**SCHEDULE 4 – CONTRACTUAL TERMS AND CONDITIONS**

**Short Break Overnight, Sessional Respite and Outreach Support Service**

This Schedule contains the details of the draft contract for the Services. It is imperative at this stage that Providers tendering accept the terms and conditions that will be imposed if the tender is won.

This Contract is made on the day of 2018

# BETWEEN

**1 WOKINGHAM BOROUGH COUNCIL** of Civic Offices, Shute End, Wokingham, Berkshire, RG40 1BN (“the Council”) and

**2. Provider name (Company registration number XXXXX) whose registered office is XXXX** (“the Provider”).

**1. FORM OF CONTRACT**

1.1 The Council sought proposals for the provision of a Short Break Respite Service and an Outreach Day Support Service (“the Service”) based at Loddon Court, 289 Wokingham Road, Earley, Reading, RG6 7ER. The Council placed a contract notice [REFERENCE] on [DATE] in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of a Short Break Respite Service and an Outreach Day Support Service.

# 1.2 The Council has through a competitive process, selected the Provider to provide these services and the Provider is willing and able to provide the services in accordance with the terms and conditions of this Contract and any individual Customer Support plans or arrangements agreed in relation to placements made by the Council.

1.3 This Contract replaces all others issued by the Council for the services commissioned in this Contract.

1.4 The Council makes no guarantee to the number of spot-funded referrals made during the period of the Contract or to pay for quantities other than those demanded.

# 2. DEFINITIONS AND INTERPRETATION

2.1 In this Contract the following expressions have the following meaning:

**“Accounting Period”** Means the payment frequency period as outlined under Clause 12.1.

**“Authorised Officer”** Means the person referred to in Clause 10 **(Authorised Officer);**

**“Commencement Date”** Means 1st May 2018;

**“Confidential Information”** Means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to business, customers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the Council or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts and including (but not limited to) information that the Provider creates, develops, receives or obtains in connection with this Contract, whether or not such information (if in anything other than oral form) is marked confidential;

**“Contract Manager”** Means the person referred to in Clause 11 **(Contract Manager);**

**“Contract Monitoring”** Means themonitoring of contract compliance and of the Service which is carried out by the Council in accordance with Clause 14

**(Contract Monitoring)**;

**“Contract Price”** Means the price the Council will pay to the Provider in return for the Provider providing the Service;

**“Customer”** Means any person who receives the Service as detailed in Schedule I. Where appropriate, the term “Customer” shall also include reference to any person who has power of attorney or acts as next of kin. A list of Customers at the commencement of this Contract is listed in Schedule II in respect of the Outreach placements;

**“Customer Agreement”** Meansthe written and priced Contract/statement of terms and conditions between the home and the Customer in accordance with the Essential Standards of Quality & Safety, Regulations & Outcomes issued by CQC;

**“Customer Contribution”** Means the contribution (if any) to be paid by the Customer towards the Service assessed in accordance with Clause 56 **(Financial Contributions)** below. This contribution will usually be paid directly to the Council but may be paid directly to the Provider;

**“Customer Information”** Means the personal information relating to a Customer and any other details of the Customer;

**“Days”** Means Monday to Sunday inclusive;

**“Default”** Means any failure, on the part of either party to carry out or respective obligations under this Contract;

**“Default Notice”** Means a notice setting out the nature of the Default committed and, if the Default can be put right, the action required to put it right and the timescale within which it is to be put right. Any such timescale must be reasonable in all the circumstances;

**“Exceptional Circumstances”** Means concerns regarding (but not limited to) performance, unacceptable levels of staff cover, fire damage, floods, evidence of criminal activity (including fraud), excessive complaints or any situation resulting in unacceptable levels of risk to Customers or staff;

**“Expiry Date”** Means; 30th April 2021;

**“Financial Assessment”** Means the review undertaken of the Customers financial situation by the Council to establish the amount the Customer will contribute to the cost of the Service;

**“Financial Year”** Means a period of12 months from 1st April in one year to 31st March in the next;

**“Mediator”** Means an individual who is appointed in accordance with Clause 33 **(Dispute Resolution)** to mediate between the parties if they are in dispute;

**“Persistent Default”** Means where the Provider has committed more than two Defaults during any consecutive period of 6 months, whether or not these are the same Defaults or different Defaults and even where the Default is corrected;

**“Premises”** Means the premises where the Service is to be provided which shall be detailed in the Customer Agreement.

**“Regulatory Body”** Means a body, which is, established either by statute or in some other way and to whose regulatory powers either or both parties are subject. However, this does not include any body of which membership is voluntary;

**“Resumption Notice”** Means a notice referred to in Clause 29 **(Defaults and Suspension);**

**“Request for Information”** Meansa request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

**“Schedule I”** Service Specification

**“Schedule II”** Schedule of Agreed Rates

**“Schedule III”** Sub-Lease

**“Schedule IV”** Inventory

**“Schedule V”** Contact Details

**“Serious Default”** Means a Default on the part of the Provider which materially prejudices the health, safety or the welfare of a Customer or Customers;

**“Service”** Means the Service outlined in Schedule I;

**“Sub-Contractor”** Means the contractors that enter into a Sub-Contract with the Provider;

**“Suspension Notice”** Means a notice served on the Provider under Clause 29 **(Defaults and Suspension)** which sets out details of the Service which are to be suspended whilst the Council carry out an investigation into a Serious Default;

**“Termination Notice”** Means a written notice served by one party to the other under Clause 29 **(Defaults and Suspension)** and31 **(Termination),** settingout details of the Service which are to be terminated;

**“TUPE”** Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (including any amendments made to these Regulations and the Acquired Rights Directive;

**“Variation”** Means a variation to this Contract or to the Service , made in accordance with Clause 34 **(Variations to the Contract)**;

**“Variation Notice”** Means a notice served in accordance with Clause 34 **(Variations to the Contract)**;

**“Working Days”** Means between 9:00am and 5:00pm Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays;

2.2 Unless the context makes it clear that this is not what is intended, any reference in this Contract to:

2.2.1 the masculine includes a reference to the feminine and vice versa;

2.2.2 the singular includes a reference to the plural and vice versa;

2.2.3 a person includes a reference to an individual or a firm, partnership, company or

corporation;

2.2.4 a ‘clause’ or a ‘schedule’ in this Contract means a reference to a clause or schedule of his Contract.

2.3 The headings in this Contract are for ease of reference only and do not affect its interpretation.

2.4 Any reference in this Contract to any enactment, order, regulation or other similar instrument is to be taken to mean a reference to any such enactment, order, regulation or other similar instrument which is in force for the time being. This includes (for as long as they are in force):

2.4.1 any amendments or modifications to any such enactment, order, regulation or other similar

instrument; and

2.4.2 any re-enactment of any such enactment, order, regulation or other similar instrument.

# 3. SPECIFICATION

3.1 All services under this Contract shall be delivered in accordance with any information in Schedule I and Schedule II, support plans and the terms and conditions herein.

**4. SUB LEASE**

4.1 The sub-lease of the premises to the Provider a copy of which is annexed hereto at Schedule III.

4.2 The sub lease granted by the Council to the Provider is to enable the performance of this contract, should the contract be terminated for any reason whatsoever the sub-lease shall also determine on the same date that the contract ends.

# 5. START AND DURATION OF THIS CONTRACT

5.1 The Contract will start on the Commencement Date and will continue until the Expiry Date (unless both parties agree, in writing, to bring forward or put back the Expiry Date), unless terminated in whole or in relation to any particular Service, under Clause 31 **(Termination).**

5.2 The Council reserves the right to extend the Contract for two separate periods of up to 12 months from the Expiry Date. This will be subject to satisfactory performance and written mutual agreement between the Council and the Provider.

**6. ENTIRE CONTRACT**

6.1 This Contract, the schedules and the documents annexed to it or otherwise referred to in it sets out all the terms and conditions which the parties have agreed regarding the provision of the Service and supersedes any representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered onto before the date of this Contract for the service to which this Contract relates.

**7. PRIORITY OF DOCUMENTS**

7.1 If there is any inconsistency or conflict between the clauses of this Contract and the Schedules, then the clauses will take precedence.

**8. ASSIGNMENT AND SUB-CONTRACTING**

8.1 The Provider must not:

8.1.1 assign its interest in the Contract to any other person; or

8.1.2 create any interest in the Contract or any part of it (for example, by way of a trust); or

8.1.3 create any security over this Contract or any part of it (for example, by way of a fixed charge) ;or

8.1.4 sub-contract the carrying out of its obligations under this Contract unless first obtaining written consent of the Council which shall not be unreasonably withheld or delayed.

8.2 Notwithstanding clause 8.1, consent will not be required by the Council for the Provider to create a floating charge over substantially the whole of the Provider’s assets or property(with the exception of the Premises granted by the Sub-Lease) and undertaking.

8.3 If consent is given to subcontract under Clause 8.1.4 it can be withdrawn provided that the Council acts reasonably in doing so and gives reasonable notice.

8.4 In the event that the Provider enters into any Sub-Contract under Clause 8.1.4 in connection with the Contract the Provider shall:

8.4.1 remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts, omissions, and neglects of its Sub-Contractors;

8.4.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

8.4.3 provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council’s Authorised Representative.

**9. AGENCY**

9.1 The Provider must not represent to anyone, nor allow any of its employees or agents to represent to anyone, that it is an agent or servant of the Council.

9.2 The Provider must not enter into any contract on behalf of the Council or on behalf of any of any of the Customers, or in any way claim that it is authorised to do so. This includes not binding the Council or any of the Customers to carrying out, varying, releasing or discharging any obligation, whether or not by way of a formal contract.

9.3 The Provider does not have the power under this Contract to make, vary, discharge or waive any bye-law or regulation of any kind and it must not represent itself as having any such power.

**10. AUTHORISED OFFICER**

10.1 The Council will appoint a person to exercise its rights and powers under this Contract, called the ‘Authorised Officer’. This will not limit in any way either its rights or obligations.

10.2 Details of the person appointed to act as Authorised Officer from Commencement Date (his telephone number, fax number, e-mail address and postal address) are set out in Schedule V.

10.3 The Authorised Officer will be entitled to appoint another person or persons to exercise some or all of his functions (each a ‘Deputy Authorised Office’) and must give the Provider at least 5 Working Days written notice.

10.4 The Council will be entitled to change the identity of the Authorised Officer (and the Authorised Officer may change the identity of any Deputy Authorised Officer) upon giving the Provider at least 5 Working Days written notice, unless for reasons beyond the Council or Authorised Officer’s control, this is not possible. In this instance the Council or Authorised Officer will notify the Provider by whatever means appears reasonable although any such notice will subsequently be confirmed in writing within 5 Working Days. If the contact details of the Authorised Officer or Deputy Authorised Officer change the Provider will be notified and supplied with updated contact details in accordance with Clause 40 **(Notices).**

10.5 Any such notice referred to in Clauses 10.3 or 10.4 must contain the same details regarding the replacement Authorised Officer or replacement Deputy Authorised Officer as are set out in the Schedule regarding the original Authorised Officer.

10.6 Until the Provider has been notified of any change in the identity of the Authorised Officer or the Authorised Officer has notified it of any change in the identity of a Deputy Authorised Officer, it will be entitled to treat the last person notified to it as the Authorised Officer or the Deputy Authorised Officer (as the case may be).

10.7 All notifications of changes under this Clause 10 **(Authorised Officer)** will be made in accordance with Clause 40 **(Notices).**

**11.** **CONTRACT MANAGER**

11.1 The Provider will appoint a person to exercise its rights and powers under this Contract, called the ‘Contract Manager’. This will not limit in any way either its rights or obligations.

11.2 Details of the person appointed by the Provider to act as Contract Manager from Commencement Date (his telephone number, fax number, e-mail address and postal address) are set out in Schedule V.

11.3 The Contract Manager will be entitled to appoint another person or persons to exercise some or all of his functions (each a ‘Deputy Contract Manager’) but if he does so, he must give the Council at least 5 Working Days written notice.

11.4 The Provider will be entitled to change the identity of the Contract Manager (and the Contract Manager may change the identity of any Deputy Contract Manager) upon giving the Council at least 5 Working Days written notice, unless for reasons beyond the Provider or Contract Manager’s control, this is not possible. In this instance the Provider or Contract Manager will notify the Council by whatever means appears reasonable although any such notice will subsequently be confirmed in writing within 5 Working Days. If the contact details of the Contract Manager or Deputy Contract Manager change the Council will be notified and supplied with updated contact details in accordance with Clause 40 **(Notices).**

11.5 Any such notice referred to in Clauses 10.3 or 10.4 must contain the same details regarding the replacement Contract Manager or replacement Deputy Contract Manager as are set out in the Schedule regarding the original Contract Manager.

11.6 Until the Council has been notified of any change in the identity of Contract Manager or the Contract Manager has notified the Council of any change in the identity of a Deputy Contract Manager, the Council will be entitled to treat the last person notified to it as the Contract Manager or the Deputy Contract Manager (as the case may be).

11.7 All notifications of changes under this Clause 11 **(Contract Manager)** will be made in accordance with Clause 40 **(Notices).**

# 12. CONTRACT PRICE AND PAYMENT

12.1 In consideration of the service set out in this Contract the Council undertakes to pay the Provider subject always to the terms, conditions and obligation. Payment of the Contract Price shall be in accordance with prices detailed in Schedule II four weekly in arrears provided that the Provider submits an invoice in line with clause 12.7.

12.2 Payment of the Contract Price will be made on the assumption that the Service has been delivered in accordance with this Contract. Where this is not the case payment may be withheld or reclaimed as appropriate.

12.3 For the avoidance of doubt the Contract Price is the total price for the Service.

12.4 Payment of the price will be inclusive of any additional third party funding such as Section 28A funding or any further grant or other payments received by the Council from other persons or statutory bodies.

12.5 Where the Council pays invoices no top up fees should be requested from the customer, their family or their advocate without first contacting Wokingham Borough Council Health and Wellbeing Finance.

12.6 The Provider shall submit a properly rendered invoice quoting the appropriate Purchase Order Number and period to which the invoice relates, to the Council at the following address:

Community Care Services (Finance)

Wokingham Borough Council

Civic Offices

Shute End

Wokingham

RG40 1WJ

12.7 In respect of the spot purchased services detailed in Schedules I and II. Invoices shall be broken down to show the amount and type of support for each customer and the Social Care ID number. All invoices shall be submitted gross at the rate stated in Schedule II. The Council will be responsible for the collection of any benefits, or other entitlements of its customers.

12.8 Where the Accounting period covers 31st March two separate invoices will need to be submitted; one to cover the start of the Accounting period to 31st March, then a second to cover the period from 1st April to the end of the Accounting Period.

12.9 The Contract Price does not include VAT. If VAT is payable then the Council must pay this in addition to the Contract price provided that the Provider supplies the Council with a proper VAT invoice.

12.10 The Council shall pay a properly submitted invoice within 28 days of receipt.

12.11 The Council reserves the right to reject and return any invoices not submitted strictly in accordance with the above terms and is entitled to set off against the Price, or any sums due to the Provider, any sums owed to the Council by, or recoverable from, the Provider.

12.12 Where the Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Contractor to the Sub-Contractor within a specified period not exceeding 28 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.

**Changes to Contract Price**

12.13 The Contract Price will not be varied in any way unless:

12.13.1 there are exceptional circumstances: or

12.13.2 in accordance with any clauses laid out in this Contract; and the Council agrees. Such

agreement will be at the Council’s sole discretion: or

12.13.3 at any time with a minimum of 1 weeks’ notice (or sooner by mutual   
 agreement) to take into account changes required to the Support to be  
 delivered in order to meet a Customers assessed needs, by an amount   
 determined by the Council for the spot purchased services detailed in Schedule I and II.

12.14 The Contract Price for the Service may be increased or decreased on 1st April in each Financial Year by an amount determined by the Council. The Council’s decision will take into account satisfactory contract performance, funding available and clear evidence must be provided to demonstrate the need for any increase. When a decrease needs to be considered this will take into account discussions with the Provider which will include assessing the impact on quality and the risk of implementing such a change.

**Late Payments**

12.15 If the Council is late in making any payment of the Contract Price then it must pay the Provider interest on the amount such late payment (unless the unpaid sum is in dispute between the parties). The interest will be calculated on a daily basis, from the date when a payment should have been made to the date when payment is actually made. The interest rate, which will apply will be the base rate of Barclays Bank plc from time to time, plus 2% per annum.

**Utilisation of Contract Price**

12.16 If the Provider does not utilise the full payment it is given, the Council may require it to repay any part of the payment not used.

**Cancelled or Missed Sessions of Support**

12.17 In respect of all Services noted on Schedule I:

12.17.1 the Council or Customer may cancel a respite or support session by giving the Provider a minimum of 24 hours’ notice, or shorter period by mutual agreement.

12.17.2 if a Customer does not attend for a respite session without giving any advanced notification, the Provider shall inform the Duty Team at Wokingham Borough Council within one working day.

12.18 In respect of the Outreach Day Support Service noted on Schedule I and Schedule II:

12.18.1 the Council shall continue to pay the Provider for the first week of absence.

12.18.2 at the end of the first week of absence the service will be resumed by mutual agreement between the Council and the Provider.

**Accounts and Financial Statements**

12.19 The Provider shall properly maintain accounts during the term of this Contract. The accounts shall contain a full and accurate record of all monies expended by the Provider in observing and fulfilling its obligations under this Contract. The accounts shall be prepared in accordance with generally accepted accounting principles and shall be audited on the Provider’s behalf by a firm of reputable Chartered Accountants (who shall be registered auditors).

12.20 The Provider shall supply the Council with copies of the accounts specific to the Service annually (or more frequently if required) and within 6 months of the date of termination of this Contract howsoever terminated.

12.21 The Provider shall notify to the Council in writing as soon as possible of any material financial irregularity, and shall provide details of any necessary action taken to remedy such irregularity.

**13. THE SERVICE STANDARD**

13.1 The Provider must provide the Service in accordance with its obligations under this Contract and with all the skill, care and diligence to be expected of a competent provider of services of a similar kind to the Service.

13.2 In providing the Service the Provider must also comply with:

13.2.1 any and all codes of practice, performance ratings and quality standards that are laid down in this Contract or that are issued to the Provider as part of an agreed Variation Notice; and

13.2.2 all statutory provisions which apply to the Service.

13.3 The Provider will notify the Council within 1 working day of any Enforcement Notice or statutory or regulatory action it is issued in relation to any Service to which this Contract applies.

# 14. CONTRACT MONITORING

14.1 The Service (as set out in Schedule I) is subject to Contract Monitoring which will be undertaken by the Council. The Provider shall use its best endeavours to co-operate in carrying our such monitoring and shall meet the deadlines laid out by the Council.

14.2 Contract Monitoring will be carried out in accordance with the arrangements set out in Schedule I. Any such process may be updated periodically by the Council.

14.3 The Council must allow the Council’s staff reasonable access to any premises and paperwork in relation to the Service at any time.

14.4 The Provider shall;

14.4.1 notify the Council within two working days of any inspection carried out by the Care Quality Commission and provide written details of any requirements or recommendations made by the Commission’s inspectors, and the actions that will be taken to meet the requirements, within fourteen days of the inspection. The Provider shall also provide details of any other formal internal or external monitoring, evaluation or review of the effectiveness of the Service.

# 15 STATUTORY DUTIES

15.1 The Provider shall observe and perform the requirements of all Acts of Parliament, subordinate legislation made under or by virtue of provisions of any Act of Parliament, and regulations and directives of the European Communities or the European Union for the time being in force and which relate to the Service. Inclusion in other provisions of this Contract of conditions relating to specific identified legislation shall not prejudice the generality of this clause.

15.2 Any reference in this Contract to any Act of Parliament, subordinate legislation or to any Regulation or Directive of the European Communities or the European Union shall be construed as including a reference to the same as applied, amended or re-enacted by any subsequent such Act, subordinate legislation, Regulation or Directive as the case may be.

15.3 In complying with Clauses 15.1 and 15.2, the Provider must allow the Council or authorised agents access to:

15.3.1 the Provider’s employees; and

15.3.2 all information, reports, financial accounts, documents, records (whether in human or machine readable form) and data which is held or accessible

in each case who or which are relevant to this Contract or the Service.

15.4 The Council must be allowed to take copies of the information, reports, etc. referred to in Clause 15.3.2.

15.5 Any information, reports etc. made available under Clause 15 **(Statutory Duties)** shall be treated as Confidential Information and therefore subject to the provisions of Clause 24 (**Confidentiality**) except where it is required in respect of the Freedom of Information Act 2000.

# 16. COMPLAINTS AND WHISTLEBLOWING

16.1 The Provider must have complaints and whistle blowing procedures in place which comply with the requirements of any Regulatory Body to which the Provider is subject, including any change in such requirements, and reflect best practice. The Provider must supply the Council with a copy of either procedure on request.

16.2 All complaints and whistleblowing activity including their outcome must be recorded and this information made available to the Council upon request.

16.3 All staff must be made aware of both policies within the first week of commencing employment.

16.4 Customers must receive a copy of the complaints process upon commencement of the Service. This should be provided in a suitable format.

# 17 SAFEGUARDING CHILDREN AND ADULTS

# Safeguarding Children

17.1 ‘Working Together to Safeguard Children’ and ‘Section 11 of the Children Act 2004’ places a statutory duty on all providers ‘who provide services for, or work with children or young people, to ‘safeguard and promote the welfare of children’.

17.2 The Provider shall at all times comply with the requirements of Section 11 of the Children Act 2004 and the Child Protection procedures relevant to the Local Safeguarding Children Board (LSCB) in which the child is placed (e.g. Berkshire Child Protection Procedures). The Provider will at all times have arrangements (“the Provider’s Arrangements”) in force for safeguarding and promoting the welfare of children which are compliant with the local LSCB Child Protection Procedures and the Provider’s duties in ‘Working Together to Safeguard Children’ and will ensure that any additional internal procedures or inter-agency protocols are consistent with these procedures.

**Safeguarding Adults**

17.3 The Provider shall at all times comply with the requirements of the Berkshire Safeguarding Adults Policy and Procedures, including any updates and/or replacement documents, and also comply with the requirements of any Regulatory Body to which the Provider is subject, including Deprivation of Liberty regulations and any change in such requirements. The Provider will at all times have arrangements (“the Provider’s Arrangements”) in force for safeguarding and promoting the welfare of vulnerable adults which are compliant with the local Safeguarding Adults Procedures and will ensure that additional internal procedures or inter-agency protocols are consistent with these procedures.

**Safeguarding requirements applying to both Adults and Children**

17.4 Providers shall ensure that:

17.4.1 All staff and volunteers (including temporary staff) ‘are made aware of the Provider’s arrangements’;

17.4.2 They publish written policies that explicitly state ‘clear priorities for safeguarding and promoting the welfare of children and vulnerable adults’ in ‘strategic policy documents’ and that they ensure the effective dissemination and implementation of these policies to staff and volunteers;

17.4.3 They provide a ‘clear line of accountability within the organisation for work on safeguarding’ and promoting welfare and demonstrate ‘a clear commitment by the Provider to the importance of safeguarding and promoting welfare’;

17.4.4 Their staff and volunteers are subject to Safer Workforce processes and checks, including, ‘recruitment and human resources management procedures that take account of the need to safeguard and promote welfare, including arrangements for appropriate checks on new staff and volunteers’, this includes conducting appropriate checks with the Disclosure and Barring Service (DBS);

17.4.5 They adhere to local LSCB ‘Procedures for dealing with allegations of abuse against members of staff and volunteers’, including arrangements for notifying the Local Authority Designated Officer (LADO), for Services in relation to Children and Young People;

17.4.6 They ensure that all staff and volunteers undertake appropriate training and to ensure that this is kept up-to-date by refresher training at regular intervals;

17.4.7 They respect the confidentiality of individuals and adhere to Wokingham Borough Council’s LSCB Information Sharing and Assessment Protocol, which summarises local ‘arrangements to work effectively with other organisations to safeguard and promote welfare, including arrangements for sharing information’, (subject to any relevant provisions of the Data Protection Act);

17.4.8 They disseminate and implement appropriate whistle-blowing procedures and a culture that enables issues about safeguarding and promoting the welfare of children and vulnerable adults to be addressed;

17.4.9 They maintain accurate and up-to-date records of decision making and actions taken;

17.4.10 They are at all times sensitive to needs arising from race, culture, religion, sexual orientation or linguistic background;

17.4.11 The furnish the Client or their agents on their reasonable request, with copies of their records relating to any of the above

17.5 The Provider should refer to the LSCB’s website for Safeguarding resources (‘Safeguarding Toolkit’) to assist them in fulfilling these responsibilities.

17.6 Compliance with these minimum standards will primarily be monitored in review meetings by the Contract Manager/officer

17.7 The Local Safeguarding Children Board will monitor Provider compliance with Safeguarding requirements in its Section 11 Audit (Section 11 of the Children Act 2004). Failure to comply with any part of the Clause will be deemed a material Breach of the Contract.

17.8 The Provider must make available a copy of any of their internal safeguarding policies and procedures to the Council on request.

17.9 Upon the Council’s reasonable request, a copy of the Provider’s records relating to the protection of vulnerable adults and children from abuse made in relation to the Service(s) and its response must be supplied.

17.10 The Provider shall adopt Safeguarding Policies and such policies shall comply with the Pan Berkshire Safeguarding Policies as amended from time to time and the Provider shall comply at all times with any new local or national safeguarding policies which may be introduced.

17.11 At the reasonable written request of the Council and within the specified timescale the Provider must provide evidence to the Council that it is addressing any safeguarding concerns.

17.12 If requested by the Council the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

# 18 STAFF

18.1 The Provider must employ sufficient numbers of people of sufficient ability, skill, knowledge, training or experience so as to properly provide and to supervise the proper provision of any Service to which this Contract applies

18.2 In providing the Service, the Provider shall use personnel who have the necessary standard of English language skills to enable the Council to fulfil its fluency duty set out in the Code of Practice issued under Section 80 of the Immigration Act 2016.

18.3 If the Provider has to hire agency staff to cover the absence of permanent staff, the Provider must ensure these staff have sufficient ability, skill, knowledge, training or experience so as to properly provide the Service.

18.4 The Provider must carry out checks with the Disclosure and Barring Service on all staff employed and/or (if any) volunteers engaged.

18.4.1 These checks must be at the enhanced level where staff and any volunteers provide or supervise the provision of the Service.

18.4.2 These checks must be at least at the standard level for staff and any volunteers who do not directly provide the Care Services but do come into regular contact with Customers.

18.4.3 All checks must be renewed every three years

18.4.4 The Provider must secure approval from all staff, on commencement of employment to

allow the Council to inspect DBS checks.

18.4.6 The Provider must allow the Council to undertake random inspections of DBS checks.

18.4.7 The Provider must adhere to the Safeguarding Vulnerable Groups Act 2006.

18.4 The Provider shall not engage a member of staff in the Service, in any position to which this Clause would apply prior to the receipt of a satisfactory check. In complying with this Clause it is agreed that the Provider must ensure that any relevant requirements or guidance issued by the Disclosure and Barring Service or any other Regulator are performed or observed as the case may be.

18.5 The Provider must make available to the Council on request all relevant information and records which relate to the action and decision the Provider has taken in the instance where a disclosure has been made as a result of a DBS check.

# 19 EQUAL OPPORTUNITIES

19.1 The Provider shall adopt a policy to comply with the requirements of the Equality Act 2010 and accordingly shall not treat one individual or group of people less favourably than others because of colour, race, nationality, ethnic origin, religion or belief, gender, gender reassignment, sex, sexual orientation, disability, age, marital status or because they have entered into a civil partnership, pregnancy or maternity and further shall seek to promote equality among its Personnel and generally.

19.2 Pursuant to Clause 25.1 the Provider shall also observe as far as possible the Equality Act Codes of Practice produced by the Equality and Human Rights Commission, which accompany the Equality Act 2010.

19.3 The Provider shall set out its equal opportunities policy:

19.3.1 in instructions to those concerned with the recruitment, training and promotion;

19.3.2 in documents available to its Personnel, recognised trade unions or other representative

groups of its Personnel;

19.3.3 in advertisements and other literature

19.4 The Provider shall on request provide the Council with examples of such instructions, documents, advertisements and literature

19.5 In the event of any finding of unlawful discrimination or recommendation being made against the Provider by any court or tribunal, or of any adverse finding or recommendation in any formal investigation, the Provider shall take appropriate steps to address the recommendations or to prevent repetition of the unlawful discrimination and shall, upon request, provide the Council with details of any steps taken.

19.6 The Provider shall indemnify the Council in respect of any costs and legal expenses incurred in defending any action brought about by the Equality and Human Rights Commission and/or any third party against the Provider for non-compliance with the Act and/or any Codes of Practice as a result of the breach of this clause by the Provider.

19.7 The Provider shall take all reasonable steps to ensure that Provider’s personnel engaged in the performance of the Contract do not act towards either the Council staff, Customers or members of the public in a manner that could amount to harassment on any of the grounds mentioned in Clause 19.1

# 20 HUMAN RIGHTS

20.1 The Provider acknowledges that:

20.1.1 in performing its obligations under this Contract it may be a public authority for the purposes of the Human Rights Act 1998; and,

20.1.2 that it is unlawful to exercise functions deemed to be of a public nature in a way that is incompatible with those rights contained in the European Convention of Human Rights and incorporated into English Law by the Human Rights Act 1998.

20.2 In providing the Service the Provider shall throughout the Contract term and at its own cost be subject to the same duty in respect of Human Rights in the same way as if it were the Council.

20.3 The Provider shall undertake or refrain from undertaking such actions as the Council may request so as to enable the Council to discharge its duty under the Human Rights Act 1998.

**21** **RECORDS AND INFORMATION**

21.1 The Provider must compile and maintain such information as may reasonably be required by the Council to monitor the Provider’s adherence to the terms, conditions and schedules of this Contract.

21.2 The Provider must make available to the Council the information referred to in Clause 21.1 within any deadline set and ensure that the information is complete and correct.

21.3 The Provider must also provide upon reasonable request (but subject to Clause 22 **(Data Protection)** and24 **(Confidentiality)**) to the Council:

21.3.1 all other information which may reasonably be required by the Council for the purpose of assessing how the Providers obligations under this Contract are being carried out and the safety and the welfare of the Customers; and

21.3.2 information on, and the names of, the Customers.

21.4 In accordance with Clause 21.3, the Provider must seek authorisation from all Customers on commencement of the Service to allow the Council to review their file as part of the contract monitoring process.

21.5 Notwithstanding Clause 21.3, the Provider must allow the Authorised Officer or any person authorised by him, together with the appropriate staff, at all reasonable times to inspect or witness the provision of the Service.

21.6 In inspecting or witnessing the provision of the Service, the Council will have proper regard to the nature of the Service being provided, particularly where this involves victims of domestic violence or other sensitive services for vulnerable client groups.

21.7 The Provider must notify the Council in writing if:

21.7.1 there is a change in who controls the majority of the shares in or the voting rights amongst the shareholders or members of the Provider;

21.7.2 the Provider changes its name;

21.7.3 the Provider merges with another organisation;

21.7.4 the Provider transfers its engagements to another organisation;

21.7.5 the Provider in any way transfers its business to another organisation;

21.7.6 as a result of any misconduct or mismanagement on the part of the Provider a Regulatory Body directs an inquiry into, or makes an order of any kind in relation to, its affairs; or

21.7.7 any registration which must be maintained by the Provider in order to provide any of the Service is withdrawn or cancelled or is threatened to be withdrawn or cancelled.

21.8 The Provider must ensure that all information provided to Customers is provided in a clear and easily comprehensible format, appropriate to the customer group(s).

21.9 If as result of termination or contract expiry the Service(s) are to be taken over in part or full by an alternative provider, the Provider must co-operate with the incoming provider. This includes providing information in a timely manner and within any deadline set and liaising with the incoming provider regarding a handover of Customers cases.

# 22 DATA PROTECTION

22.1 The Provider must comply in all respects with the provisions of the Data Protection Act 1998 and it’s eight Data Protection principles and will indemnify the Council against all actions, costs, expenses, claims proceedings and demands which may be made or brought against the Council for breach of any statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Provider and agents.

22.2 The Provider shall take appropriate technical and organisational measures against any unauthorised or unlawful processing of personal data (as defined in the Data Protection Act 1998) and against accidental loss or destruction of or damage to personal data.

22.2.1 The measures taken must ensure a level of security appropriate to:

22.2.1.1 the harm that might result from such unauthorised or unlawful processing or by accidental loss, destruction or damage to such personal data, and

22.2.1.2 the nature of such data to be protected.

22.3 The Provider shall use reasonable endeavours to ensure the reliability of any of its employees who have access to such personal data.

22.4 The Provider shall in relation to this Contract, process data only under instructions given by, or on behalf of, the Council and by no other person.

22.5 The provisions of this Clause 22 shall apply during the continuance of the Contract and indefinitely after the expiry or termination.

**23** **HEALTH AND SAFETY**

23.1 The Provider must comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to the provision of the Service.

23.2 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 and shall comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Provider’s health and safety procedures.

# 24 CONFIDENTIALITY

24.1 The Provider must use its best endeavours to ensure that subject to Clause 22 **(Data Protection)** it (and any person employed or engaged by it in connection with the provision of the Service in the course of such employment or engagement) will:

24.1.1 only use Confidential Information for the purposes of this Contract; and

24.1.2 not disclose any Confidential Information to any third party without the prior written consent of the Council (which it shall be entitled to refuse without giving any reason); and

24.1.3 not use the Confidential Information for the solicitation of business from the Council.

24.2 The provisions of Clause 24.1 shall also apply to the Council.

24.3 Notwithstanding the provisions of Clauses 24.1 and 24.2 both parties shall be allowed to disclose any Confidential Information to any consultant, contractor or other person engaged by either party in connection with this Contract or the provision of the Service provided that in each such case the consultant, contractor or person concerned has signed a confidentiality undertaking on substantially the same terms as set out in Clause 24 **(Confidentiality).**

24.4 The restrictions in Clauses 24.1 and 24.2 shall not prevent either party disclosing to the other (or to any other person) Confidential Information about a Customer where this is in the best interests of the Customer concerned or such disclosure is necessary so as to protect the health, safety or the welfare of the Customer or other Customers.

24.5 The restrictions in Clause 24.1 and 24.2 shall continue to apply after the Contract has come to an end or, if it takes place earlier, termination of the whole of this Contract but they shall not apply (whether whilst this Contract is in force or after) to information which:

24.5.1 is in, or comes into, the public domain (except if this is as a result of a breach by either parties of this Clause);

24.5.2 is required to be disclosed by law;

24.5.3 was already in the possession of either party without any restriction as to its use; or

24.5.4 subsequently lawfully comes into the possession of either party from a third party; or

24.5.5 is required to be disclosed by any Regulatory Body or governmental body.

24.6 This Clause has effect subject to the provisions set out in Clause 25 **(Freedom of Information).**

# 25 FREEDOM OF INFORMATION

25.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Provider’s expense) to enable the Council to comply with these information disclosure requests.

25.2 The Provider shall and procure that its Sub-Contractors shall:

25.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

25.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

25.2.3 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.

25.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

25.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or

25.3.2 is to be disclosed in response to a Request for Information.

25.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

25.5 The Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs’ 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:

25.5.1 without consulting with the Provider; or

25.5.2 following consultation with the Provider and having taken its view into account.

Provided always that where Clause 25 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.

25.6 The Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

25.7 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 25.

# 26 INSURANCE

26.1 For as long as this Contract is in force the Provider must take out and maintain as a minimum the insurances set out in Clause 26.3. These insurances must cover every aspect of the Service(s) to be provided under this Contract and associated Schedules.

26.2 The Provider must also ensure that any Sub-Contractors who are providing any or all of the Service(s) on its behalf take out and maintain equivalent insurances, as a minimum.

26.3 The insurances referred to in Clause 26.1 and 26.2 are as follows:

26.3.1 **Employers Liability** insurance in compliance with statutory requirements and provisions; and

26.3.2 **Public Liability** insurance with a Limit of Indemnity of £5,000,000 or such alternative or higher amount as the Council may from time to time require, applying to each and every claim or series of claims arising from any one cause; and

26.3.3 where the Provider gives advice of any nature whatsoever whilst undertaking the service, an indemnity in respect of which is not provided by the insurance required in Clause 26.3.2 above, **Professional Indemnity** insurance with a Limit of Indemnity of no less than £1,000,000 or such alternative or higher amount as the Council may from time to time require, in the aggregate in any one period of insurance; and

26.3.4 **Medical Malpractice/ Treatment Risk** insurance with a Limit of Indemnity of no less than £5,000,000 or such alternative or higher amount as the Council may from time to time require, in the aggregate in any one period of insurance, if the Provider administers any form of medication (from simply helping someone to access their tablets from a pre-packaged dispensing unit to giving injections), or provides any form of medical treatment, whilst undertaking the service, an indemnity for which is not provided by the insurances required in Clauses 26.3.2 and/or 26.3.3 above; and

26.3.5 **Motor** Insurance where Clause 52 **(Transport)** applies; and

26.3.6 any other insurance(s) which the Council may from time to time require in respect of the services being provided under this Contract.

26.4 Where under the terms of this Contract the Provider is required to purchase Professional Indemnity or Medical Malpractice/Treatment Risk insurance such insurance must be maintained in force for a minimum period of 6 years after the expiry of this Contract.

**Evidence of Insurance**

26.5. The Provider must produce to the Council annually where requested (or such other time at the Council’s request acting reasonably) a copy of the policy schedule(s) and/or certificate(s) where applicable for the insurances referred to in Clause 26.3

26.5 If the Provider has received advice from a professionally qualified insurance intermediary that Professional Indemnity and/or Medical Malpractice/Treatment Risk insurance is not required, or it the Provider holds such cover with a lower Limit of Indemnity than specified in Clauses 26.3.3 or 26.3.4, the intermediately must provide written confirmation on its headed business paper that the insurance cover the Provider has in place is sufficient and adequate to fully indemnify the Provider in respect of all risks and/or claims that may reasonable be anticipated to arise from the provision of the services under this Contract including, but not limited to, the provision of any advice, medical treatment or the administration of any form of medication. Such letter must be produced and provided annually, where requested, of the Provider’s other insurances.

# 27 THE PROVIDER’S LIABILITIES AND INDEMNITIES

27.1 The Provider must fully and promptly indemnify the Council against all direct (but not indirect or consequential) losses, damages, costs, expenses, liabilities, claims or proceedings, whether these arise under statute or common law, (together referred to as “the Council’s losses”) which the Council suffers as a result of any negligence, default or breach of statutory duty on the Provider’s part in carrying out its obligations under this Contract or on the part of any person it employs or engages to carry out its obligations under this Contract.

27.2 The Provider will not be liable to indemnify the Council as set out in Clause 27.1 to the extent that the Council’s losses are due to any negligence, default or breach of statutory duty on the Council’s part, or on the part of any of its employees acting in the course of their employment.

27.3 The Provider’s liability for any of the Council’s losses which relate to death or personal injury shall be unlimited.

# 28 THE COUNCIL’S LIABILITIES AND IDEMNITIES

28.1 The Council must fully and promptly indemnify the Provider against all direct (but not indirect or consequential) losses, damages, costs, expenses, liabilities, claims or proceedings, whether these arise under statute or common law, (together referred to as “the Provider’s losses”) which the Provider suffers as a result of any negligence, default or breach of statutory duty on the Council’s part in carrying out its obligations under this Contract or on the part of any person it employs or engages to carry out the Council’s obligations under this Contract.

28.2 The Council will not be liable to indemnify the Provider as set out in Clause 28.1 to the extent that the Provider’s losses are due to any negligence, default or breach of statutory duty on the Provider’s part, or on the part of any of its employees acting in the course of their employment.

28.3 The Council’s liability for any of the Provider’s losses which relate to death or personal injury shall   
 be unlimited

**29** **DEFAULTS AND SUSPENSIONS**

**Defaults**

29.1 If the Provider commits a Default then the Council will be entitled to serve on the Provider a Default Notice. This will be without prejudice to any other right or remedy which may be available to the Council, either under this Contract or at law.

29.2 If the Council serves on the Provider a Default Notice which relates to a Default which can be put right, then on receiving such a Default Notice, the Provider will take the action specified in the Notice within the timescale set out, at its own cost.

29.3 The Provider will be entitled to apply the provisions of Clauses 29.1 and 29.2 except that if the Default concerned is a failure to pay the Contract Price on time then the Council must make such late payment within 10 Working Days of the Default Notice being served.

29.4 If there is any disagreement between the parties as to whether a Default has occurred and/or about the action required to be taken and/or the timescale within which the action is to be taken, then either party can refer the matter for resolution, in accordance with Clause 33 **(Dispute Resolution)**.

**Persistent Defaults**

29.5 If the Provider commits a Persistent Default or fails to put right a Default within the timescale set out in the Default Notice concerned, then the Council (acting reasonably) will be entitled to terminate the application of this Contract to the Service concerned by giving the Provider reasonable notice.

**Suspension**

29.6 If the Default is a Serious Default (and if it is, the Default Notice must say so) then the Council will be entitled to arrange for a competent person (which may be one of its employees) to carry out an investigation into the Serious Default.

29.7 If the Council considers (acting reasonably) that:

29.7.1 the Serious Default is of such seriousness; or

29.7.2 there is a continuing threat to the health, safety or welfare of any or all of the Customers

such that in either case it is not appropriate for the Provider to carry on providing any or all of the Service then the Council will also be entitled to serve on the Provider a Suspension Notice.

29.8 Where a Vulnerable Adults complaint is made against the Provider or any member of staff, the Council reserves the right to serve a Suspension Notice and remove the Customer(s) from the Premises (if required) whilst any investigation into an allegation takes place.

29.9 If the Council serves a Suspension Notice then:

29.9.1 the Provider will cease providing the Service set out in the Suspension Notice from the date specified in the Suspension Notice; and

29.9.2 the Council will be entitled either to provide some or all of the Service or employ another person to do so on its behalf for as long as the Suspension Notice is in force.

29.10 The Council will ensure that any investigation is carried out as quickly as possible and the Council will make available to the Provider a copy of the report of the investigation’s findings as soon as possible after it has been made available to the Council.

29.11 If the Provider has been served with a Suspension Notice then as soon as possible after the Council have received the report of the investigation, it shall consider (acting reasonably) whether or not the Provider will resume provision of the suspended Service.

29.12 If the Council considers that the Provider is to resume provision of some or all of the suspended Service then it will serve on the Provider a Resumption Notice which shall set out the Service to be resumed and the date upon which they are to be resumed.

29.13 The Council will set out in the Resumption Notice such conditions relating to the resumption of the Service as may be reasonable.

29.14 If the Council decides that the Provider is not to resume provision of some or all of the suspended Service then:

29.14.1 it will be entitled to give notice terminating the application of this Contract to the Service concerned, with immediate effect; or

29.14.2 if it considers, acting reasonably, that the findings of the investigation reflect on the Provider’s ability to carry out the Service generally it will be entitled to give the Provider notice terminating the entire Contract with immediate effect.

29.15 During any period of suspension the Council will continue to pay the Contract Price but if notice of termination is given to the Provider either in accordance with Clause 29.14.1 or 29.14.2, then the Provider must repay all sums paid to it during the period of suspension which relate to the suspended Service concerned. If these sums are not repaid within 20 Working Days of any notice of termination, then the Council will be entitled to recover these sums as a debt and will apply interest in accordance with that outlined in Clause 12.15.

**30** **REMODELLINGAND REPRICING**

30.1 Where the Council wishes to re-model or re-price the Service, three months’ notice will be given.

**31 TERMINATION**

31.1 Notwithstanding the clauses below, either party may terminate this Contract or its application to a particular Service by giving no less than three months written notice to the other (or shorter period by written mutual consent).

**Termination by the Council**

31.2 The Council may terminate this Contract or reduce funding (with corresponding changes to the Service) to the Provider upon giving no less than three months’ notice if the funding is insufficient to continue funding the Service.

31.3 The Council is entitled to terminate this Contract in its entirety or in part in line with Clause 29 **(Defaults and Suspension).**

31.4 The Council is entitled to give written notice terminating this Contract in its entirety or in part with immediate effect and recover from the Provider any loss resulting from such termination where:

31.4.1 the Provider is an individual and is declared bankrupt, or a bankruptcy petition is filed against it at court, or it attempts to make or make a composition or arrangement for the benefit of its creditors; or

31.4.2 the Provider is a corporate body and it has a receiver or liquidator appointed over it; or

31.4.3 the Provider commits or causes the commission of any criminal offence in Providing the Service (except for any minor offence or minor traffic offence); or

31.4.4 the Provider or any person employed or acting on the Provider’s behalf (with or without the knowledge of the Provider) shall have given or agreed to give any gift or consideration as an inducement or reward in order to obtain the contract or any other contract with the Council; or

31.4.5 in relation to any contract with the Council, the Provider or any person employed by or acting on the Provider’s behalf, commits any offence under the Bribery Act 2010, or any subsequent amendment, or shall have given any fee or reward, the receipt of which is an offence section 117(2) of the Local Government Act 1972; or

31.4.6 collusion has taken place between two (or more) tenderers in fixing or adjusting bids submitted for the contract concerned.

31.4.7 the Provider’s registration is withdrawn by the Care Quality Commission.

31.5 The Council may terminate this Contract in whole or in part with immediate effect if the Provider fails to comply with the requirements laid out in Clause 17 **(Safeguarding Children and Adults)**

31.6 If the Council terminates the whole or any part of this Contract or its application to a particular Service under Clause 29 **(Defaults and Suspensions)** then:

31.6.1 the Provider will continue to provide the Service during the period of notice unless the Council requests otherwise;

31.6.2 the Council shall be entitled:

31.6.2.1 to retain any monies owed to the Provider by the Council under this Contract until the Provider shall have paid all monies owed to the Council under this Contract; or

31.6.2.2 to deduct any such monies owed under this Contract from the monies owed to the Provider under this Contract; and

31.6.2.3 to recover any such monies to compensate for the administrative costs incurred as a result of such material default or termination.

in any case without prejudice to the provisions of Clause 39 **(Recovery of Sums Due).**

**Termination by the Provider**

31.7 If:

31.7.1 on three separate occasions in any period of 12 months (whether consecutive or not) a Default Notice has been served on the Council for failure to pay the Contract Price on time; or

31.7.2 the Council has committed a Default which is a substantial breach of any material term of this Contract

then the Provider may terminate this Contract as a whole by giving the Council not less than three months written notice.

31.8 If the Provider terminates this Contract or its application to a particular Service under Clause 31.7 then it will continue to provide the Service during the period of notice unless requested otherwise in writing to which the Council agrees.

31.9 If this Contract or its application to a particular Service is terminated, whether under Clause 29 **(Defaults and Suspension)** or Clause 29 **(Termination)**, then:

31.9.1 the provisions of Clause 37 **(Information and Re-tendering)** shall apply; and

31.9.2 the Council shall continue to pay the Contract Price throughout the notice period (whether or not it has requested the Provider to stop providing the Service during such period).

# 32 FORCE MAJEURE

32.1 If either party fails to carry out their respective obligations under this Contract as a result of force majeure then whichever party is affected shall not be liable under this Contract for such failure.

32.1.1 this is subject to the proviso that whichever party is affected shall have given the other written notice that such failure is the result of force majeure within 10 Working Days of such failure occurring.

32.2 If an event of force majeure occurs then the Council shall meet with the Provider to discuss how best the Provider can continue to provide the Service until the force majeure event ceases, which may include the Council providing assistance, where possible.

32.3 In this Clause ‘force majeure’ means acts of war, acts of God, decrees of Government, riots, civil commotion, and any event or circumstance which is both beyond the control whichever party is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight.

32.4 For the avoidance of doubt ‘force majeure’ shall not include any labour dispute between the Provider and its staff or the failure to provide the Service by any of the Provider’s Sub-Contractors.

# 33 DISPUTE RESOLUTION

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

33.2 If after 28 Days (or such longer period as both parties may agree) of the date of the notice referred to in Clause 33.1 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 Chief Officer of the Council (or a person appointed by him to act on his behalf) and a senior officer of the Provider, to resolve, negotiating on the basis of good faith.

33.3 If after 28 Days (or such longer period as both parties may agree) of the date of the notice referred to in Clause 33.2 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.

33.4 If the parties do not agree on the identity of the Mediator then either party may request CEDR to appoint one.

33.5 The procedure in the Model Procedure will be amended to take account of:

33.5.1 any relevant provisions of this Contract; or

33.5.2 any other agreement which parties may enter into in relation to the conduct of the mediation (“Mediation Contract”).

33.6 Both parties must:

33.6.1 use their best endeavours to ensure that the mediation starts within 20 Working Days of service of the notice referred to in Clause 33.3; and

33.6.2 pay the Mediator’s fee in equal shares

33.7 Any agreement the Council reaches with the Provider as a result of mediation shall be binding on both parties as set out in the Model Procedure, but if the dispute has not been settled be mediation within 10 Working Days of the mediation starting then either party may commence litigation proceedings (but not before then).

33.8 Neither party shall be precluded by Clause 33.7 from taking such steps in relation to court proceedings as either party may deem necessary or desirable to protect their respective positions. This shall include but is not limited to:

33.8.1 issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; and

33.8.2 applying for interim relief.

33.9 The use of the dispute resolution procedures set out in this Clause 33 **(Dispute Resolution)** shall not delay or take precedence over the provisions for termination set out in Clauses 29 **(Defaults and Suspensions)** and 31 **(Termination)**

**34 VARIATIONS TO THE CONTRACT**

34.1 A variation to this Contract (including to the scope and nature of the Service) shall only be valid if it has been agreed in writing and signed by both parties (such agreement must not be unreasonably withheld or delayed).

34.2 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.

34.3 If either party receives a Variation Notice then within 28 Days of receipt it shall notify the other whether or not it agrees to the variation and if not, the reasons.

34.4 If neither party agrees with the variation, then this will be remedied in accordance with the clause relevant to the variation within this Contract.

**35** **ADDITIONAL SERVICE PROVISION**

35.1 The Council may request additional services be delivered by the Provider at a price to be agreed.

# 36 WAIVER

36.1 If either party fails to exercise or delays in exercising any right or remedy to which it is entitled under this Contract or at law then this shall not constitute a waiver of any such right or remedy.

36.2 If either party waives a Default on the part of the other then this shall not constitute a waiver of any future Default.

36.3 No waiver shall be effective unless it is:

36.3.1 expressly stated to be a waiver;

36.3.2 in writing; and

36.3.3 signed by the Authorised Officer or Contract Manager as appropriate.

**37** **INFORMATION AND RETENDERING**

37.1 Subject to Clause 22 **(Data Protection)** and 24 **(Confidentiality)** at the Council’s reasonable request, the Provider must provide the Council with such information and data as the Council may reasonably require to enable the Council to prepare the necessary documentation to appoint another person to provide the Service in place of the Provider.

37.2 The requirement set out in Clause 38.1 does not include any information of data which is considered commercially sensitive.

**38** **TUPE**

38.1 Subject to Clause 22 **(Data Protection)** and 24 **(Confidentiality)** the Provider must provide the Council with such information as it may reasonably require to enable it to comply with its obligations under TUPE when either this Contract comes to an end or it ceases to apply to a particular Service.

38.2 The Provider must supply the Council with the information referred to in Clause 38.1:

38.2.1 at the Councils reasonable request made at any time in the 9 months before and Expiry Date; or

38.2.2 (if this Contract or its application to a particular Service is terminated on notice) within 20 Working Days of the Providers giving or receiving notice of any such termination; or

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

38.3 The Provider must ensure that it complies with the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (including all the amendments made to these Regulations since 2006). The Provider hereby indemnifies the Council and any future employer of staff (accepting a transfer of the Providers staff as a result of TUPE) from and against all losses, costs, demands, expenses and damages as a result of the Providers non-compliance with the provisions of this Clause.

# 39 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

39.1 Notwithstanding any other provision of this Contract, nothing in this Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

**40 NOTICES**

40.1 Any notice or other communication under this Contract must be in writing and can only be sent by recorded delivery post, personal delivery or fax to the Authorised Officer (if the notice is being sent by the Provider) or to the Contract Manager (if the notice is being sent by the Council), including any nominated Deputies. Contact details are set out in Schedule V.

40.2 If either the Council’s or the Provider’s address or fax number changes, they must notify the other in accordance with Clause 40 **(Notices)**

40.3 Subject to Clause 40.4, any notice or communication shall be deemed to have been served on the date that it is delivered by hand or fax transmission, or if sent by recorded delivery on the date when it would be delivered in the ordinary course of post (two Working Days after the date when posted).

40.4 Notwithstanding Clause 40.3, if by applying its provisions a notice is deemed to have been served on a day which is not a Working Day or it is not received between the hours of 9am to 5pm on a Working Day, then it shall be deemed to have been served on the next immediately following Working Day.

**41** **RECOVERY OF SUMS DUE**

41.1 If either party owes the other money under this Contract, then the party who is owed the money may set off any such sum against any money it subsequently owes to the other under this Contract.

# 42 LAW AND JURISDICTION

42.1 This Contract shall:

42.1.1 be governed by and shall be construed in accordance with English law; and

42.1.2 be subject to the exclusive jurisdiction of the Courts of England and Wales, to which both parties shall submit.

**43** **SEVERABILITY**

43.1 If one or more of the provisions of this Contract are or become to any extent invalid or unenforceable under any applicable law then the remainder of this Contract shall continue in full force and effect.

43.2 If this happens then both parties shall enter into good faith negotiations to amend the provision concerned in such a way that as amended, it is valid and enforceable and to the maximum extent possible, carries out both parties original intent.

**44** **REMEDIES CUMULATIVE**

44.1 Any remedy or right which either party may exercise in relation to a Default committed by the other shall be in addition to, and shall be capable of being exercised without prejudice to, all other rights and remedies available to either party.

**45** **THE COUNCIL’S FUNCTIONS AS A LOCAL AUTHORITY**

45.1 Nothing in this Contract shall prejudice or affect the Council’s rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

**46** **BEST VALUE**

46.1 In undertaking the Service the Provider must use reasonable endeavours to secure demonstrable, measurable and continuous improvement (having regard in particular to economy, effectiveness and efficiency) in the performance of the Service; the time, cost, quality and health and safety standards within the various processes of the Service and generally to provide best value to the Council and Customers.

# 47 NO PARTNERSHIP

47.1 Nothing in this Contract shall be deemed to constitute a partnership (as defined by the Partnership Act 1890) between the parties nor constitute any party the agent of the other.

**48** **GRATUITIES**

48.1 The Provider and its staff and agents shall not solicit or accept any gratuity, tip or any other form of money taking or reward collection or charge for any part of the Service, unless they have an appropriate policy covering gifts of nominal value that has been seen and approved by Wokingham Borough Council.

# 49 DECLARATION OF INTERESTS

49.1 The Provider shall inform the Council in writing of any elected member of the Council or employee of the Council who are involved in any way with the Provider at any time during the Contract term.

**50** **OBSERVANCE OF STATUTORY AND OTHER REQUIREMENTS**

50.1 The Providers shall comply with all statutes, orders, regulations, statutory instruments, codes of practice, byelaws, directives, or the like to be observed and performed in connection with the provision of the Service and shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Provider of this Clause.

**51** **IMPROVING QUALITY OF SERVICE**

51.1 The Provider shall maximise every opportunity to consult those who receive the Service with a view to constantly improving the quality of the Service, and shall keep records of any such consultation which will be provided to the Council upon written request.

# 52 TRANSPORT

52.1 The Provider shall ensure that all vehicles employed in the performance of this Contract are properly licensed, insured, taxed, and tested and that they comply with all regulations and requirements relating to the construction, maintenance, and operation of such vehicles.

52.2 All drivers of any vehicles used in the delivery of this service must be suitably qualified, insured, possess the relevant valid driving licence and adhere to all legislation

**53** **OVERVIEW**

53.1 If requested to do so by the Council from time to time, the Provider shall attend overview and scrutiny meetings and/or Council management team meetings.

53.2 In attending the meetings referred to in Clause 53.1 above, the Provider shall co-operate with the Council at each meeting and respond to its requests for information in connection with the provision of the Services.

# 54 CUSTOMER’S PERSONAL ALLOWANCE AND EXPENDITURE

54.1 Where Wokingham Borough Council is responsible for managing the Customers financial affairs it will be necessary to liaise with our Finance Support Team (Client) with regards to arrangements for personal allowance and expenditure.

# 55 EMERGENCY CLOSURE

55.1 In the event of an emergency closure or a potential emergency closure of a Registered Care Business the Provider shall immediately inform the Council and the Care Quality Commission.

**56 FINANCIAL CONTRIBUTIONS**

56.1 Where the Provider is acting in an official capacity on behalf of the Customer the Provider will provide on demand to the Council such information as the Council may require in order that it can assess contribution towards the Price of the Service from the Customer which shall be calculated in accordance with the Government’s Charging for Residential Accommodation Guide (‘CRAG’) or any other relevant legislation or guidance

**57** **REVIEW OF CUSTOMER NEEDS**

57.1 The Provider shall:

57.1.1 participate as reasonably required by the Council in reviews of Customers need, contract reviews and Service meetings; and

57.1.2 notify the Council if Customer’s needs change to the extent that the Provider is unable to meet the assessed needs within the agreed funding or to the extent that the Provider does not have the appropriate staffing or expertise to maintain the delivery of the Service.

**58** **EQUIPMENT**

58.1 The Provider will maintain repair replace or renew all items supplied to assist with the provision of the Service as listed (but not limited to) in Schedule IV

# 59 CONCLUSION OF CONTRACT

59.1 Subject to Clauses 24 **(Confidentiality)** and Clause 22 **(Data Protection)**, upon the termination or expiry of this Contract, the Provider must erase and /or return to the Council or to any person it may specify, all data, information, files, records, documents and the like (in whatever format they may be held) which the Council supplied to the Provider for purposes of this Contract or which the Council produced or augmented by the Provider in connection with the carrying out of its obligations under this Contract.

59.2 Unless the Council authorises the Provider to do so, or it is required by law to do so, it must not retain any copies of the information etc. referred to in Clause 59.1