



**Tender for delivery of  
emergency nightshelter service  
in Southend on Sea for non-  
statutory homelessness cases**

July 2015

## SECTION A - INSTRUCTIONS TO TENDERERS

### GENERAL

Tenderers should read these instructions carefully before submitting their responses to the Invitation to Tender (ITT).

Failure to comply with these requirements for completion and submission may result in the rejection of your tender response.

### ITT DOCUMENTATION

The ITT documentation consists of the following:

- Section A: Instructions to Tenderers
- Section B : Specification of Requirement
- Section C : Service Terms & Conditions
- Section D : Supplier Questionnaire
- Section E : Commercial Questionnaire
- Section F : Technical Questions
- Section G : Contract Variation Form
- Section H : Tender Form
- Section I : Certificate of Bona Fide
- Section J : Prevention of Fraud & Corruption: Whistleblowing
- Section K: Freedom of Information Act

Southend-on-Sea Borough Council (hereinafter referred to as “the Client”) reserves the right to modify or amend the ITT documentation at any time prior to the deadline for receipt of tenders. Any such changes will be notified to the Tenderers in writing. Where the modifications or amendments are significant, the Client may, at its discretion, extend the deadline for receipt of Tenders.

This Invitation to Tender and its accompanying documents and publications, and any copies made in all or part, are and shall remain the property of the Client and must be returned on demand.

### Enquiries

Please contact the Procurement Team if you have any enquires regarding this tender; Southend-on-Sea Borough Council, Civic Centre, Victoria Avenue Southend on Sea, Essex, SS2 6ER.

**Email:** [procurement@southend.gov.uk](mailto:procurement@southend.gov.uk)

Tenderers should note that all enquires must be made in writing via email and the Council at their discretion reserves the right to circulate any response to all tenderers. All enquires must be clearly marked ENQUIRY with the question and Tenderer details clearly set out.

The **deadline for receiving these enquiries** will be four days prior to the tender return date, which is **12 noon on Friday 21 August 2015** to allow information to be circulated in time.

## **Tender Return**

Tenders, to consist of one A4 paper original (to be clearly marked “original”) and one further copy in the same format, along with an electronic copy are to be sealed in an envelope or package and forwarded to the Client as directed in the ITT letter, paying all carriage or postage as appropriate. The enclosed return label should be used and envelopes or packages should bear no reference to the tenderer by name.

**The tender must be returned;**

**NO LATER THAN 12 Noon on Thursday 27 August 2015**

Any Tender received after this date and time will not be considered.

Tenders may be hand-delivered to the Contact Centre at the address on the blue label where the Tenderer will be issued with a receipt.

It is the responsibility of the Tenderer to ensure that the Tender Document is delivered to the Client no later than the notified deadline.

The Client does not accept responsibility for the premature opening or mishandling of tenders that are not submitted in accordance with the above instructions.

The Client reserves the right to amend or modify the tender documents prior to the award of Contract. All Tenderers will be notified of any such amendment.

## **Unsubmitted Tenders**

This invitation must not be passed to any other person.

Should the invitee be unable to submit a tender you are requested to notify by email ([procurement@southend.gov.uk](mailto:procurement@southend.gov.uk)) and return the documents marked “No Tender.”

## **Conditions of Contract**

Any contract(s) arising from this Invitation to Tender will be based on or subject to the Client’s Conditions of Contract.

The Client reserves the right to amend the Conditions of Contract, but any amendment or exception requested by a tenderer will be subject to negotiation.

Any such proposed exceptions or amendments to the Client’s Conditions of Contract must be submitted with the Tender, using the appropriate form in Section G, and not at a later stage of the procurement exercise.

## **Tender Validity**

Tenders shall remain open for acceptance for a period of 90 Days from the closing date of receipt of the tender by the Client.

The Tenderer warrants that the performance of the Contract shall be undertaken in accordance with the requirement of the Contract.

## **Tender Costs**

Tenderers will not be entitled to claim from the Client any costs or expenses that may be incurred in preparing their tender. This applies whether or not the tender is successful and it also applies to any additional costs that may be incurred if the Client modifies or amends the tender requirements or the specification of the required goods and / or services.

Tenderers are responsible, at their own expense, for obtaining all information necessary for the preparation of their Tender. Information provided to Tenderers by the Client is supplied only for general guidance in the preparation of the tender. Tenderers must satisfy themselves by their own investigations about the sufficiency of information and no responsibility is accepted by the Client for any loss, damage or expense of whatever kind arising from the use by Tenderers of such information.

## **Form of Tender**

Tenders must be fully completed by duly authorised personnel. Prior knowledge of any aspect of your organisation or of your ability to meet the requirement must not be assumed and all schedules and questionnaire questions must be completed in full as applicable.

## **RETURNS CHECKLIST**

**THE SECTIONS THAT REQUIRE COMPLETION, SPECIFIC RESPONSE OR SIGNATURE ARE:**

SECTION C – TERMS & CONDITIONS
SECTION D – SUPPLIER QUESTIONNAIRE
SECTION E – COMMERCIAL QUESTIONNAIRE
SECTION F – TECHNICAL QUESTIONNAIRE
SECTION G – CONTRACT VARIATION FORM
SECTION H – TENDER FORM
SECTION I - CERTIFICATE OF BONA FIDE
SECTION J - PREVENTION OF FRAUD & CORRUPTION: WHISTLEBLOWING
SECTION K - FREEDOM OF INFORMATION ACT

**Failure to complete and submit the above mentioned documents, may result in the disqualification of your tender submission.**

The Tender response shall be submitted in English.

**Accuracy of Price**

Tenderers shall ensure that before submitting a tender all arithmetical calculations are checked for accuracy, at the same time ascertaining that forms have been completed and signed and all necessary information supplied.

**Modification and Withdrawal**

Tenders may not be modified subsequent to the deadline for receipt, but Tenderers may modify their tender prior to the deadline for receipt by giving written notice to the Client. Any such notice should be forwarded in a sealed envelope marked externally with the tender reference number.

Tenderers may withdraw their tenders at any time prior to accepting the notification of award by sending a notice of withdrawal to the Client.

**Confidentiality**

All information contained in this Invitation to Tender, or which is communicated in further correspondence or in the course of any subsequent negotiations, is confidential.

Tenderers should not disclose the fact they have been invited to tender and must not communicate, disclose or otherwise make available this information to any third party other than as set out below, nor use this information for any commercial or industrial purpose not connected with this tender.

All information provided by the tenderers will be treated as "Commercial in Confidence" by the Client and (except where required in law) will not be disclosed to a third party without the written permission of Tenderers.

**Freedom of Information Act**

The Client is committed to meeting its responsibilities under the Freedom of Information Act 2000 (FOIA). All information submitted to the Client may be subject to disclosure to a third party in response to a request for information under the Act. The Client may also decide to include certain information in the publication scheme that we maintain under the Act.

Tenderers are accordingly required to advise the Client of any information they consider exempt from disclosure under the Act.

If the Client receives a request to disclose the information identified, it will consider whether the information is, in fact, exempt; consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information (unless the information benefits from an absolute exemption); and consult with the Tenderer prior to disclosure of information whenever reasonably practicable.

The Client will not be liable for any loss or damage suffered by the Tenderer, whether in contract, tort or any other way as a result of the Client disclosing information in response to a request made under FOIA, if the information is not specifically considered by both the Client and the Tenderer to be exempt.

The Tenderer should note that the receipt of any information marked 'confidential' or equivalent by the Client should not be taken to mean that the Client accepts any duty of confidence by virtue of that marking.

Further information on the FOIA can be obtained from the Department of Constitutional Affairs or from the office of the Information Commissioner responsible for enforcing the Act.

## Local Transparency Agenda

Under the Local Transparency Agenda, local authorities must publish expenditure on items over £500. As such, any payment made under this contract above £500 will be published on the Councils website along with the Consultants name, company registration number and VAT number from January 2011.

## Evaluation of Tenders

Tender proposals will be subjected to a thorough evaluation.

Commercial evaluations will be conducted, based on the information submitted in Section E Commercial Questionnaire, in writing, as part of this tender submission.

Technical (Quality) evaluations will be conducted, based on the information submitted in Section F Technical Questions, in writing, as part of this tender submission.

The contract will be awarded to the highest scored tender submission following the final stage.

The Client will examine tenders for completeness and may seek clarification where necessary. Prior to detailed examination, the Client will determine whether a tender substantially fulfils the conditions in the tender documents. A tender determined as not substantially fulfilling the conditions in the tender documents will be rejected.

The Client will undertake enquiries throughout the tender process regarding fulfilment of obligations relating to payment of taxes. Tenderers demonstrating a poor revenue compliance record may be excluded from further participation in the tendering exercise.

## Selection and Award Stages

### a) Selection Stage

This stage focuses on the bidder's characteristics and suitability in principle to provide the Authority's requirement. Bidders must satisfy minimum levels of legal requirements as well as capability and experience. Section D – Supplier Questionnaire will be used as the selection criterion. For this reason Section D will be scored first.

Section	Scoring Method/Weighting
<b>1. BASIC DETAILS OF YOUR ORGANISATION</b>	<b>Information Only</b>
<b>2. BUSINESS ACTIVITIES*</b>	<b>Pass/Fail</b>
<b>3. REFERENCES*</b>	<b>Pass/Fail</b>
<b>4. INSURANCE*</b>	<b>Pass/Fail</b>
<b>5. PROFESSIONAL AND BUSINESS STANDING</b>	<b>Pass/Fail</b>

Only those bidders that pass the supplier questionnaire i.e. pass the Pass / Fail questions, will be eligible to have the rest of their bid assessed.



b) Award stage

The award stage considers the merits of the eligible tenders to be evaluated in order to award the contract and the following sections will apply;

Section E Commercial Questionnaire (30%)  
F Technical Questionnaire (70%)

The award criteria are as follows:

**30% Price allocation:**

To be detailed within the written tender submission document in Section E Commercial Questionnaire.

**70% Quality allocation:**

To be detailed within the written tender submission document, in Section F, Technical Questionnaire, covering the following priority areas:

- Service delivery model – 30%
- Throughput – 20%
- Accommodation – 20%

The scoring criteria for the quality section (Technical questionnaire) is as follows:

SCORING KEY	
Score	Description
10	The prospective contractor is highly innovative in their approach to meeting the requirements of the service specification. All proposals are clear, concise, workable and well supported with established policies/procedures and evidence from the provision of similar services is detailed. The prospective contractor shows an excellent understanding of the resources that are required to support their detailed innovative proposals.
8	The proposals meet all the requirements of the service specification in a comprehensive manner. The prospective contractor has given considerable thought to the issues under consideration, their proposals are sound and well supported with examples. The prospective contractor has clear service delivery objectives and has linked these to the resources required to achieve them.
6	The proposals are a satisfactory response which meets the basic criteria. The prospective contractor has clear ideas and stated objectives, perhaps not supported by examples or past experience. Their proposals are less thorough in terms of resource implications.
4	The proposals are an unsatisfactory response and doubts are expressed on several aspects. There is little or questionable supporting information. Service delivery objectives are vague and / or it is doubtful that the

	prospective contractor could sustain a quality service with the resources proposed.
2	The prospective contractor has failed to provide sufficient information requested OR the proposals indicate that the prospective contractor will meet only some requirements of the specification in a satisfactory manner.
0	The prospective contractor has failed to provide any information requested OR the proposals are an unsatisfactory response which suggests the prospective contractor will have serious difficulties providing a quality service, against the service specification.

### **Publication of Award**

In order to comply with the EU Procurement Directive, the Client is required to publish details, including price, of the Contract award in the Official Journal of the European Communities (OJEU). Tenderers should communicate any reasons why these details should not be published within a covering letter to their Invitation to Tender response.

### **Contract Management and Monitoring**

The Contractor will work with the Client to make sure that they fully understand the proposal and that there are appropriate processes in place for managing the service into the future.

The Client's Contract Manager for this contract will be:	Andrew Fiske
Day-to-day operational matters will be managed by:	Helen Carrick
For all queries regarding the Contract / Tender:	Lee White

### **Duration**

The Contract will commence on or around the 1 October 2015 and the duration is 6 months to 31 March 2016 with the option to extend by a further 3 months.

### **Timetable**

The key dates in the timetable are set out below. However, please note that these dates may be subject to change due to unforeseen circumstances beyond the control of the Client.

Tender submission date for proposal:	27 August 2015
Award date:	w/ending 4 September 2015
Start date:	1 October 2015

## SECTION B – SPECIFICATION OF REQUIREMENT

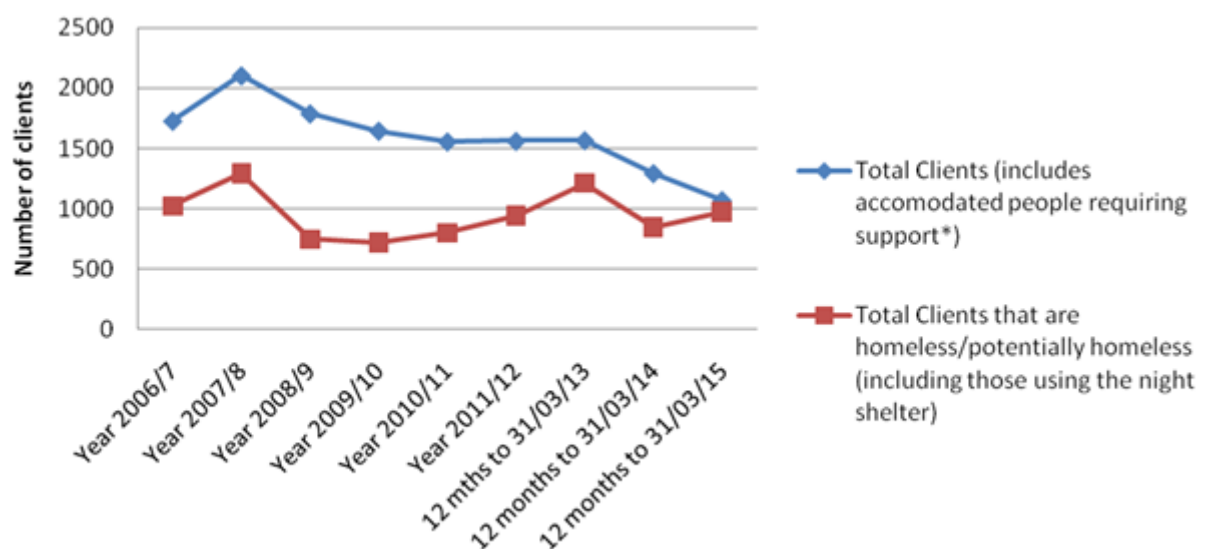
### Background

#### Non-statutory homelessness in Southend

A significant proportion of single homeless people do not have a priority need for housing under the definition of the Housing Act 1996 (as amended by the Homelessness Act 2002) and associated case law so are not entitled to statutory assistance from the Council but only advice and assistance.

The third and voluntary sector, supported by the Council, offers a valuable resource to non-statutory homeless persons in Southend, including the existing provider of this service which - in addition to the emergency night shelter service being re-tendered in this particular market testing exercise - also provides a day centre, accommodation dedicated to people who have been through the criminal justice system, accommodation for long term rough sleepers and other accommodation for single vulnerable homeless people. In 2014/15, night shelter residents accounted for 17% of our existing provider's over-all client base.

Figure 1, below, shows the total number of people approaching our existing provider's wider service as homeless/potentially homeless. The main reasons for these approaches were recorded as homelessness (38%), eviction (11%) and relationship breakdown (11%).



**Figure 1: People using HARP's services**

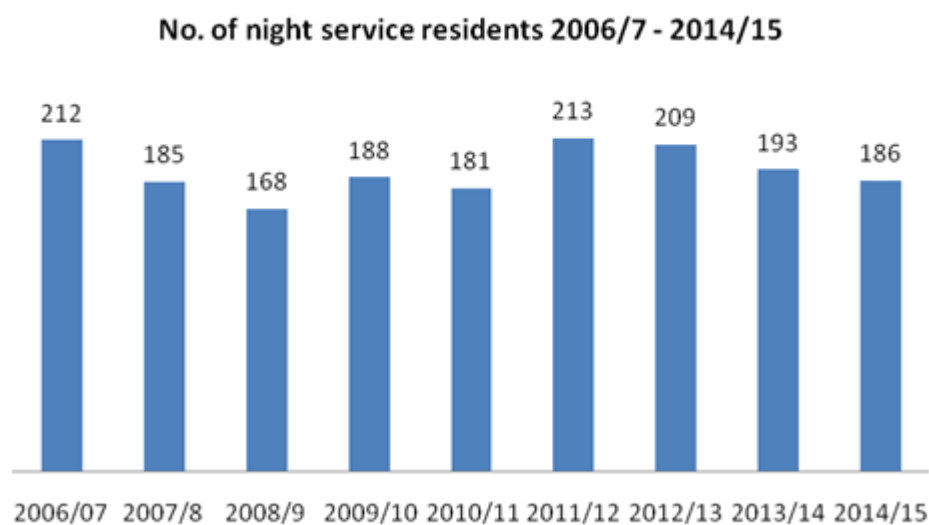
Source: HARP

\* Total includes those accommodated by HARP but continue to use the day centre for general support (advice / meal / clothing / food parcel / washing clothes etc) also a number of people that are in accommodation but come in for

The number of people using the current night shelter marginally reduced in 2012/13 from 213 to 209, however, over the course of the year, 157 people were turned away due to lack of space.

### **Commissioned night shelter use**

Figure 2 below shows the number of people using the existing night-shelter provision, has consistently remained at over 180 residents per year over the last 5 years. There has been a slight decline in residents over the last 4 years, however 308 individuals had to be turned away in 2014/15, due to lack of space.



**Figure 2: Night service use**

### **Churches Winter Night Shelter**

In addition to the commissioned night shelter provision, partnership work between Southend Borough Council, HARP, local churches and volunteers enabled a Churches Winter Night Shelter to operate for 113 nights over winter 2014/15, with 20 bed spaces per night. The shelter was fully occupied on 9 nights and over capacity on 12, with an average of 16 guests per night.

## **Rough Sleeping in Southend-on-Sea**

In Autumn 2014 we undertook our first ever official rough sleeper count, verified by Homeless Link. The figure on this particular night was 14 (though the number of rough sleepers in the town on any one night will vary). The count was arrived at using Intelligence from the Council, Streetlink<sup>[1]</sup>, the police, Southend Multi-agency Anti-Social Behaviour Response Team (SMAART), street pastors and

<sup>[1]</sup> Streetlink.org.uk is a Government funded website that enables the public to report sightings of rough sleepers, or for rough sleepers to report themselves.

the Homeless Action Resource Project (HARP) to help co-ordinate a patrol of Southend to count the number of rough sleepers during the night of 19/11/2014.

Patrol areas included:

- Southend high street
- Disused commercial properties
- Stairwells & rear areas of commercial properties.

The Council recently commissioned St Mungos Broadway to deliver a single person's homeless scheme which is provided across Southend and some neighbouring Local Authority areas. St Mungos, Broadway, responds to Streetlink referrals by visiting rough sleepers and trying to tie them in with relevant support provision, which can include the night-shelter.

## SPECIFICATION

Please refer to schedules 1, 2 & 3 in terms of the specification and accompanying schedules that form this contract.

# **SUPPORTING PEOPLE** **STEADY STATE CONTRACT**



**PROVIDER NAME: TO BE INSERTED**

**CONTRACT ID NUMBER: 15001**

**NATIONAL PROVIDER ID NUMBER: TO BE INSERTED**

**TERMS AND CONDITIONS**  
**OF CONTRACT FOR SERVICES**

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2	Authorised Officer and Contract Manager Details
3	Payment Protocol including Protocol for Dealing with Under and Over Payments

**THIS CONTRACT** is made the 1<sup>st</sup> Day of October 2015

**BETWEEN**

(1) **Southend on Sea Borough Council** of The Civic Centre, Victoria Avenue,  
Southend on Sea, SS2 6ER referred to in this contract as ‘We’ or ‘Us’

and

(2) **INSERT NAME OF ORGANISATION** of **INSERT FULL ADDRESS AND  
POSTCODE** Company Registration Number: **TO BE INSERTED**, which is a  
**INSERT DETAILS OF ANY REGISTRATION ALONG WITH  
REGISTRATION NUMBER**, referred to in this contract as ‘You’

**PART A - OPERATIVE PROVISION**

**A1 DEFINITIONS**

The terms and expressions used in these Terms and Conditions shall have the meanings set out below:

“Approval” and “Approved” means the written consent of the Authorised Officer

“Arrangements for delivering  
and monitoring Outcomes  
Schedule” means Schedule 1 containing Outcomes  
and their measurement

“Authorisation” Definition not applicable and not used

“Authorised Officer” means the person for the time being appointed by the  
Council and specified in Schedule 2 as being authorised  
to administer the Contract on behalf of the Council or  
such person as may be nominated by the Authorised  
Officer to act on its behalf

“Business Day”	means between Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays
“Care and Support Plan”	Definition not applicable and not used – see Support Plan
“Carer”	means any relative, friend or neighbour who, without payment, provides help and support to the Service User
“Code of Practice”	Definition not applicable and not used
“Commencement Date”	means the date the Provider will start to provide the Services, namely 1 <sup>st</sup> October 2015
“Conditions”	means this Contract’s terms and conditions and/or any modification duly agreed in accordance with this Contract
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, Developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998
“Contract”	means the agreement between the Provider and the Council consisting of these Conditions and any attached Schedules, the Invitation to Tender and any other documents (or parts thereof) specified by the Council

“Contract Manager”	means the person for the time being appointed by the Provider and specified in Schedule 2 as being authorised to administer the Contract on behalf of the Provider or such person as may be nominated by the Contract Manager to act on its behalf
“Contract Period”	means the period or duration of the Contract in accordance with Clause B1
“Contract Price” and “Price”	means the price exclusive of any applicable tax, payable to the Provider by the Council under this Contract, as set out in the Contract Price Schedule, for the full and proper performance by the Provider of its obligations under this Contract
“Contract Price Schedule”	means the document attached as Schedule 1 containing details of the Contract Price
“Contract Standard”	means those standards set out in Schedule 1
“Council”	means Southend on Sea Borough Council or its successor body as applicable
“Council’s Procedure for Dealing with complaints”	means the document/procedure set out in Schedule 1 as may be amended from time to time
“Default”	means any failure, either on the Council’s or the Provider’s part to carry out their respective obligations under this Contract
“Deprivation of Liberty (DoL)”	Definition not applicable and not used
“Direct Payment”	means the local Council payments for people who have been assessed as needing help from social services, and

who would like to arrange and pay for their own care and support services instead of receiving them directly from the local Council

“Dispute Resolution Procedure” means the procedure set out in section H8

“Financial Distress Notice” “Not used”

“Force Majeure” means and includes the occurrence after the Commencement Date of:

- (a) war, civil war, riot, civil unrest, civil emergency, terrorist attack or threat of terrorist attack;
- (b) nuclear, chemical or biological contamination; or
- (c) an act of God.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which would affect or relate to a comparable supply of Services of the same or a similar nature to the supply of the Services

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

“Healthwatch” accordance with section 221(1) of the Local Government and Public Involvement in Health Act 2007. Healthwatch aim to give citizens a stronger voice in how their health and social care services are delivered. Run by local individuals

and groups and independently supported - the role of Healthwatch is to find out what people want, monitor local services and to use their powers to hold them to account. Each local authority (that provides social services) has been given funding and is under a legal duty to make contractual arrangements that enable Healthwatch activities to take place.

“Law”

means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, by-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply. Any reference to “Legislation” shall be construed accordingly

“Managing Authority”

Definition not applicable and not used

“Material Breach”

means the following issues are considered (without limitation) to be a material Default:

- failure to have in place the insurance cover required under clause G2
- non-compliance with the equal opportunity requirements of clause E2
- evidence of deliberate abuse and/or mistreatment of a Service User by the Provider or the Provider’s Staff or agents or by any sub-contractor or such sub-contractor’s staff or agents or negligence by the Provider or any sub-contractor in permitting such abuse or mistreatment
- breach of the requirements of clause B12 (Fraud) or clause E1 (Prevention of Corruption)

- the conviction of the Provider of an offence under the provisions of the Care Standards Act 2000
- persistent use by the Provider or a sub-contractor of unqualified or untrained Staff except where the Council has given written consent to such use.

“Notice” means any formal communication between the Parties as required by the Contract

“Outcomes” means the impacts or end results of the Services on a person’s life

“Party” and “Parties” means a party to this Contract and “Parties” shall be construed accordingly

“Personal Budget” means a streamlined assessment across agencies responsible for a number of support funding streams, resulting in the transparent allocation of resources to an individual, in cash or in kind, to be spent in ways which suit them

“Placement of Service Users” means each individual request for the provision of Services to a Service User placed by the Council as defined and set out in Schedule 1

“Provider” means the person, firm or company with whom the Council enters into this Contract

“Qualifying Change in Law” means:

- (a) a General Change in Law
- (b) a Specific Change in Law

which was not foreseeable at the date of this Contract

“Quality and Performance Schedule” means the quality and performance standards as defined and set out in Schedule 1



“Records”	means the Contract and all documents, data or other information relating to, produced, or received as part of or in connection with the Services and stored on whatever medium
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Providers and “Regulatory Body” shall be construed accordingly
“Replacement Provider”	means any third party appointed by the Council from time to time to provide any services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party
“Schedule”	means a schedule attached to this Contract
“Services”	means the services to be provided as specified in Schedule 1 (Service Specification)
“Service Specification Schedule”	means the document attached as Schedule 1 containing details of the Services to be provided
“Service User”	means a person to whom the Provider shall provide the Services
“Significant Decision”	Definition not applicable and not used

“Specific Change in Law”	means a Change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Provider, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services
“Staff”	means all persons employed by the Provider to perform the Contract together with the Provider’s employees, agents and sub-contractors used in the performance of the Contract
“Support Plan”	means the plan, drawn up following the assessment of a Service User, which sets out how their support needs will be met and the outcomes to be achieved
“Value Added Tax”	means Value Added Tax or any similar tax replacing it or performing a similar fiscal function
“Variation”	means a change to this Contract or to the Services, made in accordance with clause B2 (Contract Variation)
“Whistleblowing”	means raising concerns about misconduct within an organisation or within an independent structure associated with it

## **A2                    INTERPRETATIONS**

- A2.1                Except as otherwise expressly provided, the documents comprising this Contract are to be mutually explanatory of one another. Should the Provider become aware of any ambiguities or discrepancies in or between any of the documents comprising the Contract, the Provider shall immediately inform the Authorised Officer giving full details. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise coming to the notice of the Authorised Officer shall be resolved by the Authorised Officer who shall issue to the Provider any appropriate instructions in writing.
- A2.2                Any references to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force, and to include any EU Directives, by-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, codes of practice, consents or permissions made thereunder, and any condition attaching thereto.
- A2.3                Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the reasonable control of the Provider.
- A2.4                The headings in the Contract are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- A2.5                The expression ‘person’ used in the Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- A2.6                In the Contract the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- A2.7                Any reference to government departments and the like, is deemed to include its or their successors.

A2.8 References to Clauses or Schedules shall be to Clauses and Schedules of these Conditions of Contract.

A2.9 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.

A2.10 Where the words include(s), including or in particular are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

### **A3 ENTIRETY OF CONTRACT**

A3.1 This Contract represents the entire understanding between the parties and supersedes all representations, understandings and agreements, whether oral or written, made by the Council or the Provider.

## **PART B – GENERAL PROVISION**

### ***B1 CONTRACT PERIOD***

B1.1 The Contract shall commence on the Commencement Date and shall continue for a period of 6 months with the option to extend for a further 3 months (subject to the provisions for early termination).

B1.2 Subject to satisfactory performance by the Provider during the Term set out in B1.1, the Contract may, with the agreement of both parties, be

extended (subject to 6 months notice in writing). The clauses in the Contract will apply throughout any such extended period save for this clause B1 and unless varied in accordance with clause B2.

## **B2 CONTRACT VARIATION**

- B2.1 The Contract may only be varied or modified if such variation or modification is in writing and signed by the Authorised Officer and the Provider's Contract Manager.
- B2.2 If either Party wishes to vary this Contract then it shall serve on the other a Variation Notice which shall set out the nature of the variation sought and the reasons for it.
- B2.3 If either Party receives a Variation Notice then within 20 Business Days of receipt it shall notify the other whether or not it agrees to the variation and if not, the reasons for refusal.
- B2.4 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Council and agreed in writing with the Provider and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.
- B2.5 The Provider shall provide such information as may be reasonably required and requested by the Council from time to time, to enable such varied price to be calculated.
- B2.6 If the Variation cannot be agreed between the Parties the matter shall be determined in accordance with the provisions of clause H6.

## **B3 NOTICES**

- B3.1 Any Notice required by this Contract to be given by either Party to the other shall be in writing and shall be serviced personally, by fax or by sending it by registered post or recorded delivery or by email to the appropriate person, address, fax number or email address set out in Schedule 1 or as otherwise notified to the other Party from time to time.

B3.2 Any Notice required by this Contract shall be issued by the Contract Manager or Authorised Officer or any person nominated to act on their behalf as set out in Schedule 2.

B3.3 Any Notice served personally will be deemed to have been served on the day of delivery, any Notice sent by post will be deemed to have been served 48 hours after it was posted, any Notice sent by fax will be deemed to have been served 24 hours after it was despatched, any Notice sent by email before 5 p.m. for which a confirmation of delivery receipt has been received will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

#### **B4 SEVERANCE**

B4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provision of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

B4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

#### **B5 WAIVER**

B5.1 The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

B5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause B3.

B5.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

**B6                    ASSIGNMENT AND SUB-CONTRACTING**

B6.1                The Provider shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the supply of the Services.

B6.2                The Provider shall not use the services of agency staff without prior approval from the Council.

B6.3                The Provider shall remain responsible and liable for the acts and omissions of any sub-contractor or agents as though they were its own.

B6.4                The Provider shall give the Authorised Officer at least twenty (20) Business Days written notice if there is to be a change in its legal status or a change of control in the ownership of its organisation and/or the contracts it holds (which for the avoidance of doubt shall apply whether the Provider is a limited company, partnership, sole trader or any other legal entity). There will be no automatic assignment of this Contract in this instance.

B6.5                The Council shall be entitled to:

B6.5.1            assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or

B6.5.2            transfer, assign or novate its rights and obligations where required by Law.

B6.6                Where the Council elects to assign, novate, sub-contract or otherwise dispose of its rights and obligations under the Contract, the Council shall seek the prior written consent of the Provider to such assignment, such consent shall not be unreasonably withheld or delayed.

**B7                    AGENCY**



B7.1 The Provider is an independent contractor and nothing in this Contract is intended to, or shall operate to allow either the Provider or its Staff in any circumstances to hold itself or themselves out as being in partnership or the employee or agent of the Council and they shall have no authority to act in the name or on behalf of or otherwise to bind the Council in any way (including the making of any representation, warranty, the assumption of any obligation or liability and the exercise of any right or power or enter into any Contract) unless otherwise agreed in writing by the Council.

**B8 PROVIDER’S OBLIGATIONS**

B8.1 The Provider agrees to provide the Services to all Service Users so as to fully comply with:

B8.1.1 the terms of this Contract; and

B8.1.2 to use reasonable skill and care in the performance of the Services and in accordance with generally recognised commercial practices and standards in the industry for similar services.

**B9 COUNCIL’S OBLIGATIONS**

B9.1 Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counter party and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

**B10 FORCE MAJEURE**

B10.1 Neither the Provider nor the Council shall be liable for breach of its obligations under the Contract to the extent that such breach is caused by Force Majeure. For the avoidance of doubt any industrial action occurring within the Provider’s

organisation, the inability of the Provider to recruit staff, or failure by any sub-contractor to provide services shall not be Force Majeure.

- B10.2 The Provider shall as soon as reasonably practicable notify the Council in writing of such Force Majeure events as they occur and shall use its reasonable endeavours to secure the continued provision of all or such part of the Services as shall have been affected by the event of Force Majeure.
- B10.3 If the event Force Majeure continues for more than one (1) month either Party may give one (1) month written notice to the other to terminate the Contract or set a termination date that both Parties may agree.
- B10.4 Pandemic Flu will not be considered as a Force Majeure event and as such must be provided for in the Provider's Pandemic Flu plan if not already incorporated into the Provider's Business Continuity plan. The Provider shall use all reasonable endeavours to maintain the service in this event.

## **B11 CONFLICTS OF INTEREST**

B11.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any employee agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or such person and the duties owed to the Council under the provision of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

B11.2 The provision of this Condition shall apply during the continuance of this Contract and for a period of 24 months after its termination.

## **B12 FRAUD**

B12.1 The Provider shall safeguard the Council's funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Provider's directors and suppliers.

B12.2 The Provider shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

B12.3 The Council reserves the right to take whatever action it deems necessary in the event of either notification of, or a suspected fraud.

## **PART C – PROVISION OF SERVICES**

### **C1 AUTHORISED OFFICER**

- C1.1 The Council shall appoint an Authorised Officer to act on behalf of the Council for all purposes connected with the Contract. Details of the person are set out in Schedule 2.
- C1.2 The Council shall forthwith give notice in writing to the Provider of any change in the identity, address and telephone numbers of the person appointed as Authorised Officer. The Council shall use reasonable endeavours to give notice to the Provider before changing its Authorised Officer.

### **C2 CONTRACT MANAGER**

- C2.1 The Provider shall appoint a Contract Manager to act on behalf of the Provider for all purposes connected with the Contract. Details of the person are set out in Schedule 2.
- C2.2 The Provider shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Provider shall use reasonable endeavours to give notice to the Council before changing its Contract Manager.

### **C3 THE SERVICES**

- C3.1 The Provider shall provide the Services during the Contract Period in accordance with the Contract.
- C3.2 The Services will be provided as and when specified in Schedule 1.
- C3.3 In providing the Services, the Provider shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

C3.4 The Provider shall be registered and shall remain registered throughout the Contract Period with any relevant Regulatory Bodies.

#### **C4 STANDARDS OF THE SERVICES**

C4.1 The Provider shall comply with all relevant current and future statutory provision and local requirements that are laid down in this Contract or that are issued to the Provider as part of a Variation Notice.

#### **C5 QUALITY ASSURANCE**

C5.1 The Provider shall throughout the Contract Period demonstrate and maintain a properly documented system of quality assurance.

#### **C6 PROVIDER'S STAFF**

C6.1 The Provider shall employ sufficient trained, suitably qualified and experienced Staff to ensure that the Services throughout the Contract Period are provided in all respects to the Contract Standard.

C6.2 The Provider shall ensure that it has sufficient Staff to provide the Services to the Contract Standard during periods of staff absence due to sickness, maternity leave, staff holidays or otherwise.

C6.3 The Provider's Staff employed in and about the provision of the Services shall at all times exercise due care and diligence in the execution of their duties and the Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services.

#### **C6.4 VETTING AND BARRING SCHEME**

C6.4.1 The Parties acknowledge that a national Disclosure and Barring Scheme ("DBS") was introduced by the Government whereby they will be responsible for making barring decisions. The requirement for Criminal Record checks will continue and will run in conjunction with DBS.

C6.4.2 In accordance with clause C6.4.1, the following changes which came into force on the 20<sup>th</sup> January 2009 are applicable to this Contract:

C6.4.2.1 the Provider (under PoCA, PoVA and List 99) will now refer all new cases to DBS which has the responsibility of making any barring decisions.

- C6.4.2.2 the DBS will automatically bar a person without a referral when they receive information from the police that the person received a new conviction or caution for a specified serious offence and as a result the Provider warrants that a person barred under this clause shall be removed from the provision of the Services under this Contract.
- C6.4.3 The Council under its duty to the DBS shall respond to requests from the DBS for further information already held by the Council in relation to the Provider's Staff and the Provider shall assist in providing this information in order for the Council to comply with such requirements as may be necessary from time to time.
- C6.4.4 The failure of the Provider to comply with clause C6.4 is deemed to be a criminal offence and as such the Provider will familiarise itself with necessary updates on DBS as published on <https://www.gov.uk/disclosure-barring-service>
- C6.4.5 In addition to clause C6.4.4, failure by the Provider to comply with this clause C6.4 may lead to the termination of this Contract at the Council's sole discretion.
- C6.4.6 The Provider shall, insofar as it is able by Law to require disclosure by applicants of all criminal convictions in recruitment and engagement of Staff:
- C6.4.6.1 ensure that it complies with its statutory obligations under the Care Standards Act 2000 where applicable;
  - C6.4.6.2 obtain a full employment history and satisfactory references for all applicants;
  - C6.4.6.3 confirm the applicant's legal right to work in the UK;
  - C6.4.6.4 not allow any member of Staff to commence employment prior to the receipt of a satisfactory check as detailed in the clause C6.4;
  - C6.4.6.5 notify the Council immediately if any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Provider (or any employee of a sub-contractor involved in the provision of the Services).
- C6.4.7 The Authorised Officer acting reasonably shall be entitled to require the Provider to remove immediately from the provision of the Services a named member of the Provider's Staff. The Provider shall have the right to make representations to the Authorised Officer concerning such person. After taking any representations

into account, the Authorised Officer shall be entitled to confirm, revoke or vary his decision.

C6.4.8 The Provider shall bear the cost of or costs arising from any Notice, instruction or decision of the Council under this clause C6.

## **C6.5 CRIMINAL RECORDS CHECKS**

C6.5.1 The Provider and their Staff will be required to undergo an enhanced Criminal Records Check before they will be allowed to start work. It is a criminal offence to employ a new member of Staff working with children or vulnerable adults if they are not registered with the DBS. All such Staff will be required to be registered with the DBS and not be barred.

C6.5.2 For this purpose the Rehabilitation of Offenders Act 1974 does not apply and the Provider and its Staff will be required to disclose all convictions, cautions, reprimands and final warnings, including those that would be deemed as spent under the provisions of the Act. The Provider shall comply with any instruction issued by the Council that the Provider should not use any particular employee in the performance of this Contract where the Council has information that the safety or comfort of Service Users may be affected.

C6.5.3 The Provider shall ensure that no person who discloses any convictions, cautions, reprimands and final warnings, or who is found to have any convictions following the results of a Criminal Records Check, is employed or engaged by the Provider or on the Provider's behalf without informing the Council and ensuring a risk assessment has taken place.

C6.5.4 The Provider shall ensure that the Council is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff (or any employee of a sub-contractor involved in the provision of the Services), receives a conviction, caution, reprimand and final warnings or whose previous convictions become known to the Provider.

## **C7 ACCESSING THE SERVICES**

C7.1 The Service Users shall gain access to the Services as set out in the Service Specification (Schedule 1).

**C8 SAFEGUARDING**

C8.1 The Provider acknowledges that the Council has legal responsibilities under Section 11 of the Children Act 2004 ("CA 2004") and provisions of the Domiciliary Care Agencies Regulations 2002 ("the 2002 Regulations") in providing the Services under this Contract, the Provider warrants that it will cooperate with the Council to enable the Council to comply with CA 2004 and the 2002 Regulations.

C8.2 The Provider shall give reasonable assistance to the Council to comply with the CA 2004 and the 2002 Regulations and shall not do any act either knowingly or recklessly that would cause the Council to be in breach of the CA 2004 and the 2002 Regulations.

C8.3 Pursuant to clause C8 the Provider shall make arrangements during the provision of the Services under this Contract to ensure that it complies with CA 2004 and the 2002 Regulations and accordingly, the Provider shall:

C8.3.1 ensure that senior management within its organisation are committed and responsible for monitoring the actions of their Staff to safeguard and promote the welfare of children and young people and vulnerable adults;

C8.3.2 have a clear statement, policy and procedure in place outlining the Provider's responsibilities towards children and young people and vulnerable adults which is made available for its Staff;

C8.3.3 identify the manager with the overall responsibility and the ultimate accountability for the Provider's contribution to safeguarding and promoting the welfare of children and young people and vulnerable adults and what the lines of accountability are for each Staff member;



- C8.3.4 consider how the delivery of the Services will take account of the need to safeguard and promote the welfare of children and young people and vulnerable adults by carrying out an assessment of the needs of the children and young people and vulnerable adults affected under this Contract and the Provider shall determine priorities and actions designed to improve outcomes for them;
- C8.3.5 ensure staff working with and Staff in contact with children and young people and vulnerable adults have an understanding of their roles and responsibilities by organising Staff training on safe guarding and promoting the welfare of children and young people and vulnerable adults;
- C8.3.6 ensure that robust recruitment and vetting procedures are in place to help prevent unsuitable people from working with children and young people and vulnerable adults and to ensure that managers in charge of recruitment are adequately trained;
- C8.3.7 ensure that its Staff work with the Council in partnership to safeguard and promote the welfare of children and young people and vulnerable adults;
- C8.3.8 in accordance with the Data Protection Act 1998 ensure that there is effective monitoring and collating of information which is shared with the Council to prevent children and young people and vulnerable adults from suffering or being at risk of suffering harm.
- C8.4 The Provider must have a procedure approved by the Council for dealing with allegations or suspicions of abuse.
- C8.5 All Staff must be trained at induction to follow the reporting procedures and training should be updated at least annually.

C8.6 The Authorised Officer must be notified immediately of all instances of suspected abuse pertaining to the Contract.

C8.7 The Council reserves the right to visit the Provider's organisation to audit, inspect and monitor the Provider's compliance with this clause C8.

C8.8 Failure by the Provider to comply with the provisions of this clause C8 may lead to the termination of the Contract at the absolute discretion of the Council.

## **C9 RIGHTS OF ACCESS AND INSPECTION**

C9.1 The Provider shall allow officers of the Council to have reasonable access to the Provider's premises, records and Staff to enable the Council to ascertain that the Services are being provided in accordance with the Contract and any relevant statutory provisions.

C9.2 Any information made available to the Council under this clause shall be treated as Confidential Information.

## **C10 PERFORMANCE MONITORING**

C10.1 The Provider shall comply with the performance monitoring arrangements set out in Schedule 1.

## **C11 CONTRACT REVIEW**

C11.1 Contract reviews may be undertaken by the Council to review performance against the Contract as a whole. The frequency and format of the reviews shall be set out and agreed in Schedule 1. The Provider shall afford all reasonable resources and facilities to allow the Council to carry out its contract reviews and provide all reasonable information required.

## **C12 FAILURE TO PERFORM**

C12.1 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall acting reasonably instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure within such period of time as the Council may direct.

- C12.2 In the event that:
- C12.2.1 the Provider fails to comply with clause C12.1 above and the failure is materially adverse to the interests of the Service User or the Council or prevents the Council from discharging a statutory duty; or
- C12.2.2 the Provider persistently fails to comply with clause C12.1 above,
- the Council may terminate the Contract with immediate effect by Notice in writing.
- C12.3 In the event that the Council is of the reasonable opinion that there has been a Material Breach of the Contract by the Provider, then the Council may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- C12.3.1 without terminating the Contract, itself procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract and with the co-operation of the Provider;
- C12.3.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services and with the co-operation of the Provider; and/or,
- C12.3.3 terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.
- C12.4 The Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services

by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

### **C13 COMPLAINTS**

C13.1 The Provider shall ensure that it has a complaints procedure which shall be approved by the Council from time to time and which shall be integrated with the Council's Procedure for Dealing with Complaints and notified to service users.

### **C14 WHISTLEBLOWING**

C14.1 The Provider shall ensure that it has a Whistleblowing procedure which shall be approved by the Council from time to time and notified to service users.

C14.2 The Provider confirms that the Council is authorised as a person to whom the Provider's Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and its Staff will be made aware of this provision. The Provider further declares that any provision in any contract purporting to preclude a member of its Staff from making a protected disclosure is void.

### **C15 BUSINESS CONTINUITY, DISASTER RECOVERY AND PANDEMIC FLU PROVISIONS**

C15.1 For the purposes of clause C15 the terms and provisions set out in the attached Schedule 1 shall apply to this Contract.

## **PART D – CONTRACT PRICE AND PAYMENT**

### **D1 CONTRACT PRICE**

D1.1 In return for the Provider carrying out its obligation under this Contract the Council shall pay the Provider the Contract Price as set out in Schedule 1.

**D2**                    **VALUE ADDED TAX**

- D2.1                    Value Added Tax (VAT), where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- D2.2                    The Council and the Provider agree to pay to the other any VAT properly chargeable.

**D3**                    **RECOVERY OF SUMS DUE**

- D3.1                    Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract), the Council may deduct that sum from any sum then due to the Provider under the Contract.
- D3.2                    Any overpayment by the Council to the Provider shall be recoverable by the Council as a debt.
- D3.3                    The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has obtained the prior Approval of the Council to such deduction.

**D4**                    **EURO**

- D4.1                    Any legislative requirement to account for the Services in euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Provider at nil charge to the Council.
- D4.2                    The Council shall provide all reasonable assistance to facilitate such changes specified in clause D4.1 above.

## **PART E – STATUTORY OBLIGATIONS AND REGULATIONS**

### **E1 PREVENTION OF CORRUPTION**

- E1.1 The Provider shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- E1.2 The Provider warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.
- E1.3 If the Provider, its Staff or anyone acting on the Provider's behalf, engages in conduct prohibited by clauses E1.1 or E1.2, the Council may:
- E1.3.1 terminate the Contract and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
  - E1.3.2 recover in full from the Provider any other loss sustained by the Council in consequence of any breach of those clauses.
- E1.4 In exercising its rights or remedies under this clause, the Council shall:
- E1.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;

E1.4.2 give all due consideration, where appropriate, to action other than termination of the Contract.

## **E2 EQUAL OPPORTUNITIES**

*E2.1 In the performance of the Services, the Provider and any sub-contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, belief, disability, sexual orientation, age, human rights or otherwise) in employment.*

*E2.2 The Provider shall take all reasonable steps to secure the observance of clause E2.1 by its Staff employed in the execution of this Contract including but not limited to:*

*E2.2.1 The Provider shall have an equal opportunities policy which must be approved by the Council prior to the commencement of the Services;*

*E2.2.2 The Provider shall provide such information as the Council may reasonably require for the purpose of assessing the Provider's continued compliance with this clause E2.*

*E2.3 If any court or tribunal, or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) should make any finding of unlawful discrimination against the Provider, then the Provider shall immediately inform the Council of such a finding.*

*E2.4 The Provider shall take all necessary steps to prevent re-occurrence of such unlawful discrimination. The Provider will provide the Council with details of the steps taken to prevent such a re-occurrence.*

*E2.5 In the event of a re-occurrence, the Council shall have a right to terminate this Contract if after having discussed the matter with the Provider, the Council is of*

*the opinion that the actions of the Provider leading up to the re-occurrence were sufficiently serious as to undermine its compliance with clause E2.1 above.*

*E2.6 In the event that the Council does not exercise its right of termination under clause E2.5 the Provider shall discuss with the Council the appropriate steps the Provider needs to take to prevent repetition of the unlawful discrimination and shall provide the Council with details of any such steps taken.*

### **E3 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

E3.1 No person who is not a Party to the Contract shall have any right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

### **E4 HEALTH AND SAFETY**

E4.1 In relation to the Provider's Staff, the Provider shall at all times comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice pertaining to the health and safety of employees and others who may be affected by the Provider's acts or omissions in providing the Services under this Contract and shall require that any sub-contractors likewise comply.

E4.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Council on request.

E4.3 The Provider shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Service and the acts of its Staff. The Provider shall notify the Council in writing if any method or practice set out in the Specification shall be or shall become an unsafe method of practice.



E4.4           The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work Act 1974 and provision within this clause E4.

## **E5 HUMAN RIGHTS**

E5.1 The Provider shall comply with the Human Rights Act 1998 (HRA) as if it were a 'Public Authority' within the meaning of the legislation.

## **E6 TRANSFER OF UNDERTAKINGS**

E6.1 Subject to clauses [F1] (Data Protection Act) and [F2] (Confidentiality) You shall provide Us with such information as We may reasonably require to enable Us to provide appropriate workforce information to potential tenders and any new provider when either this Contract comes to an end or it ceases to apply to a particular Support Service.

E6.2 You shall supply Us with the information referred to in clause [E6.1]:

E6.2.1 at Our reasonable request made at any time in the 9 months before an Expiry Date; or

E6.2.2 (if this Contract or its application to a particular Support Service is terminated on notice) within 20 Working Days of Your giving or receiving notice of any such termination; or

E6.2.3 (if this Contract or its application to a particular Support Service is terminated immediately) within 20 Working Days of termination.

E6.2.4 Without prejudice to clause [G1] (Your liabilities) You shall indemnify Us against all liabilities incurred, damage or loss suffered, claims, demands, actions and proceedings made or brought, and all costs, disbursements and expenses incurred by us arising directly or indirectly out of the following:

E6.2.5 breach or non-compliance with TUPE;

E6.2.6 Your failure to supply Us with the information as required by clauses [E6.1] and [E6.2] or the provision of inaccurate information.

## **E7 ENVIRONMENTAL REQUIREMENTS**

E7.1 The Provider shall operate and comply with and provide for the Council on request a comprehensive environmental policy, which shall include details on but is not limited to:

- Purchasing of Goods and Services
- Transport and Travel
- Energy Usage
- Waste and Recycling
- Printing
- Environmental Action Plans.

**E8 DIVERSITY**

E8.1 The Provider shall have a diversity policy that must be Approved by the Council prior to the commencement of the Services and shall promote an inclusive society, opposing all forms of intolerance and prejudicial discrimination, whether intentional, institutional or unintentional. The Provider and its Staff shall comply with the diversity policy at all times.

**E9 MENTAL CAPACITY ACT AND DEPRIVATION OF LIBERTY SAFEGUARDS**

Clause not applicable and not used

**E10 HEALTHWATCH**

E10.1 The Provider shall upon reasonable notice permit or procure permission for the authorised representatives of the relevant Healthwatch to have access to and observe the carrying-on of activities on premises controlled by that Provider and provide information to the Healthwatch.

E10.2 The above does not apply if:

- E10.2.1 the presence of the authorised representative on the premises or that part of it would compromise the effective provision of care and support services or the privacy or dignity of any person;
- E10.2.2 the authorised representative undertakes viewing or observation on the premises which is not related to the function of the Healthwatch;
- E10.2.3 it is in a non-communal part of the premises, is part of the premises which is a Service User's home or is used as accommodation by employees;
- E10.2.4 a request is made to view an excluded activity;
- E10.2.5 the request applies to a part of the premises where care and support services are not provided;
- E10.2.6 in the view of the Provider the authorised representative is not acting reasonably and proportionately, or
- E10.2.7 the authorised representative does not provide the Provider with evidence that they are authorised in accordance with Regulation 4 of the Healthwatch (Duty of Service Providers to Allow Entry) Regulations 2008.

E10.3 The Provider shall notify the Council within 5 Business Days after the inspection of any notices served by Healthwatch with respect to the Provider, any Care Home or the Staff at any Care Home.

## **E11 THE CRIME AND DISORDER ACT 1998**

E11.1 The Provider acknowledges that the Council is subject to the requirements of section 17 of the Crime and Disorder Act 1998 and shall at all times assist and co-operate with the Council (at the Provider's own expense) to enable the Council to fully comply with its statutory obligations.

## **PART F – INFORMATION**

### **F1 DATA PROTECTION ACT**

- F1.1 Each Party, including its Staff, shall comply with the requirements of the Data Protection Act 1998 (the “DPA”) in relation to the provision of the Services and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of the DPA.
- F1.2 The Provider shall in accordance with the DPA be notified and shall advise the Authorised Officer of its notification reference on the Public Register of Data Controllers.
- F1.3 The Provider shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- F1.3.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;
- F1.3.2 immediately notify the Council of any breach of the security measures required to be put in place pursuant to this Clause F1; and
- F1.3.3 ensure that it does nothing knowingly or negligently which places the Council in breach of the Council’s obligations under the DPA.
- F1.4 The Provider agrees to indemnify the Council against all costs that the Council incurs as a result of the Provider’s failure to comply with this clause F1.

- F1.5 The Provider shall ensure that personal data is not transferred to a country or territory outside the European Economic Area without the prior written consent of the Council.
- F1.6 On termination of this Contract the Provider shall return all personal data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Council.
- F1.7 The provision of this clause F shall apply during the continuance of the Contract and indefinitely after its expiry or termination.



- F2.1 Each Party: -
- F2.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- F2.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.
- F2.2 The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:
- F2.2.1 is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
- F2.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.
- F2.3 The Provider shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Contract.
- F2.4 The provisions of clauses F2.1 to F3. shall not apply to any Confidential Information received by one Party from the other:
- F2.4.1 which is or becomes public knowledge (otherwise than by breach of this clause);
- F2.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- F2.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- F2.4.4 which is independently developed without access to the Confidential Information;
- F2.4.5 which the Council considers must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 pursuant to clause 46, or



- F2.4.6 which is for any reason connected with the protection or safeguarding of the Service User(s).
- F2.5 Nothing in this clause shall prevent the Council disclosing any Confidential Information:
- F2.5.1 for the purpose of the examination and certification of the Council's accounts; or
- F2.5.2 any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or
- F2.5.3 to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
- F2.5.4 to any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Contract provided that in disclosing information the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- F2.6 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- F2.7 In the event that the Provider fails to comply with this clause F2, the Council reserves the right to terminate the Contract by Notice with immediate effect.

### **F3            AUDIT**

- F3.1 The Provider shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Council, all payments made by the Council, and Service Users' financial expenditure, specifically personal money and their

belongings. The Provider shall on request afford the Council or the Council's representatives such access to those records to conduct a financial audit or random checks as may be required by the Council in connection with the Contract. The financial auditing process may form part or whole of a planned monitoring visit. Any irregularities in Service Users' financial records will be subject to an investigation.

#### **F4 PUBLICITY**

F4.1 Except with the Approval of the Council, the Provider shall not make any press announcement or publicise this Contract or any part thereof in any way. Such Approval not to be unreasonably withheld or delayed.

F4.2 The Provider shall take reasonable steps to ensure the observance of the provision of clause F4.1 by all its Staff.

F4.3 The provision of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

#### **F5 LOGO**

F5.1 Neither Party shall use the crest or logo belonging to the counter Party either on its own or in combination with their crest or logo nor cause nor permit it to be used without express permission.

#### **F6 RECORDS**

F6.1 The Provider shall maintain current and accurate Records of all work carried out in the provision of the Services and shall ensure that these Records shall be available for inspection by an authorised representative of the Council at all reasonable times.

F6.2 The Provider shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of Records irrespective of the storage media which are under the Provider's control as part of the

Services. Such safeguards shall include an obligation on the Provider to ensure that access to Records is only obtained by such Council Staff as may be specifically designated by the Authorised Officer.

F6.3 If any Records are:

F6.3.1 accidentally or wilfully destroyed, otherwise than by the Council or on the authorisation of the Council; or

F6.3.2 altered without authorisation,

in the event that the Provider does not put in hand a method for reinstatement or replacement of such Records within seven days of receipt of a Notice from the Council then without prejudice to the Council's other rights at law, the Provider shall reimburse the Council reasonable costs in restoring such Records.

F6.4 Immediately upon expiry or termination of this Contract for any reason whatsoever the Provider shall at the sole option of the Council either return to the Council all Records in an agreed form, timescale and location or destroy all copies thereof.

## **F7 FREEDOM OF INFORMATION**

F7.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 and shall assist and cooperate with the Council (at the Providers expense) to enable the Council to comply with these information disclosure requirements.

F7.2 The Provider must, and must ensure that any sub-contractors:

F7.2.1 transfer the request for information to the Council as soon as practicable after receipt and in any event within 20 Business Days of receiving a request for information;

F7.2.2 provide the Council with a copy of all information in its possession or power in the form that the Council require within 20 Business Days (or such other period as the Council may specify) of the Council requesting that Information; and

F7.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

F7.3 The Council will be responsible for determining at its absolute discretion whether any information:

F7.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

F7.3.2 is to be disclosed in response to a request for information, and in no event will the Provider respond directly to a request for information unless expressly authorised to do so by the Council.

F7.4 The Provider acknowledges that the Council may, acting in accordance with the Ministry of Justice Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

F7.4.1 without consulting with the Provider, or

F7.4.2 following consultation with the Provider and having taken its views into account.

- F7.5 The Provider must ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and must permit the Council to inspect such records as requested from time to time.
- F7.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause F7.4. The Provider acknowledges that the Council is subject to the requirements under the Freedom of Information Act 2000 (the “Act”) and the Environment Information Regulations 2004 (the “Regulations”) and shall cooperate with the Council (at the Provider’s expense) to enable the Council to comply with these information disclosure requirements.

## **PART G – LIABILITY AND INSURANCE**

### **G1 LIABILITY**

- G1.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations.
- G1.2 The Provider shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses, loss or damage and any other liabilities whatsoever arising out of, in respect of or in connection with this Contract including but not limited to any death or personal injury, loss or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.
- G1.3 This clause G1 shall not apply if the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default or by any circumstances within its control.

### **G2 INSURANCE**

- G2.1 The Provider shall effect and maintain with an insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss.
- G2.2 The Provider shall hold public liability Insurance cover for an amount of not less than £5 million in respect of any one incident.
- G2.3 The Provider shall hold professional indemnity insurance cover for an amount of not less than £2 million for any occurrence arising out of each and every event. Such insurance shall be maintained for a minimum of 12 (twelve) years following the expiration or earlier termination of this Contract.
- G2.3.1 The Provider shall hold employer's liability insurance cover for an amount of not less than £10 million in respect of any one incident.
- G2.4 'Not used'
- G2.5 The Provider shall supply to the Council forthwith and upon each renewal date of any relevant policy referred to in clause G2.1 to G2.5 a certificate from its insurers or brokers demonstrating that appropriate cover is in place.
- G2.6 The Provider shall hold adequate insurance for all vehicles used by the Provider and ensure that any Staff using their motor vehicles to carry Service Users and/or Carers have valid business insurance on their motor vehicles and shall produce a copy of each certificate to the Authorised Officer if requested to do so provided that if the Council requests this information more often than once a year the Council shall meet the Provider's reasonable cost of production.

### **G3 WARRANTIES AND REPRESENTATIONS**

- G3.1 The Provider warrants and represents that:

- G3.1.1 the Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Provider;
- G3.1.2 the Provider shall discharge its obligation hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this clause G3) in accordance with its own established internal procedures;
- G3.1.3 the Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement, default of which might have a material adverse effect to its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.
- G3.1.4 the Provider has all necessary licences, rights and permissions to carry out its obligations specified in this Contract and made known to the Council from time to time.

## **PART H – DISPUTE, DISRUPTION, SUSPENSION AND TERMINATION**

### **H1 TERMINATION AND SUSPENSION**

#### **H1.1 Suspension of this Contract**

- H1.1.1 Suspension of this Contract will have the effect that no new Service User shall be placed in or accepted by the Services (as the case may be) after the date of such notice of Suspension. Notice of such Suspension may be served on the Provider where in the opinion of the Council the Provider is causing concern in its ability to maintain a satisfactory standard of Services to its existing Service Users. Notice of suspension may be served when:

- H1.1.1.1 The Provider is served with a Section 14 (Cancellation of Registration) notice by the Care Quality Commission.
- H1.1.1.2 The Council is instigating its local Safeguarding Adults from Abuse procedure.
- H1.1.1.3 If the Services are assessed by the Care Quality Commission as a 0 Star Rating Service.
- H1.1.1.4 There are unsatisfactory reports from statutory agencies (Registration Authority Environmental Health, Fire Authority and the Council's Contract Unit).



## H1.2 Lifting of Suspension

### H1.2.1 Suspension will be lifted at:

H1.2.1.1 such time as the actions resulting from a Safeguarding Adults from Abuse meeting have been met and the specific Serious Concerns have been closed within the minutes of the meeting; and/or

H1.2.1.2 the Services being assessed by the Care Quality Commission as a 1 star rating Service or above; and/or

H1.2.1.3 the Provider meeting standards required by statutory agencies as listed in 2.1.1.4.

H1.2.2 Where the Contract is for a number of Services where it is agreed that voids should be paid and the suspension of the Contract has led to void placements, the Council will not resume payment for the voids until such time as all places have been filled.

H1.3 The Council shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving not less than 6 months' written notice to the Provider.

H1.4 The Provider, at the discretion of the Council, may terminate the Contract prior to the termination date by serving not less than 6 months' notice in writing, giving reasons. The provider will participate fully in meeting provision for existing Service Users within the Services contracted for. The agreement of the Council to such a termination will not be unreasonably withheld.

H1.5 Where the Council terminates the Contract under clause H1.1, the Council must indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider must reduce its unavoidable costs by any insurance sums available. The Provider must submit a fully itemised and costed list of such loss, with supporting

evidence, of losses reasonably and actually incurred as a result of termination under clause H1.1.

- H1.6            Subject to the provisions of clause B9 (Force Majeure) the Council may terminate the Contract by Notice in writing with immediate effect if:
- H1.6.1           the Provider ceases or threatens to cease to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets that in the reasonable opinion of the Council would adversely affect the delivery of the Services;
- H1.6.2           the Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or
- H1.6.3           the Provider is an individual or a firm and a petition is presented for the Provider's bankruptcy, or a criminal bankruptcy order is made against the Provider or any partner in the firm, or the Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Provider's or firm's affairs; or
- H1.6.4           the Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any Party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor

or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

H1.6.5 the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

H1.6.6 in respect of any premises which are essential to the delivery of the Services, any landlord is granted an order for the forfeiture of the lease; or

H1.6.7 any person holding a mortgage or other charge over any premises which are essential to the delivery of the Services is granted an order for possession of the premises or any similar order; or

H1.6.8 any similar event occurs under the law of any other jurisdiction within the United Kingdom.

H1.7 If the Provider, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Council shall be entitled to terminate this Contract by Notice to the Provider or the Provider's Representative with immediate effect.

H1.7 The Provider shall notify the Council immediately if any of the events listed in Clause H1.6 occur.

## **H2 TERMINATION ON DEFAULT**

H2.1 The Council may terminate the Contract, or terminate the provision of any part of the Contract by written Notice to the Provider with immediate effect if the Provider commits a Default and if:

H2.1.1 the Provider has not remedied the Default to the satisfaction of the Council within the timeframe specified by the Council, after issue of a written Notice specifying the Default and requesting it to be remedied; or

H2.1.2 in the opinion of the Council the Default is not capable of remedy for any reason; or

H2.1.3 the Default is a Material Breach of the Contract.

H2.2 Without prejudice to any other right or remedy, the Provider may terminate this Contract by giving 3 months notice to the Council where the Council has committed a Default on 3 occasions in any 12 month period and such Defaults have not been remedied on each occasion within 10 Business Days notice of such Defaults being sent by the Provider.

### **H3 PROVIDER'S FINANCIAL STABILITY**

H3.1 Upon written request the Provider shall submit to the Council a copy of its latest annual accounts.

H3.2 If:

H3.2.1 the Provider fails to submit statutory accounts before any statutory deadline; or

H3.2.2 a County Court Judgment is made against the Provider for a sum greater than or equal to 1% of the Provider's annual turnover, and the debt is not settled within 28 days; or

H3.2.3 not used

H3.2.4 not used

H3.2.5 in respect of any premises which are essential to the delivery of the Services, any landlord makes an application to the court to recover unpaid rent or for the forfeiture of the lease; or

H3.2.6 any person holding a mortgage or other charge over any premises which are essential to the delivery of the Services makes an application to the court to recover unpaid loan obligations, for possession of the premises or for any similar order; or

H3.2.7 the Council has reasonable grounds to believe that any of the events set out in Clause H1.3 has occurred or is about to occur

the provisions of Clause H3.3 shall apply.

H3.3 Where the circumstances set out in Clause H3.2 apply, the Provider shall, on receipt of a written request from the Council, furnish the Council with:

H3.4.1 a copy of its latest Management Accounts;

H3.4.2 a cash flow forecast for the coming period;

H3.4.3 a reference from its bankers; and

H3.4.4 such other evidence that it is and will remain a going concern as the Council may reasonably require, and

H3.4.5 shall meet the Council within five working days of receipt of the written request to discuss its position with the Council and answer such questions as the Council may reasonably ask.

H3.4 The Provider shall notify the Council immediately if any of the events listed in Clause H3.2 occur.

H3.5 'Not used'

#### **H4 – PROVIDER'S FINANCIAL DISTRESS**

H4.1 The Council may at its sole option and discretion serve a Financial Distress Notice in the circumstances set out in Clause H3.5.

- H4.2 The Notice shall be sent to the Provider's last known email address and the Council shall make reasonable endeavours to contact the Provider by telephone to advise it that the Notice has been served. A copy shall be sent immediately by first class post.
- H.4.3 The Notice shall:
- H4.3.1 state that it is a Financial Distress Notice;
  - H4.3.2 set out the reasons why the Council believes that the Provider is no longer a going concern, or is at significant risk of ceasing to be a going concern within the next six months, and
  - H4.3.3 state that the Contract shall terminate one month from the date of the Notice, or at such later date as the Council may specify.
- H4.4 If the Provider does not accept that the Council is correct in its assessment that the Provider is no longer a going concern, or is at significant risk of ceasing to be a going concern within the next six months it may serve on the Council, within ten days of receipt of the Financial Distress Notice, an appeal (the "Appeal Notice").
- H4.5 The Appeal Notice shall set out the grounds for appeal and the Provider may enclose with the Notice concise and pertinent information and evidence in support of the appeal.
- H4.6 The Council shall consider the Appeal Notice and shall at the Provider's request meet the Provider and/or its financial advisers within five working days of the date of the Notice and shall notify the Provider within ten days of receipt of the Notice whether it accepts the appeal.
- H4.7 If the Council rejects the Provider's appeal then the matter may be submitted to binding expert determination in accordance with the provisions of Paragraph H4.

H4.8 If the Council rejects the Provider's appeal pursuant to Paragraph H4.3.3 then, at the Provider's request, the matter shall be submitted to an independent expert for binding determination

H4.9 'Not used'

## **H5 CONSEQUENCES OF TERMINATION**

H5.1 If the Council terminates this Contract or terminates the provision of any part of this Contract under clause H2 or clause C12, the Council shall:

H5.1.1 be entitled to employ and pay a Replacement Provider to provide and complete the provision of the Services or any part thereof; and

H5.1.2 be entitled to recover from the Provider the costs incurred of making those other arrangements including any additional expenditure incurred by the Council; and

H5.1.3 be entitled to deduct from any sum or sums which would have been due from the Council to the Provider under this Contract or the recovery of any sum or sums as a debt.

## **H6 HANDOVER**

H6.1 The Provider shall not charge the Council or any Replacement Provider for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this clause H6.

H6.2 At the end of the Contract Period (and howsoever arising) the Provider shall forthwith deliver to the Council upon request all the Council's property (including but not limited to materials, documents, information) relating to the Contract.

H6.3 The Provider shall use all reasonable endeavours to transfer all data in accordance with industry standard format (or any format reasonably specified by the Council

or a Replacement Provider) relating to the Services including without limitation requests for Services to be undertaken which have not been completed.

H6.4 At any time upon reasonable notice from the Authorised Officer or (where the request is occasioned by the termination of the Contract) forthwith and in any event upon the day which shall be not less than fifteen (15) months before the end of the Contract Period or within four (4) weeks of early termination of the Contract the Provider shall supply to the Council a full, complete and accurate list of those Staff members engaged in the Services (whether or not employed by the Provider), detailing the numbers and composition, for each of the Staff the number of hours of work per week on the Services and the number of hours per week worked for the Provider, job title, age, length of continuous service including the employment start date, current remuneration, benefits and notice periods of the Staff, terms and conditions of employment including but not limited to wages, holiday pay, bonuses and overtime rates, annual leave entitlement and pension scheme details and including any particulars that the Provider is obliged to give under section 1 of the Employment Rights Act 1996, any current disciplinary or grievance proceedings ongoing and any such proceedings in the preceding two years, any claims, current or which the Provider has reasonable grounds to believe will be brought by the Staff or their representatives or which have been brought in the preceding two years, all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Staff, information on any collective agreements which will have effect in relation to the Staff and any other employee liability information as specified in the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 ('TUPE Regulations') and shall warrant the accuracy of such information and shall forthwith notify the Council of any change in such information.

H6.5 The Provider shall permit the Council to use the information provided pursuant to Clause H6.4 for informing any future tenderer for the Service or any part thereof and shall enable and assist the Council and such other persons as the Council may determine to communicate with and meet the Staff and their trade unions or other employee representatives or staff associations as when and where the Council may determine.



- H6.6 The Provider shall comply with any reasonable request made by the Council for Staff information detailed in clause 6.4, if such request is made by the Council for the purpose of considering the application of, or complying with the requirements of the TUPE Regulations upon the termination of the Contract or any part thereof. The Provider shall supply the requested information to the Council within a reasonable time following the request and shall use its best endeavours to ensure that such information is accurate. The Council shall treat such information as confidential to itself and its advisors, save as required by law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Services in succession to the Provider.
- H6.7 The Provider undertakes to effect no changes in the numbers, identity, functions and terms and conditions of employment of Staff employed by the Provider in connection with the performance of the Contract during the last 12 months of the Contract Period without the Council's prior written consent. Such consent not to be unreasonably withheld or delayed.
- H6.8 At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Provider shall co-operate free of charge with the Council and any new provider appointed by the Council to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.
- H6.9 The provisions of this Clause H6 shall survive the continuance of the Contract indefinitely after its termination.

## **H7 DISRUPTION**

- H7.1 The Provider shall give the maximum possible advance warning of prospective industrial action by the Provider's Staff or other industrial disputes likely to affect the performance of this Contract adversely.
- H7.2 In the event that:

H7.2.1 industrial action is taken by any Staff of the Provider such as that the provision of the Services are, in the opinion of the Council, materially disrupted; or

H7.2.2 action is taken by the Provider so as to prevent its Staff from providing the Services the Council reserves the right to make alternative arrangements for the provision of the Services and to charge the Provider for any difference in resultant cost or terminate this Contract by Notice in writing to the Provider.

H7.3 In the event that industrial action is taken by Staff of the Council the Provider shall make every attempt to ensure that its Staff continue to provide the Services and the Council shall meet the Provider's reasonable and proper additional costs incurred in so maintaining the Services in these circumstances.

## **H8 DISPUTE**

H8.1 If there is a dispute between either Party concerning the interpretation or operation of this Contract then either party may notify the other that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Contract Manager to resolve, negotiating in good faith.

H8.2 If after 20 Business Days (or such longer period as both of the Parties may agree) of the date of the Notice referred to in clause H8.1 the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to a meeting of a senior officer of the Council (or a person appointed by them to act on their behalf) and a senior officer of the Provider, to resolve, negotiating on the basis of good faith.

H8.3 If after 20 Business Days (or such longer period as both parties may agree) of the date of the Notice referred to in clause H8.2 the dispute has not been resolved then either Party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time.

- H8.4 If both parties to this Contract do not agree on the identity of the mediator then either one of the Parties may request CEDR to appoint one.
- H8.5 The procedure in the Model Procedure will be amended to take account of:
- H8.5.1 any relevant provisions in this Contract; or
  - H8.5.2 any other agreement, which both Parties may enter into in relation to the conduct of the mediation ("Mediation Agreement").
- H8.6 Both of the Parties shall:
- H8.6.1 use their best endeavours to ensure that the mediation starts within 20 Business Days of the date on which the Notice referred to in clause H8.3 was served; and
  - H8.6.2 pay the mediator's fee in equal shares.
- H8.7 Any agreement the Council reaches with the Provider as a result of mediation shall be binding on both of the Parties, as set out in the Model Procedure. However, if the dispute has not been settled by mediation within 10 Business Days of the commencement of mediation, then either Party may commence litigation proceedings (but not before then).
- H8.8 Neither Party shall be precluded by clause H8.7 from taking such steps in relation to court proceedings or otherwise as the Council or the Provider (as the case may be) may deem necessary or desirable to protect their respective positions. This shall include:
- H8.8.1 issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; or
  - H8.8.2 applying for interim relief; and

H8.8.3 issuing or otherwise pursuing proceedings that are necessary to protect their employees, or their agents, or Service Users.

H8.9 The use of the dispute resolution procedures set out in this clause H8 shall not delay or take precedence over the provisions for termination set out in clause H1.

## **H9 LAW AND JURISDICTION**

H9.1 Subject to clause H8, the parties irrevocably agree that the Contract Shall be subject to English law and the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Contract and the legal relationship established by this Contract.

## **H10 CHANGE OF LAW**

H10.1 The Provider shall take all steps reasonably necessary to ensure that the Services are performed in accordance with the terms of this Contract following any change in Law.

H10.2 General Change in Law:

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

H10.3 Qualifying Change in Law:

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

H10.3.1 any necessary change in the Services and the Contract Price;

H10.3.2: whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;

H10.3.3: whether relief from compliance with the obligations is required, including the obligation of the Provider to achieve the Commencement Date, milestones or to meet any service level requirements at any time.

H10.4 As soon as practicable after any notification in accordance with clause H10.3 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Provider can mitigate the effect of the Change in Law, including:

H10.4.1 providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;

H10.4.2 demonstrating that a foreseeable Qualifying Change in Law had been taken into account by the Provider before it occurred;

H10.4.3 giving evidence as to how the Qualifying Change in Law has affected the cost of providing the Services; and

H10.4.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

H10.5 Any increase in the Price or relief from the Provider's obligations agreed by the Parties pursuant to this clause H10 shall be implemented in accordance with clause B2.

## **PART I – CONTRACT SPECIFIC CONDITIONS**

### **I1 OUTCOMES**

The Provider shall comply with the Arrangements for Delivering and Monitoring Outcomes as defined and set out in Schedule 1.

The Provider shall work with Us to ensure that any service user wishing to apply for self directed support shall be supported to do so.

## SIGNATURES

*Agreed and accepted for and on behalf of* **INSERT NAME OF PROVIDING ORGANISATION** *by*

*Signature* .....

*Name* .....

*Position* .....

*Agreed and accepted for and on behalf of Southend on Sea Borough Council by*

*Signature* .....

*Name* .....

*Position* .. Head of .....

## SECTION D - SUPPLIER QUESTIONNAIRE

Section	Scoring Method/Weighting
1. BASIC DETAILS OF YOUR ORGANISATION*	Information Only
2. BUSINESS ACTIVITIES*	Pass/Fail
3. REFERENCES *	Pass/Fail
4. INSURANCE *	Pass/Fail
5. PROFESSIONAL AND BUSINESS STANDING *	Pass/Fail

\* denotes where attachments must be returned if asked for. Non-compliance could lead to omission from the process.

Tenderers are required to complete the Supplier Questionnaire (Section D) as part of their tender submission.

This selection element of the tender submission contains Pass / Fail questions.

These are;

Section 2: Questions 2.1, and 2.2.

Section 3: References.

Section 4: Insurances.

Section 5: Professional and Business Standing.

If your company passes the Supplier Questionnaire (Section D), your submission will be fully scored with regards to the Commercial and Technical Questions.



<b>1</b>	<b>BASIC CONTACT DETAILS</b>	
1.1	Contact name for enquiries about this bid:	
1.2	Address:	
	Post Code:	
1.3	Telephone Number:	
1.4	Email Address:	
1.5	Company Registration Number (if this applies):	
1.6	VAT Registration number: (if this applies):	
1.7	Have you ever been employed by this Council? (if yes please provide details)	Yes <input type="checkbox"/> No <input type="checkbox"/>
1.8	Please state if you have a relative(s) who is employed by the Council at a senior level or who is a Councillor? (if yes please provide details)	Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>2</b>	<b>BUSINESS ACTIVITIES</b>	
	<p><b>Please be aware that questions 2.1, and 2.2 are pass/fail questions, if you fail any of these questions, the remainder of your submission will not be evaluated and you will be disqualified from the tender process.</b></p>	
2.1	<p>Do you have experience of providing emergency access, short term supported housing for people who are homeless, including experience of moving them on to settled secure accommodation?</p> <p><b>(If you answer 'No' you will fail this question and the remainder of your response will not be evaluated)</b></p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>

<b>3</b>	<b>REFERENCES</b>		
		Project Reference 1	Project Reference 2
3.1	Organisation (name):		
3.2	Contact name and phone number:		
3.3	Contact Email Address:		
3.4	Contract reference and brief description:		

<b>4</b>	<b>INSURANCE</b>	
	<b>Please provide copies of your insurance certificates with your return. The expected values for Southend-on-Sea Borough Council are inserted for information and the Tender will be evaluated against these. Other Council's may vary in their requirement.</b>	
	Please provide details of your current insurance cover	Value
4.1	Public Liability: (£1,000,000)	£
4.2	Professional Indemnity (if applicable): (£500,000)	£
4.3	Other (please provide details):	£
4.4	If the level is lower than the Council requires, would you be prepared to increase your level of cover?	Yes <input type="checkbox"/> No <input type="checkbox"/>

5	<b>PROFESSIONAL AND BUSINESS STANDING</b>	
	Do any of the following apply to your organisation, or to (any of) the director(s) / partners / proprietor(s)?	
5.1	Is in a state of bankruptcy, insolvency, compulsory winding up, receivership, composition with creditors, or subject to relevant proceedings	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.2	Has been convicted of a criminal offence related to business or professional conduct	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.3	Has committed an act of grave misconduct in the course of business	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.4	Has not fulfilled obligations related to payment of social security contributions	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.5	Has not fulfilled obligations related to payment of taxes	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.6	Is guilty of serious misrepresentation in supplying Information	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.7	Is not in possession of relevant licences or membership of an appropriate organisation where required by law	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.8	If the answer to any of these is <b>“Yes”</b> please give brief details below, including what has been done to put things right.	

<b>SECTION E – COMMERCIAL QUESTIONNAIRE – 30% WEIGHTING</b>
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The weighting for this section is 30%.

### **Pricing of the Tender**

The Tenderer shall complete the table below, detailing the fixed price for delivery of the service which will be applied for the contract. Failure to complete the pricing schedule will automatically lead to rejection of the Tender. **The maximum funding available for this service is £38,000 for a 6 month contract.**

### **Fixed Price**

The Tender is accepted on a “Fixed Price” basis and the Supplier will not be entitled to claim and the Council will not allow any increase in the price of the service and / or cost of, or incidental to, the employment of labour, and the prices included in the Tender shall be the maximum payable by the Council. Therefore all travel costs and any other ancillary costs should be included within your price.

### **V.A.T**

The price inserted on the form of tender must be based on rates that include Value Added Tax.

<b>Fixed price tender</b>	
Price for 6 months delivery of support – 15%	£
Total number of hours support delivered per week – 15%	Hours p/w

## SECTION F - TECHNICAL QUESTIONS – 70% WEIGHTING

All tenderers must submit answers to the following questions as part of their tender submission.

**Please ensure that the answer is clearly referenced to the question.**

Question Number	Technical Question	Weighting
1	<p><b>Service deliver model:</b> Please provide details of how you propose to deliver the required outcomes detailed under 'Aims and Purpose' of the service specification.</p> <p><b>Maximum 2 sides of A4</b></p>	30%
2	<p><b>Throughput:</b> How you will ensure throughput to secure accommodation to deal with the high levels of demand for the service. Please include details of how you will monitor and assess clients to keep stays to a minimum, and how you will move people on.</p> <p><b>Maximum 2 sides of A4</b></p>	20%
3	<p><b>Accommodation:</b> Please provide details of the accommodation you will utilise to deliver the service, including details on accessibility against DDA requirements, and a detailed outline project plan and timescales for setting this up.</p> <p><b>Maximum 2 sides of A4 as well as a high level project plan</b></p>	20%

## SECTION G – CONTRACT VARIATION FORM

Please detail below all matters (Technical, Commercial or Contractual) where you are unable to comply with the requirements laid down in the Invitation to Tender documentation. Sequentially number each point in the first column for ease of reference. If required, take copies of this blank form for additional points of non-compliance.

TENDERER:  
PAGE \_\_\_\_\_ OF \_\_\_\_\_

Section of Tender Document	Area of Non-Compliance	Extent of Non-Compliance / Alternative Proposal

<b>Signed</b>	
<b>Print Name</b>	
<b>Dated</b>	
<b>Job Title</b>	
<b>Company Name</b>	

<b>SECTION H – TENDER FORM</b>
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I / we the undersigned hereby offer to supply in accordance with the Customer's Tender documentation (Terms and Conditions of Contract, Instructions to Tenderers, Specification, Commercial Questionnaire and Variation from Contract Terms Form) the services specified to the satisfaction of your duly authorised representatives.

<b>Signed</b>	
<b>Print Name</b>	
<b>Dated</b>	
<b>Job Title</b>	
<b>Company Name</b>	
<b>Address</b>	
<b>Telephone No.</b>	
<b>Fax No.</b>	

<b>SECTION I – CERTIFICATE THAT TENDER IS BONA FIDE</b>
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In recognition of the principle that the essence of selective tendering is that the Council shall receive bona fide competitive tenders from all those tendering **WE CERTIFY THAT:**

- 1 The Tender submitted herewith is a bona fide tender, intended to be competitive.
- 2 We have not fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person.
- 3 We have not done and we undertake that we will not do at any time before the hour specified for the return of the Tender any of the following acts:
  - (a) Communicate to any other person other than the persons calling for these tenders the amounts or approximate amount of the proposed Tender (except where disclosure, in confidence, of the approximate amount of the Tender is essential to obtain insurance premium quotations required for the preparation of the Tender);
  - (b) Enter into any agreement with any person that he shall refrain from tendering or as to the amount of any tender to be submitted; and
  - (c) Offer or pay or agree to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or having caused to be done in relation to any other tender or proposed tender any act or thing of the sort described above.

In this certificate:

- a. "persons" includes any person or body or association or partnership corporate or unincorporated.
- b. "any agreement or arrangement" includes any transaction of the sort described above, formal, or informal and whether legally binding or not.

Signed \_\_\_\_\_ (as in Form of Tender)

Name \_\_\_\_\_

Date \_\_\_\_\_

Company \_\_\_\_\_

Position \_\_\_\_\_



<b>SECTION J – PREVENTION OF FRAUD &amp; CORRUPTION: WHISTLEBLOWING</b>
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**NOTICE TO POTENTIAL CONTRACTORS OF  
SOUTHEND-ON-SEA BOROUGH COUNCIL**

**PREVENTION OF FRAUD & CORRUPTION.**

The Council is committed to the highest standards of propriety in the delivery of its services ensuring the proper stewardship of public funds. We would like to encourage firms that want to contract with us to adopt this principal as well. To support this commitment, we operate within the requirements of our Anti Fraud and Corruption and Whistle Blowing Policies, (also known as the Confidential Reporting Policy). When working for us, we would expect your company and employees to do the same.

The Whistle blowing Policy sets out how to bring concerns to our attention and details the protection afforded to both companies and individuals in such circumstances.

Further information about these policies can be found at:  
[HTTP://WWW.SOUTHEND.GOV.UK/CONTENT.ASP?CONTENT=3820](http://www.southend.gov.uk/content.asp?content=3820)

Therefore, if concerns arise during either a contract letting exercise or the operation of a contract, you should let us know contacting:

Head of Internal Audit on 01702 534015; or

The Council's report line phone on 01702 212215.

<b>SECTION K – FREEDOM OF INFORMATION ACT</b>
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The Council is committed to meeting its responsibilities under the Freedom of Information Act 2000 (FOIA). All information submitted to the authority may be subject to disclosure to a third party in response to a request for information under the Act. The authority may also decide to include certain information in the publication scheme that we maintain under the Act. Tenderers are accordingly required to complete and return Schedule FOIA with their Tender for the purpose of identifying any information included in their submissions that they consider exempt from disclosure under the Act.

Section of Tender Document	Area to be considered exempt from disclosure

<b>Signed</b>	
<b>Print Name</b>	
<b>Dated</b>	
<b>Job Title</b>	
<b>Company Name</b>	