Dated **2015**

AGREEMENT FOR THE PROVISION OF NORTH EAST ESSEX HOME TO ASSESS SERVICES

LOT [1/2]

BETWEEN

ESSEX COUNTY COUNCIL

AND

[ ]

AGREEMENT FOR THE PROVISION OF HOME TO ASSESS SERVICES
AGREEMENT REF: [ ]

1. FORM OF AGREEMENT

THIS AGREEMENT dated the day of 2016

is made between

(1) **ESSEX COUNTY COUNCIL** ("**Council**") of County Hall, Market Road, Chelmsford Essex, CM1 1QH

and

(2) [ ] whose [registered office] [principal place of business] is at [ ] [and whose registered number is [ ]] ("**Service Provider**")

RECITALS

(A) The Council is a local authority as defined by section 270 of the Local Government Act 1972 and is entering into this Agreement in relation to the performance of its functions in relation to the provision of Home to Assess Services (the "**Services**").

(B) On [*Insert Date*] the Council published an Invitation to Tender ("**ITT**") inviting the Service Provider along with other providers to bid for 1 (one) or more of 3 (three) lots (one (1) lot per Locality) for the provision of the Services.

(C) The Services shall be purchased by the Council on the basis of a mix of block purchase (hours which the Council are required to pay for regardless of whether they are in use by a Service User referred by the Appointed Brokerage Service) and spot purchase (hours which the Council only pay for at the time they are in use – provided all the block hours have been used).

(D) The Council has selected the Service Provider to provide the Services for lot [1/2/3 *include geographical reference*]. Service Users are placed with the Service Provider in accordance with the terms of this Agreement and the Service Provider undertakes to provide the Services on the terms set out below.

(E) The Parties agree to work together to deliver Objectives of the Services.

(F) This Agreement is not a commitment from the Council to procure Services from the Service Provider. A commitment will only be made by the Council if and when it issues and Information to Service Provider ("**ISP**") pursuant to this Agreement.

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THE PROVISION OF HOME TO ASSESS SERVICES
AGREEMENT REF: [INSERT REF]

A. GENERAL PROVISIONS

1. DEFINITIONS

"Agreement"	means this agreement;
"Agreement Period"	means the period from and including the Service Commencement Date up to up to and including to the Expiry Date or, if earlier, the date of termination of the Agreement for any reason;
"Affected Party"	means a party affected by a Force Majeure Event;
"Approval"	means the written consent of the Council's Authorised Representative or his Deputy Authorised Representative (and "Approved" or "Approve" shall be construed accordingly);
"Appointed Brokerage Service"	means the Council's Service Placement Team (or such other team from time to time) used by the Council to place Service Users with the Service Provider;
"Authorisation"	means an authorisation given by the Council after completion of the statutory assessment process in relation to a Service User, giving lawful authority to deprive a person of their liberty;
"Barred List"	means the list(s) maintained by the Disclosure and Barring Service of those individuals that have been deemed unsuitable to work with children or vulnerable adults;
"Basic Disclosure"	means a Basic Disclosure carried out through Disclosure Scotland, which is required where a Service Provider is engaged in a position of trust but is not eligible for a Standard Disclosure check, Enhanced with Barred List Check or Enhanced without Barred List Check;
"Bribery Act"	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
"Business Continuity Plan"	means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;
"Calendar Days"	means a day reckoned from midnight to midnight and shall include weekends and bank holidays in England and Wales;
"Carer"	means the individual who assumes responsibility for overseeing the Service User's care outside of the Service Provider's provision this includes any informal carer e.g. spouse, partner, family member or friend as identified by the Service User;
"Care Manager"	means the Service Provider's member of staff the that is responsible for

	the running of the services and who is ultimately responsible for overseeing the implementation of the Individual Support Plan;
"Care Quality Commission" or "CQC"	means the independent regulator of all health and social care services in England or such other entity that replaces it form time to time;
"Clinical Commissioning Group" or "CCG"	means the NHS organisation made up of clinicians that is responsible for the organising the delivery of NHS Services in a given Locality
"Change Control Procedure"	means the change control procedure set out in Clause 10 *(Variations and Change Control)* and Schedule 4 *(Change Control Procedure)*;
"Change in Law"	means the coming into effect after the Commencement Date of this Agreement of: (a) Legislation, other than any legislation which on the Commencement Date of this Agreement has been published: i. In a Bill as part of a Government Departmental Consultation Paper ii. In a Bill iii. In a draft statutory instrument or iv. Published as a proposal in the Official Journal of the European Communities (b) Any legal guidance; or (c) Any applicable judgment of a relevant Court of law which changes or establishes a binding precedent;
"Clause"	means the clause(s) contained within this Agreement or ISP;
"Commencement Date"	means the date stated at the start of this Agreement;
"Commercially Sensitive Information"	means the subset of Confidential Information listed in column 1 of Part 1 the Schedule 10 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 10 (Commercially Sensitive Information);
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA;
"Contracting Authority"	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 (as amended) (or such other relevant regulations in force from time to time) other than the Council;

"Council's Authorised Representative"	means the person appointed and authorised by the Council in accordance with Clause 5 (*Authorised Representatives*) to represent the Council for the purposes of this Agreement or issued ISP;
"Council's Data"	means (i) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Service Provider or provided to the Service Provider for processing under this Agreement which at all times shall remain the property of the Council or; (ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever media;
"Council's DBS Umbrella Body"	means the Council's eCRB service responsible for the advice, processing and storage of Criminal Records Checks which is contactable via email on crb.enquiries@essex.gov.uk or via the telephone on 01245 438264 at the following times Monday – Thursday 8.30am – 5.30pm; and Friday 8.30am – 5.00pm
"Court"	means a Court of competent jurisdiction within the United Kingdom and the European Court of Justice and acts or directions of the European Union Commission;
"Criminal Records Checks"	means one of four checks carried out (as appropriate) under the bureau established pursuant to the Protection of Freedoms Act 2012, • Enhanced Disclosure with a Barred List Check • Enhanced Disclosure without a Barred List Check • Standard Disclosure • Basic Disclosure
"Data Controller"	as defined in the Data Protection Act 1998;
"Delay Days"	means day(s) between the notification from the hospital that a Service User is able to be discharged until the Service User is accepted by the Service Provider to commence Home To Assess the cost of which the Council may be liable to pay to the hospital;
"Deputy Authorised Representative"	means the person appointed by either Party in accordance with Clause 5 (*Authorised Representatives*) to represent the nominating party in the event that the Authorised Representative is unavailable;
"Deprivation of Liberty"/"DoL"	means the framework of safeguards set out in Schedule A1 of the Mental Capacity Act 2005 (as amended);
"Directives"	means the EC Acquired Rights Directive 77/187 (as amended) or such other directive in force from time to time);

"Disclosure & Barring Service ("DBS")"	means the Non-Departmental Public Body which helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups, including children and vulnerable adults;
"DBS Adult First"	means the service provided by the DBS that can be used in exceptional cases where, and in accordance with Department of Health guidance, a person is permitted to start work with adults before a DBS certificate has been obtained.
"Dispute Resolution Procedure"	means the procedure set out in Clause 36 *(Dispute Resolution)* of this Agreement;
"DPA"	means the Data Protection Act 1998;
"EIR"	means the Environmental Information Regulations 2004;
"Enforcement Notice"	means any notice issued against the Service Provider by the Care Quality Commission notifying the Service Provider of CQC's concerns regarding the either the Service Provider's Premises or the delivery of the Services;
"Enhanced With Barred List Check"	means a type of Criminal Records Check, which includes a check of the DBS Barred Lists and any additional information held by the police that is reasonably considered relevant to the role being applied for and includes roles that do not work with children or vulnerable adults specifically but potentially both and should be used for jobs that involve caring for, supervising or being in sole charge of children and/or vulnerable adults;
"Essex"	means the administrative area of Essex County Council which does not include the Unitary Authorities of Southend on Sea Borough council or Thurrock Borough Council;
"Exceptions Report"	means the report that the Service Provider is required to send to the Council advising why the Service Provider is not able to comply with the response times detailed in this Agreement;
"Excluded Activity"	means any activity relating to children's social care activities'
"Expiry Date"	means the 12th July 2016 unless otherwise extended or terminated before this date in accordance with the provisions of this Agreement;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
"Force Majeure Event"	means any event materially affecting the performance by a Party of its obligations under this Agreement arising from any act, event, omission, happening or non-happening beyond its reasonable control including, but not limited to: fire, flood, earthquake, windstorm or other natural disaster;

epidemic or pandemic; terrorist attack; nuclear, chemical or biological contamination; compliance with any governmental order, governmental rule or governmental regulation which comes into effect after the Commencement Date; loss at sea; extreme adverse weather conditions; interruption or failure of utility service;

"General Change in Law" means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

"Individual Support Plan" means the person centred plan agreed at the start of the Individual Service Period between the Service User the Service Provider that details individual goals and outcomes and how these are to be achieved;

"ISP" means the information issued to the Service Provider at the time a Service User is placed forming a binding contract between the Service Provider and the Council for that Service User;

"Intellectual Property Rights" or "IPR" means all intellectual and industrial property rights including patents, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

"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, bylaw, regulatory policy, guidance or industry code, judgment of a relevant Court of law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply. Any reference to "Legislation" shall be construed accordingly;

"Locality" means the area covered by the relevant district council, which include:

(i) Colchester;

(ii) Tendring;

"Healthwatch" means the body, structure or arrangement set up in accordance with section 221(1) of the Local Government and Public Involvement in Health Act 2007. Healthwatch aim to give citizens a stronger voice in how their health and social care services are delivered. Run by local individuals and groups and independently supported, the role of Healthwatch is to find out what people want, monitor local services and to use their powers to hold them to account. Each local authority (that provides social services) has been given funding and is under a legal duty to make contractual arrangements that enables Healthwatch activities to take place;

“Information”	has the meaning given under section 84 of the Freedom of Information Act 2000;
“Integrated Discharge Team”	Means Multi-Disciplinary Team focused on hospital discharge
“ISP”	Has the meaning given in Recital F;
“ITT”	Has the meaning given in Recital B;
“Local Government Ombudsman”	means a local commissioner (known as the Local Government Ombudsman) who is responsible for conducting investigations for the Commission for Local Administration in England (CLAE), which is a body of commissioners established under the Local Government Act 1974 and which, has the power to investigate complaints about councils (and certain other bodies) in England;
“Managing Authority”	means Managing Authority as defined in the Mental Capacity Act 2005 (as amended);
“Meetings”	means any meeting with the Council’s Authorised Representative or such other officer as required by the Council;
“Month”	means calendar month;
“Multi-Disciplinary Team”	means the team of professionals involved in the delivery of the Service which may include but is not limited to Occupational Therapist, Service Provider, Practitioner and any other Therapist involved in the individual's support
“NICE”	means the National Institute for Health and Care Excellence which is responsible for provision of national guidance and advice to improve health and social care;
“Objectives”	means the objectives for the Services detailed in Annex 1 to Schedule 1 (*Service Specification*);
“Party”	means a party to this Agreement and “Parties” shall be construed accordingly;
“Performance Standards”	means the key performance indicators as defined and set out in Schedule 2 *(Performance Standards)*;
“Personal Data”	as defined in the DPA;
“Persistent Breach”	means where the Service Provider commits the same (or similar) breach of the terms of this Agreement or failure to achieve the Performance Standards at least three (3) times in any rolling three (3) Month period or at least six (6) times in any rolling twelve (12) Month period;
“Prohibited Act”	the following constitute prohibited acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other

advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Agreement or any other Agreement with the Council; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Council.

"Qualifying Change in Law" Means a Specific Change in Law which was not foreseeable at the date of this Agreement;

"Service Period" means the period from the Service User's referral to the Service Provider up to and including the date that the Service User leaves the Service or the date indicated by the Council in the ISP as the end date;

"Relevant Transfer" means a relevant transfer for the purposes of the Regulations;

"Replacement Service Provider" means any third party appointed by the Council from time to time to provide all or any of services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Agreement whether those services are provided by the Council internally and/or by any third party;

"Required Insurances" means the insurances listed in Schedule 9 *(Required Insurances)*;

"Request" shall have the meaning specified in Clause 17 *(Freedom of Information)*;

"Schedules" means the Schedules attached to this Agreement;

"Service Commencement Date" Means 14th March 2016 unless an earlier date is otherwise agreed in writing between the Parties;

"Services Payment" means the payment by the Council to the Service Provider for the provision of the Services to the Service User in accordance with this

Agreement and the ISP which shall be calculated in accordance with the provisions of Schedule 3 (*Payment Schedule*);

"Service Provider's Authorised Representative" means the person appointed and authorised by the Service Provider in accordance with Clause 5 (*Authorised Representatives*) to represent the Service Provider for the purposes of this Agreement or issued ISP;

"Service Provider Default" means one of the following events:

(a) in relation to the Service Provider and/or the Parent Company:

i. it is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended), but disregarding the references therein to proving it to the Court's satisfaction;

ii. it or its directors resolve to appoint an administrator of it or to apply to Court for an administration order in respect of it or an application for an administration order in respect of it is made or any steps pursuant to schedule B1 of the Insolvency Act 1986 (as amended) and/or the Insolvency Rules 1986 (as amended) are taken to appoint an administrator to it or it enters administration;

iii. it or its directors request or it suffers the appointment of a Law of Property Act 1925, Court appointed or other receiver or receiver manager, or similar officer over or in relation to the whole of its undertaking, property, revenue or assets or any part thereof, or any person holding security over all or any of its undertaking, property, revenue or assets takes possession of them or any part of them;

iv. it or its directors resolve to wind it up whether as a voluntary liquidation or a compulsory liquidation, or they take any steps under the Insolvency Act 1986 (as amended) and/or the Insolvency Rules 1986 (as amended) to wind it up voluntarily or to apply to the Court for a winding-up order or a winding-up petition is presented against it or a provisional liquidator is appointed to it or it goes into liquidation within the meaning of that term under section 247 of the Insolvency Act 1986 (as amended);

v. it or its directors resolve to enter into, or it enters into, or it or its directors commence negotiations, or make any requisite application to Court in respect of, or if they convene meetings for the approval of, any composition, compromise, moratorium (to include a moratorium statutorily obtained, whether or not as a precursor to a voluntary arrangement under the Insolvency Act 1986 (as amended)), scheme or arrangement with its creditors or any of them, whether or not under the Insolvency Act 1986 (as amended), the Companies Acts 1985 to 2006 (as amended) or otherwise;

vi. it is dissolved, or is removed from the Register of Companies, or ceases to exist (whether or not capable of reinstatement or reconstitution) or its directors apply for it to be struck-off the

Register of Companies;

vii. it is or becomes subject to, or takes or has taken against it or in relation to it, or any or all of its undertaking, property, revenue or assets, any equivalent, analogous, corresponding or similar finding, step, process or proceeding to those in this sub clause (a) in any jurisdiction, whether or not any finding, step, process or proceeding has been taken against or in relation to it, or any or all of its undertaking, property, revenue or assets in England and Wales;

(b) a breach by the Service Provider of any of its obligations under this Agreement or ISP which materially and adversely effects the performance of the Services;

(c) a breach by the Service Provider of its obligation to procure and maintain the Required Insurances;

(d) failure to meet the Performance Standards (3) times in any rolling three (3) Month period or at least six (6) times in any rolling twelve (12) Month period;

(e) the existence of a conflict of interest on the part of the Service Provider which, in the reasonable opinion of the Council, the Service Provider is unable or unwilling to resolve effectively;

(f) a breach of the Service Provider of its obligations in Clause 9 (*Assignment and Sub-Contracting*);

(g) where a consent, licence or approval which is material to the provision of the Services is or will no longer be available to the Contractor or Sub-Contractor;

"Service Provider's Equipment" means all equipment, parts, materials, articles and/or mechanisms provided by the Service Provider for use in the provision of the Services;

"Service Provider's Premises" means [*Insert service providers office Name and address as specified in the tender response*];

"Service User" means a person who is the beneficiary of the Services to be provided by the Service Provider;

"Service(s)" means the Services to be provided in accordance with Schedule 1 (*Service Specification*) and the provisions of this Agreement;

"Significant Decision" means a decision that needs to be made relating to serious medical treatment or change of accommodation of a Service User in circumstances in which there are no friends or family who it would be appropriate to consult on the decision;

"Specific Change in Law" means any Change in Law which specifically refers to the provision of a service being the same as or similar to the Services or to the holding of shares in companies whose main business is providing a service being the same as or similar to the Services;

"Specification" means the description of the Services to be provided under this Agreement in Schedule 1 *(*Service *Specification)*;

"Staff"	means all persons employed or engaged by the Service Provider to perform this Agreement together with the Service Provider's servants, suppliers, agents, volunteers and sub-contractors used in the performance of this Agreement and/or the provision of the Services;
"Standard Disclosure"	means a type of Criminal Records Check for spent and unspent convictions, cautions, reprimands and final warnings, which is required where the role is included in the list of eligible roles detailed in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and the role does not required an enhanced DBS check;
"Suspension Period"	means the period from and including the date of verbal notification of suspension by the Council to the Service Provider's Authorised Representative up to and including the date of verbal notification by the Council to the Service Provider's Authorised Representative of the lifting of the suspension;
"SVG"	Safeguarding Vulnerable Groups Act 2006 (as amended under the Protection of Freedoms Act 2012);
"TUPE Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as may be amended or modified from time to time;
"VAT"	means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function;
"Variation"	means any change to: (i) the this Agreement or Schedules (ii) the Services or any of them (iii) the standard of performance required of a Party materially over and above that expressly stated or provided for under this Agreement provided such variation or change is in accordance with Clause 10 *(Variations and Change Control)*;
"Working Day"	means Monday to Friday excluding public and bank holidays in England and Wales;
"Working Hours"	means the hours between 9am and 5pm Monday to Friday excluding Bank Holidays ;

2. INTERPRETATION OF THIS AGREEMENT

2.1 Except as otherwise expressly provided, the documents comprising this Agreement are to be taken as mutually explanatory of one another.

2.2 Any references to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force, and to include any bylaws, licenses, statutory instruments, rules, regulations, orders, notices, directions, European Union legislation made thereunder, and any condition attaching thereto.

2.3 The headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.

2.4 The expression 'person' used in this Agreement shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.

2.5 In this Agreement, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.

2.6 References to Clauses or Schedules shall be to Clauses and Schedules of this Agreement or any issued ISP.

2.7 Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the control of the Service Provider.

2.8 In the event of any inconsistency or conflict between the main body of this Agreement and the Schedules, the order or precedence as set out below shall prevail:

(a) The Conditions of this Agreement;

(b) Schedule 1 *(*Service *Specification)*;

(c) Remaining Schedules of this Agreement; and

(d) ISP.

2.9 In the event of a conflict (or any inconsistency) between the provisions of Clause 2.8 (*Interpretation of this Agreement)* above and any Variations made to this Agreement after the Commencement Date, the Variation as agreed between the Parties shall take precedence.

B. THE SERVICES AND PERSONNEL

3. COMMENCEMENT AND DURATION

3.1 This Agreement shall commence on the Commencement Date, however the Agreement shall not be effective and the Agreement Period shall not commence until the Services Commencement Date. The Agreement shall continue for the Agreement Period unless extended or terminated in accordance with the provisions of this Agreement.

3.2 The Services shall commence on the Services Commencement Date and shall continue for the Agreement Period unless extended or terminated in accordance with provisions of this Agreement.

3.3 Subject to any early termination, referrals to the Service Provider shall cease on 31st May 2016, unless the Agreement Period is extended in accordance with Clause 3.4 (*Commencement and Duration*) in which case referrals shall cease 6 weeks prior to the amended Expiry Date.

3.4 The Council may at its sole discretion extend the Agreement period by such period as it may specify in written notice given not less than 2 (two) weeks' prior to the expiry of the Agreement Period (as extended from time to time) and may do so on as many occasions as it shall think fit provided that such extensions shall not exceed 6 (six) months in total.

3.5 The Parties acknowledge that this Agreement gives no any sole or exclusive rights to the Service Provider in relation to the provision of the Services. The Council is not obliged to procure all or any of the Services set out in Schedule 1 (*Service Specification*) by means of this Agreement or solely by means of this Agreement.

3.6 Nothing in this Agreement obliges the Council to issue any ISP to the Service Provider and the Council does not guarantee to issue any ISP to any such persons.

4. THE SERVICES

4.1 Scope of the Services

4.1.1 The scope of the Services to which the provisions of this Agreement are applicable is set out in Schedule 1 (*Service Specification*) and any issued ISP.

4.1.2 At any time, the Council may:

(a) Terminate the whole of this Agreement; or

(b) Subject to Clause 10 (*Variations and Change Control*) remove any or the Services from the scope of this Agreement;

with effect from the date notified by the Council.

4.1.3 The termination of this Agreement or the removal of any Service from the scope of this Agreement pursuant to Clause 4.1.2 (*Scope of the Services*) shall not affect the validity or enforceability of any ISP in existence as at the date of such termination or removal and such ISP shall continue in full force and effect until expiry or termination in accordance with its terms.

4.2 Scope of this Agreement

4.2.1 This Agreement applies to the procedure and terms upon which the Council may appoint the Service Provider to deliver the Services or any part of them.

4.2.2 The Service Provider shall provide the Services in accordance with the provisions of Schedule 1 (*Service Specification*) in a manner which complies with the Council's Policies detailed in Schedules 6 (*Council Policies*), 6a (*Information Security*), 6b (*Safeguarding Service User Belongings*) and 6c (*Safeguarding Vulnerable Adults Guidelines*) as and when required to do so by any ISP and in accordance with the terms of this Agreement and the ISP.

4.2.3 Subject to the provisions of Clause 3.6 (*Commencement and* Duration), the Council shall issue ISP in accordance with paragraph 6 (*Referrals to the Home to Assess*) of Schedule 1. A binding agreement for services shall be formed between the Parties when an ISP is sent by the Council to the Service Provider and the Service Provider has acknowledged receipt of such ISP in accordance with the provisions of paragraph 7 (*Response*) of Schedule 1 (*Service Specification*).

5. AUTHORISED REPRESENTATIVES

5.1 The Council's Authorised Representative shall be [***specify name and job title***] or such other person appointed pursuant to this Clause 5 (*Authorised Representatives*).

5.2 The Council's Authorised Representative shall liaise with and give instructions to the Service Provider and its officers, employees, agents or Sub-Contractors in relation to all matters

concerning the performance by the Service Provider of its obligations under this Agreement or any ISP and shall determine any matters or issue any notices as may be the function of the Council's Authorised Representative under this Agreement.

5.3 To the extent that it is reasonably possible the Council shall not change the identity of the Council's Authorised Representative without first discussing the matter with the Service Provider.

5.4 The Service Provider's Authorised Representative shall be [***specify name and job title***] or such other person appointed to this Clause 5 (*Authorised Representatives*).

5.5 The Service Provider's Authorised Representative shall have the power on behalf of the Service Provider in connection with any matter relating to the performance of the Services and exercise the rights, functions and obligations of the Contractor under this Agreement or any ISP.

5.6 To the extent that it is reasonably possible the Service Provider shall not change the identity of the Service Provider's Authorised Representative without first discussing the matter with the Council and shall have reasonable regard to the views of the Council in relation to any proposed replacement.

5.7 Either Party may appoint one or more Deputy Authorised Representatives to represent them in the event that their respective Authorised Representatives are not available.

6. SERVICE PROVIDER'S WARRANTY, RESPONSIBILITY AND KNOWLEDGE

6.1 The Service Provider warrants and represents that:

6.1.1 it has on the date of this Agreement and shall maintain for the Agreement Period the relevant registration with CQC required for the provision of community care services;

6.1.2 it has the full capacity and authority and all necessary consents to enter into and perform the Services;

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

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

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

6.2 The Service Provider is deemed to have examined the documents constituting this Agreement and to have satisfied itself before submitting a tender in response to the ITT as to the correctness and sufficiency of its submission to cover all its obligations under this Agreement or ISP and for all matters and things necessary for the delivery of the Services.

6.3 The Service Provider shall be responsible for the accuracy of all documentation and information or anything else supplied to the Council by the Service Provider. The Service

Provider shall pay to the Council any reasonable additional costs incurred by the Council as a result of any discrepancies, errors or omissions therein.

7. PERSONNEL AND STAFF

7.1 The Council shall appoint the Council's Authorised Representative to administer this Agreement and act as its representative in connection with this Agreement. The Council's Authorised Representative shall exercise the functions allocated to him/her under this Agreement.

7.2 The Service Provider shall at all times comply with any decision of the Council's Authorised Representative or his Deputy Authorised Representative (as appropriate) in the exercise of their own functions under this Agreement unless and until such decision is altered or amended by an agreed settlement following a reference under Clause 10 (*Variations and Change Control*).

7.3 The Service Provider shall provide in writing to the Council, the name, telephone number and contact address for the Service Provider's Authorised Representative. The Service Provider's Authorised Representative shall be available and contactable during Working Hours.

7.4 The Service Provider's Authorised Representative shall have sufficient knowledge of this Agreement and the Services in respect of the performance of this Agreement or any ISP. The Council may require that the Service Provider replace any Service Provider's Authorised Representative who in the reasonable opinion of the Council is unsuitable in terms of skill and knowledge to carry out the role of the Service Provider's Authorised Representative. However, the final decision in relation to any such replacement shall remain at the discretion of the Service Provider.

7.5 The Service Provider shall use all reasonable endeavours to ensure that the Staff shall be properly and suitably qualified, competent, skilled, honest, instructed, trained, experienced and supervised and shall at all times exercise due care in the execution of their duties as well as:

7.5.1 comply with the relevant provisions of the Agreement; and

7.5.2 comply with all relevant Law, policies, codes, rules, procedures and standards of the Service Provider, all relevant rules, codes, policies, procedures and standards of the Council, notified to the Service Provider by the Council's Authorised Representative from time to time.

7.6 The Service Provider shall be liable for any acts, omissions or defaults of the Staff howsoever arising in connection with the Services.

7.7 Pre-Employment Checks

7.7.1 The Service Provider shall carry out appropriate pre-employment checks, prior to the appointment of Staff in connection with the Services, including but not limited to references, medical clearance, proof of eligibility to work in the UK, professional registration/qualifications and an appropriate Criminal Records Check.

7.7.2 Where appropriate and subject to the Council's Approval, the Service Provider may employ Staff where the Service Provider has applied for and received the results of a DBS Adult First check, on the condition that

(a) the Staff is not identified on a Barred List;

(b) all legal requirements are complied with; and

(c) the Council's Authorised Representative and the Service User are informed.

7.7.3 The Service Provider shall obtain consent, prior to the commencement of any work of any Staff employed to work in connection with this Agreement, to carry out all necessary checks under Clause 7.7 (*Pre-Employment Checks*) and shall provide evidence upon the request to the Council that such checks have been carried out.

7.7.4 The Service Provider shall immediately investigate any Staff whose conduct places any of the Council's personnel, any member of the public and/or any third party or any Service User at risk or which might bring the Council into disrepute when working in connection with the provision of the Services.

7.7.5 The Service Provider shall use all reasonable endeavours to ensure that the outcome of any investigation of Staff is to the reasonable satisfaction of the Council. The Council may request that such Staff be removed from working in connection with the provision of the Services, although the final decision about any Staff shall be at the absolute discretion of the Service Provider.

7.7.6 In the event that the Service Provider acts unreasonably (in the Council's reasonable opinion) in declining to remove Staff when requested to do so by the Council, the Council may place the Service Provider on suspension in accordance with Clause 37 *(Suspension)* until an agreement is reached between the Parties about the removal of Staff.

7.7.7 The Service Provider shall monitor its compliance with this Clause 7.7 (*Pre-Employment Checks*) and shall ensure that the Council is kept advised at all times of any Staff:

(a) who subsequent to his/her engagement by the Service Provider, commits any criminal act whatsoever; or

(b) whose previous convictions become known to the Service Provider; or

(c) that commits any act which puts or could put a Service User at risk; or

(d) could bring the Council into disrepute.

7.7.8 The Council reserves the right to visit the Service Provider's Premises to audit and check disclosure information as specified in Clause 13 (*Audit Rights*) to ensure and confirm evidence provided by the Service Provider of compliance with this Clause 7.7 (*Pre-Employment Checks*).

7.8 **Safeguarding**

7.8.1 The Service Provider shall maintain and keep up to date appropriate policies regarding the protection of adults at risk. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health guidelines and also with policies, procedures and guidelines issued by the Council. The Service Provider shall ensure that these policies, procedures and guidelines are communicated to Staff and that appropriate training is provided to Staff in relation to same.

7.8.2 The Service Provider shall have comprehensive procedures for reporting and managing allegations against members of Staff. Such procedures shall comply with statutory requirements and promote the safety and welfare of adults at risk. The Service Provider shall evidence safe and robust recruitment procedures and practice for Staff working with adults at risk. The Service Provider shall ensure that Staff are aware of and comply with the

requirement to make accurate, factual and contemporaneous records to ensure compliance with this Clause 7.8 (*Safeguarding*).

7.8.3 The Service Provider shall fulfil its legal obligation to carry out Criminal Records Checks through the DBS and the relevant national or local safeguarding authority. Where necessary and appropriate the Service Provider shall complete a risk assessment form in respect of Staff when making decisions in relation to any convictions revealed by the Criminal Records Check. The risk assessment shall be in the form set out in Schedule 8 (*DBS Risk Assessment Form*).

7.8.4 The Service Provider shall bear the full cost of any registration with the DBS and the cost of any Criminal Record Check. The Service Provider acknowledges that the Council has a legal responsibility under the SVG. To that end, the Service Provider shall check the Barred List and comply with all other relevant Law in relation to safeguarding vulnerable adults.

7.8.5 The Service Provider shall provide such evidence to the Council of compliance with this Clause 7.8 (*Safeguarding*) as the Council shall reasonably require.

7.8.6 The Service Provider shall repeat the checks specified in this Clause 7.8 *(Safeguarding*) at least once every three 3 years from the Commencement Date or carry out checks not less than once a year using the DBS Update Service (where applicable).

7.8.7 The Service Provider shall nominate and name a designated senior officer or manager to ensure that the Service Provider complies with the provisions of the SVG at all times during the Agreement Period.

7.8.8 The designated senior officer or manager referred to in Clause 7.8.7 (*Safeguarding*) above shall comply with the provisions of *"Working together"* for safeguarding children, young people and adults when dealing with allegations of abuse made against a member of Staff engaged in connection with the provision of the Services. The Service Provider shall have in place a safeguarding policy, which is equal to or exceeds the Council's Safeguarding Policy set out in Schedule 6 (*Council Policies*).

7.8.9 The Service Provider shall ultimately be responsible for the employment and conditions of service of the Staff and all obligations relating thereto. In addition to the pre-employment checks to be carried out under this Clause 7.8 (*Safeguarding*), the Service Provider shall ensure that suitable references reflecting the member of Staff's suitability to work with vulnerable adults are taken up as part of the recruitment process.

7.8.10 The Service Provider shall ensure that an appropriate Criminal Records Check is carried out and results obtained prior to the relevant Staff being employed in connection with the Service. Should an adverse entry be revealed as a result of the Criminal Records Check and/or should any convictions including those that would otherwise be spent under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 be revealed, the Service Provider shall notify the Council's Authorised Representative of these immediately. The Council may request that such Staff be removed from working in connection with the provision of the Services, although the final decision about any Staff shall be at the absolute discretion of the Service Provider.

7.8.11 The Service Provider shall use one of the following methods for the advice, processing and storage of each Criminal Records Check:

(d) through the Council's DBS Umbrella Body; or

(e) by the Service Provider directly (if DBS registered); or

(f) through an external DBS umbrella body.

7.8.12 The Service Provider shall, when deciding whether the outcome of the Criminal Records Check is satisfactory (and accordingly whether the individual concerned is suitable to carry out the role in connection with the Services) comply with and observe all relevant Law in relation to Criminal Records Checks and follow all recommendations and general guidance issued (including by HM Government) on carrying out Criminal Records Checks in relation to any person engaged in a role that meets the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act 1997 (Criminal Records) regulations.

7.8.13 The Service Provider shall maintain and disclose to the Council upon reasonable request a record of the outcome of any Criminal Records Check, setting out the disclosure number and date the disclosure was made.

7.8.14 The Service Provider shall store the record of the disclosure securely in accordance with the Data Protection Act 1998 and DBS Code of Practice. The Service Provider warrants to the Council that each disclosure number will be unique and can, if necessary, be reconciled against a named Staff member engaged or appointed in connection with the Services.

7.8.15 The Service Provider must have a robust system which evidences that when Staff are suspended or dismissed; that vulnerable adults guidance including government guidance is followed and that relevant professional bodies are informed in the event of non-compliance. The Service Provider will ensure that it has appropriate procedures in place that support:

(a) the immediate reporting to the Council's Authorised Representative of concerns and details of any incidents and/or convictions in relation to Staff ; and

(b) other action necessary to support the Council's policies, including the possible mandatory participation in Meetings.

7.8.16 The Service Provider shall have codes of conduct in place for all Staff setting out clear standards of conduct particularly in relation to personal and sexual relationships between Staff and Service Users or other vulnerable adults.

7.8.17 The Service Provider must provide evidence of robust and effective complaints and whistleblowing policies including a guarantee to Staff, Service Users and Service User's carers that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.

7.8.18 If abuse of an individual is taking place, has taken place or is suspected; the Service Provider must comply with the "duty to refer" by immediately notifying the Council's Authorised Representative as well as the Service Provider's safeguarding children and vulnerable adults lead. The Service Provider should also consider suspension of the relevant Staff and take emergency measures (for example, inform police/seek medical assessment/treatment (as appropriate)).

7.8.19 The Service Provider must, as far as is practicable, preserve any evidence related to any allegations of abuse but may not commence any investigation until authorised to do so by the Council's Authorised Representative. The Service Provider must notify the DBS if any Staff are dismissed or removed from working in connection with the Services or any Staff leave the Service Provider's employment or engagement prior to the completion of any investigation.

7.8.20 The Service Provider shall not take responsibility for providing care to any other vulnerable adults in addition to the named Service User(s), even for short periods of time. If an emergency situation arises where care is required for a third party, the Service Provider must inform the Council's Authorised Representative immediately.

7.9 **Requests for Information from the Disclosure and Barring Service (DBS)**

7.9.1 The Council is entitled under its duty to the DBS to respond to requests from the DBS for further information already held by the Council in relation to the Staff.

7.9.2 The Service Provider shall respond to requests from the Council within a reasonable time about Criminal Records Checks in relation to the Staff and shall cooperate with the Council to enable the Council to comply with its duty to the DBS.

7.9.3 Failure by the Service Provider to comply with the safeguarding provisions of this Clause 7 (*Personnel and Staff*) shall entitle the Council to terminate the Agreement in accordance with Clause 38 (*Termination*).

7.10 **Offer of Employment**

For the Agreement Period and for a period of twelve (12) Months after the Expiry Date or earlier termination of this Agreement, the Service Provider shall not employ or offer employment to any of the Council's employees and/or personnel who have been associated with the procurement and/or the management of this Agreement. This Clause 7.10 (*Offer of Employment*) shall not affect an offer of employment which results from a response by the employee and/or personnel member to any public advertisement.

C. FINANCIAL ARRANGEMENTS

8. SERVICES PAYMENT

8.1 The Council shall pay the Services Payment to the Service Provider in accordance with the terms set out in Schedule 3 (*Payment Schedule*) and the ISP. No other charges or amounts shall be paid to the Service Provider for the performance of the Service Provider's obligations under this Agreement.

8.2 If any invoice (or part thereof) referred to in Clause 8 (*Services Payment*) is disputed, the dispute shall be dealt with in accordance with the Dispute Resolution Procedure. Any such dispute shall not affect any undisputed portion of any invoice which shall be paid in accordance with Clause 8.1 (*Services Payment*).

8.3 In the event that the Service Provider enters into a sub-contract in connection with this Agreement, the Service Provider shall ensure that a term is included in the sub-contract that requires the Service Provider to pay all sums due under the sub-contract to the Sub-Contractor within a specified period, not exceeding thirty (30) Calendar Days, from the date of receipt of a valid invoice as defined by the terms of the sub-contract.

8.4 The Service Provider shall not be entitled to retain or set off any amount due from it to the Council.

8.5 The Council may retain or set off any amount owed to it under this Agreement that has fallen due and payable against any amount due to the Service Provider under this Agreement. The Council shall notify the Service Provider as soon as reasonably practicable of any such retention or set off, and provide particulars of the reasons for so doing.

D. CONTROL OF THIS AGREEMENT

9. ASSIGNMENT AND SUBCONTRACTING

9.1 Unless otherwise expressly provided in this Agreement, the Service Provider shall not be entitled to assign all or any benefit, right or interest under this Agreement or sub-contract any of the Services without the prior written approval of the Council (such approval not to be unreasonably withheld or delayed).

9.2 Subject to the approval requirements of Clause 9.1 *(Assignment and Subcontracting*) if the Service Provider sub-contracts any of the Services, the Service Provider shall remain responsible for the acts and omissions of its sub-contractor as though they were its own.

9.3 The Council shall be entitled to:

(a) assign, novate or otherwise dispose of its rights and obligations under this Agreement either in whole or part to any:

(i) Contracting Authority (as defined in Regulation 3(1) of the Public Contracts Regulations 2006); or

(ii) Relevant Body (as defined in Regulation 1(2) of The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 or such other regulations that replace the regulations referred to in this Clause 9.3(a) (*Assignment and Subcontracting*); or

(iii) transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or part of the Council's business.

10. VARIATIONS AND CHANGE CONTROL

10.1 Any minor change to this Agreement, as determined by the Council's Authorised Representative, shall be agreed by the Parties in accordance with Schedule 4 *(Change Control Procedure)*.

10.2 All changes to the Agreement other than those specified in Clause 10.1 (*Variations and Change Control*) above shall be agreed by the Parties in writing as a Variation to the Agreement.

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

10.3.1 details of the proposed the Variation and giving the Service Provider sufficient information to assess the extent of the Variation proposed;

10.3.2 details of any change to the Services Payment required in order to implement the Variation. Such Variation in the Services Payment shall be calculated by the Service Provider and agreed in writing with the Council and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. The Council shall provide such information as may be reasonably required to the enable the Service Provider to calculate a revised Services Payment. If the revised Services Payment cannot be agreed, the issue will be referred to the Dispute Resolution Procedure under Clause 36 *(Dispute Resolution)*; and

10.3.3 the time limit within which the Service Provider shall respond to the request for a Variation and such time limits shall be reasonable having regard to the nature of the Variation.

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

11. PERFORMANCE MONITORING AND AGREEMENT REVIEW

11.1 The Authorised Representatives shall hold Meetings to monitor the Service Provider's performance against the Performance Standards**.** Such Meetings should take place not less than once a quarter were required. The Service Provider shall afford all necessary resources and facilities to allow the Council to carry out its reviews and provide all reasonable information required at no additional cost to the Council.

11.2 Upon reasonable notice the Service Provider's Authorised Representative shall attend any Meeting with the Council's Authorised Representative to discuss the Service unless an emergency situation arises, in which case the Service Provider's Authorised Representative shall use all reasonable endeavours to attend a Meeting at short notice.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in any Council Data, specifications, instructions, data, databases, models, reports or other material:

(a) furnished to or made available to the Service Provider by the Council by way of an exclusive licence during the Agreement Period shall remain the property of the Council; and

(b) prepared by or for the Service Provider for use, or intended use, in relation to the performance of the Service shall belong to the Council and the Service Provider shall not, and shall procure that Staff shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Service Provider may obtain in performing the Agreement except information which is already in the public domain.

12.2 The Service Provider shall procure that the owner of the third party Intellectual Property Rights grants to the Council a non-exclusive licence (or if itself a licensee of those rights, shall grant to the Council an authorised sub-licence) to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Service Provider or to any other third party providing services to the Council, and shall be granted at no additional cost to the Council.

12.3 The Service Provider shall during the Agreement period and following expiry or termination, on written demand indemnify and keep indemnified the Council against all actions, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this Clause 12 (*Intellectual Property Rights*), except where any such claim relates to the use of data supplied by the Council which is not required to be verified by the Service Provider under any provision of this Agreement.

12.4 Nothing in this Agreement shall in any way derogate from the rights of the Council under any Law relating to copyright.

12.5 The Council shall notify the Service Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Service Provider. The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Service Provider, provided always that the Service Provider:

12.5.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;

12.5.2 shall take due and proper account of the interests of the Council; and

12.5.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).

13. AUDIT RIGHTS

13.1 The Service Provider shall permit or procure permission for the Councils Authorised Representative or such other nominated officer (including the Council's internal auditors and external auditors) to have reasonable access to information, documents, data, systems, the Service Provider's Premises and/or the Service Provider's Equipment used in the provision of the Services and any information, documents, reports or anything else reasonably required for inspection by the Council, the Council's Authorised Representative or such other nominated officer. .

13.2 Access shall include (but not be limited to):

(a) reasonable access to Staff;

(b) inspection of the arrangements put in place by the Service Provider to comply with its obligations under this Agreement;

(c) access to such financial and other records kept as part of the provision of the Services by the Service Provider as may be reasonably required from time to time by the Council to enable the Council to verify the sums due and payable under the terms of this Agreement.

13.3 The Service Provider shall keep and maintain for a period of six (6) years after the Expiry Date (or such longer period as may be agreed between the Parties) full and accurate records of this Agreement including Services provided under it, all expenditure reimbursed by the Council and all payments made by the Council. For the avoidance of doubt this Clause 13.3 (*Audit Rights*) is in addition to any legal requirement to retain records and does not negate the need for the retention of the same.

13.4 The Council may not be required to provide notice to the Service Provider of the need to access the Service Provider's Premises or the Service Provider's Equipment for inspection PROVIDED THAT the Council's Authorised Representative and/or his Deputy Authorised Representative shall comply with all reasonable requirements of the Service Provider for the purpose of protecting the confidentiality of the information of third parties and no information will be divulged to any third party save in pursuance of statutory obligations.

14. RECORDS

14.1 The Service Provider shall maintain current and accurate records of all work carried out in the provision of the Services and shall ensure that these records shall be available for inspection by the Council at all reasonable times in accordance with Clause 13 (*Audit Rights*).

14.2 The Service Provider shall maintain security safeguards against the destruction, loss, unauthorised use and alteration of records irrespective of the storage media which are under the Service Provider's control as part of the Services including the Council's Data. Such safeguards include an obligation on the Service Provider to ensure that access to records is only obtained by such Staff as may reasonably be required for the provision of the Services.

14.3 Without prejudice to any other rights of the Council the Service Provider shall reimburse the Council's reasonable costs for restoring records and/or the Council's Data in the event that records are destroyed otherwise in accordance with instruction from the Council or the Service Provider does not have in place a method for reinstatement or replacement of such records within seven (7) Working Days of receipt of a notice from the Council.

15. PUBLICITY

15.1 Except with the prior written Approval of the Council, the Service Provider shall not make any press announcements or publicise this Agreement or any part thereof in any way.

15.2 The Service Provider shall take reasonable steps to ensure the observance of the provisions of Clause 15.1 (*Publicity*) by all Staff.

15.3 The Council may (but is not obliged) to consult with the Service Provider to inform any decision regarding the response to any Request prior to publication; however the final decision regarding publication shall remain the Council's absolute discretion.

15.4 The Council shall be entitled to publicise and/or release a copy or copies of the Agreement in accordance with any legal obligation upon the Council and/or compliance with a Court order, including any examination of this Agreement by an auditor or otherwise.

E. FREEDOM OF INFORMATION CONFIDENTIALITY AND DATA PROTECTION

16. FREEDOM OF INFORMATION

16.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.

16.2 The Service Provider shall and shall procure that its sub-contractors shall:

16.2.1 transfer the Request for information ("**Request**") to the Council as soon as practicable after receipt and in any event within two (2) Calendar Days of receiving a Request;

16.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Calendar Days (or such other period as the Council may specify) of the Council requesting that Information; and

16.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

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

16.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

16.3.2 is to be disclosed in response to a Request, and

16.3.3 in no event shall the Service Provider respond directly to a Request unless expressly authorised to do so by the Council.

16.4 The Service Provider acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA or the EIR to disclose Information:

16.4.1 without consulting with the Service Provider, or

16.4.2 following consultation with the Service Provider and having taken its views into account.

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

16.6 The Service 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 16 (*Freedom of Information)*

16.7 Subject to the provisions of Clause 17 *(Confidentiality)* the Council shall have the discretion to disclose any information which is the subject of this Agreement to any person who makes a request under the FOIA and/or EIR and which, in the opinion of the Council, it has to disclose to discharge its responsibilities under the FOIA and/or EIR.

17. CONFIDENTIALITY

17.1 Each Party:-

17.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

17.1.2 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 this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

17.2 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement or any ISP:

17.2.1 is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement or any ISP and only to the extent necessary for the performance of this Agreement or ISP;

17.2.2 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 this Agreement

17.3 The Service Provider shall ensure that Staff professional advisors and/or consultants are aware of the Service Provider's confidentiality obligations under this Agreement and that, where requested by the Council, such Staff, professional advisors and/or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement; and

17.4 The Service Provider shall not use any Confidential Information it receives from the Council otherwise than for the purposes of this Services Agreement.

17.5 The provisions of Clauses 17.1 to 17.4 *(Confidentiality)* shall not apply to any Confidential Information received by one Party from the other:-

17.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause 17 *(Confidentiality)*);

17.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

17.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

17.5.4 is independently developed without access to the Confidential Information; or

17.5.5 which 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 FOIA or the Environmental Information Regulations pursuant to Clause 16 *(Freedom of Information)*..

17.6 Nothing in this Clause 17 *(Confidentiality)* shall prevent the Council:-

17.6.1 disclosing any Confidential Information for the purpose of:-

(a) the examination and certification of the Council's accounts; or

(b) 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

17.6.2 disclosing any Confidential Information obtained from the Service Provider:-

(a) 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

(b) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Agreement;

provided that in disclosing information under sub-paragraph (b) 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.

17.7 Nothing in this Clause 17 *(Confidentiality)* shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement 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.

17.8 In the event that the Service Provider fails to comply with this Clause 17 *(Confidentiality)*, the Authority reserves the right to terminate this Agreement by notice in writing with immediate effect.

17.9 The provisions under this Clause 17 *(Confidentiality)* are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information

18. DATA PROTECTION

18.1 Each Party, including the Staff and the Council's employees and personnel, shall comply with the requirements of the DPA in relation to this Agreement and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach, of the DPA.

18.2 The Service Provider shall give all reasonable assistance to the Council necessary to enable it to comply with its obligations under the DPA.

18.3 In relation to all Personal Data the Service Provider shall at all times comply with the DPA as a Data Controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Services.

18.4 The Service Provider shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area (as defined in the DPA).

18.5 The Service Provider shall bring into effect and maintain all necessary technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to Personal Data including but not limited to take reasonable steps to ensure that receive appropriate training in data protection to ensure compliance.

18.6 The Council may request a written description of the technical and organisational methods employed by the Service Provider to protect Personal Data. Within thirty (30) Calendar Days of such a request, the Service Provider shall supply written particulars of measures providing a reasonable level of detail to enable the Council to determine the Service Provider's compliance with the DPA.

18.7 The Service Provider shall comply with the Council's security requirements including adherence to security policies and with obligations equivalent to those imposed on the Council by the Seventh Data Protection Principle (as set out in Schedule 1 of the DPA) in addition to any requirements specifically notified to the Service Provider.

18.8 The Service Provider shall either be certified to BS ISO/IEC 27001 or have agreed a security policy with the Council that complies with all relevant standards of ISO/IEC 27001 and shall have provided to the Council's Authorised Representative a copy of the policy.

18.9 In the event that the Service Provider is not certified to ISO 27001, the Council shall be entitled to establish its own systems audit for evaluating and monitoring the effectiveness of the Service Provider's data protection systems and shall be entitled to deduct the reasonable cost of maintaining such systems from sums due to the Service Provider.

18.10 The Service Provider shall, upon reasonable notice, allow officers of the Council to have reasonable rights of access at all times to the Service Provider's Premises, Staff and its records in connection with the provision of Services for the purposes of monitoring the Service Provider's compliance with its security requirements, including its obligations under the DPA.

18.11 The Service Provider shall ensure that Personal Data is not disclosed to any other party except where there is a legal or regulatory obligation to do so and where the Service Provider has consulted the Council regarding the legality and mechanism of the disclosure and obtained the Council's written consent in advance of the disclosure.

18.12 The Service Provider shall not disclose Personal Data to any third parties other than:

(a) to Staff to whom such disclosure is reasonably necessary in order for the Service Provider to carry out the Services; or

(b) to the extent required by Law and/or compliance with a Court order; or

(c) provided that disclosure under this Clause 18.11 (*Data Protection*) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 18 *(Data* Protection) and that the Service Provider shall give notice in writing to the Council of any disclosure of Personal Data it is required to make under Clause 18.11 (*Data Protection*) immediately it is aware of such a requirement.

18.13 The Service Provider shall ensure that all Staff who are permitted access to Confidential Information and/or Personal Data receive appropriate training in data protection to ensure compliance with this Agreement.

18.14 The Service Provider shall inform the Council immediately that it becomes aware of any breach or potential breach of this Clause 18 *(Data Protection*).

F. ADDITIONAL STATUTORY OBLIGATIONS AND REGULATIONS

19. BRIBERY, CORRUPT GIFTS AND FRAUD

19.1 The Service Provider:

(a) shall not, and shall procure that any personnel shall not, in connection with this Agreement commit a Prohibited Act;

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

19.2 The Service Provider shall:

(a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

(b) within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this Clause 19 *(Bribery, Corrupt Gifts and* Fraud)

by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

19.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any personnel or any subcontractor from committing a Prohibited Act and shall enforce it where appropriate.

19.4 The Service Provider shall notify the Council immediately that it becomes aware of or suspects that any breach of Clause 19 *(Bribery, Corrupt Gifts and* Fraud) has occurred.

19.5 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of this Clause 19 (*Bribery, Corrupt Gifts and Fraud*), the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for one (1) year following the expiry or termination of this Agreement.

19.6 The Council may terminate this Agreement by written notice with immediate effect if the Service Provider or any personnel or sub-contractor associated with it (in all cases whether or not acting with the Service Provider's knowledge) breaches this Clause 19 (*Bribery, Corrupt Gifts and Fraud*) In determining whether to exercise the right of termination under this Clause 19 (*Bribery, Corrupt Gifts and Fraud*), the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, subcontract or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a subcontract) means and shall be construed as acting:

(a) with the actual knowledge of any one or more of the directors of the Service Provider or the subcontractor as the case maybe; or

(b) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.

19.7 Any notice of termination under Clause 19.7 (*Bribery, Corrupt Gifts and Fraud*) must specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Council believes has committed the Prohibited Act; and

(c) the date on which this Agreement will terminate.

19.8 Notwithstanding the provisions of Clause 36 (*Dispute Resolution*), any dispute relating to:

(a) the interpretation of this Clause 19 *(Bribery, Corrupt Gifts and Fraud*)*;* or

(b) the amount or value of any gift, consideration or commission made in breach of this Clause 19 (*Bribery, Corrupt Gifts and Fraud*),

(c) shall be determined solely by the Council and its decision shall be final and conclusive.

19.9 Termination by the Council pursuant to Clause 19.7 *(Bribery, Corrupt Gifts and Fraud)* is without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

20. RE-USE OF PUBLIC SECTOR INFORMATION

20.1 The Service Provider acknowledges that the Council has legal responsibilities to allow re-use of public sector information in accordance with the Re-Use of Public Sector Information Regulations 2005.

20.2 The Council shall not authorise re-use of information which is exempt from disclosure under the FOIA and the EIR.

20.3 The Council shall not authorise re-use of information where the Service Provider owns the Intellectual Property Rights in that information, unless re-use is required by Law and/or compliance with a Court order.

20.4 Where information is jointly owned by the Council and the Service Provider and it is impossible to identify the Intellectual Property Right elements owned by each Party, the Council shall consult the Service Provider before authorising re-use, however the final decision shall lie with the Council in its absolute discretion.

21. EQUAL OPPORTUNITIES

21.1 During the performance of the Services, the Service Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination including the Equality Act 2010 (as amended from time to time) whether in race, gender, religion, belief, disability, sexual orientation, age, human rights or otherwise in employment and shall have regard to other official guidance and code of practice in relation to promotion of equality in employment.

21.2 The Service Provider shall comply with the provisions of the National Minimum Wage Act 1998 (as amended) in relation to the payment of its Staff.

21.3 The Service Provider shall have an equal opportunities policy which may be reviewed and approved by the Council prior to the commencement of the Services and from time to time. The Provider shall ensure that any reasonable amendments requested by the Council are incorporated into its equal opportunities policy within twenty-one (21) Calendar Days of request by the Council.

21.4 The Service Provider shall take all reasonable steps to secure the observance of this Clause 21 *(Equal Opportunities*) by Staff employed in connection with this Agreement.

21.5 The Service Provider shall provide such information as the Council may reasonably require for the purpose of assessing the Service Provider's continued compliance with this Clause 21 *(Equal Opportunities)*. From time to time the Council may request and the Service Provider produce to the Council an audit in writing on an annual basis of an anonymised random sample of employees (the size of sample to be specified by the Council) demonstrating that the National Minimum Wage has been paid and taking into account travel time under Regulation 15 and training under Regulation 19 of the National Minimum Wage Regulations 1999.

21.6 If any Court or tribunal, or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) should make any finding of unlawful discrimination against the Service Provider, then the Service Provider shall immediately inform the Council of such a finding and the Council shall have the right to terminate this Agreement in accordance with Clause 38 (*Termination*) if, having discussed the matter with the Service Provider, it is of the opinion that the actions of the Service Provider leading up to the finding

were sufficiently serious as to undermine its compliance with this Clause 21 *(Equal Opportunities)*.

21.7 In the event that the Council does not exercise its right of termination under Clause 21.6 *(Equal Opportunities)* the Service Provider shall discuss with the Council the appropriate steps which the Service Provider needs to take in order to prevent repetition of the unlawful discrimination and shall provide the Council with details of any such steps taken within a time limit reasonably specified by the Council.

22. HEALTH AND SAFETY

22.1 The Service Provider shall at all times comply with the requirement of the Health and Safety at Work Act 1974 and any other legislation or order pertaining to the health and safety of employees and others who may be affected by the Service Provider's acts or omissions in providing the Services under this Agreement.

22.2 The Service Provider shall comply with all health and safety requirements affecting the Service Provider's Premises. The Service Provider shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Services and the acts of its Staff.

22.3 The Service Provider shall throughout the Agreement Period have full regard for the safety of all persons (including Staff and Service Users),and shall ensure that the Service Provider's Premises, stores and the Service Provider's Equipment are maintained (at the Service Provider's own cost) in a manner appropriate to ensure compliance with health and safety legislation.

22.4 The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Service Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work Act 1974 and provisions within this Clause 22 (*Health and Safety)*.

23. WHISTLEBLOWING

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

23.2 The Service Provider shall ensure that it has a whistleblowing procedure which may be reviewed and approved by the Council from time to time will be notified to Staff and Service Users. The Service Provider shall ensure that any reasonable amendments requested by the Council are incorporated into its whistleblowing procedure within twenty-one (21) Calendar Days of a request by the Council to do so.

24. OBSERVANCE OF STATUTORY REQUIREMENTS

24.1 Without prejudice to the particularity of the foregoing or the particularity of the Clauses in this Agreement, each of the Parties shall comply with all requirements of the Law to be observed and performed in connection with the Services and the Service Provider shall indemnify the Council against all actions, claims, demand, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by it or any of its Staff of this Clause 24

(*Observance of Statutory Requirements*).The Service Provider shall notify the Council of any breach of any statutory or other provision relating in any way to the provision of or connected with the Services.

24.2 The Council will consider any representation made by the Service Provider in relation to this Clause 24 (*Observance of Statutory Requirements)*. The Council reserves the right to suspend the provision of the Services in accordance with Clause 37 (*Suspension*) in whole or in part without paying compensation if and whenever the Service Provider is, in the reasonable opinion of the Council, in contravention of the Law including those provisions referred to in this Clause 24 (*Observance of Statutory Requirements)* or at any time enacted or notified to the Service Provider during the course of this Agreement.

24.3 If the Council exercises the right reserved in Clause 24.2 (*Observance of Statutory Requirements)* then the Council may employ and pay a Replacement Service Provider to provide the Services required and, where appropriate, may recover from the Service Provider any additional costs in so doing.

24.4 **Mental Capacity Act and Deprivation of Liberty Safeguards**

24.4.1 In relation to the Mental Capacity Act 2005 (as amended) (the **"MCA"**):

(a) The Service Provider, including Staff shall comply with the provisions set out in the MCA when delivering the Service;

(b) The Service Provider shall have a clear written policy which may be reviewed and approved by the Council on its approach to the MCA. The Service Provider shall agree that any reasonable amendments requested by the Council are incorporated into its diversity policy within twenty-one (21) Calendar Days of request by the Council to do so;

(c) The Service Provider must train all Staff as part of their induction process to follow the reporting procedures specified in the policy and shall ensure that such training is updated at least annually; and

(d) The Service Provider shall notify the Council immediately where a Service User may lack the capacity and a Significant Decision is to be made.

24.4.2 In relation to DOL:

(a) The Service Provider shall have regard to the MCA Code of Practice including the supplementary DoL Safeguards Code of Practice in its role as a Managing Authority.

(b) The Service Provider shall have a clear written policy approved by the Council and reviewed from time to time on its approach to the DoL, which includes but is not limited to the following:

i. a clear procedure for the recording of information;

ii. the process for applying for an Authorisation to the Council;

iii. the process once a Authorisation request has been made; and

iv. any reasonable amendments requested by the Council are incorporated into it's diversity policy within twenty-one (21) Calendar Days of request by the Council.

24.4.3 The Service Provider shall appoint a lead contact to act on behalf of the Service Provider for all purposes connected with the MCA and DoL. The Service Provider shall notify the Council of the lead contact details immediately prior to the Commencement Date.

24.4.4 The Service Provider shall give notice in writing to the Council of any change in the identity, address, e-mail and telephone numbers of the person appointed as lead contact as soon as it becomes aware of such change.

25. HEALTHWATCH

25.1 The Service Provider shall (upon reasonable notice) permit or procure permission for the authorised representatives of the relevant Healthwatch to have access to and observe the carrying-on of activities (including but not limited to the Services) on premises controlled by that Service Provider (including but not limited to the Service Provider's Premises) and provide information to the Healthwatch.

25.2 The provisions of Clause 25.1(*Healthwatch)* shall not apply if:

(a) 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; or

(b) the authorised representative undertakes viewing or observation on the premises which is not related to the function of Healthwatch; or

(c) it is in a non-communal part of the Service Provider's Premises, is part of the Service Provider's Premises which is a Service User's home or is used as accommodation by employees; or

(d) a request is made to view an Excluded Activity; or

(e) the request applies to a part of the Service Provider's Premises where care and support services are not provided; or

(f) in the view of the Service Provider's Authorised Representative the authorised representative is not acting reasonably and proportionately, or

(g) the authorised representative does not provide the Service Provider with evidence that they are authorised in accordance with Regulation 4 of the Local Involvement Networks (Duty of Service Providers to Allow Entry) Regulations 2008.

25.3 The Service Provider shall notify the Council within five (5) Working Days after the inspection of any notices served by Healthwatch in respect of the Service Provider or its Staff.

26. ENVIRONMENTAL REQUIREMENTS

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

27. HUMAN RIGHTS ACT 1998

27.1 In the performance of the Services the Service Provider shall comply with the Human Rights Act 1998 as if it was a "Public Authority" within the meaning of the Human Rights Act 1998.

27.2 If a third party threatens or commences proceedings or complaint against the Council on the grounds that there has been a breach of any person's rights under the Human Rights Act 1998 in connection with this Agreement, the Service Provider shall use all reasonable endeavours to co-operate with the Council so as to enable the Council:

(a) to achieve the aim of successfully averting or defending the proceedings or complaint; and/or

(b) to comply with any order, judgment or direction made pursuant to the same by any duly authorised authority.

27.3 Notwithstanding the provisions of Clause 10 (*Variations and Change Control*), the Council may agree such modifications to this Agreement as may be required to enable it to comply with the provisions of the Human Rights Act 1998 and the Service Provider shall forthwith comply with such modifications.

28. CHANGE IN LAW

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

General Change in Law:

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

Qualifying Change in Law

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

(a) any necessary change in the Services and any consequent change in the Price;

(b) whether any variation is required to the terms of this Agreement pursuant to Clause 10 (*Variations and Change Control*);

(c) whether relief from compliance with the terms of this Agreement is required, including the obligation of the Service Provider to achieve the Commencement Date, milestones or to meet any Performance Standards.

28.4 As soon as practicable after any notification in accordance with Clause 28.3 (*Qualifying Change in Law*) the Parties shall discuss and agree the matters referred to in Clause 28.3 (*Qualifying Change in Law*). The Service Provider shall provide evidence of how it can mitigate the effect of the Qualifying Change in Law, including:

(a) providing evidence that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractor;

(b) demonstrating that a foreseeable Qualifying Change in Law had been taken into account by the Service Provider before it occurred;

(c) giving evidence as to how the Qualifying Change in Law has affected the cost of providing the Services; and

(d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

28.5 Any increase in the Price, relief from the Service Provider's obligations agreed by the Parties or any variation to the Agreement required pursuant to this Clause 28 (*Qualifying Change in Law*) shall be considered and implemented, if agreed, in accordance with Clause 10 *(Variations and Change Control)***.**

G. INSURANCE AND INDEMNITY

29. INSURANCE

29.1 The Service Provider shall during the Agreement Period take out and maintain or procure the maintenance of the Required Insurances.

29.2 The Council may require the Service Provider to:

(a) name the Council as co-insured (other than employer liability and professional indemnity insurance) with any other party maintaining the Required Insurances; and

(b) comply with any other condition in respect of the Required Insurances that the Council considers reasonable in the circumstances.

29.3 The Service Provider shall provide to the Council evidence and copies on request of all insurance policies required under this Clause 29 *(Required* Insurances) including but not limited to the name of the insurer and premium paid.

29.4 If the Service Provider is in breach of this Clause 29 *(Required Insurances*)*,* the Council may pay any premium required to keep such Required Insurances in force or itself procure such insurance and may in either case recover such amounts from the Service Provider on written demand.

29.5 The Service Provider shall give the Council notification within thirty (30) Calendar Days after any claim on any of the Required Insurances' policies referred to in this Clause 29 (*Required Insurances*) accompanied by full details of the incident giving rise to the claim.

29.6 Failure to comply with the Required Insurance provisions of this Agreement shall not limit or relieve the Service Provider of its liabilities and obligations under this Agreement.

29.7 The Service Provider shall inform the Council of any material changes to the Service Provider's policies that may affect the Service Providers insurance held for the purposes of the Required Insurances pursuant to this Clause 29 (*Required Insurances*).

29.8 The Service Provider shall prior to the renewal date or the expiry date in respect of each Required Insurance deliver to the Council for its approval (such approval not to be unreasonably withheld) a notice stating that the Service Provider's proposals for its insurances for the following period which includes details as to:

(a) the proposed insurers; and

(b) the terms of the policies including the proposed exclusions, the insured amounts and the policy excess.

(c) The insurance premiums in respect of the Required Insurances shall be the responsibility of the Service Provider.

29.9 In addition to the Required Insurances, the Service Provider shall procure and maintain contents insurance to cover the personal belongings of the Service Users at the Service Provider's Premises. The Service Provider shall inform the Service User of the level of cover held and advise that it is the responsibility of the Service User to arrange personal insurance cover for any possessions they own that are not adequately insured by the Supplier's insurance.

29.10 The Service Provider shall at all times comply with the Council's policy for the protection of Service User belongings as detailed in Schedule 6b (*Safeguarding Service User Belongings*).

30. INDEMNITY

30.1 The Service Provider shall, subject to Clause 30.2 (*Indemnity)*, be responsible for and indemnify the Council, its employees, agents and contractors on demand from and against all liability for:

30.1.1 death and personal injury;

30.1.2 loss of or damage to property;

30.1.3 breach of statutory duty;

30.1.4 actions, proceedings, costs, claims, demands, liabilities, losses and expenses

whatsoever arising out of, or in consequence of the performance or non-performance by the Service Provider of its obligations under this Agreement or ISP.

30.2 The Service Provider shall not be responsible or be obliged to indemnify the Council for any injury, loss, damage, costs and expense caused by the negligence or wilful misconduct of the Council, its employees, agents or contractors or by a breach of the Council of its obligations under this Agreement

30.3 In relation to any claim the Service Provider shall notify and keep the Council fully informed and consult with it about the conduct of the claim and shall have due regard to the Council's interests.

H. REMEDIES FOR POOR PERFORMANCE AND TERMINATION

31. REMEDIES FOR POOR PERFORMANCE

31.1 If the Service Provider fails to supply the Services in accordance with this Agreement (and in the Council's reasonable opinion such failure is capable of remedy), the Council's Authorised Representative shall notify the Service Provider's Authorised Representative of such failure in writing and shall request the Service Provider to produce a plan to the Council's Authorised Representative within fourteen (14) Calendar Days which details the Service Provider's proposals and timescales necessary to rectify the failures detailed in the Council's notice (the "**Action Plan**").

31.2 If the Action Plan, in the Council's reasonable opinion, does not propose adequate steps to rectify the failures specified by the Council in the notice served by it pursuant to Clause 31.1 (*Remedies for Poor Performance*), the Service Provider shall amend the Action Plan in order

to adequately rectify the failures to the Council's reasonable satisfaction within the time frame stipulated by the Council.

31.3 The Council's Authorised Representative shall notify the Service Provider's Authorised Representative in writing of the Council's acceptance of the Action Plan.

31.4 The Council shall monitor the Service Provider's performance and implementation of the Action Plan.

31.5 If the Service Provider fails to comply with the Action Plan the Council shall be entitled to terminate this Agreement and any ISP on giving thirty (30) Calendar Days written notice to the Service Provider.

31.6 Without prejudice to any other rights and remedies either Party may have, the Service Provider shall reimburse the Council on demand for any reasonable costs incurred by the Council as a consequence of the Service Provider's failure to comply with the agreed Action Plan.

31.7 If the Service Provider's failure is not (in the Council's reasonable opinion) capable of remedy or is (in the Council's reasonable opinion) so serious the failure has the potential to cause the Council to be in breach of any statutory duty or its duty of care to the Service User the Council may terminate this Agreement in accordance with the provisions of Clause 38 *(Termination).*

32. FORCE MAJEURE

32.1 No Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out all or a material part of its obligations under this Agreement by that Force Majeure Event.

32.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party before the expiration of twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

32.3 Within forty-eight (48) hours, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.

32.4 If the Force Majeure continues for more than thirty (30) Calendar Days either Party may terminate this Agreement by giving the other Party thirty (30) Calendar Days' written. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.

32.5 This Clause 32 (*Force Majeure*) does not affect the Council's rights to terminate this Agreement in accordance with Clause 38 *(Termination)* in respect of any ground for termination which does not arise from a delay in or failure of the Service Provider in the performance of its obligations under this Agreement where such delay or failure has not arisen as a result of a Force Majeure Event.

33. INDUSTRIAL ACTION

33.1 The Service Provider shall use all reasonable endeavours to give the Council as much advance warning of prospective industrial action and/or industrial dispute by its Staff which is likely to affect the performance of this Agreement.

33.2 The occurrence of industrial action by the Staff shall not relieve the Service Provider from any of its obligations set out in this Agreement. The Council reserves the right to make alternative arrangements for the provision of the Services and to charge the Service Provider for any difference in resultant cost including the cost of a Replacement Service Provider or terminate this Agreement by notice in writing to the Service Provider in accordance with Clause 39 (*Termination*).

34. BUSINESS CONTINUITY

34.1 In addition to the provisions of this Clause 34 (Business Continuity), the Parties shall comply with the provisions of Schedule 5 (*Business Continuity*)

34.2 The Parties shall agree no later than sixty (60) Working Days after the Commencement Date a Business Continuity Plan which shall ensure that the Service Provider can restore or regenerate full business activity in the event of an internal or external threat within a reasonable period of time as specified by the Council.

34.3 The Business Continuity Plan shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of a major failure of the Services or any part thereof, as determined by the Council's Authorised Representative.

34.4 The Service Provider shall review and assess the Business Continuity Plan every twelve (12) Months and produce a report to the Council of the success or failure. If the Council is not satisfied with the Business Continuity Plan provided by the Service Provider, the Council reserves the right to ask for the review and assessment to be repeated at the Service Provider's expense.

34.5 Any costs incurred in the preparation and implementation of the Business Continuity Plan shall be the responsibility of the Service Provider.

35. COMPLAINTS

35.1 The Service Provider shall, from the Commencement Date, have in place a complaints procedure to deal with complaints about the Services, which such procedure shall be approved by the Council from time to time.

35.2 The Service Provider shall ensure that the complaints procedure referred to in Clause 35.1 (*Complaints*) shall include, as a minimum, the following information:

(a) that the Service being provided is being provided by the Service Provider on behalf of the Council;

(b) that in the event that any Service User or any member of the general public is dissatisfied with the manner in which or the standard to which the Service is being provided, that they may (after exhausting the Service Provider's complaints procedure) make a formal complaint to the Council's Authorised Representative; and

(c) the address and telephone number of the Council's Authorised Representative.

35.3 The Service Provider shall ensure that any reasonable amendments requested by the Council are incorporated into its Service Provider's complaints procedure within twenty-one (21) Calendar Days of request by the Council to do so.

35.4 The Service Provider shall notify the Council's Authorised Representative of any complaints received within two (2) Working Days of receipt by the Service Provider of such complaint. The Service Provider shall at the same time inform the Council's Authorised Representative of how it proposes to resolve the complaint. If the compliant is not resolved to the satisfaction of the Council's Authorised Representative within any time period reasonably specified by the Council's Authorised Representative, then the Council's Authorised Representative may require that the Service Provider produce an Action Plan in accordance with Clause 31.1 (*Remedies for Poor Performance)* and the provisions of that Clause 31 (*Remedies for Poor Performance*) shall apply.

36. DISPUTE RESOLUTION

36.1 Any dispute or difference arising out of or in connection with this Agreement or ISP (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this Clause 36 *(Dispute Resolution)*.

36.2 The Parties shall each use reasonable endeavours to resolve a dispute by means of prompt, bona fide discussion at a managerial level appropriate to the dispute in question.

36.3 In the event that a dispute is not resolved within seven (7) Working Days of it having been referred to a managerial level for discussion then either Party may refer it to a Director or equivalent officer of each Party for resolution and the same shall meet for discussion within fourteen (14) Working Days thereafter or such longer period as the Parties may agree.

36.4 Nothing in this Clause 36 *(Dispute* Resolution) shall prevent the Parties from seeking from any Court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

36.5 Mediation shall not be a condition precedent to an action in relation to any dispute:

(a) which under the terms of this Agreement or any rule of Law the Parties must refer to any Court or arbitrator or other tribunal; or

(b) in which either Party requires either:

(i) an order or award (whether interim or final) restraining the other Party from doing any act; or

(ii) compelling the other Party to do any act; or

(iii) a judgment or award for a liquidated sum to which there is no arguable defence.

36.6 If the dispute cannot be resolved by the Parties pursuant to Clause 36.1 *(Dispute* Resolution) the dispute shall be referred to mediation pursuant to the procedure set out in Clause 36.6 *(Dispute* Resolution) unless:

(a) the Council reasonably considers that the dispute is not suitable for resolution by mediation; or

(b) the Service Provider does not agree to mediation.

36.7 The performance of this Agreement by the Service Provider shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and its Staff shall comply fully with the requirements of this Agreement at all times.

36.8 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he/she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator.

(b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

(d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be confirmed in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the agreement without the prior written consent of both Parties.

36.9 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

36.10 Unless agreed otherwise in any mediation each Party shall bear its own costs of such mediation.

37. SUSPENSION

37.1 If :

37.1.1 The Service Provider commits a Persistent Breach of this Agreement*;* or

37.1.2 The Council instigates its local Safeguarding Vulnerable Adults Guidelines as detailed in Schedule 6c (*Safeguarding Vulnerable Adults Guidelines*); or

37.1.3 The Services are assessed by the Care Quality Commission as non-compliant for the purposes of the Health and Social Care Act 2008; or

37.1.4 There are unsatisfactory reports from statutory agencies (such agencies shall include but not be limited to the Registration Authority, Environmental Health, Fire and Rescue Service and the Council's Approved Brokerage Service).

Then the Council may (following the process specified in this Clause 37 (*Suspension*) suspend the Service Provider from the supply chain and shall not issue any new ISP to the Service Provider during the Suspension Period.

37.2 In the event that the Service Provider is suspended pursuant to Clause 37.1 (*Suspension*) the Council shall immediately notify the Service Provider's Authorised Representative of such suspension verbally and shall confirm the suspension (including the grounds for suspension in accordance with Clause 37.1 (*Suspension*) in writing within five 5 Working Days thereafter. The Council will not issue ISPs to the Service Provider during the Suspension Period.

37.3 The Parties acknowledge and agree that the provisions of Clause 31 (*Remedies for Poor Performance)* shall apply from the date of verbal notification of suspension from the Council to the Service Provider's Authorised Representative.

37.4 The Council shall remove any suspension if:

37.4.1 In the case of a suspension under Clause 37.1.1 (*Suspension*), the Service Provider has complied with any relevant Action Plan to address the issues that caused the failure to achieve the Performance Standards; or

37.4.2 In the case of a suspension under Clause 37.1.2 (*Suspension*), any investigation under the Council's Safeguarding Adults from Abuse procedure finds that no action is required by either the Council or the Service Provider or the Service Provider has (in the reasonable opinion of the Council) adequately addressed any concerns highlighted to by any investigation by the Council under the Safeguarding Adults from Abuse procedure in accordance with any Action Plan; or

37.4.3 In the case of a suspension under Clause 37.1.3 (*Suspension*), the Service Provider is assessed as compliant by the Care Quality Commission and such assessment has been evidenced to the Council in writing; or

37.4.4 In the case of a suspension under Clause 37.1.4 (*Suspension*) the Service Provider has (in the reasonable opinion of the Council) adequately addressed any concerns highlighted by any investigation undertaken by the statutory agencies detailed in Clause 38.1.4 (*Suspension).*

37.5 The Council shall notify the Service Provider's Authorised Representative verbally of the lifting of any suspension and confirm the same in writing within five (5) Working Days thereafter.

37.6 The Council shall place Service Users with the Service Provider in accordance with paragraph 6 (*Referrals to the Home to Assess Service)* of Schedule 1 (*Service Specification*) upon expiry of the Suspension Period.

38. TERMINATION

38.1 In addition to the grounds detailed in Clauses 4.1.2 *(The Services)*, 7.9.3 *(Personnel and Staff)* 19.6 *(Bribery, Corrupt Gifts and Fraud)*, 21.6 *(Equal Opportunities)*, 31.5 *(Remedies for Poor Performance)*, 31.7 *(Remedies for Poor Performance)*, 48.3 *(Severance),* The Council may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Agreement or ISP in whole in the event that the Service Provider:

(a) is served with a section 14 (Cancellation of Registration) notice by the Care Quality Commission or such other notice from the Care Quality Commission to cancel the Service Provider's relevant registration in force from time to time;

(b) is assessed by the Care Quality Commission as non-compliant for the purposes of the Health and Social Care Act 2008;

(c) is the subject of unsatisfactory reports from statutory agencies (such agencies shall include but not be limited to the Care Quality Commission, Environmental Health, Fire and Rescue Service and the Council's Approved Brokerage Service);

(d) fails to achieve the Performance Standards at least three (3) times in any rolling three (3) Month period or at least six (6) times in any rolling twelve (12) Month period;

(e) fails to comply with any statutory duty or requirement in so far as such duty or requirement affects or relates to the Services, including the loss of any statutory licence or certification which is required for the performance of the Services or as otherwise required by this Agreement;

(f) does anything which has the effect of putting the Council in breach of a statutory duty or any licence held by the Council;

(g) fails to comply with or breaches Clause 18 *(Data Protection);*

(h) fails to comply with or breaches the safeguarding provisions of Clause 7 (*Personnel and Staff*);

(i) fails to comply with or breaches Clause 21 *(Equal Opportunities);*

(j) commits a Persistent Breach or Persistent Breaches of any of the terms of this Agreement, and where the Persistent Breach or Persistent Breaches are capable of remedy but are not remedied by the Service Provider in accordance with Clause 31 *(Remedies for Poor Performance);*

(k) commits a substantial or fundamental breach of any of the terms of this Agreement which in the Council's reasonable opinion is not capable of being remedied.

(l) fails to comply with or breaches the provisions of Clause 19 *(Bribery, Corrupt Gifts and Fraud)*;

(m) if the Service Provider commits a Service Provider Default;

(n) the Service Provider undergoes a change of control, within the meaning of section 450 of the Corporation Tax 2010, which in the opinion of the Council impacts adversely and materially on the performance of this Agreement;

38.2 The Council at its sole discretion may appoint a Replacement Service Provider on the same terms and conditions as this Agreement in the event that the Service Provider undergoes corporate restructuring, including takeover, merger, acquisition or insolvency of the Service Provider.

39. CONSEQUENCES OF TERMINATION OR EXPIRY

39.1 If the Agreement expires or is terminated in accordance with Clause 38 *(Termination)*:

(a) the Service Provider shall forthwith cease to perform the Services;

(b) the Council shall have the right to terminate any ISP immediately or agree a expiry date of the ISP that occurs after the termination of this Agreement if required;

(c) the Service Provider shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Council; and

(d) the Service Provider shall forthwith cease to use the Council's Data and shall return to the Council a complete and uncorrupted version of all Council Data and all records, information, documents whosoever held including without limitation correspondence with Staff, the Council's service departments, any Service Users and any other relevant third party and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Council (in which event the Council shall reimburse to the Service Provider the Council's reasonable data conversion expenses) whether such Council Data is on hard copy or on a disk or on any computer systems.

39.2 The Service Provider shall at the sole discretion of the Council either return to the Council in an agreed form timescale and location as specified by the Council or destroy the Council's Data and all copies thereof as instructed by the Council. The Council reserves the right to request evidence from the Service Provider that the Council's Data has been destroyed in a secure manner.

39.3 If the Service Provider is unable or fails to provide the Services or any part thereof in accordance with this Agreement, the Council may seek a Replacement Service Provider. All costs incurred by the Council as a result of seeking and employing a Replacement Service Provider shall be deducted by the Council from any sums due to the Service Provider and shall be recoverable from the Service Provider by the Council as a debt. The Council's right under this Clause 39 (*Consequences of Termination*) shall be without prejudice to any other rights or remedies which it may possess.

39.4 The Council shall be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination of the Agreement, to deduct the same from any sum or sums which would but for Clause 38 *(Termination)* have been due from the Council to the Service Provider under the Agreement or any other Agreement or be entitled to recover the same for the Service Provider as a debt.

39.5 Losses or expenditure claimed pursuant to this Clause 39 (*Consequences of Termination*) shall include the reasonable costs to the Council of the time spent by its officers in terminating the Agreement and in making alternative arrangements for the provision of the Services or any part thereof when the total costs, loss and/or damage resulting or arising out of the termination of the Agreement have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would but for Clause 38 *(Termination)* have been due to the Service Provider, any balance shown as due to the Council shall be recoverable as a debt or alternatively, the Council, subject to the Clause 8 (*Services Payment)*, shall pay the Service Provider any balance due to the Service Provider.

39.6 The rights of the Council under this Clause 39 *(Consequences of Termination*) are in addition to and without prejudice to any other rights or remedies the Council may have against the Service Provider directly or pursuant to any guarantee and/or performance bond or indemnity.

39.7 Expiry or earlier termination of the Agreement shall be without prejudice to the rights and remedies of the Service Provider and the Council accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either such Party to recover any amount outstanding at the termination or expiration.

39.8 Expiry or termination of this Agreement shall not affect the Council's liability to pay any Performance Payments due to the Service Provider which have accrued during the final 6 weeks of the Agreement Period.

39.9 Expiry or earlier termination of this Agreement shall not affect the continuing rights and obligations of the Parties under Clauses *12 (Intellectual Property Rights), 13 (Audit Rights), 16 (Freedom of Information), 17 (Confidentiality), 18 (Data Protection), 19 (Bribery, Corruption and Fraud), 20 (Re-Use of Public Sector Information), 30 (Indemnity), 39 (Consequences of Termination), 40 (Exit and Handover Arrangements)* or under any other provision of this Agreement that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination.

40. EXIT AND HANDOVER ARRANGEMENTS

40.1 The Service Provider shall not charge the Council or any Replacement Service Provider for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this Clause 40 *(Exit and Handover Arrangements*) on expiry or earlier termination**.**

40.2 The Service Provider shall forthwith upon the request of the Council's Authorised Representative, supply to the Council any information reasonably specified by the Council as necessary for the re-tendering of the Service, this includes but is not limited to information relating to members of Staff engaged in the delivery of the Services.

40.3 During the twelve (12) Months prior to the Expiry Date or during any notice period following termination of this Agreement by the Council, the Service Provider shall not without prior notification to the Council:

40.3.1 vary or purport to vary the terms and conditions of any members of Staff engaged in the delivery of the Services;

40.3.2 materially increase or decrease the number of Staff engaged in the delivery of the Services;

40.3.3 increase Staff remuneration;

40.3.4 assign, re-deploy or second any Staff engaged in the delivery of the Services to other duties unconnected to the Services;

40.4 The Parties acknowledge that the provisions of the TUPE Regulations may apply should a new provider be appointed following a procurement process. The appointment of a new service provider may constitute a "Relevant Transfer" (as defined in the TUPE Regulations).

40.5 In the event of a Relevant Transfer the Service Provider agrees to comply with its obligations under the TUPE Regulations in respect of employees transferring to a new provider.

40.6 The Service Provider shall be responsible for its own costs that arise as a result of compliance with the provisions of this Clause 40 (*Exit and Handover Arrangements*).

40.7 On giving written notice to the Service Provider and after twelve (12) Months of the date of the expiry or earlier termination of this Agreement unless the individual is responding to a job advert the Council shall have the right:

(a) to offer any Staff who have previously been involved in performing the Services either employment or an agreement for services with the Council and the Service Provider agrees that if such Staff accepts such offer the Service Provider shall release such person from any contractual restriction with it which such acceptance may otherwise contravene;

(b) to require the Service Provider to provide for a period of four (4) Months following the date of expiry or termination such advice assistance and co-operation as the Council may reasonably require to enable the Council to provide the Services in-house or to procure their provision by a Replacement Service Provider.

I. GENERAL PROVISIONS

41. NOTICES

41.1 Any notice required by this Agreement to be given by either Party to the other shall be in writing and shall be served personally, by fax, by email or by sending the same by registered post or recorded delivery to the following:

	Service Provider	**Council**
Address:		
For the attention of:		
Tel:		
Fax:		
E-mail:		

41.2 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 forty-eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty-four (24) hours after it was despatched.

42. LEGAL PROCEEDINGS

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

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

42.3 If requested to do so by one Party to the other Party, the other Party shall provide, at no cost to the recipient, any relevant information in connection with any legal enquiry, relevant disciplinary hearing, dispute resolution or Court proceedings in which it may become involved arising out of the provision of the Services under this Agreement.

42.4 The Service Provider shall indemnify and keep indemnified the Council against all and any liabilities incurred by reason of the Service Provider's failure to meet any timescale specified

in Law and/or any reasonable timescale specified by the Council in connection with this Clause 42 (*Legal Proceedings*).

43. LOCAL GOVERNMENT OMBUDSMAN

43.1 In the event of a complaint to the Local Government Ombudsman regarding the Service, the Service Provider shall at its own expense provide assistance to the Council and the Local Government Ombudsman to investigate the complaint.

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

(a) provide any information requested in the timescale specified;

(b) attend any meetings as required and permit its Staff to attend;

(c) promptly allow access to an investigation of any documents deemed to be relevant to the investigation and/or the complaint;

(d) allow itself and any Staff deemed to be relevant to be interviewed;

(e) allow itself and any of its Staff to appear as witness in any ensuing proceedings; and

(f) co-operate fully and promptly in every way required by the Local Government Ombudsman during the course of that investigation.

43.3 Where any financial redress, compensation or award is recommended by the Local Government Ombudsman during or as a result of any investigation, or is agreed to by the Council with the Local Government Ombudsman, as a result of any complaint or investigation the Council shall be entitled to recover the cost of that financial redress, compensation or award from the Service Provider.

43.4 The Service Provider shall indemnify and keep indemnified the Council against all and any liabilities incurred by reason of the Service Provider's failure to meet any timescale specified in Law and/or any reasonable timescale specified by the Council in connection with this Clause 43 (*Local Government Ombudsman*).

44. AGENCY

44.1 Nothing in this Agreement shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Council and the Service Provider.

44.2 Save as expressly provided otherwise in this Agreement, the Service Provider shall not be, or be deemed to be, an agent of the Council and the Service Provider shall not hold itself out as having authority or power to bind the Council in any way.

45. ENTIRE AGREEMENT

45.1 Save for any information provided for specific ISPs, each Party acknowledges that this Agreement sets forth the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations communications negotiations and understandings (whether oral or written) concerning the subject matter of this Agreement.

45.2 Nothing in this Clause 45 (*Entire Agreement)* is intended to exclude or limit any statement representation or warranty made fraudulently or to any provision of this Agreement which

was induced by fraud for which the remedies available shall be all those available under the law governing this Agreement.

46. CONFLICT OF INTEREST

46.1 The Service Provider shall take appropriate steps to ensure that neither it nor any of its Staff are placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Service Provider or such persons and the duties owed to the Council under the provisions of this Agreement. The Service Provider will disclose to the Council full particulars of any such conflict of interest which may arise and take all reasonable steps to remove any such conflict to the satisfaction of the Council's Authorised Representative.

47. USE OF THE COUNCIL'S COAT OF ARMS OR LOGO

47.1 The Service Provider shall not use the Council's crest, logo or coat of arms either on its own or in combination with the Service Provider's crest or logo nor cause or permit it to be used.

48. SEVERANCE

48.1 If any term condition or provision contained in this Agreement shall be held to be invalid unlawful or unenforceable to any extent such term condition or provision shall not affect the validity legality or enforceability of the remaining parts of this Agreement.

48.2 Pursuant to Clause 48.1 (*Severance*), the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which as nearly as possible validly gives effect to their intentions as expressed in this Agreement.

48.3 The obligations of the Parties under any invalid, unlawful or unenforceable provision of this Agreement shall be suspended during the negotiations referred to in Clause 48.2 (*Severance*). Failure to agree on such provision within three (3) Months of commencement of negotiations shall entitle either Party to terminate this Agreement.

49. WAIVER

49.1 The failure of either Party to insist upon strict performance of any provision of this Agreement 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 Agreement.

49.2 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 42 *(Notices)***.**

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

50. THE AGREEMENT (RIGHTS OF THIRD PARTIES) ACT 1999

The Parties agree that this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

51. LAW AND JURISDICTION

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

IN WITNESS whereof the Parties have executed this Agreement as a deed and delivered it on the date first written.

Execution by the Council

The common seal of

ESSEX COUNTY COUNCIL

was hereunto affixed in the presence of

Attesting Officer

Execution by the Service Provider

Signed as a deed by [ ])

acting by [ ])

Director

Director/Secretary/Witness

Witness Name and Address