution of the environment;
“Exit Plan”	means the plan produced by the Service Provider as detailed in clause 49 (Exit Planning) and Schedule G (Exit Planning);
“Extended Period”	means the period or periods after the Initial Term which have been agreed in accordance with clause 2;
Fee(s)	means the charges/fees payable by the Council in accordance with this Contract as set out in each Individual Spot Order(s) and as amended from time to time in accordance with this Contract;
“Force Majeure Event”	means war, riots, acts of terrorism, fire, natural flood, drought, exceptionally adverse weather conditions, storm, earthquake strike or lockout (other than a strike or lock-out which is limited to the Service Provider, Service Provider’s Personnel or Representatives), civil disorder, acts of God, power cuts or delays or other wholly exceptional events outside the control of the Parties which could not have reasonably been foreseen or avoided;
“General Data Protection Regulation/GDPR”	means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;
“Good Industry Practice”	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that

	of the Service Provider under the same or similar circumstances at the relevant time for such exercise;
“Individual/ Service Users”	means the person(s) directly receiving the Services provided by the Service Provider as set out in the Service Specific Requirements and the Specification contained therein (and where specified, shall include their Parents, Carers and Legal Guardian, Advocate);
“Information”	has the meaning given under Section 84 of the Freedom of Information Act 2000;
“Information Commissioner’s Office”	means the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority;
“Information Laws”	means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Legislation and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time;
“Initial Term”	The period commencing on the Commencement Date and ending on the 1 <sup>st</sup> (first) anniversary of the Commencement Date;
“Insolvency Event”	<p>in relation to the Service Provider:</p> <ul style="list-style-type: none"> <li>(a) any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed);</li> <li>(b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven (7) days) upon the whole or any material part of the Service Provider’s assets;</li> <li>(c) a court makes an order that the Service Provider be wound up or a resolution for a voluntary winding up of the Service Provider is passed;</li> <li>(d) ceasing or threatening to cease to carry on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 of the Insolvency Act 1986;</li> <li>(e) being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors;</li> </ul>
“Intellectual Property Rights”	means any and all patents, trademarks, service marks copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future

	subsisting in the United Kingdom or any other part of the world together with all or any good will and accrued rights of action;
“Key Performance Indicator/KPIs”	means the key performance indicators contained in the Specification(s) which are contained in Schedule B (Service Specific Requirements (which includes the Specifications) in relation to different elements of the Services;
“Law(s)”	means any applicable statute or any delegated or subordinate legislation, duly applicable guidance code of practice, direction, judgment or determination with which the Council and/or the Service Provider is bound to comply including the Council’s rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time;
“Local Government Ombudsman”	means the independent body that investigates complaints from the public about maladministration in local government and other organisations providing local public services, whose website can be found at - <a href="http://www.lgo.org.uk/">http://www.lgo.org.uk/</a> ;
“Management Report(s)”	means the reports to be prepared and presented by the Service Provider in accordance with clause 13.1;
“Mediator”	as defined in clause 41.2.1
“Month(s)”	means a calendar month and the term “Monthly” shall be interpreted accordingly;
“Necessary Consents”	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services including without limitation all planning permissions and waste management licences;
“Persistent Breach”	a failure to meet the Service Provider repeatedly breaching any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract.
“Personal Data”	has the meaning given to that term in the Data Protection Legislation in force from time to time;
“PIDA 1998”	means the Public Interest Disclosure Act 1998;
“Prohibited Act”	means the following constitute Prohibited Acts:  (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:  (i) induce that person to perform improperly a relevant function or activity; or

	<p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act;</p> <p>(ii) under legislation or common law concerning fraudulent acts;</p> <p>(iii) defrauding, attempting to defraud or conspiring to defraud the Council.</p> <p>(d) any activity, practice or conduct which would constitute one of the offences listed under sub-clause (c) above, if such activity, practice or conduct had been carried out in the UK.</p>
“Quality Standard(s)”	means an appropriate and current British Standards Specification, Care Quality Commission or British Standard Code of Practice issued by the British Standard Institution or any similar European Union standard applying to goods or services relating to the Services or equivalent;
“Quarter”	means a consecutive period of three months commencing on 01 April, 01 July, 01 October or 01 January and the term “Quarterly” shall be interpreted accordingly;
“Regulated Activity”	has the meaning contained in the Safeguarding Vulnerable Groups Act 2006, as amended;
“Regulatory Body”	means Government Departments and agencies or any other regulatory Council or body (other than the Council) including any health and safety enforcement agency, with power to regulate the Services and their respective successors and substitutes;
“Relevant Conviction”	means a Conviction that is relevant to the nature of the Services to be provided;
“Replacement Service Provider”	means any third party contracted to provide Replacement Services to the Council from time to time;
“Replacement Services”	means any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Contract (in whole or in part), whether those services are provided by the Council or by any Replacement Service Provider;

“Representative”	means any employee, officer, worker, agent or service provider engaged by a Party in connection with the Services including any Sub-Contractor and the Service User representative;
“Required Insurances”	as defined at clause 26 (Insurance);
“Safe Working Arrangements”	has the meaning given in clause 21.7;
“Service Failure”	means a failure by the Service Provider to provide all, some or certain elements of the Services in accordance with any KPI and the provisions of this Contract;
“Service Provider Premises”	as defined at clause 23.1;
“Service Provider’s Assets”	as defined at clause 22.1;
“Service Provider’s Manager”	means the representative of the Service Provider and other representatives of the Service Provider appointed or nominated as the same may be replaced from time to time;
“Service Provider’s Personnel”	means the Service Provider’s Staff employed and/or engaged in the provision of the Services;
“Service Specific Requirements”	means the service specific requirements for the Services which are contained in Schedule B Annex A to F (inclusive);
“Individual/ Service Users”	means the person(s) directly receiving the Services provided by the Service Provider as set out in the Service Specific Requirements and the Specification contained therein (and where specified, shall include their Parents, Carers and Legal Guardian, Advocate);
“Services”	means all, some or certain elements of the services, supplies and/or works to be provided by the Service Provider under this Contract as more particularly described in the Service Specific Requirements and the Specification contained therein and any Variation thereto made in accordance with this Contract;
“Social Value Requirements”	means the commitment to improving the economic, social and environmental well-being of the local area and to supporting employment and skills made by the Service Provider;
“Specification”	means the relevant specification contained in the Service Specific Requirements set out in Schedule B (Service Specific Requirements (which includes the Specifications)), Annex A to F (inclusive) detailing the Services;
“Spot Order”	means a contract between the Council and the Service Provider for Services for a Service User, which comes into effect on the date set out in the in the Spot Order (a form of which is contained in Schedule B (Service Specific Requirements (which includes the Specifications)) or the placement of the Service User(s) with the Service Provider.

“Staff”	means all persons employed by the Service Provider to perform its obligations under this Contract together with the Service Provider’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under this Contract;
“Sub-Contract”	means any sub-contract entered into by the Service Provider or by any Sub-Contractor for the purpose of the performance of any obligation on the part of the Service Provider under this Contract;
“Sub-Contractor”	means the contractors or service providers engaged by the Service Provider to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the Services to the Council;
“Support Plan”	The support plan for the Service User which is attached to the Spot Order;
“Third Party Employee”	means an employee of a Third Party Employer whose contract of employment transfers to the Service Provider by virtue of the application of TUPE;
“Third Party Employer”	means a service provider engaged by the Council to provide some of the Services to the Council and whose employees will transfer to the Service Provider on the Effective Date;
“Transferring Employee(s)”	means an employee(s) of the Council whose contract of employment becomes, by virtue of the application of TUPE in relations to what is done for the purposes of carrying out this Contract between the Council and the Service provider, a contract of employment with someone other than the Council;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“Variation”	means a variation of the Service or the Contract in accordance with this Contract;
“VAT”	means value added tax or any similar or substituted tax;
“Vulnerable Adult”	means any adult to whom an activity which is a Regulated Activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 of the Safeguarding Vulnerable groups Act 2006 ;
“Working Days”	means Monday to Friday inclusive of each week, excluding Christmas Day, Good Friday and Bank Holidays in England;
“Working Hours”	means 09:00 to 17:00 on Working Days.

## **SCHEDULE B – SERVICE SPECIFIC REQUIREMENTS (WHICH INCLUDES THE SPECIFICATIONS)**

This Schedule contains the following Service Specific Requirements (which includes the Specifications):

- Annex A - Residential Care and Residential Nursing Services 1 July 2022;
- Annex B - Supported Living Services 1 July 2022;
- Annex C - Community Opportunities Services dated 1 July 2022;
- Annex D – Short Breaks Services 1 July 2022;
- Annex E – Care within the Home Services 1 July 2022;
- Annex F - Specification for Residential and Residential with Nursing, Supported Living, Community Opportunities Services, 2013

### **ANNEX A RESIDENTIAL CARE AND RESIDENTIAL AND NURSING CARE SERVICES, OCTOBER 2022**

#### **APPROVAL PROCESS AND SPOT ORDERS**

1. The Service Provider will have completed the Council's Approval Process as set out in Schedule C and will complete the Spot Order and any other relevant forms set out in Appendix A for the provision of the Services. The Service Provider will undertake some or all elements of the Services set out in the Specification for each service area as particularly specified in the Spot Order.
2. The Council shall use the following forms (as appropriate) to procure Spot Orders for the Residential Care and Residential and Nursing Care Service:
  - 2.1. Spot Order for the purchase of Adult Social Care Residential Services
  - 2.2. Inventory of; personal effects and valuables of the individual/Service User
  - 2.3. Agreement for the payment of top up fees

#### **Fees and Payments**

##### **Top up fees**

3. The Service Provider and the Council acknowledge that in some circumstances an individual/Service User (in certain limited circumstances) or a third party acting on behalf of the individual/Service User may pay top up fees or additional contributions in order for an individual/Service User to stay in more expensive accommodation whilst receiving Residential Care or Residential Care with Nursing services than the Council would assess that individual/Service User as requiring.
4. The Service Provider shall only accept payment of top up fees directly from the individual/Service User or third party if there is an agreement in place signed by all parties including the third party / individual/Service User, the Council and the Provider (Appendix 1).
5. Where payment is made directly to the Service Provider to meet the cost of top up fees, the terms and conditions contained in this Contract will apply.

6. The Service Provider will alert the Council within 24 hours of any issues or problems with the payment of top up fees.

### **NHS Funded Nursing Care**

7. Where a Service User receives Residential Care with Nursing and that Service User receives NHS Funded Nursing Care (“the Contribution”) from the NHS, the Service Provider shall not charge the Council the sum attributed to the Contribution and shall collect the Contribution from the NHS directly. In no circumstances will the Council be liable for the fee attributed to the Contribution.

### **Death of an Individual**

8. In the event that an individual/Service User dies whilst receiving the Services, the Service Provider will notify the Council, within 24 hours of the death, so scheduled payment arrangements can be updated and overpayments avoided, minimised, or recouped. The Service Provider will not invoice for services that are not delivered following death and will issue credit notes if invoices are already raised.
  - 8.1. If the Services consist of Residential Care or Residential Care with Nursing, the element of the Fee which relates to one-to-one support and individual/Service User specific costs shall cease immediately and the Council shall pay for an additional seven (7) days of the Fee which is set out in the Spot Order to be core fees from the date of death.

### **Absence**

9. In the event that an individual/Service User who is subject to a Spot Order is temporarily absent from the Service Provider Premises for any reason and that period of absence is not detailed in the Support Plan, the element of the Fee which relates to one-to-one support and individual/Service User specific costs shall cease immediately and for the first week of absence the Council shall pay seventy five percent (75%) of the Fee which is set out in the Spot Order to be the core. For the period from the end of the first week and for the next five weeks (i.e., up to the end of a six-week period) the Council shall pay fifty percent (50%) of the core charge unless otherwise agreed in writing between the Parties. After the six-week period has elapsed the Council shall not be liable to pay any Fee in respect of the absent individual/Service User unless otherwise agreed in writing between the Council and the Service Provider. Either Party may request a review of the Spot Order during the period of absence and elect to terminate the Spot Order under the provisions of clause 44.

### **Deferred Payment**

10. Where the Council has a deferred payment arrangement with the individual/Service User and the Council is paying the Service Provider directly for services on their behalf, the terms and conditions contained in this Contract will apply (Care and Support Statutory Guidance, DCSH)
11. Where the Council has a deferred payment arrangement with the individual/Service User under a ‘loan type’ arrangement and the individual/Service User is paying the Service

Provider directly for services, the Service Provider accepts and agrees that the contract is between itself and the individual/Service User.

### **Self-funders reaching state funding eligibility; depleting capital**

12. In accordance with CMA guidance ([\\*Care homes full guidance for providers \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)) Service providers will inform their residents about funding options, giving them a realistic estimate of the cost of the placement duration, taking account of likely, future increases in fees. The Service Provider will advise residents about state funding in order that the Council has as much notice as possible, of a resident reaching eligibility of state funding. This is so that the Council can meet its obligation to the Service User in providing financial assistance and making suitable alternative arrangements for them if necessary.

### **Service Provider Warranties**

13. In the event of an individual's/Service User's death, the Service Provider shall notify the Council immediately. The Service Provider shall keep an individual's/Service User's room in the same state as it was before the individual's/Service User's death for a period of seven (7) days after the individual's/Service User's death and shall ensure that the individual's/Service User's next of kin are given access to collect the individual's/Service User's personal effects during the seven (7) day period unless agreed otherwise and in writing with the Council's Contract Manager.
14. The Service Provider must notify the Council in the event that an individual/Service User is going to be absent from the Service Provider Premises for more than 24 hours. During periods of an individual's/Service User's absence the Service Provider shall not remove an individual's/Service User's personal effects from the individual's/Service User's room except in the manner set out in the Spot Order or at request of the Service User.
15. The Service Provider shall ensure that no individual customer rights for Service Users are curtailed or denied in the manner set out in the Competition and Market Authority (CMA) guidance which can be found at [\\*Care homes full guidance for providers \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

### **APPENDIX 1: Spot Order for the Purchase of Adult Social Care Residential and Residential with Nursing**

### **APPENDIX 2: Third party contribution (top-up) agreement for residential and nursing care placements**

### **APPENDIX 3: Specification for Residential and Residential with Nursing Services**

## **ANNEX B: SUPPORTED LIVING SERVICES, OCTOBER 2022**

### **APPROVAL PROCESS AND SPOT ORDERS**

1. The Service Provider will have completed the Council's Approval Process as set out in Schedule C and will then complete the Spot Order and any other relevant forms set out in Appendix 1 for the provision of the Services. The Service Provider will undertake some or all elements of the Services set out in the Specification for each service area as particularly specified in the Spot Order. The Services for which the Service Provider has been approved will commence on the date the Service User begins to receive the Services ("Start Date").
2. A range of commercial rates will be agreed between the Council and the Service Provider prior to any placements being made. Supported Living will be priced on a per hour basis and where shared care is provided at a setting this will be apportioned equally across the full capacity of the setting.
3. The Council shall use the following forms (as appropriate) to procure Spot Orders for the relevant Services:
  - 3.1 Spot Order for a Supported Living Placement

### **PAYMENT**

#### **Death of an Individual**

4. In the event that an individual/Service User dies whilst receiving Supported Living Services;
  - 4.1. the Service Provider will notify the Council, within 24 hours of the death, so scheduled payment arrangements can be updated and overpayments avoided, minimised, or recouped. The Service Provider will not invoice for services that are not delivered following death and will issue credit notes if already raised.
  - 4.2. The element of the Fee which relates to one-to-one support and Individual/ Service User costs shall cease immediately and the Council shall pay for an additional seven (7) days of the Fee which is set out in the Spot Order to be core/ shared fees, from the date of death.

#### **Absence**

- 4.3. In the event that an individual/Service User who is subject to a Spot Order for Supported Living, and is temporarily absent from the Service Provider Premises for any reason and that period of absence is not detailed in the Support Plan, the element of the Fee which relates to one-to-one support and individual/Service User specific costs shall cease immediately and for the first week of absence the Council shall pay seventy five percent (75%) of the Fee which is set out in the Spot Order to be the core. For the period from the end of the first week and for the next five weeks (up to the end of a six-week period) the Council shall pay fifty percent (50%) of the core charge unless otherwise agreed in writing between the Parties. After the six-week period has elapsed the Council shall not be liable to pay any Fee in respect of the absent individual/Service User unless otherwise agreed in writing between the Council and the Service Provider. Either Party

may request a review of the Spot Order during the period of absence and elect to terminate the Spot Order under the provisions of clause 44.

**APPENDIX 1: Spot Order for Supported Living Services**

**APPENDIX 2: Specification for Supported Living services**

## **ANNEX C: COMMUNITY OPPORTUNITIES SERVICES, OCTOBER 2022**

### **APPROVAL PROCESS AND SPOT ORDERS**

1. The Service Provider will have completed the Approval Process as set out in Schedule C and will then complete the relevant Spot Order set out in Appendix 1 for the provision of the Services. The Service Provider will undertake some or all elements of the Services set out in the Specification for each service area as particularly specified in the Spot Order. The Services for which the Service Provider has been approved to provide will commence on the date the Service User begins to receive the Services (“Start Date”).
2. The Council shall use the following forms (as appropriate) to procure Spot Orders for Community Opportunities Services:
  - 2.1. Spot Order for Community Opportunities

### **Payment**

#### **Death of an Individual**

3. In the event that an individual/Service User dies whilst receiving Community Opportunities Services, the Service Provider will notify the Council, within 24 hours of the death, so scheduled payment arrangements can be updated and overpayments avoided, minimised, or recouped. The Service Provider will not invoice for services that are not delivered following death and will issue credit notes if already raised.
  - 3.1. the Council shall pay the Fee for the next session if that session is scheduled to take place within 48 hours after the individual’s/Service User’s death. Where a session is not scheduled to take place within 48 hours of the individual’s/Service User’s death, the Council shall incur no liability to pay the Fee;

### **Absence**

4. In the event that an individual/Service User who is subject to a Spot Order is temporarily absent from the Services/Service Provider Premises for any reason and that period of absence is not detailed in the Support Plan, or the Council has not provided 48 hours’ notice, then the Council shall pay for all Services the individual/Service User would have received/attended in the first 48 hours after the start of their absence. All other sessions shall be deemed to be cancelled until the individual/Service User returns from their period of absence.

### **APPENDIX 1: Spot Order for Community Opportunities Services**

### **APPENDIX 2: Specification for Community Opportunities Services**

This is being updated, Specification in Annex F Service Specification for Residential and Residential and Nursing, Supported Living and Community Opportunities applies.

## **ANNEX D: SHORT BREAKS SERVICES OCTOBER 2022**

### **APPROVAL PROCESS AND SPOT ORDERS**

1. The Service Provider will have completed the Approval Process set out in Schedule C and will then complete the relevant Spot Order as set out in Appendix 1 for the provision of the Services. The Service Provider will undertake some or all elements of the Services set out in the Specification for each service area as particularly specified in the Spot Order. The Services for which the Service Provider has been approved to provide will commence on the date the individual/Service User begins to receive the Services (“Start Date”).
2. The Council shall use the following forms (as appropriate) to procure Spot Orders for the relevant Services:
  - 2.1. Spot Order for Short Breaks at Appendix 1.

### **PAYMENT**

#### **Death of an Individual**

3. In the event that an individual/Service User dies whilst receiving the Short Breaks Services, the Service Provider will notify the Council, within 24 hours of the death.
  - 3.1. the Council shall pay for the remainder of the Short Break placement. If the individual/Service User has a Short Break booked and the individual/Service User dies 48 hours before attending the Short Break, the Council shall pay the Fee for that Short Break. If the individual/Service User dies and the Council gives 48 hours’ notice that the Short Break is no longer required, the Council shall incur no liability to pay the Fee.

#### **Absence**

4. In the event that an individual/Service User who is subject to a Spot Order for Short Breaks Services is temporarily absent from the Services for any reason and that period of absence is not detailed in the Support Plan the following provisions shall apply:
  - 4.1. if the absence occurs during the Short Break, the Council shall pay for the period specified in the Spot Order. If Council becomes aware that the individual/Service User will be absent and therefore will not require the Short Break Services, the Council shall endeavour to give the Service Provider 48 hours-notice that the Short Break is not required and in such circumstances the Council shall not be liable to pay the Fee. Should the Council not give 48 hours’ notice, the Council shall pay the Fee for that Short Break in full.

#### **APPENDIX 1: Spot Order for Short Breaks**

#### **APPENDIX 2: Specification for Short Breaks Services**

This is being updated, Specification in Annex F Service Specification for Residential and Residential and Nursing, Supported Living and Community Opportunities applies.

## **ANNEX E: CARE WITHIN THE HOME, OCTOBER 2022**

### **APPROVAL PROCESS AND SPOT ORDERS**

1. The Service Provider will have completed the Council's Approval Process as set out in Schedule C and will complete the Spot Order and any other relevant forms set out in Appendix 1 for the provision of the Services. The Service Provider will undertake some or all elements of the Services set out in the Specification in Appendix 1 and Appendix 2, for each service area as particularly specified in the Spot Order.
2. The Council shall use the following forms (as appropriate) to procure Spot Orders for Care within the Home Services:
  - 2.1. Spot Order for the purchase of Adult Social Care, Care within the Home Services
3. In 2021, the Council tendered for a long-term Dynamic Purchasing System (DPS) contract for Care within the Home. The contract is joint between Surrey County Council and NHS Surrey heartlands Clinical Commissioning Group who host Continuing Healthcare (CHC) on behalf of the two Surrey CCGs. The Council will make spot purchases outside of the Care within the Home DPS Contract only in exceptional circumstances. Service Providers that are approved for spot purchases in exceptional circumstances are expected to apply to join the DPS for any subsequent purchases, and can do so by initially registering at: [Proactis - Supplier Network \(proactisp2p.com\)](https://proactisp2p.com)

### **PAYMENT**

#### **Death of an Individual**

4. In the event that an individual/Service User dies whilst receiving the Care within the Home Services, the Service Provider will notify the Council immediately, and within 24 hours of the death.
  - 4.1. The Spot Order shall be terminated immediately.
  - 4.2. All elements of the fee will cease immediately
  - 4.3. the Council shall pay for services delivered up to the date of death unless the council has given the Provider at least 24 hours' notice to cancel the visit.
  - 4.4. The Service Provider will not invoice for services that are not delivered following death of an Individual and will issue credit notes if already raised.

#### **Absence**

5. In the event that an individual/Service User who is subject to a Spot Order for Care within the Home is temporarily absent from the Services for any reason and that period of absence is not detailed in the Support Plan, and 24 hours' notice is not given by the Individual/Service User or by the Council to cancel a scheduled visit, the following provisions shall apply:
  - 5.1. The council will pay for the first scheduled visit but not for any subsequent planned visits.

5.2. Clause 5.1 will apply where attempts to provide the Services have been frustrated, such as when access is denied or the Individual is not at home.

5.3. The individual care package shall terminate immediately if the individual ceases to require the Service because of an unplanned, temporary or permanent change in their circumstances, such as admission to hospital or a care home, unless otherwise agreed in writing between the Service Provider and the Council.

5.3.1. All elements of the fee will cease immediately unless otherwise agreed in writing between the Service Provider and the Council.

5.4. The Service Provider will not be paid for Services to any Individual/ Service user whilst the Individual/ Service User is an in-patient in hospital unless otherwise agreed in writing between the Service Provider and the Council.

### **Other fees**

6. The Provider shall be entitled to invoice for a maximum of one hour of standard service where the Contract Manager or other Council representative has requested the attendance of the care worker at the Individual/ Service User's review. This is to cover the loss of earnings of the individual care worker and will not be payable when the manager or any other salaried employee is requested or chooses to attend.

### **Live in Care**

7. Other than providing live in care worker accommodation, the individual will pay all the expenses of a normal home, including utility bills, and their own day to day and personal expenses, but they and the Council will not be expected to pay for the following (this list is not exhaustive).

7.1. The keep of the care worker, including

7.1.1. care workers' food or meals, the cost of which should be included in the package cost,

7.1.2. the transport of care workers,

7.1.3. or any charges relating to the CCG / SCC agreed package of care.

### **INSURANCE**

8. The insurance cover levels set out in clause 26 will apply, except for the limit indemnity for employer's liability insurance, which for Care within the Home Service Providers, is ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Services.

### **TERMINATION OF SPOT ORDER**

9. The Parties shall have regard to the provisions of clause 44 and in addition, the Council has the right to terminate a Spot Order at any time upon giving forty-eight (48) hours' notice in writing to the Provider. The Council will communicate this to the Individual/ Service user impacted in this instance.

9.1. The Council representative will work with the Service Provider to resolve any issues including, but not limited to, any requirement by the Council that an individual care package be amended, prior to issuing notice but this clause will not prevent the right to terminate.

10. The Provider is permitted to terminate an individual care package by giving fourteen (14) days' notice in writing to the Commissioner. This is to give adequate time for the Commissioner to source alternative care and reduce potential disruption to an individual's care. The option to terminate the individual care package can only be exercised where:
- 10.1. Following a comprehensive joint review involving both the Commissioner and the Provider which will explore all methods of service delivery, it is apparent that the assessed needs of the individual have changed to a point where the care that is needed exceeds a level of service which the Provider is able to provide; or
  - 10.2. The individual or carer displays challenging behaviour or other behaviours which place the Provider's staff at risk, and which were not identified in the support plan as part of the risk assessment prior to commencement of the service. In such cases the Provider shall discuss the case with the Commissioner prior to issuing of the notice and shall make all reasonable endeavours to ensure that all alternative ways of delivery are explored prior to the issue of notice.

**APPENDIX 1: Spot Order for Care within the Home Services**

**APPENDIX 2: [Care within the home services specification](#)**

All mentions of DPS contract refer to these Terms and Conditions

**APPENDIX 3: [Care within the home services: Package purchase protocol & service delivery requirements](#)**

All mentions of DPS contract refer to these Terms and Conditions

## **ANNEX F: SPECIFICATION FOR RESIDENTIAL AND RESIDENTIAL WITH NURSING, SUPPORTED LIVING, DAY OPPORTUNITIES SERVICES 2013**

Service specifications are being developed and updated for all adult social care services commissioned by the Council. Where an update is not available for a Service, this Service Specification will apply.

### **SCHEDULE C - APPROVAL PROCESS AND SPOT ORDERS**

1. Each Premises the Provider wishes to utilise in order to provide the Services must be approved by the Council.
2. Premises are deemed approved by the council where the Council Representative approves the premises and forwards to the Service Provider the means to complete and submit details for each premises, including, name, address of premises, parent organisation details, payment details and Head Office details where appropriate, such as for care within the home.
3. Service Provider details will be stored on Council Information Management Systems for administration, market management, and performance monitoring purposes.
4. The Council reserves the right to delay payment without incurring any interest or other charges until the Approval Process has been completed and reserves the right not to pay for Services delivered from unapproved premises.
5. Upon completion of the Approval Process, the Council may make Spot Orders for the Services. On each occasion that the Council wishes to make a Spot Order under this Contract, an agreement in the form set out in Schedule B: Service Specific Schedules will be completed, executed by the Parties and issued specifying the Services required for a Service User together with the Fee and Support Plan.
6. The Service Provider will complete and sign the Spot Order and any other relevant forms set out in Schedule B – Service Specific Requirements for the provision of the Services. The Service Provider will undertake some or all elements of the Services set out in the Specification for each service area as particularly specified in the Spot Order
7. The Services for which the Service Provider has been approved will commence on the date the Service User begins to receive the Services or the individual/Service User is placed with the Service Provider (“Start Date”).
8. The Service Provider may (i) offer other elements of the Services to the Council or the Service User (as the case may be) (ii) provide Additional Services to the Service User and/or the Council (as the case may be). Such Additional Services (or other elements of the Services as the case may be) shall only become valid by means of a formal variation to the Contract after the Service Provider has completed a new Approval Process for these Additional Services and the Parties have executed a new Spot Order to evidence the variation to the original Spot Order.

9. Upon issue by the Council of the Spot Order, the Service provider shall be deemed to have accepted the Spot Order once the Service User starts to receive Services or the Service User is placed with the service Provider. For the purpose of the Spot Order, the commencement date of the Spot Order shall be the date an Individual starts to receive the Services. The Council shall endeavour to send the Spot Order within 72 hours of the commencement of the Spot Order and the Provider shall upon receipt arrange for signature of the Spot Order.

## **SCHEDULE D – STAFF TRANSFER AND PENSIONS**

### **PART 1 – TUPE AND PENSIONS**

#### **1. INTERPRETATION**

1.1. The definitions and rules of interpretation in this clause apply in this Contract:

Acquired Rights Directive	means Directive 77/187/EEC as amended and updated.
Administering Authority	means Surrey County] Council in its role as administrator of the Surrey] Pension Fund;
Admission Agreement	means the agreement to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, as amended, by the [Administering Authority/Council] and the Service Provider or Sub-Contractor, as appropriate, in the Administering Authority's standard form contained in Part 3 of this Schedule D (Staff Transfer and Pensions);]
Appropriate Pension Provision	means in respect of Eligible Employees, either:  (i) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or  (ii) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of their Legacy Scheme,  save as may be modified or varied by any replacement or amendment of the Best Value Authorities Staff Transfers (Pensions) Direction 2007;
Bond	means the bond to be executed in the Council's standard form to the value of the bond prescribed by the Council;
Data Protection Legislation	means the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of

	Communications) Regulations 2000 and from 25 May 2018 the General Data Protection Regulation and any legislation implemented in connection with the General Data Protection Regulation and any replacement legislation coming into effect from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including as where applicable the guidance and codes of practice issued by the Information Commissioner.
Discretionary Benefits	means those benefits which an employer may confer on Eligible Employees under the rules governing the LGPS;
Effective Date	means the date on which the Services (or any part of the Services), transfer from the Council or any Third Party Employer to the Service Provider or Sub-Contractor and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider or Sub-Contractor. The first Effective Date shall occur on the Commencement Date of the Service;
Eligible Employees	means: <ul style="list-style-type: none"> <li>(a) the Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or</li> <li>(b) the Third Party Employees who are former employees of the Council and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services;</li> </ul>
“Employed In Connection With”	means employed by the Service Provider (or its Sub-Contractor(s) if relevant) solely or mainly (i.e., more than 50% of their working time) in the management or delivery of the provision of the Services;
Employee Liability Information	means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE: <ul style="list-style-type: none"> <li>(a) the identity and age of the employee;</li> <li>(b) the employee's written statement of employment particulars (as required under Section 1 of the Employment Rights Act 1996);</li> <li>(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where 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 applies, within the previous two (2) years;</li> <li>(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the</li> </ul>

	<p>previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor; and</p> <p>(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.</p>
Employment Liabilities	<p>means all claims, including without limitation 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;</p>
Legacy Scheme	<p>means the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer.</p>
LGPS	<p>means the Local Government Pension Scheme;</p>
LGPS Regulations	<p>means the Local Government Pension Scheme Regulations 2013 (<i>S/2013/2356</i>) as amended or replaced from time to time;</p>
Pension Fund	<p>means the Surrey Pension Fund;</p>
Redundancy Costs	<p>means statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Service 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;</p>
Redundant Transferring Employees	<p>means Transferring Employees whom the Service Provider has dismissed following a lawful redundancy within 12 months of the date they transferred to the Service Provider (the Relevant Service Transfer Date);</p>

Relevant Employees	means those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider by virtue of the application of TUPE;
Relevant Transfer	means a relevant transfer of the Services for the purposes of TUPE, including upon or as a result of expiry or termination of this Contract;
Relevant Transfer Date	means as defined in paragraph 4.1 below;
Replacement Services	means any services that are fundamentally the same as any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Service Provider;
Replacement Service Provider	means any third party supplier of Replacement Services appointed by the Council from time to time;
Service Provider's Final Staff List	means the list of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;
Service Provider's Provisional Staff List	means the list prepared and updated by the Service Provider of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list, and in the format requested by the Council;
Service Transfer Date	means the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-contractor to the Council or any Replacement Service Provider;
Staffing Information	means in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Council 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;
Sub-Contract	means any sub-contract entered into by the Service Provider or by any Sub-Contractor for the purpose of the performance of any obligation on the part of the Service Provider under this Contract;
Sub-Contractor	means the contractors or service providers engaged by the Service Provider (or a sub-contractor of the Service Provider) to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the Services to the Council;

Subsequent Transfer	means, following the commencement of this Contract, circumstances whereby the identity of the provider of the Services (or any part of the Services) changes (whether as a result of termination of this Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part from the Service Provider to the Council or Replacement Service Provider;
Third Party Employee	means employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Service Provider or Sub-contractor by virtue of the application of TUPE.
Third Party Employer	means either: <ul style="list-style-type: none"> <li>i. a Partner Organisation (as defined in Schedule A (Definitions)) whose employees will transfer to the Service Provider on or after the Effective Date; or</li> <li>ii. a service provider engaged by the Council to provide some or all of the Services to the Council before the Effective Date and whose employees will transfer to the Service Provider on the Effective Date;</li> </ul>
Traded Services	means the traded services provided by the Service Provider to third party organisations outside of the Services.
Transferring Employees	means employees of the Council whose contracts of employment transfer with effect from the Effective Date to the Service Provider by virtue of the application of TUPE. [A list of Transferring Employees, as at the date of execution of the Contract, is attached at Part 2 (a) of this Schedule D (Staff Transfer and Pensions);
TUPE	means the Transfer or Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

1.2. All other words, terms and expressions used in this Schedule D (Staff Transfer and Pensions) shall have the meanings given to them in Schedule A (Definitions) of this Contract.

## **2. TRANSFER OF EMPLOYEES TO THE SERVICE PROVIDER ON THE SERVICE TRANSFER DATE – NOT USED**

### **3. EMPLOYMENT EXIT PROVISIONS**

3.1. Where a Subsequent Transfer constitutes a Relevant Transfer then the Council or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.2. The Service Provider shall and shall procure that any Sub-Contractor shall:

- 3.2.1. on request from the Council on a date not more than twelve (12) months immediately preceding the expiry of this Contract and/or any review date; and/or
- 3.2.2. on receiving notice of termination of this Contract (on whatever grounds and in whatever circumstances) or otherwise; and/or
- 3.2.3. at such times as required by TUPE

provide promptly (and in any event within 14 days of request) and at no cost to the Council, in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council (notwithstanding this may be beyond the information required to be provided under TUPE), including information as to the application of TUPE to the employees. The Service Provider shall notify the Council, within fourteen (14) days of the event (and in any event before the Service Transfer Date), of any material changes to the information supplied, discovery of further relevant information or on receipt of a request for or clarification or amplification by the Council.

- 3.3. At least twenty-eight (28) days prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4. The Council shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5. The Service Provider warrants to the Council and the Replacement Service Provider that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List, the Employee Liability Information and the Staffing Information (the 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 Service Provider's Final Staff List.
- 3.6. The Service 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. The Council regards compliance with this paragraph 3 as fundamental to this Contract. In particular, failure to comply with paragraphs 3.2 and 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Fee until such information is provided.
- 3.8. Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Council's prior written consent unless such

changes are required by law. The Service Provider shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

3.9. In the six (6) months prior to expiry or termination of this Contract or from the date of service of a termination notice of this Contract, the Service Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Service Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees or transfer or remove from the performance of the services any supervisory or managerial personnel without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).

3.10. The Service Provider shall indemnify and keep indemnified in full the Council and each and every Replacement Service Provider against all Employment Liabilities arising from or connected with:

3.10.1. any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or

3.10.2. any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Service Provider and/or any Sub-Contractor),

3.10.3. any failure by the Service 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.

3.10.4. any failure by the Service Provider or any Sub-Contractor to supply or delay in supplying the Staffing Information, the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Employee Liability Information and any other information herein required (or inaccuracy or incompleteness of the same) or to inform and consult in accordance with TUPE;

3.10.5. any failure on the part of the Service Provider or any Sub-Contractor to provide the Relevant Employees with any benefit of any nature including Appropriate Pension Provision or failure to make all due payments to the Relevant Employees or Pension Fund;

3.10.6. any failure or omission of any legal or statutory obligation on the Service Provider;

3.10.7. any claim by any Relevant Employee arising out of any personal injury or injury at work of whatever nature prior to the termination of this Contract; and

3.10.8. any other obligations of or arising under this Contract,

whether any such claim arises on or after the Service Transfer Date if it has its origins before such date.

- 3.11 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.
- 3.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 3.2 to 3.11, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.13 Despite paragraph 3.12, 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.

#### **4. PENSIONS – NOT USED**

#### **5. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME – NOT USED**

#### **6. PASS THROUGH ARRANGEMENT FOR THE LGPS – NOT USED**

#### **7. SERVICE PROVIDER PENSION SCHEME – NOT USED**

### **SCHEDULE E – DATA SHARING AGREEMENT**

### **SCHEDULE F – EXIT PLANNING**

This Schedule should contain paragraphs to ensure an orderly transfer of the Services at the end of the Contract either back to the Council or to another provider.

The Parties should consider, as a minimum, what happens to: assets, software, how the transfer of data to a new service provider is handled and how service continuity should be maintained.