



Dated 2022

(1) THE KENT COUNTY COUNCIL

-and-

(2) *INSERT PROVIDER NAME*

Agreement

relating to the supply of

Residential Care Home Services (Learning Disability, Physical Disability & Mental Health Needs)

Contract Number: SC19 012

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FORM OF AGREEMENT

THIS AGREEMENT is made on the day of 2022.

BETWEEN

- (1) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, ME14 1XQ (the "Council"); and
- (2) **INSERT PROVIDER NAME** (company registered number *INSERT COMPANY NUMBER*) whose registered office is at *INSERT ADDRESS* (the "Provider").

RECITALS:

- (A) The Council a local authority as defined by section 270 of the Local Government Act 1972.
- (B) The Council is procuring a Dynamic Purchasing System of Providers able to deliver residential care services.
- (C) The Council placed a notice on 24th March 2021 to Find a Tender Service to seek expressions of interest from potential service providers for the provision of Services under a Dynamic Purchasing System.
- (D) Following receipt of expressions of interest, the Council invited potential Providers on 24th March 2021 to apply to join the Dynamic Purchasing System for residential care services and submit an Application.
- (E) On the basis of the Provider's Application, the Council selected the Provider to enter a DPS Agreement (the Agreement) to provide services as and when required following a further competition and Call-Off Orders in accordance with this Agreement.
- (F) The Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Service Provider under this Agreement.
- (G) The Authority have no obligation to place Orders with the Provider under this Agreement or at all.

IT IS AGREED:

this Contract is comprised of the following documents:

- 1.1 This Form of Agreement;
- 1.2 The Contract Particulars;
- 1.3 The Special Conditions (if any);
- 1.4 The Conditions of Contract;
- 1.5 The Schedules (excluding Schedule 4 (the Tender));
- 1.6 The Appendices; and
- 1.7 Schedule 4 (the Tender)

and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above.

Terms and expressions used in this Contract shall have the meanings given in Clause 1.1 of the Conditions of Contract.

In consideration for payment of the Contract Price, the Provider undertakes to perform the Services with due skill, care and diligence throughout the Contract Period.

EXECUTION AS A DEED

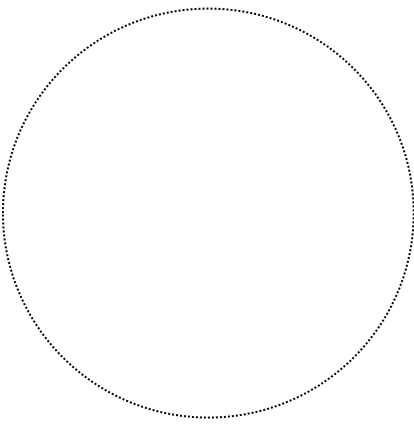
EXECUTED as a Deed by the Council

The COMMON SEAL of
THE KENT COUNTY COUNCIL

was affixed in the presence of:

.....
Authorised Signatory

.....
Print Name of Authorised Signatory



Notes for Contractor on Execution as a Deed

1. For the purpose of execution as a deed, two forms are provided for execution, one for the Council and the other for the Contractor. For execution by the Contractor four methods of execution, (A) to (D) are provided for use as appropriate. The full name of the Contractor (whether an individual, a company or other body) should be inserted where indicated at top of the form. This applies irrespective of the method used.
2. For public and private companies incorporated and registered under the Companies Act, the three principal methods of execution as a deed are:
 - (A) Through signature by a Director and the Company Secretary or by two Directors.
 - (B) By affixing the company's common seal in the presence of a Director and the Company Secretary or of two Directors or other duly authorised officers; or
 - (C) Signature by a single Director in the presence of a witness who attests the signature.
3. Where the Employer or Contractor is an individual, he should use method (D) and sign where indicated in the presence of a witness who should then sign and set out his name and address.

Executed as a Deed by the Contractor

namely **INSERT PROVIDER NAME**

(A) EXECUTED as a deed by the Contractor acting by a Director and the Company Secretary / two Directors **of the Company**

.....

Print Name of Director

.....

Signature Director

.....

Print Name of Director / Company Secretary

.....

Signature Director / Company Secretary

(B) EXECUTED as a Deed by the Contractor By affixing hereto the common seal **of the company**

The COMMON SEAL of
(CONTRACTORS NAME)

was affixed in the presence of

.....

Signature Director

.....

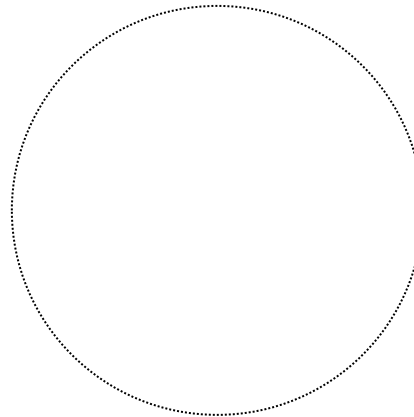
Print Name of Director

.....

Signature Company Secretary/Director

.....

Print Name of Company Secretary/Director



(C) EXECUTED as a deed by the Contractor by attested signature of a single Director of the Company

.....

Print Name of Director

.....

Signature Director

In the presence of

Witness' signature

(Print Name)

Witness' address

Witness' occupation

(D) EXECUTED as a deed by the Contractor by attested signature of the individual

.....

Print Name of Individual

.....

Signature Individual

In the presence of

Witness' signature

(Print Name)

Witness' address

Witness' occupation

CONTRACT PARTICULARS

1	Commencement Date:	15 th June 2020	(Clauses 1.1 and 2.1)
2	Contract Period:	48 months	(Clause 1.1)
3	Contract Price:	As set out in Schedule 3	(Clause 1.1)
4	Contract Extension:	Yes, at the Council's discretion by up to 24 Months in the first instance, and then up to an additional 24 months.	(Clause 2.2)
5	Address for Service of Notices	<p>For the Council:</p> <p>Strategic Commissioning Kent County Council Sessions House County Road Maidstone Kent, ME14 1XQ</p> <p>For the Provider:</p> <p>insert address and contact details</p>	(Clause 5.3)
6	Service Levels and Service Credits	Clause 9 does not apply	(Clause 9 and Schedule 6)
7	Key Personnel	Clause 11 does not apply	
8	Safeguarding	Clause 13 applies	
9	TUPE and Pensions	Clause 14 and Schedule 9 apply	(Clause 14 and Schedule 9)
10	Licence to Occupy Council Premises	Clause 16 does not apply	(Clause 16)
11	Parent Company Guarantee	Clause 18.1 and Schedule 10 do not apply	(Clause 18.1 and Schedule 10)

12	Performance Bond	Clause 19 and Schedule 11 do not apply	(Clause 19 and Schedule 1)
13	Payment and VAT	Payment Periods: monthly in arrears	
14	Price Adjustment	Clause 23 applies If Clause 23 applies, the Price Review Date is: 1 st anniversary of the Commencement Date and every anniversary thereafter	(Clause 23)
15	Audit	Period for which records must be maintained after the end of the Contract: Where the contract is executed as a deed: 12 years	(Clause 21.7, 24.5, 35, and 36)
16	Liability and Indemnity	The Provider's liability under this Contract shall be limited to the sum of 125% of the annual Contract value	(Clause 47.5)
17	Insurance	Public liability insurance: £10 million per claim Employer's liability insurance: £5 million per claim	(Clause 48.1)
18	Additional Insurances	Adequate Business Use vehicle insurance is required as appropriate	(Clause 48.5 and 48.6)
19	Break Clause	Clause 54 applies The notice period is 6 months	(Clause 54)
20	Force Majeure	Clause 58 applies	(Clause 58)
21	Disaster Recovery	Clause 59 applies	(Clause 59)
22	Commercially Sensitive Information	Schedule 13 applies	(Schedule 13)

CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Achieved Service Level”	means in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 6).
“Appendix”	means an appendix to this Contract.
“Approval”	means the written consent of the Council.
“Change”	means any change to this Contract including any Variations.
“Change Control Form”	means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.
“Change Control Procedure”	means the procedure for changing this Contract, as set out in Schedule 7.
“Change of Control”	shall have the same meaning as within section 416 of the Income and Corporation Taxes Act 1988 or section 574 of the Capital Allowances Act 2001.
“Commencement Date”	means the date stated in the Contract Particulars or if none is stated, the date of this Contract.
“Commercially Sensitive Information”	means the information listed in Schedule 13 (Commercially Sensitive Information) comprised of information: (a) which is provided by the Provider to the Council in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret.
“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

	<p>interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Council Personal Data and special data (sensitive personal data) within the meaning of the DPA as such terms are defined in Schedule 16. Confidential Information shall not include information which:</p> <p>(a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 30 (Confidential Information));</p> <p>(b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</p> <p>(c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</p> <p>(d) is independently developed without access to the Confidential Information.</p>
“Contract”	means this written agreement between the Council and the Provider which is more particularly described in the Form of Agreement.
“Contracting Authority”	means any contracting authority as defined in section 2 of the Public Contracts Regulations 2015.
“Contract Extension”	means any extension to the Contract Period as set out in the Contract Particulars.
“Contract Particulars”	means the contract particulars contained in this Contract.
“Contract Period”	means the period stated in the Contract Particulars.
“Contract Price”	means the price (exclusive of any applicable VAT), payable to the Provider by the Council under the Contract, as set out in the Contract Particulars, for the full and proper performance by the Provider of its obligations under the Contract.
“Council”	means The Kent County Council of County Hall, Maidstone, Kent ME14 1XQ.
“Crown Body”	means a public body which has Crown status, such that the material which it produces is subject to Crown copyright protection under section 163 of the Copyright Designs and Patents Act 1988.
“Default”	means any breach of the obligations of the relevant Party (including but not limited to fundamental

	breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.
“Disaster”	means an event defined as a disaster in the Disaster Recovery Plan.
“Disaster Recovery Plan”	means a plan (including Provider's internal business continuity provisions which are approved by the Council prior to the date of this Contract and from time to time thereafter), which sets out the procedures to be adopted by the Provider in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Provider in planning and providing for any such event), the Disaster Recovery Plan at the date of this Contract being set out in Schedule 12.
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 as amended and any guidance and/or codes of practice issued by the Information Commissioner's Office or relevant government department in relation to such regulations.
“Equipment”	means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract.
“Exit Manager”	has the meaning set out in paragraph 4 of Schedule 8.
“Exit Obligations”	means the obligations set out in paragraph 2 of Schedule 8.
“Exit Period”	means the period determined in accordance with paragraph 5 of Schedule 8.
“Fees Regulations”	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as amended.
“FOIA”	means the Freedom of Information Act 2000 as amended 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's Office or relevant government department in relation to such legislation.

"Force Majeure"	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made precluding the provision or receipt of the Services, but excluding:</p> <p>a) any industrial action occurring within the Provider's or any Sub-Contracting organisation; or</p> <p>b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.</p>
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
"Individual"	Means a person in receipt of the Service.
"Information"	has the meaning given under section 84 of the FOIA.
"Information Commissioner's Office"	means the public body responsible for the data protection in accordance with the Data Protection Legislation in the UK.
"Information Governance"	means the way organisations 'process' or handle information relating to the Service and/ or Individuals
"Intellectual Property and Intellectual Property Rights"	means any and all intellectual property and appertaining rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, topography rights, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any

	websites.
“Interface Agreement”	means the document that defines an interface between Parties to the Contract together with associated responsibilities.
“Key Personnel”	means those persons named in the Specification and/or elsewhere in the Contract as being key personnel.
“Law(s)”	any law, statute, regulation, by-law or subordinate legislation in force from time to time, and all subsequent amendments thereto, applicable to a Party or any part of the Services in any jurisdiction in which the Services are supplied as well as regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body, all as amended, of which the Provider is bound to comply.
“Losses”	shall mean all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including legal costs and expenses) of such actions and proceedings and the Staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the contractual Clause in question or to its breach.
“Month”	means calendar month.
“Party”	means a party to the Contract.
“Premises”	means the location where the Services are to be supplied, as set out in the Specification.
“Price Review Date”	has the meaning given in the Contract Particulars.
“Processing and Process”	has the meaning given to it under the Data Protection Legislation and for the purposes of this Contract, it shall include both manual and automated processing.
“Prohibited Act”	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or</p>

	<p>activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act 2010 as amended;</p> <p>(ii) under legislation creating offences concerning fraudulent acts;</p> <p>(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or</p> <p>(iv) defrauding, attempting to defraud or conspiring to defraud the Council.</p>
	means the property, other than real property, issued or made available to the Provider by the Council in connection with the Contract.
“Provider”	means the person, firm or company with whom the Council enters into the Contract.
“Provider Party”	means the Provider's agents and contractors, including each Sub-Contractor.
“Public Sector Contracting Authorities”	means public sector bodies that are subject to the Public Contracts Regulations 2015 and respective successor legislation.
“Public Contracts Directive”	means Directive 2014/24/EU of 26 February 2014 of the European Parliament and of the Council of the European Union.
“Quality Standards”	means the quality standards published by BSI (British Standards Institute), the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same

	type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
“Receipt”	means the physical or electronic arrival of the invoice at the address of the Council set out in the Contract Particulars or at any other address given by the Council to the Provider for the submission of invoices.
“Regulations”	means The Public Contracts Regulations 2015 and respective successor legislation.
“Regulated Activity”	has the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 as amended. Providers must implement as stipulated by the Regulatory body. Regulated activities are listed in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010
“Regulated Activity Provider”	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 as amended.
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.
"Relevant Convictions"	means a conviction that is relevant to the nature of the Services or as listed by the Council from time to time.
“Relevant Index”	means, where used, the index specified Schedule 3 (Pricing and Payment Schedule) or if none is specified, the Consumer Prices Index (CPI).
“Relevant Transfer”	means a relevant transfer for the purposes of TUPE.
“Replacement Provider”	means any third party Service Provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
“Request for Information”	shall have the meaning set out in FOIA or the Environmental Information Regulations 2014 as

	amended as relevant (where the meaning set out for the term “request” shall apply).
“Schedule”	means a schedule attached to, and forming part of, the Contract.
“Services”	means the description of the services to be supplied under the Contract as set out in Schedule 2 and elsewhere in the Contract, as appropriate, including, where appropriate, the Key Personnel, the Premises and the Quality Standards, in accordance with current health and social care legislation including the Care Act 2014, Health and Social Care Act 2012, Health and Social Care Act 2008, Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and Essential Standards of Quality and Safety March 2010.
“Service Credits”	means the sums attributable to a Service Failure as specified in Schedule 6.
“Service Failure”	means a failure by the Provider to provide the Services in accordance with any individual Service Level
“Service Levels”	means the service levels to which the Services are to be provided, as set out in Schedule 6.
“Specification”	means the description of the Services to be supplied and the required outcomes under the Contract as set out in Schedule 2 and elsewhere in the Contract, as appropriate, including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
“Special Conditions”	means the special conditions (if any) set out in Schedule 1.
“Staff”	means all persons employed or engaged by the Provider to perform its obligations under the Contract together with the Provider’s servants, agents, Providers and Sub-Contractors used in the performance of its obligations under the Contract.
“Staff Vetting Procedure”	means the Council’s procedures for the vetting of personnel and as advised to the Provider by the Council.
“Sub-Contract”	means any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

“Sub-Contractor”	means the contractor or contractors that enter into a Sub-Contract with the Provider.
“Tender”	means the document(s) submitted by the Provider to the Council in response to the Council’s invitation to Providers for formal offers to supply it with the Services.
“TFEU”	means the Treaty on the Functioning of the European Union, as amended from time to time.
“the Treaties”	means the Treaty on European Union and TFEU, as amended from time to time.
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended.
“Variation”	means a Change only to the Specification, and, if required, an associated Change of Contract Price.
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994 as amended.
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. CONTRACT PERIOD AND EXTENSION

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Contract Period unless it is otherwise terminated in accordance with the provisions of the Contract, or by operation of law, or extended under Clause 2.2.
- 2.2 Where stipulated in the Contract Particulars, the Council may, by giving written notice to the Provider extend the Contract for such further period as is stated in the Contract Particulars. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to Clause 23 (Price Adjustment)) throughout any such extended period.

3. PROVIDER'S STATUS

- 3.1 At all times during the Contract Period the Provider shall be an independent Provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

4. COUNCIL'S OBLIGATIONS

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

5. NOTICES

- 5.1 Save as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 5.3 For the purposes of Clause 5.2, the address of each Party shall be the address stipulated in the Contract Particulars.
- 5.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

6. MISTAKES IN INFORMATION

- 6.1 The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.
- 6.2 The Provider agrees and acknowledges that:
- 6.2.1 it has been provided with and understood all the information that it needed to assess the scope of the Council's requirements for the Services;
 - 6.2.2 it has taken into account the Premises and any applicable Council systems and processes and is aware of the composition, size and requirements of all user groups and customers relevant to the supply of the Services; and
 - 6.2.3 it is aware of and is able to meet all of the Council's requirements for the Services as communicated to the Provider before the execution of this Contract.
- 6.3 Accordingly, the Provider may not at any time claim any extension of time, relief from its contractual obligations or charge for any additional costs or time incurred on the basis that it was unaware of the scope and extent of the Council's requirements or of the matters described in clauses 6.2.1 to 6.2.3.

7. CONFLICTS OF INTEREST

- 7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.
- 7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

8. THE SERVICES

- 8.1 The Provider shall supply the Services during the Contract Period with due skill, care and diligence and in accordance with:
- 8.1.1 the Quality Standards (if any stipulated in the Specification)
 - 8.1.2 Good Industry Practice;
 - 8.1.3 the Law; and
 - 8.1.4 the requirements of the Contract.

8.2 The Council may inspect and examine the manner in which the Provider supplies the Services at the Premises during normal business hours on reasonable notice.

8.3 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

9. SERVICE LEVELS AND SERVICE CREDITS

9.1 This Clause 9 shall apply where stated in the Contract Particulars.

9.2 Where any part of the Services is stated in Schedule 6 to be subject to a specific Service Level, the Provider shall provide that part of the Services in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.

9.3 The Provider shall provide records of and management reports summarising the Achieved Service Levels as provided for in Clause 43.

9.4 If the Provider fails to provide the Services in accordance with any individual Service Level, the Provider shall pay to the Council the Service Credit set out in Schedule 6.

9.5 The Parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Council. The Provider has taken the Service Credit into account in setting the level of the Contract Price.

10. PROVISION AND REMOVAL OF EQUIPMENT

10.1 The Provider shall provide all the Equipment necessary for the supply of the Services.

10.2 The Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.

10.3 All Equipment brought onto the Premises shall be at the Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Provider.

10.4 The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

10.5 The Provider shall, at the Council's written request, at its own expense and as soon as reasonably practicable:

10.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and

10.5.2 replace such item with a suitable substitute item of Equipment.

- 10.6 On completion of the Services the Provider shall remove the Equipment together with any other materials used by the Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff.

11. KEY PERSONNEL

- 11.1 This Clause 11 (Key Personnel) shall apply if so stated in the Contract Particulars.
- 11.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 11.3 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 11.4 The Council shall not unreasonably withhold its agreement under Clauses 11.2 or 11.3. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

12. PROVIDER'S STAFF

- 12.1 The Council may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain involved in the delivery of the Services:
- 12.1.1 any member of the Staff; or
- 12.1.2 any person employed or engaged by any member of the Staff, whose admission or continued involvement with the delivery of the Services would, in the reasonable opinion of the Council, be undesirable.
- 12.2 At the Council's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.
- 12.3 The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, policies and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 12.4 The Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 12.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council may require the Provider to carry out an appropriate Disclosure and Barring Service (DBS) check in respect of any person to be employed or engaged in the provision of the Services. The Provider shall ensure that any person who discloses that he/she has a Relevant Conviction, or is found by the Provider to have a Relevant Conviction (whether as a result of or through a DBS check or otherwise) is risk assessed to ensure safety of

Service delivery should that person be employed or engaged in the provision of any part of the Services.

12.6 If the Provider fails to comply with Clause 12.2 within 21 days of the date of the request the Provider shall be in Default of its obligations under the Contract.

12.7 The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Provider has failed to comply with Clause 12.2 shall be final and conclusive and the Provider shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under Clause 12.1.

13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

13.1 Without prejudice to the provisions of this Clause 13 the Provider shall at all times in providing the Services comply with the provisions of all Law and guidance that are relevant to the Services and shall take all steps necessary to promote preserve and ensure the wellbeing of the Individuals.

13.2 This Clause 13 shall apply where stipulated in the Contract Particulars.

13.3 The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

13.4 The Provider shall ensure that all individuals engaged in the provision of the Services:

13.4.1 are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the adults' barred list or the children's barred list, as appropriate; and

13.4.2 shall monitor the level and validity of the checks under this Clause 13.4 for each member of Staff.

13.5 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

13.6 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 13 have been met.

13.7 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Individuals/children/vulnerable adults.

13.8 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Individuals.

13.9 All Staff shall comply with the Kent and Medway Safeguarding Children's Procedures 2007 and the Multi Agency Adult Protection Policy, Protocols and Guidance for Kent and

Medway (updated six monthly) and the Provider's own policy and procedure concerning Adult Protection/Safeguarding.

- 13.10 The Provider's Safeguarding Policy shall include safeguarding vulnerable adults and children from any form of abuse or exploitation which includes physical, financial, psychological or sexual abuse, neglect, discriminatory, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance.
- 13.11 The Provider shall have in place robust procedures for responding to suspicion or evidence of abuse or neglect to ensure the safety and protection of the Individual. The procedures shall reflect local multi-agency Policy, Protocols and Guidance, including informing the Care Quality Commission and where appropriate involving the police in accordance with the Public Interest Disclosure Act 1998 and the Department of Health guidance "No Secrets" and the Disclosure and Barring Service
- 13.12 The Provider's Safeguarding Policy and Procedures must ensure that all allegations and incidents of abuse are followed up in a prompt, specified timeframe. All details and actions taken are recorded in a special record/file kept specifically for the purpose, and on the personal file of the Individual.
- 13.13 The Provider shall have in place policies and procedures for Staff regarding the Individual's will and bequests. The policies and procedures shall prevent the involvement of any Staff or members of their family in the making of, or benefiting from, the individual's will, soliciting any other form of bequest or legacy, acting as a witness or executor, and being involved in any way with any other legal arrangement.
- 13.14 All Staff shall receive training on the prevention of abuse within three months of employment and this must be updated annually. Adult Protection level 1 is the minimum requirement for all staff and levels 1 and 2 for managers.
- 13.15 All Staff shall comply with the Mental Capacity Act (MCA) 2005 (including all amendments that have been introduced at the time of signing the contract as well as future amendments during the term of the contract), and the Deprivation of Liberty Safeguards (DOLS). The Provider's processes need to incorporate consideration of whether a person has capacity to consent to the services which are to be provided and whether their actions are likely to result in a deprivation of liberty. The Provider's records must provide evidence of compliance with the MCA and DOLS where appropriate.
- 13.16 All Staff shall receive training on MCA and DOLS within 3 months of employment.
- 13.17 The Provider shall have in place MCA policies and procedures to ensure that all staff understand and comply with their duties and responsibilities under the MCA 2005 for all care and support services.
- 13.18 The Provider shall have in place DOLS policies and procedures to ensure that potential deprivation of liberty is identified, applications for DOLS authorisations are promptly made where appropriate, conditions are properly followed and reviews are regularly undertaken.
- 13.19 All Staff will be aware of the conditions under which to instruct and consult the statutory advocacy service, Independent Mental Capacity Advocacy (IMCA) service, under MCA. All Staff shall understand the role of the IMCA and the role of the paid Relevant Person's Representative (RPR) under DOLS.

14. TUPE AND PENSIONS

- 14.1 The Parties agree that the provisions of Schedule 9 shall apply to any Relevant Transfer of Staff under or in connection with this Contract.

15. INSPECTION OF PREMISES

- 15.1 Unless the Council otherwise directs, the Provider is deemed to have inspected the Premises before submitting its Tender and to have made all appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract. Where the Services are delivered within an individual's home or other residential address, the Provider shall satisfy itself, prior to the commencement of Service delivery where practically possible, or at the earliest opportunity thereafter, that any checks required by this Clause have been satisfactorily carried out.

16. LICENCE TO OCCUPY COUNCIL PREMISES

- 16.1 This Clause 16 applies where stipulated in the Contract Particulars.
- 16.2 Any land or Premises made available from time to time to the Provider by the Council in connection with the Contract shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 16.3 The Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.
- 16.4 Should the Provider require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Provider's expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.
- 16.5 The Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 16.6 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

17. PROPERTY

- 17.1 Where the Council issues Property free of charge to the Provider such Property shall be and remain the property of the Council and the Provider irrevocably licences the Council and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any

circumstances have a lien or any other interest on the Property and the Provider shall at all times only possess the Property as fiduciary agent and bailee of the Council. The Provider shall take all reasonable steps to ensure that the title and proprietary rights of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Staff and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.

- 17.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Council otherwise within 5 Working Days of receipt.
- 17.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 17.4 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 17.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Provider shall inform the Council within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.
- 17.6 Where the Council pays, directly or indirectly, for Property, real or otherwise, in relation to the Contract, the Council will retain ownership of such Property unless stated otherwise in Contract. The Provider shall return such Property to the Council upon request and at the end of the Contract.

18. PARENT COMPANY GUARANTEE

- 18.1 Where stipulated in the Contract Particulars the Provider shall procure the delivery of a parent company guarantee substantially in the form contained in Schedule 10.

19. PERFORMANCE BOND

- 19.1 Where stipulated in the Contract Particulars the Provider shall procure the delivery of a performance bond substantially in the form contained in Schedule 11.

20. CONTRACT PRICE

- 20.1 In consideration of the Provider's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with Clause 21 (Payment and VAT).
- 20.2 The Council shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

21. PAYMENT AND VAT

- 21.1 Unless otherwise specified in Schedule 3, the Council shall pay all sums due to the Provider within 30 days of receipt of a valid invoice, submitted monthly in arrears.

- 21.2 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 21.3 Where the Provider enters into a Sub-Contract with a Provider or Sub-Contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 21.4 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
- 21.5 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause 21.5 shall be paid by the Provider to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.
- 21.6 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under Clause 52.3 (Termination on Default) for failure to pay undisputed sums of money.
- 21.7 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council during the Contract Period and following the end of the Contract for the period specified in the Contract Particulars.

22. RECOVERY OF SUMS DUE

- 22.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Council.
- 22.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 22.3 The Provider shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 22.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

23. PRICE ADJUSTMENT

- 23.1 Unless otherwise indicated in the Contract Particulars, the Contract Price shall apply for the Contract Period without adjustment.

23.2 Where stipulated in the Contract Particulars, the Contract Price shall be adjusted on each Price Review Date by an amount equal to the annual percentage change in the Relevant Index(s) as published in the December preceding the relevant Price Review Date or the average annual percentage change over the three months ending December or the average annual percentage change over the six months ending December, whichever is the lowest.

24. PREVENTION OF BRIBERY AND CORRUPTION

24.1 The Provider:

24.1.1 shall not, and shall procure that any Provider Staff or Provider Party shall not, in connection with this Contract commit a Prohibited Act;

24.1.2 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 Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

24.2 The Provider shall:

24.2.1 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;

24.2.2 within 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 Provider) compliance with this Clause 24 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

24.3 The Provider shall ensure that its anti-bribery policy is provided to the Council on request.

24.4 If any breach of Clause 24.1 is suspected or known, the Provider must notify the Council immediately.

24.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of Clause 24.1, the 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 the period specified in the Contract Particulars following the expiry or termination of this Contract.

24.6 The Council may terminate this Contract by written notice with immediate effect if the Provider, Provider Party or Provider Staff (in all cases whether or not acting with the Provider's knowledge) breaches Clause 24.1.

24.7 Any notice of termination under Clause 24.6 must specify:

24.7.1 the nature of the Prohibited Act;

24.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

24.7.3 the date on which this Contract will terminate.

24.8 Despite Clause 61 (Dispute Resolution), any dispute relating to:

24.8.1 the interpretation of Clause 24; or

24.8.2 the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.

24.9 Any termination under Clause 24.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

25. EQUALITIES

25.1 The Provider shall and shall ensure its Sub-Contractor's and Staff at all times comply with the requirements of the Equality Act 2010 and all other related statutory and regulatory requirements and the Council's policies and procedures copies of which are available on request relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity, marriage and civil partnerships.

25.2 The Provider shall fully indemnify the Council against all actions, claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Provider of this Clause 25.

26. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

27. ENVIRONMENTAL REQUIREMENTS

27.1 The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, 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.

28. HEALTH AND SAFETY

28.1 The Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Contract.

28.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.

- 28.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 28.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working in the performance of its obligations under the Contract.
- 28.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

29. DATA PROTECTION

- 29.1 Clause 29 is to be read in conjunction with Schedule 16 and Annex 1 to Schedule 16, which are, where applicable, incorporated into this Clause 29. The definitions used within this clause 29 are defined at Schedule 16.
- 29.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor unless otherwise specified in Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects).
- 29.3 The Parties acknowledge their respective obligations arising under the Data Protection Legislation and must assist each other as necessary to comply with these obligations.
- 29.4 The Provider acknowledges its obligations pursuant to Schedule 16 and further undertakes on an ongoing basis on behalf of itself, its staff and shall ensure its Sub-processors:
- 29.4.1 treat as Confidential Information all Personal Data which may be derived from or be obtained in the course of the Contract or which may come into the possession of the Provider or an employee, servant or agent or Sub-Contractor of the Provider as a result or in connection with the contract;
 - 29.4.2 provide all necessary precautions to ensure that all such information is treated as confidential by the Provider, his employees, servants, agents or Sub-Contractors;
 - 29.4.3 ensure that he, his employees, servants, agents and Sub-Contractors are aware of the provisions of the DPA and that any personal information obtained from the Council shall not be disclosed or used in any unlawful manner; and
 - 29.4.4 ensure that the Council is kept informed at all times of the identities of the nominated Provider data protection lead.
- 29.5 The Provider shall, for and on behalf of itself, its staff and Sub-Contractors, comply with any notification requirements under the DPA.
- 29.6 The Council is required to comply with Her Majesty's Government information security standards for the secure destruction of data processed on its behalf. The Provider must provide certificated evidence of secure destruction to the required standards when equipment is decommissioned or retired or at the end of the Contract.

- 29.7 The Provider shall return to the Council all data processed on the Council's behalf under this Contract at the end of the Contract whether by expiry or termination unless the Council has informed the Provider in writing that this is not required.
- 29.8 The Provider shall permit the Council or the Council's representative (subject to reasonable and appropriate confidentiality requirements), to inspect and audit, in accordance with Clause 36 (Audit), the Provider's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Provider is in full compliance with its obligations under this Contract.
- 29.9 The Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 29.10 Subject always to Clause 37 (Transfer and Sub-Contracting) if the Provider requires any Sub-Contractor to process Personal Data on its behalf as a Sub-processor, the Provider must, in addition to Schedule 16:
- 29.10.1 require the Sub-Contractor to have in place the appropriate technical and organisational security measures governing the data processing to be carried out, and take all reasonable steps to ensure compliance with those measures;
- 29.10.2 ensure that the Sub-Contractor is engaged under the terms of a written agreement requiring the Sub-Contractor to obligations that are substantially equivalent as those imposed on the Provider by this Clause 29.
- 29.11 The provision of this Clause 29 shall apply during the Contract Period and indefinitely after its expiry.

30. CONFIDENTIAL INFORMATION

- 30.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 30.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 30.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 30.2 Clause 30.1 shall not apply to the extent that:
- 30.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 31 (Freedom of Information);
- 30.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 30.2.3 such information was obtained from a third party without obligation of confidentiality;

30.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

30.2.5 it is independently developed without access to the other Party's Confidential Information.

30.3 The Provider may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

30.4 The Provider shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

30.5 At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

30.6 Nothing in this Contract shall prevent the Council from disclosing the Provider's Confidential Information:

30.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies 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 Crown Body or any Contracting Authority;

30.6.2 to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review as amended or superseded;

30.6.3 for the purpose of the examination and certification of the Council's accounts; or

30.6.4 for 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.

30.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause 30.6 is made aware of the Council's obligations of confidentiality.

30.8 Nothing in this Clause 30 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

31. FREEDOM OF INFORMATION

31.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

- 31.2 The Provider shall and shall procure that any Sub-Contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:
- 31.2.1 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
- 31.2.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 31.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 31.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 31.5 The Provider acknowledges that (notwithstanding the provisions of Clause 31) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:
- 31.5.1 without consulting the Provider; or
- 31.5.2 following consultation with the Provider and having taken their views into account;
- provided always that where Clause 31.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 31.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 31.7 The Provider acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this Clause 31.
- 31.8 The Provider's actions under this Clause 31 shall be at no cost to the Council.

32. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 32.1 The Provider shall not make any press announcement or publicise the Contract, the Services or any aspects thereof in any way, except with the prior written consent of the Council.

- 32.2 The Provider shall take reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, Providers, professional advisors and consultants comply with Clause 32.1.

33. SECURITY

- 33.1 The Council shall be responsible for maintaining the security of the Premises over which the Council has control in accordance with its standard security requirements. The Provider shall comply with all security requirements of the Council while on the Premises and shall ensure that all Staff comply with such requirements.

34. INTELLECTUAL PROPERTY RIGHTS

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

34.1.1 furnished to or made available to the Provider by or on behalf of the Council shall remain the property of the Council; and

34.1.2 prepared by or for the Provider on behalf of the Council for use, or intended use, in relation to the performance by the Provider of its obligations under the Contract shall belong to the Council;

and the Provider shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

- 34.2 The Provider hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 34.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation necessary to execute this assignment.

- 34.3 The Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

- 34.4 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract 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, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Provider or to any other third party supplying services to the Council.

- 34.5 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:

- 34.5.1 items or materials based upon designs supplied by the Council; or
- 34.5.2 the use of data supplied by the Council which is not required to be verified by the Provider under any provision of the Contract.
- 34.6 The Council shall notify the 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 Provider.
- 34.7 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Provider, provided always that the Provider:
 - 34.7.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 34.7.2 shall take due and proper account of the interests of the Council; and
 - 34.7.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 34.8 The Council shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Provider by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Provider's obligations under the Contract and the Provider shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clause 34.5.1 or 34.5.2.
- 34.9 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Provider in connection with the performance of its obligations under the Contract.
- 34.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:
 - 34.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
 - 34.10.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,and in the event that the Provider is unable to comply with Clauses 34.10.1 or 34.10.2 within 15 Working Days of receipt of the Provider's notification the Council may terminate the Contract with immediate effect by notice in writing.

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

35. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 35.1 The Provider shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records and any other reasonable data request as may be requested by the Council in connection with the Contract.
- 35.2 Any requirement for a Change shall be subject to the Change Control Procedure detailed in Schedule 7 (Change Control).
- 35.3 The Provider shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services. As part of this obligation the Provider shall identify and report to the Council's authorised representative quarterly in each Contract year on:
- 35.3.1 the emergence of new and evolving relevant technologies which could improve the Services;
 - 35.3.2 new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;
 - 35.3.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
 - 35.3.4 changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.
- 35.4 Any potential Changes highlighted as a result of the Provider's reporting in accordance with Clause 35.3 shall be addressed by the Parties using the Change Control Procedure.

36. AUDIT

- 36.1 The Provider shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records and any other reasonable data request as may be requested by the Council in connection with the Contract.
- 36.2 The Provider shall, on request, provide to the Council financial information related to their business(es). This may include, however is not limited to, the below. The Provider will further answer any queries and provide necessary information to the Council where the Council deems this appropriate and/or necessary.
- Signed accounts for the last three years, to include detailed P&L accounts (as submitted to HMRC)

- Draft accounts for the last accounting reference period (unless covered by the signed accounts)
- Together with the following information, where not already disclosed in the accounts:
 - Number (and FTEs) of staff employed
 - Total number of Directors and total Directors salaries
 - Details of transactions between connected companies
 - Amounts owed at year-end to connected companies
 - Amounts owed at year-end by connected companies
 - Details of shareholder dividend payments

36.3 The Provider shall, on request, provide to the Council, remuneration information relating to the Provider's Staff. This and the information requested at Clause 36.2 above shall be provided in the format requested by the Council.

36.4 The Provider shall additionally allow the Council access to its Premises on reasonable notice for the purpose of inspection of the Provider's records and systems for the purposes of Contract management.

37. TRANSFER AND SUB-CONTRACTING

37.1 The Provider shall not assign, Sub-Contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract.

37.2 The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

37.3 Where the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.

37.4 The Provider shall ensure that the assignee notifies the Council of the assignee's contact information and bank account details to which the Council shall make payment.

37.5 The provisions of Clause 21 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.

37.6 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- 37.6.1 any Contracting Authority; or
- 37.6.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
- 37.6.3 private sector body which substantially performs the functions of the Council, ("the Transferee") provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.

- 37.7 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.
- 37.8 The Council may disclose to any transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Council shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 37.9 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

38. WAIVER

- 38.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, 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 the Contract.
- 38.2 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 Clause 5 (Notices).
- 38.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

39. VARIATION

- 39.1 Subject to the provisions of this Clause 39, the Council may request a Change to the Specification. Such a Change to the Specification is hereinafter called a Variation and may include a Change to the Contract Price.
- 39.2 The Council may request a Variation by notifying the Provider in writing of the Variation and giving the Provider sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Provider shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Provider accepts the Variation it shall confirm the same in writing.
- 39.3 In the event that the Provider is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;
- 39.3.1 allow the Provider to fulfil its obligations under the Contract without the variation to the Specification;
- 39.3.2 terminate the Contract with immediate effect.
- 39.4 The Provider may propose Variations to the Contract, provided that the Council shall be under no obligation whatsoever to accept any request for a Variation. A Variation

proposed by the Provider shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.

- 39.5 Variations will be dealt with according to the process defined in Schedule 7 (Change Control).

40. SEVERABILITY

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

41. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 41.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Council shall be entitled to investigate the complaint in accordance with the contract monitoring and management procedures contained in Schedule 14 (Contract Management). The Council may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 52 (Termination on Default) of the Contract.

- 41.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Council may, without prejudice to its rights under Clause 52 (Termination on Default), do any of the following:

41.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;

41.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

41.2.3 terminate, in accordance with Clause 52 (Termination on Default), the whole of the Contract.

- 41.3 Without prejudice to its right under Clause 22 (Recovery of Sums Due), the Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

- 41.4 The Provider shall ensure that the Service is delivered as commissioned. In the event there is a difference between commissioned and delivered activities, the Provider shall inform the Council prior to the submission of an invoice to enable all relevant changes to be made on Council systems to effect accurate payments. Should the Provider fail to do this, the Council shall be entitled to recover (i) all sums due in accordance with Clause

22 and (ii) interest calculated in accordance with the Late Payment of Commercial Debt (Interest) Act 1998 as subsequently amended.

41.5 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.

41.6 In the event that:

41.6.1 the Provider fails to comply with Clause 41.5 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

41.6.2 If in the Council's reasonable opinion the Provider's failure, included but not limited to safeguarding issues, is such that it requires immediate rectification which in the Council's reasonable opinion the Provider cannot or will not make; or

41.6.3 the Provider persistently fails to comply with Clause 41.5 above, the Council may terminate the Contract with immediate effect by notice in writing.

42. REMEDIES CUMULATIVE

42.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

43. CONTRACT MANAGEMENT

43.1 The Provider shall comply with the monitoring and contract management arrangements set out in the Schedule 14 (Contract Management) including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

44. ANNUAL REVIEW

44.1 On each anniversary (or other time should this be reasonably required) of the Commencement Date, the Council shall be entitled to carry out a review of the Contract and of the Council's requirements for the Services. As a result of the review, the Council shall (in its discretion) be entitled to:

44.1.1 affirm that the Contract shall continue in accordance with its terms; or

44.1.2 reduce the Contract Period; or

44.1.3 exercise the option to terminate the Contract in accordance with Clause 54; or

44.1.4 require a reduction in the volume or scope of the Services (which shall take effect as a Variation in accordance with Clause 39) in return for a reduction in the Contract Price; or

44.1.5 through negotiation require a reduction in the Contract Price, where there has been a reduction in the Council's budget for the provision of the Services.

44.2 The Council shall notify the Provider in writing of the results of the annual review and the Provider shall take all necessary steps to implement the review within 4 weeks of receiving such notice (or such other reasonable period as may be specified by the Council).

45. ENTIRE AGREEMENT

45.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

46. COUNTERPARTS

46.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

47. LIABILITY AND INDEMNITY

47.1 Neither Party excludes or limits liability to the other Party for:

47.1.1 death or personal injury caused by its negligence; or

47.1.2 Prohibited Act; or

47.1.3 fraudulent misrepresentation; or

47.1.4 any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.

47.2 The Provider shall indemnify the Council without limitation in respect of:

47.2.1 breach of Council Intellectual Property and Intellectual Property Rights;

47.2.2 loss or corruption of Personal Data (including any special category data); and

47.2.3 breach of Council Confidential Information.

47.3 Subject to Clause 47.4 and 47.5 the Provider shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:

47.3.1 the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract;

47.3.2 the act, omission or default of the Provider, any Sub-Contractor or any member of Staff including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by any such party; and

47.3.3 any other loss which is caused directly or indirectly by any act or omission of the Provider which, for the avoidance of doubt, includes wasted expenditure, anticipated savings, replacement services, procurement costs, interests and fines.

47.4 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

47.5 Subject to Clauses 47.1 and 47.2, the Provider's liability under this Contract shall be limited to the amount stated in Contract Particulars.

48. INSURANCE

48.1 The Provider shall throughout the Contract Period effect and maintain with a reputable insurance company the following policies of insurance:

48.1.1 public liability insurance; and

48.1.2 employer's liability insurance with the levels of indemnity cover for each claim stipulated in the Contract Particulars.

48.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

48.3 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

48.4 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.

48.5 Where stipulated in the Contract Particulars, the Provider shall effect the additional insurances stipulated in the Contract Particulars.

48.6 Where professional indemnity insurance is required in accordance with the Contract Particulars the Provider shall maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services do the same. To comply with its obligations under this Clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, Sub-Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the amount stated in the Contract Particulars. Such insurance shall be maintained for a minimum of the period specified in the Contract Particulars following the expiration or earlier termination of the Contract.

49. WARRANTIES AND REPRESENTATIONS

49.1 The Provider warrants and represents on an ongoing basis that:

49.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider;

49.1.2 in entering the Contract it has not committed any Prohibited Act;

- 49.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- 49.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 49.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 49.1.8 in the three 3 years prior to the date of the Contract:
 - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
 - (c) it is and has not been subject to any contractual obligations which might have a material adverse effect on its performance in the provision of the Services to the Council; and
 - (d) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 49.1.9 each warranty and representation is separate and shall not be limited or restricted by reference to, or inference from, the terms of other representations or warranties; and
- 49.1.10 if Provider becomes aware that a warranty or representation given in this Contract is either untrue, misleading or has been breached, it shall immediately notify the Council.

50. TERMINATION FOR BREACH

- 50.1 The Council may terminate this Contract with immediate effect by the service of written notice on the Provider in the following circumstances:

- 50.1.1 if the Provider is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Council may only terminate this Contract under this Clause 50.1 if the Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a Remediation Notice) to do so;
- 50.1.2 if a consistent failure has occurred;
- 50.1.3 if a catastrophic failure has occurred;
- 50.1.4 if a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- 50.1.5 if the Provider ceases or threatens to cease to carry on business in the United Kingdom;
- 50.1.6 if there is a Change of Control of the Provider to which the Council reasonably objects;
- 50.1.7 if this Contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Regulations;
- 50.1.8 if the Provider has, at the time of this Contract's award, been in one of the situations referred to in regulation 57(1) to (3) of the Regulations and should therefore have been excluded from the procurement procedure; or
- 50.1.9 if this Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure pursuant to Article 258 of TFEU, as amended.

50.2 The Council may terminate this Contract in accordance with the provisions of Clause 24 and Clause 58.

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

50.4 The Council may terminate this Contract either in whole or in part.

51. TERMINATION ON INSOLVENCY AND/OR CHANGE OF CONTROL

51.1 The Council may terminate the Contract with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:

- 51.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 51.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed

(other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- 51.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- 51.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 51.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 51.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 51.1.7 being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 51.1.8 any event similar to those listed in Clauses 51.1.1 -51.1.7 occurs under the law of any other jurisdiction.

51.2 The Council may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:

- 51.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
- 51.2.2 a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy; or
- 51.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 51.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- 51.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days; or
- 51.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- 51.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

51.3 The Provider shall notify the Council immediately if the Provider undergoes a Change of Control. The Council may terminate the Contract by notice in writing with immediate effect within six months of being notified that a Change of Control has occurred; or

51.3.1 where no notification has been made, the date that the Council becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

51.4 With regard to the notification to the Council by the Provider detailed in Clause 51.3, such notification shall be made to the Council's Contract Manager as described in Schedule 5 (Schedule of Agreements) or, if this is not possible, the second or third level contacts within Schedule 5 (Schedule of Agreements).

51.5 The notification to the Council by the Provider detailed in Clauses 51.3 and 51.4 shall be made for each contract that the Provider holds with the Council.

52. TERMINATION ON DEFAULT

52.1 The Council may terminate the Contract by written notice to the Provider with immediate effect if the Provider commits a Default and if:

52.1.1 the Provider has not remedied the Default to the satisfaction of the Council within 15 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or

52.1.2 the Default is not, in the opinion of the Council, capable of remedy; or

52.1.3 the Default is a material breach of the Contract.

52.2 In the event that through any Default of the Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

52.3 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause 22 (Recovery of Sums Due).

52.4 The Council may terminate this Contract either in whole or in part.

53. TERMINATION NOTICE

53.1 Where the Council terminates the Contract under Clause 52 (Termination on Default), the Council may terminate this Contract at any time by giving three months' written notice to the Provider. Where the Contract is terminated under Clause 52, the Council shall incur no liability, costs or other detriment resulting from this termination.

54. BREAK CLAUSE

- 54.1 Where stipulated in the Contract Particulars, the Council shall have the right to terminate the Contract at any time by giving written notice (of not less than the period specified in the Contract Particulars) to the Provider.
- 54.2 Where the Council exercises its right to terminate the Contract under Clause 54.1, the Provider shall only be entitled to payment for Services duly rendered up to the date of termination and the Council shall incur no liability to the Provider in respect of any other losses whatsoever whether:
- 54.2.1 loss of future profits;
 - 54.2.2 redundancy or Sub-Contractor breakage costs; or
 - 54.2.3 any other costs whatsoever incurred by the Provider as a consequence of such termination which shall include but not be limited to licence fees, redeployment fees and other contract break fees resulting directly or indirectly from the termination of the Contract.

55. CONSEQUENCES OF EXPIRY OR TERMINATION

- 55.1 Where the Council terminates the Contract under Clause 52 (Termination on Default):
- 55.1.1 the Council may recover from the Provider the cost reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.
 - 55.1.2 no further payments shall be payable by the Council to the Provider (for Services supplied by the Provider prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this Clause.
- 55.2 Save as otherwise expressly provided in the Contract:
- 55.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - 55.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses 21 (Payment and VAT), 22 (Recovery of Sums Due), 24 (Prevention of Bribery and Corruption), 29 (Data Protection Act), 30 (Confidential Information), 31 (Freedom of Information), 34 (Intellectual Property Rights), 36 (Audit), 42 Remedies Cumulative), 47 (Liability and Indemnity), 48 (Insurance), 55 (Consequences of Expiry or Termination), 57 (Recovery upon Termination) and 60 (Governing Law and Jurisdiction).

56. DISRUPTION

- 56.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- 56.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 56.3 In the event of industrial action by the Staff, the Provider shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 56.4 If the Provider's proposals referred to in Clause 56.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.
- 56.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Provider may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

57. RECOVERY UPON TERMINATION

- 57.1 On the termination of the Contract for any reason, the Provider shall:
- 57.1.1 immediately return to the Council all Confidential Information, Personal Data and intellectual property materials in its possession or in the possession or under the control of any permitted Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - 57.1.2 immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Provider under Clause 17. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 57.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress.
 - 57.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Provider to conduct due diligence.
- 57.2 If the Provider fails to comply with Clause 57.1.1 and 57.1.2, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or Sub-Contractors where any such items may be held.
- 57.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under Clause 57.1.3 and 57.1.4 free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

58. FORCE MAJEURE

- 58.1 This Clause 58 shall apply where stipulated in the Contract Particulars.
- 58.2 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 58.3 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or Provider shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or Provider is itself impeded by Force Majeure from complying with an obligation to the Provider.
- 58.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 58.2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

59. DISASTER RECOVERY

- 59.1 This Clause 59 shall apply where stipulated in the Contract Particulars.
- 59.2 The Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.
- 59.3 Following the declaration of a Disaster in respect of any of the Services, the Provider shall:
- 59.3.1 implement the Disaster Recovery Plan;
 - 59.3.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and
 - 59.3.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
- 59.4 To the extent that the Provider complies fully with the provisions of this Clause 59 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Contract on the part of the Provider), the Service Levels (if any) to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in Schedule 6 but shall be the Service Levels set out in the Disaster Recovery Plan or (if none) the best Service Levels which are reasonably achievable in the circumstances.

60. GOVERNING LAW AND JURISDICTION

- 60.1 Subject to the provisions of Clause 61, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

61. DISPUTE RESOLUTION

- 61.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 61.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 61.3 If the dispute cannot be resolved by the Parties pursuant to Clause 61.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 61.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.
- 61.4 The obligations of the Parties under the Contract shall not cease or be suspended or delayed by the reference of a dispute to mediation and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- 61.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 61.5.1 a neutral adviser or mediator (the “Mediator”) shall be appointed by the Centre for Effective Dispute Resolution.
 - 61.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
 - 61.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - 61.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - 61.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - 61.5.6 If the Parties fail to reach agreement in the structured negotiations within 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.

62. TRANSPARENCY

- 62.1 The Council may disclose to other Public Sector Contracting Authorities any of the Provider’s information, tender documentation and supporting documentation (including

any that the Provider has indicated to be confidential and/or Commercially Sensitive Information) such as specific tender information which has been submitted by the Provider as part of the tender process. The Provider shall ensure that such information shall not be disclosed to any other party except to other Public Sector Contracting Authorities. The Provider acknowledges and agrees that by virtue of taking part in the tender process they hereby consent to such disclosure by the Council as a part of the tender process and the Council shall have no liability to the Provider under this Clause or otherwise and the Provider shall indemnify and keep indemnified the Council against any Losses in respect of the same.

63. EXTREMISM AND RADICALISATION

63.1 This Clause is to be read in conjunction with Clause 13 (Safeguarding Children & Vulnerable Adults) and all requirements of that Clause are to be adopted herein.

63.2 The Provider must comply with the requirements and principles in relation to section 26 Counter Terrorism and Security Act 2015 and Prevent (and any successor legislation) to include:

63.2.1 in its policies and procedures, and comply with, the principles contained in the Government Prevent Strategy, the Prevent Guidance and Channel Guidance and;

63.2.2 in relevant policies and procedures a programme to raise awareness of the Government Prevent Strategy among Staff and volunteers in line with the Contracting Authorities Prevent Training and Competencies Framework;

63.2.3 the Council's policies and procedures in relation to the Prevent agenda.

64. CALDICOTT PRINCIPLES

64.1 The Provider shall at all times comply with the requirements of Schedule 17 (Caldicott Principles) in relation to the use of information about Individuals.

65. KENT INTEGRATED DATASET

65.1 Where applicable, the Provider shall flow anonymised, person level data covering activity, costs, and outcomes into the Kent Integrated Dataset. Data items must be provided in a format agreed with the Council and by a secure means. The Provider must ensure its responsibilities under the Data Protection Act (1998) or any subsequent legislation are met. The Council can provide advice to the Provider in relation to the Kent Integrated Dataset and the Data Protection Act (1998). In accordance with best practice and in relation to self-funded Individuals, the Provider shall ensure that its staff actively encourage such Individuals to register and remain registered with a General Practitioner within the Kent and Medway area, or, where required, a reasonable distance from that area, and that Individuals keep their General Practitioner updated with their current home address.

66. WHISTLEBLOWING POLICY

66.1 The Provider shall have, and keep operational, a suitable and effective Public Interest Disclosure Act 1998 (Whistleblowing) Policy which will include procedures under which Staff can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way. These will include but will not be limited to situations listed below when Staff believe that:

- 66.1.1 a criminal offence has been committed, and/or
- 66.1.2 someone has failed to comply with a legal obligation, and/or
- 66.1.3 a miscarriage of justice has occurred, and/or
- 66.1.4 the health and safety of an individual is being endangered, and/or
- 66.1.5 there are or may be financial irregularities, and/or
- 66.1.6 there may be a Safeguarding concern.

66.2 The Provider will make its Whistleblowing Policy available to the Council for inspection upon request.

67. FURTHER ASSURANCES

67.1 The Provider shall at its own cost and expense perform all acts and sign all deeds and documents as may be reasonably required for the purpose of giving effect to this Contract and shall procure that any third parties shall also do so.

68. CHANGES IN LAW

68.1 The Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of the Contract nor be entitled to an increase in the Contract Price as the result of a change in Law, save that in relation to any change in Law which affects the Council's requirements as set out in the Contract and would increase the cost of providing the Services to the Council by more than 10%, in which case the Provider may propose an amendment to the Contract Price which the Council shall consider in good faith.

**SCHEDULE 0 – SERVICE SPECIFIC CONDITIONS FOR RESIDENTIAL
CARE HOME SERVICES (LEARNING DISABILITY, PHYSICAL DISABILITY
& MENTAL HEALTH NEEDS)**

1. DEFERRED PAYMENT

- 1.1 The Council operates a Deferred Payment scheme in accordance with the provisions of the Care Act 2014 (Section 34).
- 1.2 In the event that the Council has a legal charge or operates a Deferred Payment on a Individual's property and is funding the Individual until the property is sold and the Individual becomes self-funding, the Provider shall not increase its fees retrospectively.
- 1.3 The Provider will be responsible for assessing the financial viability of Individuals who enter the service under a private arrangement. If an Individual is under the provision of a Deferred Payment and becomes eligible for the Council's funding, the price payable in respect of the Individual will automatically revert to the Providers price, as set out in Schedule 3.
- 1.4 If a Third Party Top Up cannot be agreed the Council reserves the right to move the Individual.

2. FORMER SELF FUNDERS (WEALTH DEPLETERS)

- 2.1 The Provider will be responsible for assessing the financial viability of Individuals who enter the service under a private arrangement. If a self-funder's wealth depletes and they become eligible for the Council's funding, the price payable in respect of the Individual will temporarily revert to the Providers price, as set out in Schedule 3.
- 2.2 If a long term placement rate cannot be agreed the Council reserves the right to move the Individual as set out in Schedule 2.

3. VACANCY INFORMATION AND ADVERTISING

- 3.1 The Provider shall register with the Council's online care service directory (or any site that succeeds it). The Provider shall keep their contact details up to date on the site and any failure to do so may result in a contract sanction. The Provider shall update the Council with the number of current vacancies they have within their home weekly and by the close of business each Friday using the Council's online care service directory. This is important to ensure that the Provider maximises the opportunity to receive placements from the Council and for business continuity purposes. The Provider's contact details shall be used to communicate with the Provider, including any service changes, enhancements, developments, changes to price and vacancy information on a weekly basis.
- 3.2 The online care service directory is a public-facing website and will be used by the Council as a tool to help individuals to make an informed choice about which Care home they would like to live in. It is the responsibility of the Provider to ensure that the information held on the online care directory is full, accurate and up to date.

4. INFECTION CONTROL

- 4.1 In addition to compliance with the Health & Safety at Work 1974, the Control of Substances Hazardous to Health Regulation 2002, and any other relevant legislation, the Provider should follow the guidance set out in Infection Control Guidance for Care Homes (Department of Health, 2006 (updated 2013) and The Health and Social Care Act 2008: Code of Practice on the prevention and control of infections and related guidance (Department of Health, December 2010), and any superseding guidance published during the lifetime of this contract..
- 4.2 The Provider should ensure that there are systems and policies in place to manage and monitor the prevention and control of infection. These systems use risk assessments and consider how susceptible individuals are and any risks that their environment and other users may pose to them. The Provider should provide appropriate information from the risk assessment to any person concerned with providing further support or nursing/medical care in a timely fashion.
- 4.3 The Provider should have appropriate provision for the disposing of clinical waste.

5. MANAGEMENT AND ADMINISTRATION OF MEDICATION

- 5.1 The Provider should be compliant with Regulation 12 the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- 5.2 The Provider has is required to have a Management and Administration of Medicines Policy, and processes that are compliant with National Institute for Health and Care Excellence (NICE) Managing Medicines in Care Homes: 2014 (and any subsequent amendments).
- 5.3 Within the Management and Administration of Medicines Policy, the Provider should have clear guidance for staff with respect of consent and the relationship between duty and care and best interest decision regarding the administration of medication.
- 5.4 The Provider shall ensure that all staff are trained in the management and administration of medication, appropriate to their role & responsibilities, within 3 months of employment. The Provider must ensure only trained staff who have been assessed as competent should administer medicines.

SCHEDULE 1

SPECIAL CONDITIONS

Definitions

“Social Media”

Interactive online media that allows parties to communicate instantly with one another or to share data in a public forum.

1. HANDING BACK OF PLACEMENTS

1.1. Termination

- 1.1.1. Both Parties shall be entitled to terminate an Order(s) in relation to one or more placements for any reason by serving at least 90 days written notice unto the other Party.
- 1.1.2. In the event of termination of an Order/Placement, the Provider agrees to provide the Council with any assistance required to ensure that the move of an Individual to another Provider is made with the least disruption for the Individual.
- 1.1.3. The Council reserves the right, at its sole discretion, to reduce the timeframes referenced within 2.1.1. in the event of safeguarding concerns, or any other relevant factors.
- 1.1.4. Where the Transfer of Undertakings for the Protection of Employment (TUPE) legislation applies in relation to the staff servicing any Individuals, the notice periods referenced within 2.1.1. shall be the length of the TUPE transfer.
- 1.1.5. The Provider shall have, at all times, regard to the continuity of Care for Service.
- 1.1.6. The notice period referenced in Clause 2.1.1 will commence upon KCC Commissioning receiving confirmation via email to communitysupport@kent.gov.uk and adultspurchasingteam@kent.gov.uk from the Provider of all KCC funded client identification numbers (including relating to any clients funded by KCC direct payment) to be handed back and a detailed breakdown of the support being currently provided as this information is a basic requirement before alternative support provision can be sourced.
- 1.1.7. Where notice has not, or cannot, be provided as per 2.1.1, the Provider shall reimburse the council for any additional costs received during the specified notice period. The Council reserves the right to apply a debit note against the Provider's account.
- 1.1.8. Reasonable costs can include, but are not limited to
 - a) The difference in cost between the initial providers contracted rate and the replacement providers rate.
 - b) Any costs incurred by the transfer of clients to the new provider, such as provider client assessment.

1.2. Temporary Handback of Residential Placements

- 1.2.1. Temporary postponement of an Order(s) in relation to one or more placements for any reason by the Provider is discouraged within this contract.
- 1.2.2. It is recognised that there may be occasions where meeting the demands of all clients becomes difficult and as such all providers are asked to provide their emergency procedures plans and business continuity
- 1.2.3. As part of these plans the Council will expect providers to engage with other providers within the area to consider joint protocols and procedures.
- 1.2.4. Should local provider collaboration prove unsuccessful and the need to temporarily hand back clients to KCC become unavoidable the provider must contact the Councils purchasing team by telephone and the commissioning team by email to communitysupport@kent.gov.uk.
- 1.2.5. The notice period as supplied in 2.1.1 will apply to temporary handbacks.
- 1.2.6. Where notice has not, or cannot, be provided as per 2.1.1, the Provider shall reimburse the council for any additional costs received during the specified notice period.
- 1.2.7. Reasonable costs are laid out in section 1.1.8 to 1.1.10.

1.3. Modification / Temporary Modification

- 1.3.1. The Council shall be entitled to serve notice in writing onto the Provider to modify an Order (SDO/FAN) in line with the relevant notice periods for an Order for Services set out within the Contract.
- 1.3.2. Reasons for the modification of an Order may include, but are not limited to, planned absences of an Individual and changes to an Individual's care plan.
- 1.3.3. Where the Council fails to give such notification in line with the notice periods, the Council will pay the Provider a reasonable part of the Contract Price taking into account any savings the Provider was able to make due to Staff not having had to attend an Individual, and other relevant factors. For the avoidance of doubt, the Provider shall provide the Council with full information as to the savings made when providing an invoice in accordance with the Contract.

1.4. Death

- 1.4.1. The Council and Provider agree and accept that in the event of an Individual's death, the individual placement contract shall come to an end seven (7) days after his or her death (counting from the first day after the day of death) or any other period agreed between the Provider and the Contract Manager. Payment will be made by the Council for the Individual's package for this time period.

2. Social Media

- 2.1 Social media/networking is recognised as a tool for an organisation to support communication. However, it is important for providers to establish and maintain robust security protocols to safeguard individuals supported by the organisation, employees, providers and KCC;
- 2.2 This provision includes online social media/networking and blogging sites such as Facebook, Twitter, LinkedIn, Google+, YouTube, Pinterest, Instagram, Flickr, Reddit, Snapchat, WhatsApp and Tumblr, as well as any other image, data and video-sharing sites currently available or developed in the future. This list is not intended to be exhaustive as this is a constantly evolving area. Employees and all provider associates should adhere to this requirement in relation to any social media;
- 2.3 The Provider will have appropriate mechanisms in place to maintain the dignity, integrity and privacy of all individuals supported by the service whilst keeping the reputation of the organisation and KCC in good repute. This involves protocols for the use of all communication mechanisms to include social media/networking and all digital activity in general both within the workplace and out of work. This should include browsing websites, posting, downloading, publishing anything to and from the web;
- 2.4 The supplier shall ensure reasonable protocols are in place within the relevant associated policies and procedures e.g. Induction Programme, Equality and Diversity or Data Protection, to prevent the unauthorised use of social media/networking;
- 2.5 Unauthorised staff must not take part in comment, interaction or requests which compromise, or may have the capacity to compromise the service or individual privacy;
- 2.6 The Provider will have a plan of action in place should a security breach or public relations crisis occur; this may be incorporated within a Business Continuity Plan.

SCHEDULE 2

SPECIFICATION

DISABILITY AND MENTAL HEALTH RESIDENTIAL AND NURSING CARE HOMES SC19012

GLOSSARY AND DEFINITIONS

Abuse

Abuse is a violation of an individual's human and civil rights by other person or persons. Abuse may consist of single or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented or cannot consent. Abuse can occur in any relationship and may result in significant harm, or exploitation of, the person subjected to it. (Based on No Secrets, Department of Health (DoH) and Home Office guidance 2000).

Adult Social Care and Health

The Council's Directorate responsible for this contract.

Advocate

Someone who speaks on behalf of the person.

Assessment

An assessment of a person's needs co-ordinated by the Council according to prioritising need in line with the Care Act 2014.

Assistive Technology (AT)

Assistive technology or adaptive technology (AT) is an umbrella term that includes assistive, adaptive, and rehabilitative devices. AT promotes greater independence by enabling people to perform tasks that they were formerly unable to accomplish, or had great difficulty accomplishing, by providing enhancements to, or changing methods of interacting with the technology needed to accomplish such tasks.

Best Interests Decision

A decision made on the behalf of the person who has been assessed as lacking the Mental Capacity to make a decision relating an aspect of their life due to a mental disorder and an inability to understand, retain and/or weigh up information and/or to communicate their decisions to others, following consultation with all relevant people.

Care and Support Plan

The details of the care/support required, and the way the person's assessed needs are to be met.

Contract

The agreement entered into between the Council and the Service Provider incorporating all the Contract documents.

Council

Refers to Kent County Council.

Council Practitioner

The person deployed by the Council to arrange and review care for people who have been found on assessment to be owed a duty under The Care Act 2014.

Deprivation of Liberty Safeguards (DoLS)

The process that shall be followed if an incapacitated person is to be deprived of their liberty in a lawful manner, to prevent harm in their best interests.

Disclosure and Barring Service (DBS)

The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups. It replaced the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

End of Life

The diagnosis of a life limiting condition where a person is likely to die within the next 12 months; and can include: Cancer, cardiovascular disease, respiratory disease, neurological disorders and dementias.

Equipment

Equipment comprises aids to daily living, nursing aids and rehabilitation equipment. Items fall into the following categories: bathing equipment, beds and accessories, chair raising equipment, mobility aids, handling/lifting/transfer equipment, pressure care, seating and toileting. The Equipment in Care Homes Protocol (as specified in Appendix A) details the responsibilities of care homes and the Integrated Community Equipment Service for the provision of items of equipment.

Individual

A person in receipt of a residential care home service detailed within this specification.

Key Performance Indicators (KPIs)

Performance measures that will be recorded and reported by the Service Provider to the Council.

Local Government Ombudsman (LGO)

The Local Government Ombudsman looks at complaints about Local Authorities and Adult Social Care Service Providers and investigates complaints as an independent organisation.

Mental Capacity

A person's ability to make their own specific decisions at specific times.

Moving and Handling

When providing care and support for people, Staff may need to support them to move around. It is essential that Staff are able to deliver safe Moving and Handling which upholds the dignity of the person so they don't hurt themselves or others.

Nursing Care

The care and support provided by a qualified nurse to promote the health and well-being of people.

Outcomes

Consequence or result of a planned activity in relation to the agreed goals for a person.

Person / People

Individuals in receipt of a residential care home service.

Personal Care

The provision of assistance to enable a person to carry out personal hygiene tasks and assistance with bodily functions.

Personalisation

Putting people at the centre of the process identifying their needs.

Registered Manager

Refers to the person managing the home daily as registered with the Regulator.

Regulator

The body which is established by statute and to whose regulatory powers the Service Provider is subject. These are currently the Care Quality Commission (CQC) for adults and The Office for Standards in Education, Children's Services and Skills (Ofsted) for children, Health and Safety Executive, Public Health Department, Kent Fire and Rescue Service and Environmental Health Department.

Review

The process by which the Council and the Service Provider evaluate and record the adequacy of their respective current Care and Support Plan to meet the person's needs and desired Outcomes.

Safeguarding Adults

The process by which abuse is reported, investigated and harm to the person is prevented.

Service

All the services to be provided by the Service Provider under this Contract.

Service Outcomes

Outcomes the Service Provider shall achieve in order to demonstrate contracted care is being delivered.

Service Provider

The Contractor responsible for providing the Service.

Service Specification

This document.

Staff

Within the context of this Specification, Staff refers to the group of people, working under the direction of the Registered Manager, which is responsible for delivering care and support to deliver outcomes and includes employees, volunteers and Agency workers.

Terms and Conditions

Refers to the conditions of the contract and should be read in conjunction with this Specification.

Vacancy

A vacant (empty) bed for use within a care home reported to the Council.

Well – Being

Refers to the state of the person's physical, emotional and social wellbeing.

Whistleblowing

Whistleblowing involves a person or group of people who tell someone in authority (i.e. the Council, CCGs in Kent, the Registered Manager or the Regulator) about alleged abusive and dishonest practices occurring in a care setting.

Workforce Development

The development and training of staff to ensure a capable, confident and skilled team.

Working Days

Within the context of this Specification, Working Days means Monday to Friday, excluding Bank Holidays.

Date	Version	Details
30/9/19	0.5	Final

Service	This document defines the Disability and Mental Health Residential services purchased by Kent County Council. It should be read in conjunction with the Terms and Conditions
Strategic Commissioning Lead	Andrea Martin
Provider Lead	Name: TBC Position: Telephone Number: Generic email address for Contractor:



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1. Introduction

- 1.1 Kent County Council (the Council) is commissioning accommodation-based Services for people with a disability and/or Mental Health needs. Social care has evolved, and the personalisation agenda is key to this, with the focus being on the individual. Services will provide support to assist people to build on their strengths and aspirations and achieve outcomes which enhance their independence.
- 1.2 The Council's vision and strategy, Your Life Your Well Being¹, is based on the Care Act 2014², with the aim of helping people to improve or maintain their well-being and live as independently as possible. Service Providers will support the principles of the Care Act, ensuring that people with disabilities and or Mental Health needs access the appropriate health care and treatment and community resources to support them to live well and be socially included.
- 1.3 Services will evidence an outcome-based ethos of support delivery, with co-produced goal setting, monitoring and review being central to the persons support plan.

2. Overview

- 2.1 This document sets out the broad standards that the Council requires from its service providers for residential care homes for people with disabilities and/or Mental Health needs. The Council may from time to time vary this Specification. Any variation will only be carried out after consultation and will be recorded in writing.
- 2.2 The purpose of the service is to provide accommodation, care, support, stimulation and community engagement for people.
- 2.3 It is a requirement that all Service Providers are registered with the Regulator, currently the Care Quality Commission (CQC)³ or the Office for Standards in Education, Children's Services and Skills (Ofsted)⁴, and will maintain registration throughout the duration of this Contract. Therefore, the regulations required for registration (and their associated standards) and the monitoring of the achievement of those regulations and standards are not replicated in full within this Specification.
- 2.4 The Council expects all Service Providers to strive for excellence. Service Providers are required to comply with the relevant regulation standards including Health and Social Care Act 2008 (Regulated Activities) Regulations 2015⁵, NICE⁶

¹<https://www.kent.gov.uk/about-the-council/strategies-and-policies/adult-social-care-policies/your-life-your-wellbeing>

² <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

³ <https://www.cqc.org.uk/>

⁴ <https://www.gov.uk/government/organisations/ofsted>

⁵https://www.cqc.org.uk/sites/default/files/20150210_guidance_for_providers_on_meeting_the_regulations_final_01.pdf

guidance, the Driving up Quality Code⁷ and other appropriate National and Local guidelines. This Specification could be subject to change in response to future legislation or Government guidelines.

- 2.5 Services will provide 24-hour care, with night cover comprising of a sleep or wake night staff member, or both, dependent on peoples assessed needs. The daytime week consists of 105 hours and support may include one-to-one, two to one, shared hours, day services, informal support or no support. The use of assistive technology will be promoted where appropriate to increase independence and well being and reduce dependence on physical support. Some night support may be required based on 63 hours per week.
- 2.6 The configuration of support delivery must consider the person's preferences and aspirations, supporting them to lead fulfilled lives. Services will work to each person's Care and Support Plan, enabling the individual to have choice and control in their everyday life, focusing on the principle of 'a life, not a service'.
- 2.7 Service Providers will engage in multi-agency working processes with professionals from integrated teams to ensure a coordinated approach to meet the person's needs.
- 2.8 The Service Provider will register with the Council's online care service directory (or any site that succeeds it). The Service Provider will keep their contact details up to date on the site and update the Council with the number of current vacancies they have via the online care service directory, and by email to AdultsPurchasingTeam@kent.gov.uk This is important to ensure that the Service Provider maximises the opportunity to receive placements from the Council and for business continuity purposes. The Service Provider's contact details will be used to communicate with the Service Provider, including any service changes, enhancements or developments.
- 2.9 The Service Provider will register a generic email address (i.e. admin@serviceprovider.com or office@serviceprovider.com) that will not change with any staff turnover within the Service Provider's organisation and avoids the need for many amendments and possible miscommunications. This must be in compliance with Data Security recommendations from the NHS Data Security & Protection toolkit⁸
- 2.10 The Service Provider will be registered on the Kent Business Portal⁹ to receive updates on the contract and future tender opportunities.
- 2.11 The Service Provider will show a willingness to participate in both local and national research programmes which have an emphasis on improving services for people with Disability /Mental Health. An example of this would be Learning Disabilities Mortality Review Programme (LeDeR) as detailed in Clause 26.9.

⁶ <https://www.nice.org.uk/guidance>

⁷ <https://www.drivingupquality.org.uk/documentdownload.axd?documentresourceid=33>

⁸ <https://www.dsptoolkit.nhs.uk/>

⁹ <https://www.kentbusinessportal.org.uk/>

3. Service Requirement

- 3.1 The Service Provider will deliver a care and support residential Service for people with disabilities and/or Mental Health needs, living in residential, nursing or dual-registered care homes who are ordinarily resident within the administrative area of Kent County Council.
- 3.2 The Service Provider will deliver a Service that supports the outcomes detailed in the Care Act 2014. Services will be easy to access, of good quality, maximise ability and potential in relation to physical, spiritual, intellectual, emotional, cultural and social capacity and support people to live safely in their community.
- 3.3 When identified in the Care and Support Plan, the Service Provider will actively support the person to develop daily living skills with a view to moving on to services that offer a higher level of independence.
- 3.4 The Service Provider will support people to achieve their desired outcomes and meet the personalised needs of the individual as outlined in the Care and Support Plan. Support will be provided with dignity and respect for their individual needs and preferences, with their Equality and Human Rights being protected, in accordance with the Equality and Human Rights Act 2010¹⁰.
- 3.5 The Service Provider will ensure that Staff are aware of the religious, cultural and spiritual requirements of people and their families, facilitating support so that these needs are met.
- 3.6 Service Providers will use the least restrictive approach to support people to live as independently as possible, accessing mainstream amenities and facilities.
- 3.7 The Service will comprise a single room in a shared house, access to toilet, washing (shower or bathing) facilities (preferably en-suite), full board, personal care where required, support with health needs, availability of 24 hour supervision if required and a range of activities should be offered tailored to individual choices.
- 3.8 The Service will be available 24 hours a day, 365 days of the year (366 days in the event of a leap year).
- 3.9 The Service Provider will ensure that there are enough appropriately trained Staff (employees, volunteers and Agency workers) on duty at all times to ensure the safe and effective delivery of services to meet people's assessed needs. Staffing resource will be sufficient to deliver the full number of commissioned hours for all people within the Service. This will include any additional hours that are commissioned to meet short term needs. The Service Provider will advise the Council should there be a shortfall in delivered support and failure to do so may lead to contract sanctions being placed on the Service. The Council reserves the right to financial reclaim where commissioned hours have not been delivered.
- 3.10 An assessment of needs will be completed by the allocated Council Practitioner, with a copy of this document being given to the Service Provider. The Service Provider will inform the Council Practitioner should there be a change in the person's needs, indicating an increase or reduction in support.

¹⁰ <https://www.equalityhumanrights.com/en/equality-act/equality-act-2010>

- 3.11 Prior to admission the Service Provider will complete an assessment with the person to ensure they are able to meet the individual's needs.
- 3.12 All Staff will be aware of the person's needs and content of their Care and Support Plan, including all updates and amendments as they occur. The Service Provider will consider a keyworker system, with a nominated Staff member building a positive relationship with the person, gaining a comprehensive understanding of their likes, dislikes and future goals and aspirations.
- 3.13 The Service Provider will work with a range of health and social care professionals to identify and deliver support according to the person's needs and agreed Care and Support plan. This will include Advocates and Relevant Persons Representatives (RPR).
- 3.14 The Service Provider will provide the placement, where reasonable and practicable, for as long as the person requires it. This will include any fluctuation in support, in agreement with the Council Practitioner, should the needs of the person change.
- 3.15 The Service Provider will maintain the care home and grounds in a way which will promote people's safety, security and enjoyment.
- 3.16 Service Providers must comply with all relevant legislation and have in place a range of policies and procedures which will be subject to review by the Council as required. All policies and procedures must take account of:
- the number of people in the service and their care needs;
 - the requirements of the Regulator;
 - cultural, religious and spiritual needs of people in the service;
 - The Equality Act 2010;
 - the Equality and Human Rights Commission guidance;
 - the Mental Capacity Act 2005¹¹;
 - the Kent and Medway Multi-agency Safeguarding Adults Policy, Protocols and Guidance¹²; and
 - The Care Act 2014.
- 3.17 The Council encourages the use of electronic recording and technological systems to support efficient ways of working. This will include electronic care plans, daily records and medication administration records, with real-time recording functionality. The Service Provider will engage with the use of Telecare adaptations, where appropriate, to support the person's independence.
- 3.18 The Service Provider will provide an information pack and will ensure that this is available to people before the start of the placement. The information pack will

¹¹ <https://www.legislation.gov.uk/ukpga/2005/9/contents>

¹² http://www.kent.gov.uk/_data/assets/pdf_file/0018/11574/Multi-Agency-Safeguarding-Adults-Policy,-Protocols-and-Guidance-for-Kent-and-Medway.pdf

meet the Government's accessibility requirements¹³ and will be made available to people and their relatives/advocates. The information pack will include:

- the aims of the Service, philosophy of care and support, who the Service is for, including the range and level of support services provided, religious, cultural and social needs catered for and support for Staff;
- contact details for the Service, name of the manager/owner and telephone numbers for the Service (including out of hours and emergency contact numbers);
- service provision, including the type of Service, facilities, and range of activities;
- the procedures/contingency arrangements in place in the event of emergency temporary closure, service reduction or permanent closure;
- Safeguarding information, including procedures followed and contacts;
- the process of quality assurance;
- information regarding where a copy of the most recent regulatory and/or other relevant inspection reports or information can be obtained;
- complaints procedure; and
- details of how to contact the Regulator/KCC.

3.19 A home website page/s will be provided to include access to all the above information and be clearly laid out, in Plain English with Easy Read options and meet web accessibility requirements.

4. Individual Outcomes

4.1 This specification is designed to be outcome focused, in line with the individual outcomes identified within the Care Act 2014. People will be supported to live as independently as possible and as well as possible, with support to manage long term conditions.

4.2 Maintaining a Habitable, Safe Home Environment

4.2.1 A person's home should be clean, safe and well maintained with all essential amenities. All areas of the home should be accessible, with adaptations where necessary to increase independence.

4.3 Managing and Maintaining Nutrition

4.3.1 People are enabled to maintain a balanced and nutritious diet. Choices aligned to likes, dislikes and culturally specific foods will be available. People will be involved in the purchase of groceries and the preparation of meals.

4.4 Maintain Personal Hygiene and Continence

4.4.1 People are supported with all aspects of daily living with an emphasis on achieving independence in self-care where appropriate.

¹³ <https://www.gov.uk/service-manual/helping-people-to-use-your-service/making-your-service-accessible-an-introduction#meeting-government-accessibility-requirements>

4.5 Being Appropriately Clothed

- 4.5.1 People are supported to make choices in line with personal preferences, ensuring clothing is suitable for the weather conditions. People will be encouraged to explore and develop their own personal style.

4.6 Developing and Maintaining Family or Personal Relationships

- 4.6.1 People are supported to maintain friendships and relationships in and out of the service. Support is available to access different methods of communication to facilitate contact with family and friends. This will include but not be limited to face to face visits, telephone calls and Skype communication.

4.7 Making Use of Local Amenities and Facilities

- 4.7.1 People are supported to access local community facilities and services, with the opportunity to develop friendships, social networks and contribute to their local community. Flexibility of support will be available to ensure that people can fully engage in activities, without time constraints linked to staff shift time.

4.8 Accessing and Engaging in Work, Training, Education or Volunteering

- 4.8.1 Opportunities for wider engagement in the community are explored with the individual according to their interests. People will be supported to access training, volunteering and employment opportunities.

5. Care and Support

- 5.1 The list of activities detailed in this Specification are neither exhaustive, prescriptive or needed for all people and will depend on the tasks identified to best support the person's needs and meet the outcomes agreed with them.
- 5.2 The Care and Support Plan will be outcome focused, providing support for people to increase their daily living skills and achieve a greater level of independence and wellbeing in their day to day life.
- 5.3 The Principles of the Mental Capacity Act 2005 will always be applied. Where a person is unable to make care/treatment decisions for themselves, the Service Provider will comply with the Mental Capacity Act 2005 by following due process relating to capacity assessments and Best Interests decisions. Requirements associated with Deprivation of Liberty authorisations will be clearly documented within the Care and Support Plan.
- 5.4 The Council will assess the needs of the person before referring to the Service Provider. This preliminary Assessment will be undertaken by the Council Practitioner and will confirm the eligibility of the person to access this Service.
- 5.5 The Council Practitioner will develop a Care and Support Plan in accordance with the person's individual care needs. The Care and Support Plan will be owned by the person and it will identify a range of desired Outcomes with the individual. The Care and Support Plan will be agreed by the person, where they are assessed as having capacity, and the Council Practitioner.

- 5.6 Where the person lacks capacity to make decisions, these decisions will be clearly indicated as such in the Care and Support Plan. These decisions will be made as Best Interests decisions which will be reached following the involvement of the person and consultation with families and friends, advocates and professionals.
- 5.7 The person should make an introductory visit to view the accommodation, facilities and discuss his or her individual requirements. This is to ensure the best match between the person's requirements and the resources offered by the Service Provider. The Service Provider will be expected to consider the compatibility of an individual with the other people living within the Service.
- 5.8 Where appropriate, trial stays or day visits should be arranged to allow the person to meet other people and experience daily life within the service, to support their decision prior to moving to the home.
- 5.9 The Service Provider will follow the key statutory principles of supporting decision making and assist in maximising and developing the person's decision-making capacity. The precise details of the responsibilities to be completed with the person will need to be negotiated and agreed between them, relatives, carers, advocates and the Service Provider to achieve the Outcomes stated in the Care and Support Plan and signposting to helpful sites and services given. The details of the responsibilities will be clearly recorded in the Care and Support Plan and linked to Outcomes.
- 5.10 The Service Provider will ensure that there are handover arrangements in place at the beginning of each shift, and that Staff providing Services are properly briefed as to the person's needs and respect the individual's wishes, their independence, gender, their race and any culturally specific requirements. Service Providers must respect the person's need for independence and right to be consulted and must always work with them in an enabling manner.

6. Communication

- 6.1 The Service will provide a range of communication methods, both verbal and non-verbal, to meet individual needs in accordance with Five Good Communication Standards – Royal College of Speech and Language Therapists¹⁴.
- 6.2 All Staff will be aware of the person's communication methods, which will include personalised forms of language, sign language and non-verbal indications.
- 6.3 The Service Provider will ensure that Staff receive training linked to the communication methods of people within the Service.
- 6.4 Where an interpreter may be required, the Service Provider should consult with the Council Practitioner to identify appropriate resources.

¹⁴ https://www.rcslt.org/news/docs/good_comm_standards

7. Personal Care

7.1 The Service Provider will deliver personal care support where required, providing encouragement, advice, guidance or physical assistance to perform the following tasks;

- getting up or going to bed at a time that suits the person;
- transferring from or to bed/chair/toilet;
- washing and bathing using equipment if necessary, shaving and hair care, denture and mouth care, hand and fingernail care, foot care (excluding any aspect of nail care which requires a state registered chiropodist or podiatrist, surgical or cosmetic procedures);
- accessing toilet facilities, including necessary cleaning and safe disposal of waste/continence pads;
- emptying or changing catheter or stoma bags where this is an existing care requirement and associated monitoring by appropriately trained staff;
- skin care such as moisturising very dry skin in line with the General Practitioner/District Nurse advice and guidance;
- deciding what to wear for the day;
- dressing and undressing;
- putting on appliances with appropriate training for example leg calliper, artificial limbs and surgical stockings and assistance with visual and hearing aids e.g. glasses care, hearing aid battery checks;
- dealing with correspondence;
- accessing social activities, both in-house and externally;
- support during the night when required;
- managing medication;
- accessing timely health appointments as required;
- managing health;
- eating and drinking, including but not limited to, PEG percutaneous endoscopic gastrostomy (PEG) and percutaneous endoscopic jejunostomy (PEJ). Staff will be appropriately trained and adhere to health professional advice guidance; and
- monitoring and recording weight where deemed necessary, with referral to health professionals e.g General Practitioner or Speech and Language where there has been a significant change in weight.

7.2 The level of support required will be proportionate and will be detailed in the person's Care and Support Plan. The emphasis should always be focused on helping the individual to be as independent as possible and respecting their privacy.

8. Nutrition

8.1 The Service Provider will provide three full meals a day and access to food outside of regular mealtimes for people who are absent or unwell at the time the meal is served. Meals will have nutritional value, be culturally specific and be of sufficient serving for the person to maintain a healthy balanced and consistent weight.

8.2 In accordance with the individual needs of the person, the Service Provider will:

- provide a balanced diet in accordance with NICE guideline CG32¹⁵;
- ensure that food/drink is available at flexible times and locations in accordance with people's preferences;
- provide choice and flexibility of the menu that reflects individual preferences;
- involve people in planning the menu and where appropriate in food shopping and the preparation of meals;
- provide kitchens used for food preparation, handling and storage that conform to the requirements of the Food Safety Act 1990 Amendment Regulations 2004¹⁶;
- ensure that all staff engaged in food preparation or nutritional support are trained in food Hygiene Standards;
- ensure that people requiring support with eating their meals are assisted in a sensitive manner with appropriately presented food;
- ensure that a policy is in place for Staff to respond to changes in a person's weight or dietary intake appropriately and in a timely manner, offering advice and support around healthy meal choices;
- ensure trained staff manage the use of enterostomy feeding, which includes percutaneous endoscopic gastrostomy (PEG) and percutaneous endoscopic jejunostomy (PEJ) and other related procedures; and
- ensure health needs are recognised and refer to specialist services such as Speech and Language Therapy (SALT) when appropriate.

9. Health

9.1 Service Providers must promote and maintain the health of the person, encouraging a healthy diet and exercise, accessing health care services when required. People will;

- have an up to date and relevant Health Action Plan;
- be registered with a General Practitioner (GP);
- have access to preventative health care services such as dentist, optician, chiropodist;
- access annual health checks with their designated GP;
- have an up to date hospital communication passport;
- have Anticipatory Care Plans when deteriorating health has been identified;
- be accompanied to all health appointments by a member of staff that knows them well and has knowledge of their health needs; and
- have access to interpreters to meet identified communication needs.

9.2 For people with a learning disability, Service Providers will support the person to enrol on the learning disability register with their GP if this is available. This will ensure they have access to additional support linked to their health care needs.

¹⁵ <https://www.nice.org.uk/guidance/cg32>

¹⁶ <https://www.legislation.gov.uk/ukxi/2004/2990/contents/made>

- 9.3 The Service Provider will ensure that they complete a Disability Distress Assessment Tool (DisDAT) for each person who has limited communication, for use with the GP during the pre-admission screening processes and planned GP Visits. The Service Provider will review the management of pain periodically in accordance with the individual needs of the person.
- 9.4 The Service Provider will notify the allocated Council Practitioner, and copy in the relevant duty box, within 24 hours of any hospital admission. The Council will agree a contribution for the shared costs at the home from the date the person was admitted to hospital up to a period of 42 continuous days.
- 9.5 Where a person has one to one support in addition to shared hours, these may be paid for up to 24 hours following admission. Any payment for additional one to one support beyond 24 hours will be an exception and only in agreement with the allocated Council Practitioner.
- 9.6 Support hours to 'keep in touch' with the person whilst in hospital, may be assessed on a case by case basis by the Council Practitioner according to need.
- 9.7 The Service Provider will keep the Council Practitioner informed whilst the person is in hospital and upon their discharge, as the Care and Support Plans may need to be reviewed to reflect any changes in needs.
- 9.8 The Service Provider will ensure that the hospital staff have the appropriate information to support the person during their stay, communicating directly with the hospital ward and clinical staff.
- 9.9 The Service Provider will support discharge from hospital when people are clinically assessed as being ready to leave. The discharge will be facilitated on the same day, seven days a week unless agreed otherwise by the hospital team supporting the discharge, in consultation with the home manager and hospital ward manager. The Service Provider will ensure that the person's needs can be met, which may include the provision of equipment, prior to facilitating the discharge. Provision of equipment will be in line with Appendix A- Equipment in Care Homes Protocol.
- 9.10 If there is no planned return to the service, a notice period will be agreed between the Council and Service Provider.
- 9.11 According to the person's needs, the Service Provider will notify the Council Practitioner immediately of any:
- Safeguarding concerns in respect of any individual;
 - persistent refusal from person to accept support to meet Outcomes mutually agreed in the Care and Support Plan;
 - failure to provide care and/or support to the person;
 - failure to deliver the agreed commissioned hours;
 - deterioration in the person's health or wellbeing;
 - improvement in the person's circumstances/reduction of needs;
 - serious accidents or incidents involving the person or care workers;
 - hospital admissions;
 - death of the person;

- other changes in the service resulting from a change in circumstances or emergency;
- contact with the emergency services;
- Mental Capacity issues including the deterioration of Mental Capacity in relation to decisions specified in Care and Support Plans; and
- use of restrictive measures and consideration of Deprivation of Liberty Safeguards (DoLS)¹⁷.

10. Medication

- 10.1 The Service Provider will ensure that medication is administered in accordance with current best practice including the National Institute for Clinical Excellence (NICE) guidance (including Managing Medicines in Care Homes)¹⁸ and other relevant National and Local guidance.
- 10.2 Service Providers for Learning Disability and Autism will ensure staff are aware of Stopping over medication of people with a learning disability, autism or both (STOMP)¹⁹. Staff supporting people to attend medication review appointments will know the person well and have the information required by the health professionals to conduct the review. Guidance developed by the Voluntary Organisations Disability Group (VODG) is available via the NHS website²⁰.
- 10.3 The Service Provider will ensure there is a well-developed culture of safety to protect people and Staff from harm that can be caused by medicines. This will include the following:
- ensuring that an appropriately qualified member of Staff is on site to administer medication. All care homes have "The Handling of Medicines in Social Care"²¹ document as issued by the Royal Pharmaceutical Society of Great Britain available as a reference for Staff, specifically including injectables that could otherwise have been delivered in a home setting by family members, such as insulin;
 - delivering the Service in accordance with the NICE quality standard guidance for the management of medicines within care home environments, including robust procedures for the management of Controlled Drugs;
 - ensuring well-established links with the GP, supplying Community Pharmacy, and where relevant Care Homes Support Team, for appropriate advice and support;

¹⁷ <https://www.gov.uk/government/collections/dh-mental-capacity-act-2005-deprivation-of-liberty-safeguards>

¹⁸ <https://www.nice.org.uk/guidance/sc1>

¹⁹ <https://www.england.nhs.uk/learning-disabilities/improving-health/stomp/>

²⁰ <https://www.vodg.org.uk/wp-content/uploads/2017-VODG-Preparing-to-visit-a-doctor-to-talk-about-psychotropic-medication.pdf>

²¹ <https://www.rpharms.com/Portals/0/RPS%20document%20library/Open%20access/Support/toolkit/handling-medicines-socialcare-guidance.pdf?ver=2016-11-17-142751-643>

- establishing the prescribed medication for people on admission to the service;
- prescribed medication will be administered in a format suitable for the person, with robust procedures in place for the administration of covert medication;
- checking the medication against the medication administration chart prior to administration, ensuring the right medications are given to the right person at the right time via the right route and recording accurately;
- implementing infection control measures during the administration of medicines;
- undertaking monthly audits of medication administration charts, liaising with the person, where appropriate, and their GP to avoid duplication;
- using alerts, reminders, posters and facilities which aid Staff and the person to follow the correct procedures for managing medicines;
- using a well-established procedure for reporting, analysing and learning from incidents i.e. near-misses and errors relating to medicines;
- ensuring personalisation of support is recorded in a Care and Support Plan in particular around the administration of 'when required'(Pro Re Nata-PRN) medication;
- promoting a reflective learning culture to enable Staff to address previous medicines incidents including near-misses and errors;
- the registered person ensuring that there is a policy and that Staff adhere to procedures for the receipt, recording, storage, handling, administration and disposal of medicines, with a person being able to take responsibility for their own medication if they wish, within a risk management framework;
- considering the safe disposal of medication waste;
- considering homely remedies in accordance with the individual needs of each person and through consultation with the GP;
- ensuring a robust system for ordering of medication to ensure medication is available for administration at the appropriate time;
- checking all stock levels before ordering. The Service Provider will check prescriptions once generated, including those printed at the pharmacy using the Electronic Prescribing System (EPS), to ensure that the items are required by the person **before** submitting to the pharmacy for dispensing;
- ensuring appropriate procedures are in place to support people who require catheters; and
- ensuring all Staff having contact with blood/bodily fluids are offered immunisation against Hepatitis B.

11. Safeguarding

- 11.1 The Service Provider will identify and report safeguarding concerns in line with the Kent & Medway Multi-Agency Safeguarding Adults Policy, Protocols and Guidance. Where the Service Provider is unsure if the issue constitutes Safeguarding, the local Safeguarding Team will be contacted for a consultation prior to the completion of the Adult Safeguarding Concern form.
- 11.2 The Service Provider will report back to the Council Practitioner where risks or hazards have been identified which may require a risk assessment. When a person is in a hospital, the Service Provider will report any safeguarding concerns

relating to the person's stay in hospital in the usual way and will work with the NHS Acute Trust to encourage safe discharges from NHS acute settings.

11.3 The Service Provider will ensure that people are free from abuse and neglect and appropriate action is taken where it is suspected by:

- responding to concerns;
- attending Safeguarding Adult review meetings;
- complying with Safeguarding Adult Review Panel requests for management reports, ensuring these are completed within six weeks;
- making representation in court as and when necessary;
- ensuring there is a Safeguarding Adults at Risk policy available that compliments the Kent and Medway Multi-agency Safeguarding Adults Policy, Protocols and Guidance;
- ensuring staff are familiar with the Kent & Medway Multi Agency Adult Protection Policy, Protocols and Guidance and with the Service Providers' own policy and procedures on Safeguarding Adults At Risk of Abuse and Neglect;
- ensuring the appropriate Adult Safeguarding Concern Form is completed to notify the Council if adult abuse or neglect is witnessed or reported;
- ensuring that there is a designated Staff member to handle complaints against employees within the service including Whistleblowing;
- ensuring managers and Staff co-operate fully with safeguarding enquiries and comply with any recommendations in post enquiry action plans;
- ensuring staff training is provided in safeguarding, that the training is refreshed at regular intervals and that Staff attend relevant multi-agency safeguarding adults at risk training appropriate to their position;
- complying with the regulator and Disclosure and Barring Service²² (DBS) requirements for all Staff. Checks will be carried out every three years as a minimum and prior to an individual commencing unsupervised employment;
- requesting annual completion of self-disclosure forms from staff, in line with DBS checks, as good practice;
- reporting poor practice issues to the relevant professional body eg Nursing and Midwifery Council;
- taking positive action to combat discrimination (needs arising from the specific ethnic, religious, cultural, gender, sexuality, disability or age requirements of the person shall be identified in their Care and Support Plan; the Service Provider will ensure that Staff are able to meet these needs); and
- demonstrating a culture that encourages all Staff to Whistle-blow as safely and confidentially as possible.

12. Mental Capacity Act / Deprivation of Liberty Safeguards

12.1 The Service Provider will comply with the Mental Capacity Act 2005 (MCA), including Deprivation of Liberty Safeguards (DoLS), or any subsequent legislation, by having the relevant policies and procedures in place, by:

²² <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

- ensuring MCA and DoLS training is mandatory for all staff;
 - ensuring records kept include specific capacity assessments and Best Interests decisions;
 - ensuring records kept include evidence of any Lasting Powers of Attorneys or Deputies held by families and friends of the person;
 - ensuring records kept include use of restraint and the promotion of least restrictive measures at all times;
 - ensuring consideration and timely application of DoLS where appropriate; and
 - reporting all applications and outcomes of DoLS to the regulator.
- 12.2 The Service Provider will inform the Regulator and Council Practitioner of all DoLS applications and authorisations.
- 12.3 The Service Provider will keep records of all applications and outcomes.
- 13. Reviews**
- 13.1 A formal review of the person's Care and Support Plan will be conducted by the Council. The first review will be held within 8 weeks of initial placement. Thereafter, a review of the person's Care and Support Plan may be carried out as often as the Council, the person or the Service Provider feels necessary, but at least annually.
- 13.2 The person, their family and friends, Advocate, Service Provider, Relevant Person's Representative (RPR) and Council Practitioner can request a review at any time. Arranging the review will be the joint responsibility of the Council Practitioner and Service Provider fully involving the person to identify who should attend.
- 13.3 The review will involve, as a minimum, the person and their family or other representative, and the designated Council Practitioner. The Service Provider will only be present if the person wishes them to be, but the Service Provider must contribute to, and provide information for the review as requested by the Council. Any other individuals, who can actively contribute and whose input the person has requested including family, friends, advocates and RPR's may also be present.
- 13.4 The review will address the extent to which the initial outcomes, which will be specified in the Care and Support Plan, are being met, determine whether the eligibility criteria continue to be met in line with the Care Act 2014, and whether the Service continues to be appropriate for the person's needs.
- 13.5 The commissioned support hours will be discussed at each review to ensure that the person's needs are being met. The support hours will remain static or be increased or decreased dependent on the outcome of the review.
- 13.6 The Service Provider will:
- review all personal records at least once a month, or where the needs of the person have changed;
 - review any special requirements for the person regularly and ensure these requirements are reflected in individual personal records the

- Service Provider holds, including the Support Plan developed by the provider in line with the Council Practitioners Care and Support Plan;
- discuss and consider people's requests for adjustments in the Service and make reasonable changes in arrangements to accommodate the individual needs of the person where appropriate;
- if there is a substantial change in the person's circumstances or needs, indicating an increase or reduction of commissioned hours, the Service Provider will inform the Council Practitioner as this may require a reassessment of the individual's needs;
- ensure processes are in place so that Staff know how to notify the Service Provider and the Council Practitioner of any increase or deterioration in physical or mental health and/or any other relevant events and record these in the person's Care and Support Plan and/or personal records as appropriate;
- ensure that all Staff have adequate English communication skills to undertake their duty to record and communicate clear, legible, concise and relevant information;
- ensure that all elements of support are recorded, using descriptive language to detail how the person engaged in support. Records must include the staff ratio of delivered support ie shared /1:1 or 2:1, and any declination of support; and
- ensure that all financial transactions are carried out in accordance with person's Care and Support Plan and care workers are supported to fully understand policies and procedures.

- 13.7 The Service Provider will demonstrate that they can deliver the assessed support hours for all people within the service at any given time, in line with the commissioned levels of support. The Service rota will record actual staff on duty and clearly document any changes to personnel or working patterns, including sickness absence and annual leave.

14. Making Use of Local Amenities and Facilities

- 14.1 The Service Provider will support or facilitate access to social, vocational and recreational activities, both on and off-site, in accordance with the person's Care and Support Plan. Where there are recommendations from professionals within the integrated teams, the Service Provider will make use of these to support successful engagement for individuals in activities, which will include but not be limited to the following:

- day services;
- arranging transport;
- visits to family or friends;
- shopping and handling their own money;
- holidays applicable to the person's budget;
- theme parks and sports venues;
- attend local colleges and other educational establishments;
- local work experience/employment;
- local community-based services such as church services, social clubs, gyms and interest groups;
- forum and support groups e.g. District Partnership meetings
- hospital and other medical appointments; and
- opportunities to contribute to their local community.

14.2 The person will be able to choose from a range of age and culturally appropriate activities. Where staff support is required, the person's activity will not be limited due to time constraints of staff shift patterns, with flexibility of staffing resource being available, in line with recommendations of the Stay up Late²³ campaign.

14.3 Holidays will be suitable to people's interests, preferences and financial budgets. The Provider will consult with Council Practitioner and provide information on the holiday destination, costs, staffing and risk assessments prior to booking the holiday. The person's commissioned support hours will be used for the holiday, with any additional staffing costs requiring prior agreement from the Council Practitioner.

15. Developing and Maintaining Relationships

15.1 The Service Provider will support the person to develop and maintain relationships with relatives, friends and partners. The person will be supported to;

- maintain family connections in line with agreed support plan;
- maintain and widen friendships and relationships inside and outside of the service;
- access a range of social networks;
- access advice, support and education on personal relationships and sexuality, including information on lesbian, gay, bi-sexual and transgender (LGBTQ) relationships; and
- access counselling about relationships if requested.

16. Promoting Safety and Positive Risk Taking

16.1 The Service Provider will empower the person to take appropriate risks in their daily life, promoting safety and positive risk taking. The Service Provider will;

- ensure the person is supported by a 'trusted team' and not receiving care from numerous care workers;
- recognise that continuity of support is important in building trusting relationships;
- identify, assess and then manage risks whilst understanding that risk is a normal everyday experience;
- assess risk dynamically, understanding that decision-making can be enhanced through positive collaborations;
- understand that risks can be minimised, but not eliminated;
- take responsibility in encouraging a no-blame culture whilst not condoning poor practice;
- work with the Council to understand and meet the changing needs and expectations of the person and their family, supporting them to have more control over their health and care; and

²³ <https://stayuplate.org/>

- conduct risk assessments where there is potential for significant harm, self-neglect injury or death. Examples could be, but are not limited to, the following:
 - choking
 - falling
 - scalding
 - transfers (hoisting)
 - not following specialist instruction
 - skin integrity
 - infection control
 - Control of Substances Hazardous to Health (COSHH)²⁴
 - Self harm
 - non-compliance with prescribed medication.

Service Groups

In **addition** to this Specification, Service Providers delivering support for people with specific needs will meet the following requirements.

17. Support for People with Autism

- 17.1 The Service Provider will deliver support in accordance with the Autism Act 2009 and the Adult Autism Strategy “Fulfilling and Rewarding Lives: The Strategy for Adults with Autism in England” 2010 as updated by Think Autism (2014)²⁵ , Strategy for Adults with Autism in Kent²⁶ and NICE quality standards.
- 17.2 The Service Provider will develop a personalised Care and Support plan with the person, their family and carers and the Council Practitioner.
- 17.3 Structured activities will be provided or accessed, supporting social interaction, communication and enablement.
- 17.4 The Service Provider will maintain consistency of staffing teams with named keyworkers. All staff will receive training to ensure they have appropriate skills and competencies to support the people within the service.
- 17.5 The Service Provider will provide training and support in communication, ensuring that staff can understand and interpret the person’s verbal and non-verbal communication. Appropriate language and communication methods will be used to meet each person’s needs.

²⁴ <http://www.hse.gov.uk/coshh/>

²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/301492/Think_Autism_-_Autism_Strategy-colour_contrast_version.pdf

²⁶ <https://www.kent.gov.uk/about-the-council/strategies-and-policies/adult-social-care-policies/strategy-for-adults-with-autism-in-kent>

- 17.6 The Service Provider will ensure that all staff are able to use the SPELL approach, incorporating Structure, Positive approaches and expectations, Empathy, Low arousal and Links.
- 17.7 Providers should assess the level of training needed for each member of staff, based on their role, using the three Tiers of the Learning Disability Core Skills Education and Training Framework, and when available the Autism Core Competency Education and Training Framework and have responsibility for ensuring that training is undertaken.
- 17.8 When intervention in support is necessary, the least restrictive methods will be used in line with the Mental Capacity Act 2005.
- 17.9 The Service Provider will support the person to develop skills to work towards moving to more independent living environments, in line with the Care and Support Plan.
- 18. Support for People with Complex Needs/ Behaviours that Challenge**
- 18.1 The Service Provider will have a policy to positively engage and support people that display behaviours that challenge. The policy will take account of all relevant legislation and guidance including but not limited to, Human Rights Act 1998²⁷, Mental Capacity Act 2005, NICE guidelines for Challenging Behaviour²⁸ and the PBS Academy- Positive Behavioural Support Specification for Contracts.²⁹
- 18.2 The Council Practitioner will develop a detailed Care and Support plan for the person prior to placement, working with the individual, Service Provider and Multi-Disciplinary Team. The Care and Support plan will be regularly reviewed within agreed timescales according to need, and at least annually.
- 18.3 The Service Provider will provide Positive Behavioural Support (PBS) training for all staff. PBS is a framework for developing an understanding of behaviour that challenge rather than a single therapeutic approach, treatment or philosophy. It is based on an assessment of the broad social, physical and individual context in which the behaviour occurs and uses this information to develop interventions. The overall goal of PBS is to improve the person's quality of life and of those around them. The primary approach to the prevention of behaviour that challenges involves the provision of high quality, personalised care and support, meaningful activities and relationships, which reduce the likelihood of people developing such behaviours in the first place and thereafter, prevent them from becoming entrenched.
- 18.4 The Service Provider will demonstrate the delivery of Positive Behavioural Support through:

²⁷ <https://www.legislation.gov.uk/ukpga/1998/42/contents>

²⁸ <https://www.nice.org.uk/guidance/ng11>

²⁹ <http://pbsacademy.org.uk/wp-content/uploads/2016/01/PBS-Academy-Specification-for-contracts.pdf>

- completion of functional assessments. The Service Provider will have an ongoing functional behaviour assessment for each person. The Service Provider must be able to conduct or obtain a suitable functional assessment and evidence this with an anonymized example. For current placements, the service provider must be able to produce a recent or recently reviewed (within past 12 months) assessment report. The report will include information around the factors influencing the person's behaviour;
- development of behaviour support plans. The personalised plan will be integrated into the Care and Support plan and include a description of the person's behaviour, a summary of the most probable reasons for the behaviour and the proactive and reactive strategies for supporting the individual;
- regularly monitoring and reviewing the Care and Support plan, and behaviour support plan;
- providing a suitable environment to support the needs of the person, with adaptations where necessary to ensure the safety of the individual and others;
- providing personalised levels of support to enhance participation in meaningful activities;
- ensuring that all staff receive competence-based PBS training including which is regularly updated (at least annually), with senior staff completing more extensive training including practice-based assignments and independent assessment of performance;
- the use of flexibly deployed suitably trained staff to support an individual during a crisis;
- the use of data to analyse the frequency of behaviours and restrictive practices (physical intervention, seclusion, medication) as part of the Service Providers Quality Assurance strategy; and
- using the least restrictive methods where intervention in support is necessary in line with the Mental Capacity Act 2005.

19. Support for People with Sensory Needs

- 19.1 The Service Provider will maximise the independence of people with a sensory need and enable them to exercise choice and control in their day to day lives. People will feel safe and secure, with the Service promoting safety and positive risk taking.
- 19.2 The Service Provider will support people to maintain their health and well-being, arranging for interpreters to be present at health appointments when required.
- 19.3 People will have their cultural needs met, be part of the wider community and feel valued, with activities that are accessible and appropriate to need.
- 19.4 The Service Provider will provide adaptive and assistive equipment to support daily living and ensure safety. This will include but not be limited to flashing or vibrating smoke/fire alarms and doorbells. Provision will be in line with the person's needs.
- 19.5 All staff will be trained according to people's needs in the service. The training will include, but not be limited to, a minimum of Level 2 training in:

- British Sign Language (BSL);
- Deaf/Blind Manual Alphabet;
- hands on signing and block alphabet.

19.6 The Service Provider will ensure that people's communication needs are fully met in line with the Care and Support Plan.

19.7 The Service Provider will provide accessible information including support plans and other documentation linked to the person's support.

20. Support for People with Mental Health Needs

20.1 Services will be designed to support enablement outcomes, supporting people to live as independently as possible.

20.2 Residential placements will be made with the emphasis on recovery, supporting people to build on their skills and increase independence and social integration.

20.3 Service Providers will work with Health and Social Care Professionals to support hospital discharge processes and avoid admissions to hospital.

20.4 Services will provide flexible support to meet the needs of the person according to their mental well-being.

20.5 Care and Support Plans will be developed with the person, with an emphasis on enablement. Placements will be viewed as short term enabling people to reach independent living outcomes where possible, through the development of daily living skills. People will be supported to move on to services that offer a greater level of independence.

20.6 The Service Provider will ensure that Staff are aware of mental health diagnoses, including dual diagnoses of learning disability and mental health, and how each condition can affect people, including feelings and behaviours. Training specific to the needs of the people within the service will be supplied by the Service Provider.

20.7 Where a person is subject to Guardianship, under the Mental Health Act, the service provider will adhere to the requirements of the legislation and associated Guidance. This will include but not be limited to supporting the person to adhere to the care and support plan, which sets out the powers of the Guardian. The service provider will liaise closely with the Guardian, the Council Practitioner, the care coordinator and the Responsible Clinician and alert them to any concerns at the earliest opportunity.

20.8 Where a person is subject to a Community Treatment Order (CTO) under the Mental Health Act, the service provider will adhere to the requirements of the legislation and associated Guidance. This will include but not be limited to supporting the person to adhere to the conditions of discharge and the care and support plan. The service provider will liaise closely with Council Practitioner, the care coordinator and the Responsible Clinician and alert them at the earliest opportunity of any concerns in relation to the persons adherence to their conditions.

- 20.9 Where a person is subject to conditional discharge under the Mental Health Act, the service provider will adhere to the requirements of legislation and associated Guidance. This will include but will not be limited to supporting the person to adhere to the conditions of discharge. The service provider will liaise closely with the social supervisor, the clinical supervisor and the care coordinator and alert them at the earliest opportunity of any concerns in relation to the persons mental state or adherence to the conditions of discharge. In urgent circumstances where the service provider cannot secure a response from services, they can contact the Mental Health Casework Section at the Ministry of Justice to seek advice and support.
- 20.10 In all cases where the person is subject to Guardianship, CTO or conditional discharge the service provider will support the person to accept prescribed medication and to attend for treatment, occupation, education or training sessions as required. In addition to working with the Council Practitioner to ensure that the care and support is delivered the service provider will work with health practitioners to ensure that requirements under the Care Programme Approach are met.
- 20.11 The Service Provider will encourage inclusion within the local community, supporting people to access the Live Well Kent services and facilities, encouraging Six Ways to Wellbeing³⁰.
- 20.12 The Service Provider will advise and support people on self-care techniques and lifestyle changes to improve their wellbeing.
- 20.13 The Service Provider will support people to contact the Crisis Resolution Home Treatment Team when required.

21. Dementia Care

- 21.1 In line with population trends, people with disabilities are living longer with the prevalence of dementia increasing. This is particularly noted within people with learning disabilities, with a higher prevalence for people with Downs Syndrome.
- 21.2 Service providers must ensure that staff receive dementia awareness training which includes identifying the early signs that could denote the onset of dementia.
- 21.3 All Staff will be aware of the early signs and ensure timely referral to the Community Learning Disability Team for the completion of Dementia Screening Questionnaire for Individuals with Intellectual Disabilities (DSQUID).
- 21.4 The Service will follow dementia friendly design principles for the layout, and fixtures and fittings in the building.³¹
- 21.5 The Service Provider will comply with the National Institute for Health and Clinical Excellence (NICE) quality standard guidance.

³⁰ <https://livewellkent.org.uk/>

³¹ https://www.kingsfund.org.uk/sites/default/files/field/field_pdf/is-your-care-home-dementia-friendly-ehe-tool-kingsfund-mar13.pdf

- 21.6 The Council Practitioner and Service Provider will ensure that dementia is considered as part of the Care and Support Plan.

22. End of Life Care

- 22.1 In accordance with the individual needs of the person, the Service Provider will identify people who are approaching the end of their life (where death is expected within the next 12 months) and seek the appropriate multidisciplinary support including palliative care.
- 22.2 The Service Provider will work with Health Professionals to develop Anticipatory Care Plans, with the emphasis on the person receiving healthcare and or palliative care at home.
- 22.3 The Service Provider will discuss the cultural, spiritual and religious needs with the person and their family, ensuring that End of Life Care and Support Plans accommodate the preferences of the individual.
- 22.4 The Service Provider will ensure that the person and their families/friends/advocates are encouraged to have conversations around their individual preferences, using a tool such as the 'When I Die' document when appropriate and in consultation with the Council Practitioner. This will include any religious or cultural requirements for funeral arrangements.
- 22.5 In consultation with the Council Practitioner, the Service Provider will ensure involvement of the person and their relatives/friends/advocates in discussions around DNACPR (Do Not Attempt Cardiopulmonary Resuscitation), following a Best Interest process where the individual is deemed to lack capacity in accordance with the Mental Capacity Act 2005.
- 22.6 Where a DNACPR has been applied in hospital, the Service Provider will ensure that this is reviewed by the GP within 6 months of discharge or where the health needs have improved.
- 22.7 All Staff will be familiar with DNACPR forms and be aware of their existence for each person where this has been agreed.
- 22.8 The Service Provider will work proactively with health care professionals for people with known medical conditions which are likely to worsen during End of Life.
- 22.9 All Staff will be trained in End of Life care, including communication skills and dealing with bereavement and stress, and be aware of the guidance for End of Life care ³²
- 22.10 The Service Provider and Staff will liaise with health professionals to ensure the person can access appropriate medication for symptom management. Emergency End of Life medication (Just in Case Boxes) will be in place to ensure the person can receive pain relief when required without delay.

³² <https://www.kent.gov.uk/social-care-and-health/information-for-professionals/guidance-on-end-of-life-care>

- 22.11 The Service Provider will have processes in place to support Staff and the other people living at the service, following the death of the person. This will include time to talk about the person and attend their funeral if appropriate.

23. Maintaining a Habitable and Safe Environment

- 23.1 The Service Provider will maintain an effective cleaning schedule to minimise odours and to ensure high standards of health and hygiene.
- 23.2 People will have a key to their room if requested, to provide privacy and security.
- 23.3 Rooms will have doors that can be locked from the inside using snap bolts or other means, allowing access by Staff in emergencies.
- 23.4 People will be involved in decisions regarding the materials and colours when redecorating the communal areas as well as their own personal rooms.
- 23.5 The Service Provider will support with laundry services, encouraging the person to be as independent as possible and develop daily living skills. This will include making beds and changing linen, washing clothes or household linens, drying, ironing, storage and simple mending.
- 23.6 All Staff will encourage recycling and the responsible disposal of refuse in accordance with the Council's waste policies.
- 23.7 The Service Provider and Staff will identify and manage areas of potential hazards, developing risk assessments to minimise risk. This will include implementing solutions such as non-slip rugs or removing obstacles.
- 23.8 The Service Provider will ensure the environment is suitable to meet the needs of all people in the Service, in accordance with identified needs within the individual Care and Support Plans.
- 23.9 The Service Provider will ensure furniture and fittings are maintained in a clean and safe condition, with repairs being completed as soon as is reasonably practicable.
- 23.10 The furniture within the Service will conform to The Furniture and Furnishings (Fire) (Safety) Regulations 1988 (amended 1993)³³.
- 23.11 The Service Provider will operate a maintenance schedule and work plan, which will include regular servicing of all equipment, electrical and gas safety checks and portable appliance testing. Planned maintenance of both the interior and exterior fabric of the building will also be scheduled which will include the redecoration of areas and the replacement of furniture and fittings when required.
- 23.12 The Service will comply with The Provision and Use of Work Equipment Regulations (1998)³⁴ and Health and Safety in Care Homes (2014)³⁵ which are

³³ <http://www.legislation.gov.uk/ukxi/1993/207/contents/made>

³⁴ <http://www.hse.gov.uk/work-equipment-machinery/puwer.htm>

³⁵ <http://www.hse.gov.uk/pubns/books/hsg220.htm>

available from the Health and Safety Executive and the Workplace (Health Safety and Welfare) Regulations 1992.

- 23.13 The Service Provider will recognise and respect the need for people to have their own space. Where possible within the constraints of the physical building the Service Provider will ensure that multiple areas are available for different physical activities and emotional states, e.g. sensory room, quiet lounge, outdoor seating areas, etc.
- 23.14 The Service Provider will ensure that aids and adaptations are in place to support people to live their every day lives. These will include but not be limited to Telecare equipment, sensory door bells and fire alarms, specialist seating and mobility aids. The Council encourage providers to explore The Council encourage providers to explore innovative use of Smart home technology to increase a person's independence.

24. Financial Matters

- 24.1 The Service Provider will have policies and procedures in place for Staff on the safe handling of money and property belonging to the person. The starting assumption should always be that a person has capacity to manage their finances in line with The Mental Capacity Act 2005.
- 24.2 The Service Provider will not be Appointee for any person within the home.
- 24.3 Support will be provided to enable a person to manage their money and understand their income and outgoings, where this is identified in the Care and Support Plan. The Service Provider will support the person with budget management and the support plan will identify the support required to help the person with their finances.
- 24.4 The Service Provider will supply basic toiletries and the person must exclusively own their towels, flannels and sponges which will not be shared.
- 24.5 The Service Provider will record the amount and purpose of all financial transactions undertaken by the person or on behalf of the them. Receipts for all purchases will be retained. All records will be signed and dated by the staff member and the person.
- 24.6 Access to the persons finances will be restricted to certain staff, with regular audits of all transactions being carried out by the management team. Auditing of the accounts will be undertaken by two staff members, with any discrepancies being investigated, recorded and signed. A spot check system carried out by the management team should also be in place.
- 24.7 The Service Provider will report any financial irregularities in line with the Multi Agency Safeguarding Adults Policy, Protocol and Guidance for Kent and Medway.
- 24.8 Where the Client Financial Affairs Team (CFA) oversee the persons finances, records will include all transactions, amounts received from CFA, expenditure and the balance of the person's bank account. The Client Financial Affairs team will request a reconciliation expense sheet from each home for each person at

quarterly intervals in order to check a sample of transactions, and further checks may be carried out as part of the ongoing contract monitoring.

- 24.9 The personal allowance is the person's income and should not be used to contribute to the weekly charge for the Service.
- 24.10 The Council Practitioner will be consulted prior to the Service supporting the person with any large purchases, with the discussion being recorded in the person's daily records.
- 24.11 The Service Provider will safeguard the property of the person, reporting any loss or damage to the property to the Council Practitioner.
- 24.12 Records relating to the person's finances will be made available on request to the person, their Appointee, Council Practitioner or Client Financial Affairs Team.
- 24.13 The Service Provider's Safeguarding policies and procedures will detail that Staff members or their relatives will not;
- use credit or debit cards belonging to the person or have knowledge of the person's Personal Identification Number (PIN), accept gifts or cash;
 - use loyalty cards belonging to person;
 - undertake personal activities during time allocated to provide support for the person;
 - make personal use of person's property (e.g. telephone);
 - involve the person in gambling syndicates (e.g. national lottery);
 - borrow from or lend money to the person;
 - sell or dispose of goods belonging to the person and their families;
 - sell or buy goods or services to or from the person;
 - incur a liability on behalf of the person;
 - agree to be an executor of the person's will;
 - accept gifts or be a beneficiary of a person's will;
 - take responsibility for looking after any valuables on behalf of the person;
 - allow any unauthorised people (including children) or pets to accompany them when visiting the individual without their permission and approval of the Council Practitioner; and
 - make or receive telephone calls not relating to the person whilst caring for the individual i.e. the time allocated to a person shall be used to support the individual needs of that individual.

25. Transport

- 25.1 The person should be enabled to use public transport where appropriate, accessing the local authority bus pass and companion scheme. The Service Provider will ensure that all travel undertaken by the person is done so safely and appropriately and in accordance with the legal requirements.
- 25.2 Where a person is in receipt of benefit payments for help with mobility, we expect this to be used to contribute to their transport costs. The Council Practitioner will ensure that benefits are claimed and received by the person, with transport contributions being agreed between the Service Provider and Council Practitioner.

A record of journeys will be held and presented on request by the Council Practitioner or Client Financial Affairs Officer.

- 25.3 The Service Provider will ensure that if the person is transported by a vehicle owned by the individual, Service Provider or by an employee of the Service Provider, there is appropriate insurance. Staff will meet the all of the requirements of the vehicle insurance.
- 25.4 The vehicle should be maintained in line with the manufacturers' guidance, be taxed, comprehensively insured and have a valid MOT if applicable. The driver must hold a valid driving licence, and both driver and escort must hold appropriate Disclosure and Barring Service checks. Drivers and escorts should have references, which have been checked and validated by the Service Provider and have received the appropriate mandatory training.
- 25.5 Seat belts complying with legal requirements and British Standard Specifications must be fitted and used for all passengers on every journey. Where standard seat belts are not appropriate, alternative equipment should be sourced to ensure the safety of the person.
- 25.6 In adapted vehicles, wheelchair anchor points and grips must conform to the relevant British Standard Specification and be used in accordance with the manufacturer's instructions.
- 25.7 The Service Provider will have a responsibility to arrange appropriate transport for hospital appointments and elective admissions to hospital, in accordance with the individual needs of the person.

26. Absence, Discharge, Dying and Death

- 26.1 The Service Provider must know whether the person is in the home, on a recreational outing or attending a pre-arranged appointment. A written procedure for dealing with missing persons must be held in the home and will include:
- time for assumption of a person missing;
 - search of building(s) and grounds;
 - telephoning likely places;
 - informing Police;
 - informing relatives where appropriate; and
 - informing the Council Practitioner.
- 26.2 The Service Provider must inform the Council Practitioner when a person is absent from the home due to being unexpectedly admitted to hospital. If a person requests an unplanned visit to a relative or friend, advice should be sought from the Council Practitioner in accordance with the individual's Care and Support Plan.
- 26.3 When a person is subject to a legal order linked to their support such as Mental Health Act Guardianship, Community Treatment Order or Social Supervision, the Service Provider will adhere to the requirements and inform the Council Practitioner in all cases.
- 26.4 In cases of hospitalisation, the person's representative must also be told unless the individual or Council Practitioner has specifically requested otherwise.

- 26.5 The Service Provider will hold a person's room for a period of up to 42 continuous days when he/she is admitted to hospital. During this time the person's room should not be used.
- 26.6 If the person is in hospital or absent for longer than 42 continuous days, a Care and Support Plan review should be discussed with the Council Practitioner and any other relevant party.
- 26.7 The Service Provider must have a policy and procedure relating to the care of people who are dying and the tasks to do in the event of a death. This will include elements of care linked to the spiritual, religious and cultural needs of individuals.
- 26.8 When a person dies the Service Provider must inform the Council Practitioner. The Service Provider will then inform relatives, people closest to him/her, other people within the service, friends and advocates sensitively but without delay. If there are no relatives the relevant District Council must be told as they may be responsible for arranging the funeral.
- 26.9 If the deceased person has a Learning Disability, the Service Provider will notify the Learning Disabilities Mortality Review Programme (LeDeR) ³⁶ of the death. This programme is commissioned by the Healthcare Quality Improvement Partnership on behalf of NHS England, to identify common themes and learning points to be taken forward to improve both future policy and practice.

Workforce

27. Service Management

- 27.1 The Service Provider will ensure that there is strong leadership and management, ensuring the service has a strong care and support focus that is personalised and affords dignity, respect and independence for all. The Service Provider will develop their management staff, and the management team will take responsibility for the delivery of a high-quality service and the retention of high quality staff.
- 27.2 The Service Provider will ensure that Registered Managers complete the Manager Induction Standards and have or be undertaking a recognised qualification for Registered Managers within their first year of employment. This will be completed within 2 years of employment. Managers will undertake periodic management training to update their knowledge, skills and competencies to manage the Service.
- 27.3 Managers will engage in local forums arranged by either the Council, Regulator or Service Provider groups, to increase awareness of updated legislation and good practice.
- 27.4 Staff will be supported to ensure appropriate skills are maintained to ensure that the highest level of support is provided by qualified and competent Staff. The Service Provider will ensure that staff are competent and trained to undertake the activities they are employed and responsible for.

³⁶ <http://www.bristol.ac.uk/sps/leder/>

- 27.5 Staffing arrangements will provide flexibility to enable staff to respond to changing needs and preferences. Staff teams will be trained and possess varied skills to deliver personalised support to people within the service.
- 27.6 The Service Provider will have contingency plans in place to ensure that sufficient staffing is in place to deliver the commissioned hours at all times.
- 27.7 People living at the service will be advised of the staff on duty through communication methods appropriate to their needs.
- 27.8 All Staff will be aware of their Safeguarding responsibilities both for Children and Adults and receive Safeguarding training within three months of employment and annually thereafter.
- 27.9 The Service Provider will ensure that they demonstrate a culture which values and respects all members of Staff, enabling them to give a high standard of support to people.

28. Recruitment

- 28.1 The Service Provider will ensure that they employ Staff (employees, volunteers and Agency workers) who respect the person and their property, and who keep information about them confidential.
- 28.2 The Service Provider will only recruit Staff who have satisfied all necessary recruitment checks. All Staff will be trained in Safeguarding of Vulnerable Adults (SOVA) and actively support the Kent and Medway Multi-agency Safeguarding Adults Policy, Protocols and Guidance.
- 28.3 Services that provide nursing care will ensure that the recruitment of nursing staff will follow the guidance published by the Nursing and Midwifery Council and that all nurses working within the home will maintain their registration according to the legislation as set out in the Nursing and Midwifery Amendment Order 2018³⁷ (or any successor legislation), completing revalidation processes when required.
- 28.4 The Service Provider will have a written recruitment and selection procedure, which reflects equality and diversity policies. The Service Provider will have recruitment strategies that attract candidates that exhibit empathy and possess awareness of the importance of their personal attitude towards people and the impact that has on the quality of the Service.
- 28.5 The recruitment and selection procedures will meet the Regulators minimum standards, ensuring records are maintained to demonstrate best practice in this area. The Service Provider will comply with DBS requirements for Staff.
- 28.6 All roles within the Service Provider's organisation will have written job descriptions and person specifications. In accordance with the Employment Rights Act 2008³⁸, the Service Provider must ensure that each member of Staff is issued with a contract that clearly states the terms and conditions of his/her employment,

³⁷ <https://www.legislation.gov.uk/ukdsi/2018/9780111169339>

³⁸ http://www.legislation.gov.uk/ukpga/2008/24/pdfs/ukpga_20080024_en.pdf

the contract must be signed by the appropriate representative of the Service Provider and the Staff member and a copy of the contract must be kept in the Staff member's personnel file.

- 28.7 The Service Provider will have an equal opportunities policy in place for the recruitment, development and care of the workforce (including volunteers).

29. Workforce Development

- 29.1 The Service Provider will comply with the relevant regulations covering staff competence and training. The Service Provider will ensure the completion of the Care Certificate (or other standards as set out by the Regulator) for all new care workers and other employees within 12 weeks of starting their employment. This induction will specifically include Mental Capacity Act, Safeguarding and any necessary service specific training.
- 29.2 The Service Provider will ensure that all new staff receive an induction which will include shadowing experienced and competent staff on a supernumerary basis. This will allow staff to get to know the people in the service and understand their Care and Support Plans.
- 29.3 The Service Provider will ensure that staff are trained to meet the needs of the service. The Service Provider will have financially resourced plans in place to address workforce development requirements. The Service Provider will have a training plan, a training matrix and keep records of successfully completed training on individual members of Staff and a central file to continuously monitor and develop this.
- 29.4 All Staff will hold a relevant national occupational standard such as Level 2 Diploma in Health and Social Care, or equivalent, through the Qualifications Credit Framework (those who do not already hold a relevant standard shall be supported to achieve the above qualification as a minimum).
- 29.5 A minimum of two staff members will be trained as Infection Prevention and Control Link Practitioners, with free training available via the Kent Community Health Trust.
- 29.6 Young staff (16-18 years-old) will be supported in their work (young staff shall be undertaking an approved training programme, the Service Provider will consider using the Health and Social Care Apprenticeship framework where appropriate).
- 29.7 Specialist advice, training and information is provided to support Staff working with specific care needs and/or medical conditions to ensure they have the skills and knowledge required.
- 29.8 All Staff will be aware of and familiar with the Service Provider's policies and procedures, which will include all amendments and updates.
- 29.9 All Staff will receive communication training and demonstrate a good standard of verbal and written communication.

- 29.10 The Service Provider will be registered with the Skills for Care National Minimum Dataset for Social Care (NMDS-SC)³⁹ and will develop Staff an accordance with the following criteria:
- all care homes will complete a NMDS-SC organisational record and will update all its organisational data at least once each financial year, in line with Skills for Care deadlines;
 - all care homes will fully complete individual NMDS-SC worker records for a minimum of 90% of its total workforce (this includes any staff who are not care-providing);
 - individual records for workers, which are included in the 90% calculation, will be both fully completed and updated at least once each financial year; and
 - all care homes will agree to share information via the facility within NMDS-SC with the Council, the regulator and NHS Choices.
- 29.11 All Staff will meet formally on a one to one basis with their line manager to discuss their work in accordance with the staff member's needs, at least every three months at a minimum. Written records of these supervisions will be kept demonstrating the range, content and outcome of the discussion at each meeting. A supervision matrix will be in place and be available on request of the Council Practitioner.
- 29.12 The Service Provider will be able to demonstrate how Staff are supported and advised between supervisions and that additional meetings are facilitated where required. This will include conversations linked to Wellbeing within the workplace, acknowledging that Staff may require additional support or guidance to carry out their duties at any given time.
- 29.13 With the consent of the person, at least one supervision a year should incorporate direct observation of the care worker providing support to the individual with whom they regularly work, to observe competencies.
- 29.14 The Service Provider will hold regular meetings at least quarterly with peers and/or other team members to discuss and share issues and best practice; minutes from these meetings shall be recorded.
- 29.15 All Staff will have an annual appraisal with their line manager. This will include identification of training and development needs, and their personal Wellbeing. A copy of the appraisal will be placed on the personnel file for each care worker.
- 29.16 The Service Provider will ensure that there is a clear link between staff appraisals, identified training and development needs and the training plan. Managers and supervisors will receive training in supervision skills, undertaking performance appraisals, supporting staff and planning for workforce development.
- 29.17 The Service Provider will have a succession plan in place, developing staff to support future requirements within the service.
- 29.18 The Service Provider will keep a record of any disciplinary incidents and details will be entered in the personnel file of the care worker concerned. Referrals to the

³⁹ <https://www.skillsforcare.org.uk/NMDS-SC-intelligence/NMDS-SC-and-intelligence.aspx>

Disclosure and Barring Service must be made, if appropriate, and recorded on the care worker's personnel file.

- 29.19 The Service Provider will have a written policy for the management of violence towards Staff and ensure that suitable training is provided to reduce the risk of violence towards Staff. The Service Provider will comply with the Health and Safety at Work Act 1974⁴⁰ to ensure that Staff are safe whilst at work.

Health and Safety

30. Accidents and Injuries

- 30.1 The Service Provider will ensure that Staff are aware of and able to follow the policies and procedures for dealing with medical emergencies.
- 30.2 The Service Provider will record all accidents, near misses and injuries involving the person, staff or visitors in the accident book or register. A monthly audit of all accidents and incidents will be carried out to identify trends and patterns, with actions being identified to mitigate further risk.
- 30.3 All Staff will have up to date First Aid training and a First Aid kit must be available to treat minor incidents. First Aid Kits must comply with The Health and Safety (First Aid) Regulations 1981⁴¹.
- 30.4 The Service Provider will inform the Council Practitioner of any accident or injury to the person that requires hospital or GP attendance.
- 30.5 The Service Provider will implement risk assessments, ensuring all Staff are aware of and adhere to safe systems of work.
- 30.6 The Service Provider will report all incidents subject to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)⁴² to the regulator and where applicable the Health and Safety Executive (HSE).

31. Transmittable Diseases

- 31.1 The Service Provider will ensure that the person, friends, relatives, staff and visitors are protected from transmittable diseases. A policy in relation to transmittable diseases (eg. HIV/AIDS and Hepatitis A,B and C) will be available and followed by all staff.
- 31.2 All Staff will be trained in and follow Infection Control Guidelines to manage transmittable diseases.
- 31.3 The Service Provider will support people to access vaccination against influenza in line with NHS guidelines. The opportunity to be vaccinated will be discussed with people using appropriate communication methods, supporting them to make an

⁴⁰ <http://www.hse.gov.uk/legislation/hswa.htm>

⁴¹ <http://www.hse.gov.uk/pubns/indg214.pdf>

⁴² <http://www.hse.gov.uk/riddor/>

informed choice. Best Interest Decision processes may be required for people who are assessed as lacking capacity to make this choice. Staff will also be encouraged to receive the vaccination under the NHS Flu Vaccination Programme.

32. Hygiene and Infection Control

- 32.1 The Service Provider will maintain good hygiene and infection control by complying with the requirements detailed in the Department of Health Prevention and Control of Infection in Care Homes⁴³, the Health and Social Care Act 2008: Code of Practice on the prevention and control of infections and related guidance (Department of Health 2010)⁴⁴, and any other relevant national or local policies and guidance as they arise. Service Providers will comply with the Hygiene Code 2008;
- 32.2 Service Providers will identify infection control leads within the staff team, accessing the Infection Prevention and Control Link Practitioner training.
- 32.3 Service Providers will ensure that all catering facilities are kept clean and meet the requirements of the local Environmental Health regulations.
- 32.4 Service Providers will ensure that all staff involved with food handling and preparation are trained in food hygiene.
- 32.5 The Service Provider will ensure that everyone entering or leaving the care home is aware of the requirement for high standards of hand hygiene, providing alcohol hand gel throughout the service.
- 32.6 In the event of a disease outbreak, such as norovirus, the Service Provider will respond by implementing a plan to prevent further infection. Where applicable the outbreak will be reported in line with Public Health England Guidance.

33. Business Continuity Plans

- 33.1 In accordance with the Civil Contingencies Act 2004⁴⁵ the Council is required to continue providing essential services such as housing support at all times regardless of emergencies or business interruptions such as natural disaster, fire, loss of data, financial irregularities or services failure. Service Providers will also have their own resilient contingency arrangements in place.
- 33.2 The Service Provider will assist the Council in meeting these duties by:
- developing and adopting a Business Continuity Plan which complies with the Civil Contingencies Act 2004;

⁴³ <https://www.gov.uk/government/publications/infection-prevention-and-control-in-care-homes-information-resource-published>

⁴⁴ <https://www.gov.uk/government/publications/the-health-and-social-care-act-2008-code-of-practice-on-the-prevention-and-control-of-infections-and-related-guidance>

⁴⁵ <https://www.legislation.gov.uk/ukpga/2004/36/contents>

- operating the Business Continuity Plan for the duration of this Contract; and
- providing the Council with a copy of the plan on commencement of the Contract and yearly thereafter, or when changes occur.

33.3 The Service Provider acknowledges that its obligations will include regular risk assessments and business impact analysis in relation to this Contract to be carried out on an annual basis or more frequently if the Council requests that additional testing be undertaken.

34. Safety Inspections of Premises

34.1 The Service Provider must inspect the premises regularly and records of safety inspections must be kept. Any faults must be recorded together with details of actions to isolate equipment or rectify the fault and the date of completion of the action.

34.2 All hazardous materials used for cleaning or gardening must be stored in a locked cupboard in accordance with Control of Substances Hazardous to Health (COSHH) and they must not be left unattended when in use. Data Sheets for all products should always be kept in a COSHH folder and be available to staff .

35. Fire Safety

35.1 The Service Provider will always comply with Fire Safety requirements, as advised by Kent Fire and Rescue. The service will comply with the Regulatory Reform (Fire Safety) Order 2005 or any replacement provisions, accessing the Safer Care Service⁴⁶ for guidance and support.

35.2 The Service Provider will have an up to date fire safety risk assessment and carry out regular reviews of this within their premises, in accordance with guidance from HMCLG Government Guide – Fire Safety Risk Assessment – Residential Care Premises. The fire risk assessment will be carried out by a competent person and must be reviewed annually or when there is any significant change in risk, as defined in the Regulatory Reform (Fire Safety Order 2005)⁴⁷.

35.3 The Service Provider will complete any actions identified within the fire risk assessment as soon as is reasonably practicable to ensure the safety of everyone with the Service.

35.4 The Service will have an automatic fire detection and warning system and appropriate fire-fighting equipment. All equipment will regularly be maintained by qualified personnel and records of the maintenance kept. The Service Provider will also carry out periodic checks of the equipment to ensure that it is in good working order.

⁴⁶ <http://www.kent.fire-uk.org/your-safety/business-safety/safer-care/advice-for-owners-and-managers/>

⁴⁷ <https://www.gov.uk/government/publications/regulatory-reform-fire-safety-order-2005-guidance-note-enforcement>

- 35.5 The Service Provider will develop a personal emergency evacuation plan (PEEP) for each person. This will be included as part of the person's Care and Support Plan. The Service Provider will be responsible for ensuring that all staff are aware of people's needs in the event of a fire, and PEEP's should be regularly reviewed and updated when individual needs change.
- 35.6 The Service Provider shall ensure adequate staffing levels during day and night which consider all persons on the premises including those who may need assistance to escape.
- 35.7 The Service Provider will have written fire strategy document which will detail safety/prevention and staff evacuation procedures which will ensure that all members of Staff are trained (including refresher training) in response to and use of the care homes automatic fire detection and fire-fighting equipment. The Service Provider will ensure that this training includes action to be taken on discovering a fire/hearing the fire alarm (respond in an emergency); raising the alarm; the location/use of equipment; confirming a fire with the fire and rescue service and the method of evacuation/escape routes.

36. Quality Assurance Requirements

- 36.1 The Service Provider will ensure that a quality management system is in place to ensure internal control of quality and consistency of practice and be committed to a process of continuous service improvement. Outcomes and Key Performance Indicators will be reviewed throughout the life of the contract and the Council reserve the right to utilise a third-party representative to manage this on behalf of the Council.
- 36.2 The Council will measure quality and performance data via Key Performance Indicator (KPI) data returns from Service Providers. The Council may implement electronic methods for collecting and collating Key Performance Indicator data and the Service Provider will work with the Council to deliver this effectively and to ensure compatibility with the Council's systems and requirements. The returns will be analysed and published to inform the public and professionals on the performance of care homes. This will develop to provide a benchmark of quality and performance expectation and inform future commissioning.
- 36.3 The Service Provider (including owners, corporate managers and local managers) will participate in local Service Provider meetings organised by the Council and its partners. The Service Provider will take part in any events in relation to any legislative and Market Position Statement work.
- 36.4 Contract review visits may be planned or unannounced and the Council reserves the right to view all records relating to the service. This will include commissioned levels of support for everyone within the service to enable the Council Practitioner to verify the required staffing resource.
- 36.5 Within 12 months of the contract commencement date, and annually thereafter, Service Providers will submit a completed contract monitoring form to the Council. The purpose of the monitoring form will be to review the Service delivery in accordance with the Specification and Terms and Conditions. The Council may distribute quality assurance questionnaires to people using the services, to assess qualitative aspects of delivery.

37. Contract Sanctions (*currently under review*)

- 37.1 The Council will utilise contract Sanctions to denote non-compliance with the Contract and Specification. Non-compliance will be identified through KPI's, Contract management and monitoring processes and notifications from the Council's Practitioners. There are three types of Contract Sanctions:
- Poor Practice Sanctions to express levels of non-compliance with the Service Specification;
 - Contract Compliance Sanctions to express levels of non-compliance with the Terms and Conditions; and
 - Safeguarding Sanctions where a person(s) is/are reported to be at risk of harm, abuse or neglect.
- 37.2 Each of these Contract Sanctions have three risk levels starting at Level 1 and escalating to Levels 2 and 3. A Level 3 flag will prevent the provider from being offered or accepting referrals from the Council. The Council will immediately apply a Level 3 Contract Sanction if:
- The Regulator has issued a Warning Notice;
 - Significant risks to people have been identified; and
 - The assessed needs of people are not being met.
- 37.3 Where contractual non-compliance is evidenced, the Council will require the Provider to draw up an action plan that addresses areas of concern and provides timescales for improvement. This must be returned to the Council within 7 days. It is the Providers responsibility to evidence improvement and the Council will escalate Sanctions when providers fail to meet the plan.
- 37.4 Continuous non-compliance or more than three episodes of non-compliance within a 12-month period could lead to the termination of an order or the Contract itself. The Council will be entitled to terminate the Contract or any order without issuing a Sanction if the Provider is found to be in serious breach of the Contract.
- 37.5 The Council shall reserve the right to publish any information in relation to contract sanctions or any contractual or quality audits undertaken by the Council or representatives of the Council. The Council will reserve the right to;
- publish lists of Service Providers who attend events managed by the Council and those who do not;
 - publish information in relation to contract sanctions or any contractual or quality audits undertaken by the Council or representatives of the Council;
 - recoup any costs incurred in supporting the recovery or managed exits of services, where the Service Provider has done little to improve or manage this; and
 - alter the sanctions policy at any time and provide notice to the Service Provider of any changes.

38. Requirements Relating to Actions by the Regulator

- 38.1 The Service Provider will inform the Council when a regulatory inspection has taken place and will share the result of the inspection within 24 hours of receipt.

- 38.2 The Service Provider will notify the Council of any Regulator Warning Notices placed on the Service/Service Provider regarding the Service Provider and/or its associated activities within 24 hours of receipt. The Service Provider will also inform the Council of any advice and/or comments received from the Regulator.
- 38.3 The Regulator can place fines or formal warnings on the Service Provider or suspend or cancel the Service Provider's registration. The Service Provider will inform the Council of any such activity and a failure to do so will mean that the Council shall seek to recoup costs and damages incurred and may terminate the Contract without notice in accordance with the Terms and Conditions of the Contract. The Service Provider will keep people and their families informed of any such activity.
- 38.4 The Service Provider will keep the Council informed of Registered Manager vacancies and any fines this attracts from the Regulator. The Service Provider will inform the Council when new Registered Managers are appointed and provide their updated contact details.
- 38.5 The Service Provider will ensure that an appropriate person will be available to deputise for the Registered Manager in the event of a short-term absence from the home, for example due to annual leave or sickness, and that a person with managerial responsibility will be available for the Staff and people within the service at all times, including weekends and Bank Holidays.

39. Complaints and Compliments

- 39.1 The Service Provider will ensure an easily understood, well-publicised and accessible procedure is in place to enable an individual to make a complaint or compliment and for complaints to be investigated. The Service Provider's complaints and compliments policy shall also refer to the Regulator, Local Government Ombudsman (LGO) and the Council's Complaints Team if the complaint requires an alternate signposting route. The Service Provider will be expected to investigate any complaints, compliments or quality issues that arise concisely, with all evidence clearly documented. The Service Provider will be able to evidence how they ensure learning from complaints improves the quality of the service provided.
- 39.2 The Service Provider will welcome complaints and compliments as an opportunity to continuously improve and develop the service. Where there is a local advocacy or Service User Forum, the Service Provider will always make constructive use of these organisations and specifically to help resolve complaints and problems as early as possible. All complaints, whether they have been formally or informally resolved, will be recorded.
- 39.3 The Service Provider will have systems in place to support people to resolve complaints and disputes within the service. This will include disputes with other people living in the service, with staff supporting people to reach mutual resolutions.
- 39.4 A record of compliments will be maintained together with evidence if available and be used to reinforce good practice. The Service Provider will be able to evidence how they share feedback on the Service via their quality assurance process.

- 39.5 The record of the complaint/compliment will include:
- the date of the complaint/compliment;
 - details of the investigation and response to the complaint/compliment;
 - full details of the actual complaint/compliment;
 - the date the complaint/compliment was received (if different);
 - the date when the complaint/compliment was responded to;
 - the outcome of the complaint; and
 - details of whether the complainant was satisfied with the response/outcome; and
 - any further actions arising from the complaint/compliment.
- 39.6 In the event that the complainant has exhausted the Service Provider's own complaints procedure and is still not satisfied with the response, the Service Provider will then follow the Council's Statutory Complaints procedure **before** going to the LGO. The LGO shall expect to see this process has been followed prior to responding officially.

40. Records

- 40.1 The Service Provider will comply with and store all information in accordance with General Data Protection Regulation 2016⁴⁸ legislation.
- 40.2 The Service Provider will ensure that records and details of support given are comprehensive and shared as appropriate by:
- recording any refusal of support agreed within the Care and Support Plans and advising the Council Practitioner as soon as possible;
 - reporting any significant occurrence or changes in circumstances/support needs to the Council Practitioner;
 - allowing the Council's authorised staff to see records required by this Specification at any time, including records relating to people who are funded by other authorities, to fulfil safeguarding and Care Act requirements;
 - accommodating visits by the Councils' authorised staff, which may take place at any time and could be unannounced;
 - ensuring appropriate sections of the individual's personal files are accessible to relevant care staff;
 - ensuring staff are aware of the Service Provider's policy regarding confidentiality of records;
 - ensuring staff possess acceptable standards of literacy in English;
 - informing people about what is written in their records, allowing access to their Care and Support Plan and any contents past or present; and
 - making records available to the person's family and/or carer with consent of the individual, unless the person has been assessed as lacking the Mental Capacity to make a decision relating to this, or Lasting Powers of Attorney have been granted.
- 40.3 Records will include, but not be limited to:

⁴⁸ <https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation>

- assistance with medication;
- care provided, including any refusal of care;
- delivery of commissioned support hours;
- health appointments/conditions;
- any financial transactions undertaken;
- details of changes in the person's circumstances, support needs, health condition and any Mental Capacity concerns, which raise questions about the individual's ability to consent with specific decisions of the care and support arrangements;
- any use of restraint;
- any accident/incident relating to the person and/or Staff;
- any other untoward incidents;
- activities undertaken and any particular achievements; and
- any information that will assist any future Staff to ensure consistency in the Service.

41. Information Sharing

- 41.1 Information will be shared between the Service Provider, the Council and other statutory agencies e.g. Clinical Commissioning Groups and Regulators. This will follow the Kent and Medway Information Sharing Protocol⁴⁹.
- 41.2 When transferring personal or confidential information/data, the Service Provider will ensure that they use secure or encrypted email systems or passwords sent separately from the main body of the message in accordance with General Data Protection Regulation 2016 and the Caldicott Principles⁵⁰.
- 41.3 Staff will have training on Information Governance, General Data Protection Regulation 2016 and the Data Protection Act 2018⁵¹.
- 41.4 The Service Provider will ensure that all Staff are aware of the risk of unintended breaches of confidentiality and identifying situations in which this may occur. Staff will only carry confidential information when necessary to do so, and the Service Provider will ensure that Staff understand the need to preserve security when carrying confidential information.
- 41.5 The Service Provider will have policies and procedures in place to ensure Staff who leave or change duties do not retain any written information about the people in the Service.
- 41.6 Staff who have a mobile phones or other digital devices should be kept in lockers and not be used whilst conducting duties within their role (residential home setting).

⁴⁹ https://www.kent.gov.uk/data/assets/pdf_file/0012/14043/information-sharing-protocols.pdf

⁵⁰ <https://www.igt.hscic.gov.uk/Caldicott2Principles.aspx>

⁵¹ <https://www.gov.uk/data-protection>

- 41.7 Where it is necessary for staff to use a mobile phone to communicate regarding work related issues a mobile phone must be provided by the provider e.g. accompanying individuals out in the community.
- 41.8 Staff must not use personal social media/networking accounts to communicate/discuss business or individual issues, formalised business accounts must be used.
- 41.9 The provider should give clear guidance to Staff about the use of the mobile phone and other digital devices, including desktop computers and tablets, etc.
- 41.10 Staff should not give out their personal phone number to individuals using the service.
- 41.11 Staff cannot use personal mobile phone/devices to take photos or any digital record of the individuals they are supporting at any time.
- 41.12 Service providers should not have access to their staff social media accounts.

GLOSSARY AND DEFINITIONS

Abuse

Abuse is a violation of an individual's human and civil rights by other person or persons. Abuse may consist of single or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented or cannot consent. Abuse can occur in any relationship and may result in significant harm, or exploitation of, the person subjected to it. (Based on No Secrets, Department of Health (DoH) and Home Office guidance 2000).

Adult Social Care and Health

The Council's Directorate responsible for this contract.

Advocate

Someone who speaks on behalf of the person.

Assessment

An assessment of a person's needs co-ordinated by the Council according to prioritising need in line with the Care Act 2014.

Assistive Technology (AT)

Assistive technology or adaptive technology (AT) is an umbrella term that includes assistive, adaptive, and rehabilitative devices. AT promotes greater independence by enabling people to perform tasks that they were formerly unable to accomplish, or had great difficulty accomplishing, by providing enhancements to, or changing methods of interacting with the technology needed to accomplish such tasks.

Best Interests Decision

A decision made on the behalf of the person who has been assessed as lacking the Mental Capacity to make a decision relating an aspect of their life due to a mental disorder and an inability to understand, retain and/or weigh up information and/or to communicate their decisions to others, following consultation with all relevant people.

Care and Support Plan

The details of the care/support required, and the way the person's assessed needs are to be met.

Contract

The agreement entered into between the Council and the Service Provider incorporating all the Contract documents.

Council

Refers to Kent County Council.

Council Practitioner

The person deployed by the Council to arrange and review care for people who have been found on assessment to be owed a duty under The Care Act 2014.

Deprivation of Liberty Safeguards (DoLS)

The process that shall be followed if an incapacitated person is to be deprived of their liberty in a lawful manner, to prevent harm in their best interests.

Disclosure and Barring Service (DBS)

The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups. It replaced the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

End of Life

The diagnosis of a life limiting condition where a person is likely to die within the next 12 months; and can include: Cancer, cardiovascular disease, respiratory disease, neurological disorders and dementias.

Equipment

Equipment comprises aids to daily living, nursing aids and rehabilitation equipment. Items fall into the following categories: bathing equipment, beds and accessories, chair raising equipment, mobility aids, handling/lifting/transfer equipment, pressure care, seating and toileting. The Equipment in Care Homes Protocol (as specified in Appendix A) details the responsibilities of care homes and the Integrated Community Equipment Service for the provision of items of equipment.

Individual

A person in receipt of a residential care home service detailed within this specification.

Key Performance Indicators (KPIs)

Performance measures that will be recorded and reported by the Service Provider to the Council.

Local Government Ombudsman (LGO)

The Local Government Ombudsman looks at complaints about Local Authorities and Adult Social Care Service Providers and investigates complaints as an independent organisation.

Mental Capacity

A person's ability to make their own specific decisions at specific times.

Moving and Handling

When providing care and support for people, Staff may need to support them to move around. It is essential that Staff are able to deliver safe Moving and Handling which upholds the dignity of the person so they don't hurt themselves or others.

Nursing Care

The care and support provided by a qualified nurse to promote the health and well-being of people.

Outcomes

Consequence or result of a planned activity in relation to the agreed goals for a person.

Person / People

Individuals in receipt of a residential care home service.

Personal Care

The provision of assistance to enable a person to carry out personal hygiene tasks and assistance with bodily functions.

Personalisation

Putting people at the centre of the process identifying their needs.

Registered Manager

Refers to the person managing the home daily as registered with the Regulator.

Regulator

The body which is established by statute and to whose regulatory powers the Service Provider is subject. These are currently the Care Quality Commission (CQC) for adults and The Office for Standards in Education, Children's Services and Skills (Ofsted) for children, Health and Safety Executive, Public Health Department, Kent Fire and Rescue Service and Environmental Health Department.

Review

The process by which the Council and the Service Provider evaluate and record the adequacy of their respective current Care and Support Plan to meet the person's needs and desired Outcomes.

Safeguarding Adults

The process by which abuse is reported, investigated and harm to the person is prevented.

Service

All the services to be provided by the Service Provider under this Contract.

Service Outcomes

Outcomes the Service Provider shall achieve in order to demonstrate contracted care is being delivered.

Service Provider

The Contractor responsible for providing the Service.

Service Specification

This document.

Staff

Within the context of this Specification, Staff refers to the group of people, working under the direction of the Registered Manager, which is responsible for delivering care and support to deliver outcomes and includes employees, volunteers and Agency workers.

Terms and Conditions

Refers to the conditions of the contract and should be read in conjunction with this Specification.

Vacancy

A vacant (empty) bed for use within a care home reported to the Council.

Well – Being

Refers to the state of the person's physical, emotional and social wellbeing.

Whistleblowing

Whistleblowing involves a person or group of people who tell someone in authority (i.e. the Council, CCGs in Kent, the Registered Manager or the Regulator) about alleged abusive and dishonest practices occurring in a care setting.

Workforce Development

The development and training of staff to ensure a capable, confident and skilled team.

Working Days

Within the context of this Specification, Working Days means Monday to Friday, excluding Bank Holidays.

Appendix A - EQUIPMENT IN CARE HOMES PROTOCOL

Supplementary information regarding Equipment in Care Homes is available at http://www.kent.gov.uk/_data/assets/pdf_file/0005/81563/Guidance-for-Provision-and-Recycling-of-Community-Equipment-in-Care-Homes-for-Adults.pdf and should be read in conjunction with this Specification

SCHEDULE 3

PRICING AND PAYMENT

The cost model is based on National, Regional and Local costs and the relevant price indexes and used to support the determination of fees for each service.

It is a comparison tool to ensure KCC are paying a fair price for LD/PD/MH residential care services.

Certain values within in the model vary depending on:

- Specialty (LD/PD/MH), Type (mid/high/specialist/specialist Plus), Size (Small/medium/large/x large)
- Location
- Other variables

All LDPDMH residential homes are assessed against criteria and assigned the appropriate category (mid/high/specialist/specialist plus).

The cost model assesses each aspect of the total fee (staff pay, accommodation, consumables, etc.) and it is split into 2 mutually exclusive areas:

Care costs - Based on value of a single hour of care, costs vary by care receiver

Hotel & Management (H&M) costs and profit

Variable and fixed costs, e.g. Consumables, utilities, transport, property payments (i.e. rent/mortgage/owned), non-care related staff costs and profit.

Each home will have a different cost depending on the variables. Because it is based on individual variables it is not possible to work out the service baseline until costs are submitted. Service costs will then be assessed against all the measures and will need to fall within acceptable tolerances of the baseline cost, -/+ 25% for H&M and 0/+15% for Care costs.

PRICING SCHEDULE

[Insert Provider's Cost Model Submission at Contract Award]

SCHEDULE 4

TENDER

[To be inserted post-tender as appropriate]

SCHEDULE 5
SCHEDULE OF AGREEMENTS

[Details to be inserted post-tender]

PRE-TENDER CLARIFICATIONS

These can be found at the end of the contract.

SCHEDULE 6

SERVICE LEVELS AND SERVICE CREDITS

Not Used

SCHEDULE 7

CHANGE CONTROL

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Provider sees a need to change this Contract, the Council may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Provider shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any Change-related work undertaken by the Provider and the Provider's Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Provider. Should the Council not authorize such work the Provider may, at the Council's absolute discretion, be required to reverse such work and the cost for so doing will be borne by the Provider alone.

2. PROCEDURE

- 2.1 A Change request must be submitted to the Council's Contract manager in the case of a request by the Provider and to the Provider's manager in the case of a request by the Council.
- 2.2 Either Party may raise a change request in the form annexed (the "**Contract Change Control Form**"). All Contract Change Control Forms should where practicable be supported by additional information which should accompany the Contract Change Control Form. Where a Party requires additional information from the other Party in order to complete the Contract Change Control Form as fully as possible then that other Party shall respond to such request for additional information as soon as practicable and in any event shall use all reasonable endeavours to supply the necessary details within 3 Working Days, or such other timescales as may be agreed between the Parties.
- 2.3 The minimum information required to be submitted on the Contract Change Control Form is as follows:
 - (a) Date of Change request
 - (b) Name of Party making the change request
 - (c) Date of proposed implementation of Change request

- (d) If appropriate, changes to the requirement, or any other aspect of this Contract to be changed
 - (e) Any changes to existing documentation or any new documentation that may be required
 - (f) A description of the change or the new requirement (as appropriate).
 - (g) Justification for making the Change
 - (h) Detailed cost implications
 - (i) Impact on exit plan
 - (j) If necessary and so far as possible a description of any future impact analysis work to be undertaken together with anticipated time scales and costs if any.
 - (k) So far as possible, a description of the impact of the Change or new requirement (as appropriate) quantified in terms of input required from each Party, timescales, performance and cost.
- 2.4 Discussions between the Council and the Provider concerning a Change shall result in any one of the following:
- (a) No further action being taken; or
 - (b) A request to change this Contract by the Council; or
 - (c) A recommendation to change this Contract by the Provider
- 2.5 Where a written request for an amendment is received from the Council, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Form signed by the Provider to the Council within three weeks of the date of the request or such other timescales as may be agreed between the Parties.
- 2.6 A recommendation to amend this Contract by the Provider shall be submitted directly to the Council in the form of two copies of a Change Control Form signed by the Provider at the time of such recommendation. The Council shall give its response to the Change Control Form within three weeks or such other timescales as may be agreed between the Parties.
- 2.7 A Change Control Form signed by the Council and by the Provider shall constitute an amendment to this Contract.

Annex 1

Contract Change Control Form

CCF NO.:	TITLE:	DATE RAISED:
ORIGINATOR:	REQUIRED BY DATE:	
DETAILED DESCRIPTION OF CONTRACT CHANGE BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
DETAILED JUSTIFICATION FOR MAKING THE CHANGE :		
PROPOSED ADJUSTMENT TO THE PRICING WITH DETAILED COSTINGS RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL PRICING AND MEANS FOR DETERMINING THESE – THESE WILL BE BASED ON PROVIDER COSTS PLUS ACCEPTABLE MARGIN):		
DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:		
DETAILS OF ANY KEY PERFORMANCE INDICATOR'S AFFECTED:		
DETAILS OF IMPACT ON EXIT PLAN:		
DETAILS OF IMPACT ON REQUIREMENT:		

DETAILS OF IMPACT ON DOCUMENTATION :

DETAILS OF ANY OPERATIONAL SERVICE IMPACT:

DETAILED RISK ASSESSMENT:

SCHEDULE 8

EXIT ARRANGEMENTS

1. General

- (a) The Provider acknowledges that it is of critical importance to the Council to ensure on termination or expiry of this Contract an orderly transfer of the Services either back to the Council or to a Replacement Provider and for this reason the Council relies significantly on the Provider fulfilling its obligations under this Schedule.
- (b) If this Contract is terminated in whole or part or expires in accordance with its terms, the Provider will, during the Exit Period, co-operate with the Council and where applicable any Replacement Provider to ensure the orderly migration of, and transfer of responsibility for, the Services.

2. Exit Obligations

- (a) During the Exit Period the Provider shall:
 - (i) provide all reasonable assistance and appropriate resources to the Council and any Replacement Provider to facilitate the orderly transfer of the Services to the Council or the Replacement Provider;
 - (ii) continue to provide the Services in accordance with any relevant Service Levels in force at the date of termination or expiry on the terms set out in this Contract;
 - (iii) provide such information and assistance as detailed in paragraph 4;
 - (iv) provide such copies of the Council's data in its possession as are requested by the Council and at no additional charge to the Council;
 - (v) carry out such security tasks necessary to identify security and operator risks inherent in the transfer of the Services and inform the Council of such risks and possible preventative and curative measures necessary to deal with such risks;
 - (vi) immediately prior to the end of the Exit Period provide the Council with a detailed description and status report of all errors which have not been corrected, problems not resolved or agreed changes to the Services which have not been fully implemented at the termination of the Exit Period.
- (b) The Provider shall carry out the Exit Obligations in such a manner so as to cause as little disruption as possible to the Council's business.

3. Documentation and Due Diligence

- (a) During the Exit Period, the Provider will comply with any reasonable request by the Council for any information in relation to the Services to ensure the smooth transition of the Services. Following such a request the Provider will within two (2) days of such

request make the relevant information available to the Council for inspection or on the Council's authorisation to the Replacement Provider and shall within two (2) days of such inspection provide copies of the relevant information to the Council and/or (if so requested by the Council) the Replacement Provider.

- (b) The Provider shall promptly and diligently answer any questions about the Services which may be asked by the Council or by any Replacement Provider as necessary in order (i) to explain the manner in which the Services have been provided; and (ii) to allow the Council or Replacement Provider to conduct all such due diligence as is reasonably required to enable it to take over responsibility for the provision of the Services (or any part thereof).
- (c) The Council shall procure that any Replacement Provider agrees to be bound by (i) an obligation of confidentiality in respect of any confidential information of the Provider which is made available to it under this Schedule and (ii) an obligation to use any of the Provider's confidential information solely for the purpose of evaluating and/or providing to the Council the services which will replace the Services.

4. Exit Manager

- (a) The Provider will appoint a person as Exit Manager at the commencement of the Exit Period and will notify the Council as soon as possible of the name and contact details of such person. The Council shall have the right to require the replacement of the Exit Manager if it reasonably believes that such person is unsuitable for the position.
- (b) The Exit Manager will be the Council's primary point of contact in connection with the matters referred to in this Schedule. The Provider shall ensure that the Exit Manager liaise with the Council in relation to all issues relevant to the termination (in whole or part) or expiry of this Contract and all matters connected with this Schedule.

5. Exit Period

- (a) The Exit Period shall be:
 - (i) a period of up to twelve (12) months prior to the end of the Contract;provided that the Council may terminate the Exit Period at any time by giving ninety (90) days' notice in writing to the Provider.

SCHEDULE 9

TUPE AND PENSIONS

In this Schedule the following terms shall have the following meaning:

Admission Agreement: means the agreement in the form set out in Appendix A to this Schedule to be entered into in accordance with regulation 54 of the LGPS Regulations, by the Authority and the Provider and/or Sub-Contractor, as appropriate.

Admission Body: means a body that has entered into an Admissions Agreement with an administering authority in accordance with regulation 54 of the LGPS Regulations.

Agency Worker: is as defined by the Agency Workers Regulations 2010.

Appropriate Pension Provision; means in respect of the Transferring Employees, either:

(a) for the LGPS Employees membership, continued membership or continued eligibility for membership of the LGPS; or

(b) for the LGPS Employees a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the LGPS for the LGPS Employees.

Authority: shall mean Kent County Council as the administering authority for the LGPS in accordance with the LGPS Regulations.

Bond: means the bond to be executed in the Authority's standard form/ in the form set out in Appendix B to this Schedule to the value stipulated by the Authority.

Compensation Regulations: means the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, as amended or replaced from time to time.

Eligible Employees: means any Transferring Employees and/or any Relevant Employees who transferred to the Outgoing Provider or to any Sub Contractor from the Council in connection with the provision of the Service and who have been continuously part of the economic entity providing the Service since that transfer and who are active members of (or eligible to join) the LGPS or a broadly comparable scheme on a Relevant Transfer Date.

Employee Emoluments: means all employment related outgoings including salaries, wages, bonus or commission, holiday pay, redundancy costs whether statutory or contractual, expenses, national insurance and pension contributions and any liability to taxation.

Employee Information: means the categories of information referred to or listed in clauses 3.6 and 3.12 of this Schedule.

Employee Liability Information: means the information that a transferor is obliged to notify to a transferee under Regulation 11 of TUPE.

Future Transfer: means any future transfer pursuant to TUPE of any employees who are subject to the terms of this Contract.

Future Transfer Date: means the date on which any Future Transfer takes effect.

LGPS: means the Local Government Pension Scheme made pursuant to the LGPS Regulations (or where the context requires their predecessor regulations made pursuant to the Superannuation Act 1972) as amended or replaced from time to time.

LGPS Employee: mean those Transferring Employees who are also Eligible Employees and thus active members of (or eligible to join) the LGPS or a broadly comparable scheme on a Relevant Transfer Date.

LGPS Regulations: mean the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and/or any regulations amending, modifying or replacing them.

Losses shall mean all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including legal costs and expenses) of such actions and proceedings and the staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the contractual clause in question or to its breach.

Outgoing Provider: means the outgoing provider(s) of the Service and includes their sub-contractors

Party: means a party to the Contract.

Relevant Employees: means any of the Outgoing Provider's or the Provider's Staff or the Staff of any Sub Contractor who would be liable to transfer pursuant to TUPE from the employment of the Outgoing Provider or of any Sub Contractor to the Provider or from the employment of the Provider or of any Sub Contractor to the employment of the Replacement Provider or to the Council irrespective of whether they actually transfer (and for the avoidance of doubt shall include Transferring Employees).

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

Relevant Transfer Date: means the date of a Relevant Transfer.

Replacement Provider: means any third party appointed by the Council upon the expiry, assignment or termination of this Contract to undertake work which is substantially similar or identical to the Service.

Service: means those Services referred to in the Specification to this Contract.

Staff: means any person employed or engaged by the Outgoing Provider, by the Provider or by any Sub Contractor (including volunteers, apprentices, and agency personnel) undertaking any activity related to or connected with the provision of the Service.

Sub-Contractor: means any third party engaged by the Provider (or where the context requires the Outgoing Provider) to carry out the Services other than its Staff.

The Transfer Date: means in respect of Transferring Employees employed by the Outgoing Provider prior to the Transfer Date or by any Sub Contractor appointed by the Outgoing Provider prior to the Transfer Date the date upon which the Provider or any Sub Contractor appointed by the Provider become responsible for the delivery of the Service.

Transferring Employees: means any Relevant Employees who are the subject of a Relevant Transfer.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) implementing the Acquired Rights Directive 77/187 (as amended from time to time).

1. TUPE TRANSFER AND EMPLOYMENT ISSUES UPON THE COMMENCEMENT OF THE CONTRACT

Transfer of employees from the Outgoing Provider to the Provider on the Transfer Date

- 1.1 The Council hereby makes the Provider aware that in its opinion in connection with this Contract and in connection with the delivery of the Service under this Contract there may be a Relevant Transfer of Transferring Employees employed or contracted by the Outgoing Provider or their Sub Contractors from the Outgoing Provider or their Sub Contractors to the Provider. The Council can offer no warranties or indemnities in respect of this and It is the responsibility of the Provider to take advice as to the applicability of TUPE and request up to date TUPE information.
- 1.2 The Council hereby makes the Provider aware that in relation to the operation of the Service the Provider may be required to offer Transferring Employees employed or contracted by the Outgoing Provider or their Sub-Contractors membership of the LGPS or equivalent scheme. The Council can offer no warranties or indemnities in respect of this and It is the responsibility of the Provider to take advice as to the scope of any such pension scheme membership that will need to be provided.
- 1.3 The Provider shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the rates and prices stated and which shall (except in so far as it is otherwise provided in the Contract) include all of its obligations under the Contract and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or effecting his tender.
- 1.4 The Council is unable to offer the Provider any warranties or indemnities in respect of any Transferring Employees who are transferring from the Outgoing Provider or any Sub- Contractor appointed by any Outgoing Provider to the Provider.
- 1.5 **Apportionments**
 - 1.5.1 The Outgoing Provider shall be responsible for all emoluments and outgoings in respect of all Transferring Employees employed (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to the Transfer Date. The Council offers the Provider no indemnities against the Outgoing Provider's failure to comply with this clause.
 - 1.5.2 The Provider or any Sub-Contractor appointed by the Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period on and after the Transfer Date and for any employment related liabilities that transfer

to it or to any Sub Contractor pursuant to TUPE and the Provider will indemnify the Council in respect of the same.

1.6 Information and Consultation

1.6.1 The Provider shall comply (and shall procure that any Sub-Contractor complies) with its obligations under Regulation 13 of TUPE during the period prior to the Transfer Date.

1.6.2 The Provider shall indemnify the Council and the Outgoing Provider against all Losses incurred as a result of:

1.6.2.1 any failure by the Provider or any Sub-Contractor appointed by the Provider to comply with its obligations under Regulation 13 of the TUPE, or any award of compensation under Regulation 15 of TUPE arising from that failure; and

1.6.2.2 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the Transferring Employees arising from or connected with any failure by the Provider or any Sub- Contractor appointed by the Provider to comply with any legal obligation to such trade union, body or person.

1.7 Indemnities

1.7.1 The Provider shall in respect of the Transferring Employees also indemnify the Council against all Losses incurred by the Council in connection with or as a result of:

1.7.1.1 any claim or demand by any Relevant Employee employed by the Outgoing Provider prior to the Transfer Date (whether in contract, tort, under statute, pursuant to European law or otherwise) without limitation, in each case arising directly or indirectly from any act, fault or omission of the Outgoing Provider, the Provider or any Sub-Contractor appointed by the Provider or by the Outgoing Provider in respect of any Relevant Employee before, on or after the Transfer Date; and

1.7.1.2 any claim or demand by any Relevant Employee employed by the Outgoing Provider, the Provider or any Sub-Contractor appointed by the Provider or by the Outgoing Provider arising out of any change or proposed change in the terms and conditions of employment or working conditions before, on or after the transfer to the Provider or any Sub-Contractor appointed by the Provider; and

1.7.1.3 any claim or demand by any Relevant Employee that the change of employer itself amounts to a significant material detriment where that Relevant Employee would have been a Transferring Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE on or before the Transfer Date.

- 1.7.2 Without prejudice to the foregoing, the Provider shall comply at all times with its obligations under TUPE and shall ensure that any Sub Contractor complies with its obligations and shall indemnify and hold harmless the Council and the Outgoing Provider from and against all Losses, arising in connection with or as a result of any breach of such obligations.
- 1.8 The Provider shall immediately on request by the Outgoing Provider or the Council provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Transferring Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact.
- 2. TUPE AND EMPLOYMENT ISSUES DURING THE LIFETIME OF THE CONTRACT**
- Transfer of Transferring Employees to the Provider**
- 2.1 The Council and the Provider agree that any transfer of Transferring Employees from the employment of the Outgoing Provider or of any Sub-Contractor appointed by the Outgoing Provider into the employment of the Provider or a Sub-Contractor, will, (subject to Transferring Employees' rights under Regulation 4(7) of TUPE) be by operation of TUPE on the Transfer Date. The Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.
- 2.2 The Provider confirms and agrees that at all times during the term of this Contract it shall comply with and shall ensure that any Sub-Contractor appointed by the Provider shall comply with clauses 5 to 14 of this Schedule and with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 and where applicable comply with the Pensions Schemes Act 1993, the Pensions Acts 2004, 2008 and 2011, the Public Service Pensions Act 2013 and any other statutory provision, guidance or regulation relating to workforce matters or pensions in local authority/public sector service contracts or related matter whether in existence or to be enacted and will fully indemnify the Council and any Replacement Provider from all Losses arising from its failure to do so.
- 2.3 The Provider shall be liable for and indemnify and keep indemnified the Council and any Replacement Provider against any failure by the Provider or by any Sub-Contractor appointed by the Provider to meet all Employee Emoluments for the Transferring Employees and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Service from and including the Transfer Date up to but not on or after a relevant Future Transfer Date.
- 2.4 The Provider shall indemnify and keep indemnified the Council and the Replacement Provider against any Losses, incurred by the Council or by the Replacement Provider in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee by the Provider or any Sub-Contractor appointed by the Provider or from the termination of that employment. This indemnity shall apply provided that it arises from any wrongful act, fault or omission of the Provider or the Sub Contractor in relation to any Transferring Employee on or after the Transfer Date or as a result of any failure to comply with its or their obligations

under clauses 1 and 2 of this Schedule.

3. TUPE TRANSFER UPON ON ASSIGNMENT, EXPIRY OR TERMINATION OF THE CONTRACT

3.1 The Provider and the Council acknowledge and confirm that in the event of assignment, expiry or termination of this Contract, TUPE may apply but that the position shall be determined in accordance with the law at the relevant date as the case may be and this clause 3 of this Schedule is without prejudice to such determination. The Parties shall comply with their respective obligations and the Provider shall ensure that any Sub Contractor complies with its obligations under TUPE in respect of a Relevant Transfer of Transferring Employees to the Council or to a Replacement Provider on a Future Transfer Date and with any other applicable legislation or agreement with regard to the information to be given to and consultation with the Relevant Employees or any trade union or other representatives on their behalf. The Provider will provide:

3.1.1 to the Council (for use by the Council or by a Replacement Provider) the Employee Liability Information required pursuant to Regulation 11 of TUPE in respect of any Relevant Employees in accordance with the timescale specified therein, and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE; and

3.1.2 will keep the Council and the Replacement Provider indemnified in full against all Losses arising from any claim against the Council or against the Replacement Provider by any person or organisation as a result of the Provider or any Sub Contractor failing to provide or promptly to provide the Council or to the Replacement Provider with any Employee Liability Information in respect of any Relevant Employees or as a result of any material inaccuracy in or omission from the Employee Liability Information; and

3.1.3 comply with the Provider's obligations and ensure that any Sub Contractor complies with its obligations (including without limitation under regulation 13(4) of TUPE).

3.2 Immediately on the expiry, termination or assignment of this Contract the Provider shall fully indemnify the Council and any Replacement Provider against all Losses arising out of-

3.2.1 any claim or demand by any Relevant Employee arising from and relating to his employment prior to the Future Transfer Date due to, arising from or relating to the act, fault or omission of the Provider or of any Sub Contractor prior to the Future Transfer Date (including but not limited to any claims relating to a failure to provide or failure adequately to provide a pension);

3.2.2 any claim or demand arising out of or in connection with employment with the Provider or of any Sub Contractor or the termination thereof, by any past, present or future employee who is not a Relevant Employee (including but not

limited to any claims relating to a failure to provide or failure adequately to provide a pension);

- 3.2.3 any claim by or on behalf of any Relevant Employee pursuant to Regulation 4(9) of TUPE on the grounds that the identity of the Council or of any Replacement Provider as his employer is both a substantial change and to his material detriment;
 - 3.2.4 subject to Clause 3.3.3 of this Schedule below, any claim arising out of any failure by the Provider or by any Sub Contractor to comply with TUPE regulations 11 or 13 prior to the Future Transfer Date;
 - 3.2.5 any claim or demand by any trade union or staff association or employee representatives (whether or not recognised by the Provider in respect of any Relevant Employees) arising from or connected with any failure by the Provider or by any Sub Contractor to comply with any legal obligation to such trade union, staff association or employee representative.
- 3.3 On assignment, expiry or termination of this Contract, the Council shall fully indemnify the Provider against all Losses arising out of-
- 3.3.1 any claim by any Relevant Employee arising from and relating to his employment or the termination of his employment with the Council or with the Replacement Provider on or after the Future Transfer Date and arising from the Council's or the Replacement Provider's act, fault or omission in relation to any Relevant Employee on or after the Future Transfer Date;
 - 3.3.2 any claim arising from the Council's (but not from the Replacement Provider's) failure to supply the Provider with information in respect of "measures" under TUPE regulation 13(4) but only in relation to a transfer of Staff taking place on the Future Transfer Date;
 - 3.3.3 any claim arising from the Council's (but not from the Replacement Provider's) failure to comply with the Council's obligations to consult the Relevant Employees or their representatives pursuant to regulation 13 of TUPE but only in relation to a transfer of Staff taking place on the Future Transfer Date.

PROVIDED that this indemnity shall not apply to any claim arising as a result of the Council's or the Replacement Provider's act, fault or omission which arises or is occasioned directly or indirectly from any act, fault or omission of the Provider or of any Sub Contractor.

- 3.4 All salaries and other Employee Emoluments and the cost of all benefits, including (but not limited to) accrued holiday pay, tax and national insurance payments, bonus and commission arrangements relating to the Transferring Employees shall be the responsibility of the Provider from the Transfer Date up to the Future Transfer Date and the responsibility of the Council or the responsibility of the Replacement Provider on and after the Future Transfer Date and all necessary apportionments shall be

made to give effect to this Clause 3.4 of this Schedule.

- 3.5 The Provider shall fully indemnify the Council and the Replacement Provider against all Losses arising from the Provider's or any Sub Contractor's failure to comply with Clause 3.4 of this Schedule and the Council shall fully indemnify the Provider against all Losses arising from the Council's and the Replacement Provider's failure to comply with Clause 3.4 of this Schedule.
- 3.6 At any point during the duration of or upon the expiry, termination or assignment of this Contract and where the Council believes that TUPE may apply and within 15 working days of being so requested by the Council, the Provider shall fully and accurately disclose to the Council (and at no cost to the Council) any and all information in relation to the Provider's Staff or any such staff employed by a Sub Contractor who are assigned to the provision of the Service in the manner prescribed in Clause 3.13 of this Schedule, a list of all Relevant Employees who are liable to transfer as a consequence of a Future Transfer as in the form set out in Clause 3.14 of this Schedule and such information regarding the manner in which the Provider organises and carries out the provision of the Service as the Council may request.
- 3.7 The Provider shall warrant the accuracy of all the information provided to the Council pursuant to Clause 3.6 of this Schedule and the Provider authorises the Council to use any and all the information as the Council may consider necessary for the purposes of the Council's business or for informing any prospective tenderer for any Service which are substantially the same as those provided by the Transferring Employees under this Contract.
- 3.8 The Provider shall notify the Council as soon as reasonably practicable in writing of any material changes to the information supplied in accordance with Clause 3.6 of this Schedule as soon as reasonably practicable as and when such changes arise and the Provider shall fully indemnify the Council against all Losses arising from the Provider's failure to comply with Clauses 3.6 to 3.8 of this Schedule.
- 3.9 The Provider agrees that it shall not and shall not permit with reference to any Relevant Employees in the period following a likely TUPE transfer being identified by either Party other than with the Council's prior consent and in accordance with prevailing market condition-
- 3.9.1 other than in circumstances where an individual resigns voluntarily or where an individual's employment is terminated pursuant to the policies and procedures of the Provider or any Sub Contractor (in which cases the said individual may be replaced) make or allow any material increase or decrease in the numbers of Relevant Employees;
 - 3.9.2 make or allow to be made any material increase in the remuneration or other material change in the terms and conditions of the Relevant Employees other than in the ordinary course of business and with the Council's prior written consent;
 - 3.9.3 transfer or allow to be transferred any of the Relevant Employees to another part of the business of the Provider or any Sub Contractor or move other

employees from elsewhere in the business of the Provider or any Sub Contractor who have not previously been subject to the terms of this Contract save with the Council's prior written consent.

- 3.10 The Provider shall indemnify the Council and the Replacement Provider and shall keep the Council and the Replacement Provider indemnified in full against all Losses arising from any claim by any person or organisation as a result of the Provider's failure to comply with its obligations under Clauses 3.9, 3.9.1, 3.9.2 and 3.9.3 of this Schedule above save that this indemnity shall not apply in respect of any failure to the extent that such information was originally provided to the Provider by the Council or the Replacement Provider and was materially inaccurate or incomplete when originally provided.
- 3.11 The Provider agrees that if it fails to provide the TUPE information requested by the Council pursuant to Clauses 3.6 to 3.9 of this Schedule or to clarify submitted information within the time allowed for the provision of the same by this Schedule the Council may withhold 25% of all applications for payment until the information is received and further where failure to submit the TUPE information to the timescales stated results in more than two days delay to the procurement timetable, the Provider shall be liable to pay liquidated damages of £200 per day to cover the costs of altering documents, re-scheduling bidder briefings, responding to requests for information from tenderers and notifying tenderers.
- 3.12 If, by operation of law, the contract of employment of any individual who is not at the relevant time identified under Clause 3.6 and Clause 3.14 of this Schedule by the Provider as being a Transferring Employee due to transfer under TUPE on a Future Transfer Date takes effect or is alleged to take effect as if originally made with the Council or with any Replacement Provider (as applicable) as a consequence of the expiry, termination or assignment of this Contract, the Provider agrees that:
- 3.12.1 in consultation with the Council or with the Replacement Provider (as applicable), the Provider will, within 7 days of being so requested by the Council or by the Replacement Provider (as applicable) (as long as the request is made no later than 14 days after the Council or the Replacement Provider (as applicable) become aware of such transfer of employment), make to that individual an offer in writing to employ him under a new contract of employment or to continue employing him under the terms of his existing employment contract to take effect upon the termination referred to below; and
- 3.12.2 the offer to be made will be such that none of the terms and conditions of the new contract save insofar that they relate to any occupational pension scheme will differ from the corresponding provision of that person's contract of employment immediately prior to the Future Transfer Date; and
- 3.12.3 the Council or the Replacement Provider (as applicable) shall be entitled to terminate the employment of the individual and the Provider shall indemnify and keep indemnified the Council or the Replacement Provider (as applicable) against all Losses arising from or in connection with the employment of such an individual until such termination and the termination of the employment itself.

- 3.12.4 Clauses 3.12.1, 3.12.2 and 3.12.3 of this Schedule will not apply where the Provider or any Sub Contractor has given full information about the individual in question in good time as required by this Schedule and the Replacement Provider or the Council has unreasonably refused to accept the employee as a Transferring Employee on the Future Transfer Date.

3.13 Employee Information

Individual terms and conditions to be provided in accordance with Clause 3.6 of this Schedule.

- 3.13.1 Copies of all current employment contracts, and all other terms and conditions of employment.

- 3.13.2 A schedule comprising in respect of each Relevant Employee, the following particulars:-

- full name of the employee and his/her current employer;
- post/job title;
- hours of work (indicating whether the employment is considered to be full or part time);
- sex;
- date of birth;
- date of commencement of employment (and if different, date of commencement of period of continuous employment);
- place of work;
- holiday entitlement;
- notice period (or, if relevant, duration of fixed-term);
- normal retirement age;
- remuneration (including rate and intervals at which paid);
- pension details;
- sick pay entitlements

- 3.13.3 Details of any changes of terms and conditions in relation to any employee within the last 12 months.

- 3.13.4 Copies of any employee handbooks, rules and other policies, procedures, arrangements or agreements in relation to:-

(a) redundancy procedures and payments;

(b) redeployment procedures;

(c) sickness absence and sick pay entitlements;

(d) equal opportunities;

(e) disciplinary matters;

(f) maternity and other parental rights;

and details of whether or not each of the above are discretionary or contractual.

3.13.5 Copies of any job descriptions.

3.13.6 Details of any practices or customs which although not written down form part of employees' terms and conditions of employment.

Collective bargaining

3.13.7 Details of the names of all trade union and other employee representatives, with the name of the trade union, the position held and how long the position was held.

3.13.8 Details of any trade union recognised by the Provider or by any Sub Contractor giving the date and details of the recognition agreement (and a copy if available), with brief details of current and historic labour relations and any pending negotiations.

3.13.9 Details of any other agreement, whether local or national, with any trade union or other body of employee representatives (and copies if available) including any informal recognition and procedure arrangements and other arrangements honoured by "custom and practice".

Disputes

3.13.10 Details of any dispute or potential dispute with any employee or former employee within the last 2 years whether brought under the Provider's disciplinary, dismissal or grievance procedure or any other employer of a Relevant Employee or otherwise and any matters which might give rise to such.

3.13.11 Details of any litigation threatened or pending within the last 2 years against the Provider or any Sub Contractor including any court, employment tribunal or arbitration claims or any matters which might give rise to such.

3.13.12 Details of any enquiry, correspondence or contact within the last 2 years between the Provider or any Sub Contractor and the Equality and Human Rights Commission, the Health and Safety Executive, the Inland Revenue or any similar body concerning employees.

3.13.13 Details of any court judgment or employment tribunal award within the last 2 years in respect of any employee dispute (including confirmation of whether satisfied).

3.13.14 Details, and, if available, copies, of any warnings given to Relevant Employees under the disciplinary or capability procedure or similar procedures within the last 2 years.

Dismissals

3.13.15 Details of all dismissals/resignations within the last 12 months including reasons for the dismissal/resignation.

3.13.16 Details of all employees recruited within the last 12 months.

Working Time Regulations 1998

3.13.17 Copies of any individual, collective and workforce agreements entered into pursuant to the Working Time Regulations.

Health and Safety

3.13.18 Details of any health and safety committees/representatives.

3.13.19 Details of any health and safety complaints or recommendations or claims within the last 5 years.

Trainees/Consultants

3.13.20 Details of all individuals involved in the provision of the Services involved in training, work experience or similar schemes.

3.13.21 Details of all consultancy agreements or self-employed personnel who are or may actually be employees.

Absent employees

3.13.22 Details of all employees who have notified the Provider or any Sub Contractor that they are pregnant or who are currently absent on maternity leave together with confirmation of their expected week of confinement and any confirmed dates for the start or end of maternity/adoption leave.

3.13.23 Details of all employees on long term sick leave together with confirmation of the nature of their illness and the duration and dates of their absence(s).

3.13.24 Details of all employees absent on other leave together with confirmation of the nature of such leave and dates of their absence(s).

Job Evaluation Scheme

3.13.25 A copy of any job evaluation scheme.

Pension

3.13.26 A list of all pension schemes (both occupational and personal) applicable to the employees.

3.13.27 Details of any current or pending applications for early retirement.

Agency Workers

3.13.28 Details of all Agency Workers engaged by the Provider or any Sub Contractor in connection with this Contract within the 12 calendar months prior to the proposed Future Transfer Date; including

- The total number of Agency Workers engaged;
- The areas of business in which they are engaged; and The types of work that they are contracted to undertake.

3.13.29 Details of the current employment status of those Agency Workers:

3.13.30 Details of those Agency Workers to whom Regulation 5 of the Agency Worker Regulations 2010 will be applicable on the Transfer Date.

3.14 Transferring Employees

The Provider represents that in accordance with clause 3.6 of this Schedule that in the Provider's opinion that by virtue of TUPE the following employees will transfer into the Council's employment or that of a Replacement Provider in the event of a Future Transfer (list to be provided by Provider).

4. THIRD PARTY RIGHTS

4.1 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Schedule to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to the Replacement Provider by the Provider in their own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

4.2 Despite paragraph 4.1, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

5. PENSIONS

5.1 The Provider shall or shall procure that any relevant Sub-Contractor shall ensure that the LGPS Employees who transfer from the employment of the Outgoing Provider or any Sub- Contractor into the employment of the Provider or any Sub-Contractor appointed by the Provider on the Transfer Date are offered Appropriate Pension Provision up to and including the date of the termination or expiry of this Agreement.

- 5.2 The provisions of clause 5.1 of this Schedule shall be directly enforceable by a LGPS Employee against the Provider in respect of its own default or that of any relevant Sub Contractor.

6. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

- 6.1 Where the Provider or Sub-Contractor has elected to offer the LGPS Employees membership of the LGPS, the Provider shall or shall procure that it and/or each relevant Sub- Contractor shall enter into an Admission Agreement ("Provider Admission Agreement") to have effect from and including the Transfer Date. The Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate or Bond value in respect of any LGPS Employee who is eligible to elect to join the LGPS on or after the Transfer Date.
- 6.2 The Provider shall indemnify and keep indemnified the Council and the Authority and/or any Replacement Provider from and against all Losses suffered or incurred by it or them, which arise from any breach by the Provider or Sub-Contractor of the terms of the Provider Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.
- 6.3 The Provider shall and shall procure that it and any Sub-Contractor shall prior to the Transfer Date obtain any indemnity or Bond required in accordance with the Provider Admission Agreement.
- 6.4 The Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the LGPS Employees under the LGPS Regulations in circumstances where the LGPS Employees would have received such benefits had they been employed by the Council. The Provider shall be responsible for meeting all costs associated with the award of such benefits.
- 6.5 The Council shall have a right to set off against any payments due to the Provider under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Provider or from any relevant Sub-Contractor (as applicable) under the Provider Admission Agreement.
- 6.6 The Provider agrees to become and will ensure that any Sub-Contractor will become an Admission Body on a fully funded basis from the start and the Provider agrees and acknowledges-
- 6.6.1 That the Council does not guarantee any funding deficiency.
- 6.6.2 Other than as otherwise provided for in clauses 5 and 6 of this Schedule or as required for by the LGPS Regulations or by the terms of the Provider Admission Agreement or Bond the Provider shall be responsible for the LGPS funding deficit in respect of any LGPS Employees if it or the Sub Contractor opts to become an Admission Body.
- 6.6.3 Other than as otherwise provided for in clause 6 of this Schedule the Provider will be entirely responsible for any liability which the Provider or the Sub-Contractor

may have to pay as contributions or any other sum of money payable (including all payments due to be paid by the Provider or any Sub-Contractor as a Provider Admission Agreement employer under the LGPS Regulations (including Regulations 67 to 71 inclusive of the LGPS Regulations) under the said the LGPS Regulations including any payments payable by an exiting employer within the meaning of Regulation 64 of the LGPS Regulations as a result of the Provider Admission Agreement or the termination or expiry of that agreement or the termination of this Contract and the Provider will indemnify the Council or the Replacement Provider (as the case may be) in respect of the same.

- 6.7 For the avoidance of doubt, the indemnity provided in Clause 6.6 of this Schedule includes any amounts payable as a result of the non-payment of contributions properly payable by the Provider and, if relevant, any Sub-Contractor, during its or their period of admission in the LGPS in accordance with any Provider Admission Agreement and prior to the termination of any Provider Admission Agreement.

7. PROVIDER PENSION SCHEME

- 7.1 Where the Provider or Sub-Contractor does not wish to or is otherwise prevented from offering the LGPS Employees membership or continued membership of the LGPS, the Provider shall or shall procure that any relevant Sub-Contractor shall offer the LGPS Employees membership of an occupational pension scheme with effect from the Transfer Date. Such an occupational pension scheme must be:

7.1.1 established no later than three months prior to the Transfer Date; and
certified by the GAD as providing benefits that are broadly comparable to those provided by the Authority's LGPS scheme;

7.1.2 and the Provider shall produce evidence of compliance with this clause 7.1 to the Council prior to the Transfer Date.

- 7.2 The Authority's actuary shall determine the terms for bulk transfers from the Authority's LGPS scheme to the Provider's scheme following the Transfer Date and any subsequent bulk transfers on termination or expiry of this Contract.

8. PENSION PROVISION FOR THE PROVIDER'S EMPLOYEES

- 8.1. The Provider shall procure that with effect from the Transfer Date that it and each relevant Sub-Contractor shall procure that any of the Provider's or Sub Contractor's employees who are not Transferring Employees but whose contracts of employment with the Provider or with the relevant Sub-Contractor become contracts in relation to what is done for the purposes of this Contract will be provided with pension benefits which are in accordance with (where applicable) the Pensions Schemes Act 1993 and with the Pensions Acts 2004, 2008, 2011 and the Public Service Pensions Act 2013 and any Regulations made thereunder.

- 8.2 The Provider shall indemnify the Council and/or any Replacement Provider from and against all Losses suffered or incurred by it or them which arise from successful claims by any of the Provider's or Sub Contractors' employees or by any trade unions, elected

employee representatives or staff associations in respect of all or any such employees and which relate to any failure of the Provider or any Sub Contractor to offer access to pension arrangements in accordance with the provisions of this clause 8 of this Schedule.

UNDERTAKINGS FROM THE PROVIDER

8.1 The Provider on its own behalf and on behalf of any Sub Contractor undertakes to the Council (for the benefit of the Council and the Authority) that:

8.1.1 all information which the Council and/or the Authority or its/their professional advisers may reasonably request from the Provider or any Sub Contractor for the administration of the LGPS concerning any other matters raised in clause 6 of this Schedule (Admitted body status to the LGPS), clause 7 of this Schedule (Provider Pension Scheme) and clause 9 of this Schedule (Undertaking from the Provider) shall be supplied to them as expeditiously as possible;

8.1.2 it shall not without the consent in writing of the Council (which shall only be given subject to the payment by the Council of such reasonable costs as the Council reasonably requests) consent to instigate, encourage or assist any event which could impose on the LGPS, the Authority or on the Council a cost in respect of any Transferring Employee or any Relevant Employee greater than the cost which would have been payable in respect of that Transferring Employee or Relevant Employee had that consent, instigation, encouragement or assistance not been given;

8.1.3 until the Transfer Date it shall not issue any announcements (whether in writing or not) to the LGPS Employees concerning the matters stated in clauses 5 and 6 of this Schedule without the consent in writing of the Council (not to be unreasonably withheld or delayed); and

8.1.4 it shall not take or omit to take any action which would materially affect the benefits under the LGPS, or under the Provider Pension Scheme of any LGPS Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Provider will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any LGPS Employees.

9. DISCRETIONARY BENEFITS

9.1 Where the Provider or a Sub-Contractor is an Admission Body, the Provider shall and/or shall procure that any relevant Sub-Contractor shall comply with its duties as a scheme employer under Regulation 60 of the LGPS Regulations to award benefits (where permitted) to the LGPS Employees under the Compensation Regulations and/or the LGPS Regulations in circumstances where the LGPS Employees would have received such benefits had they still been employed by the Council.

9.2 Where the award of benefits in clause 10.1 is not permitted under the Compensation Regulations and/or the LGPS Regulations or the Provider and/or a Sub-Contractor is not an Admission Body, the Provider shall and/or shall procure that any Sub-Contractor

shall award benefits to the LGPS Employees which are no less favourable than the benefits the LGPS Employees would have received under the Compensation Regulations and/or the LGPS Regulations in circumstances where the LGPS Employees would have received such benefits had they been employed by the Council.

- 9.3 Under clauses 10.1 and 10.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Transfer Date (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Provider shall and/or shall procure that any relevant Sub-Contractor shall compensate the LGPS Employees in a manner which is broadly comparable or equivalent in cash terms.

10. CLAIMS FROM TRANSFERRING EMPLOYEES OR FROM TRADE UNIONS

- 10.1 The Provider hereby indemnifies and shall procure that any relevant Sub-Contractor indemnifies the Council and/or any Replacement Provider against all Losses suffered or incurred by it or them which arise from claims by Transferring Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Transferring Employees, which losses:

11.1.1 relate to pension rights in respect of periods of employment on and after the Transfer Date until the date of termination or expiry of this Contract; or

11.1.2 arise out of the failure of the Provider and/or any relevant Sub-Contractor to comply with the provisions of clauses 5 to 13 of this Schedule (Pensions) before the date of termination or expiry of this Contract.

11. TRANSFER TO ANOTHER EMPLOYER

- 11.1 Save on expiry or termination of this Agreement, if the employment of any Transferring Employee transfers to another employer (by way of a transfer under TUPE) the Provider shall and shall procure that any relevant Sub-Contractor shall:

11.1.1 consult with and inform those Transferring Employees of the pension provisions relating to that transfer; and

11.1.2 procure that the employer to which the Transferring Employees are transferred (the "New Employer") complies with the provisions of clauses 5 to 13 of this Schedule (Pensions) provided that references to the "Sub-Contractor" will become references to the New Employer, references to "Transfer Date" will become references to the date of the transfer to the New Employer and references to "Transferring Employees" will become references to the Transferring Employees so transferred to the New Employer.

12. PENSION ISSUES ON EXPIRY OR TERMINATION

- 12.1 The Provider shall:

- 12.1.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Provider or by any Sub Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the LGPS Employees, the Transferring Employees or the Relevant Employees)
- 12.1.2 promptly provide to the Council or to the Authority such documents and information mentioned in clause 13.1.1 which the Council or the Authority may reasonably request in advance of the expiry or termination of this Contract; and
- 12.1.3 fully co-operate (and procure that the trustees of the Provider's scheme shall fully co-operate) with the reasonable requests of the Council or the Authority relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub Contractor in the provision of the Services on the expiry or termination of this Contract.

SCHEDULE 10

PARENT COMPANY GUARANTEE

Not used

THIS DEED is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Guarantor).
- (2) THE KENT COUNTY COUNCIL of County Hall, Maidstone, Kent ME14 1XQ (hereinafter together called "the Contracting Authority").

BACKGROUND

- (A) By an agreement dated on or about the date of this guarantee (Agreement which term includes all amendments to variations of or supplements to it from time to time in force) the Contracting Authority has agreed to engage [INSERT NAME] (Provider) to provide [] services.
- (B) It is a condition of the Agreement that the Provider procures the execution and delivery to the Contracting Authority of a parent company guarantee substantially in the form of this guarantee.
- (C) The Guarantor has agreed to guarantee the due performance of the Agreement by the Provider.
- (D) It is the intention of the parties that this document be executed as a deed.

AGREED TERMS

1. INTERPRETATION

- 1.1 Unless the context requires otherwise, the definitions and rules of interpretation in the Agreement shall apply in this guarantee.
- 1.2 A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.

2. OBLIGATIONS OF THE GUARANTOR

- 2.1 In consideration of the Contracting Authority entering into the Agreement with the Provider, the Guarantor:
 - (a) as primary obligor guarantees to the Contracting Authority the due and punctual performance by the Provider of each and all of the obligations, representations, warranties, duties and undertakings of the Provider

under and pursuant to the Agreement when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of such Agreement;

- (b) agrees, in addition to its obligations set out in clause 2(a), to indemnify the Contracting Authority on demand against all losses which may be awarded against the Contracting Authority or which the Contracting Authority may otherwise incur arising out of, under or otherwise in connection with the Agreement whether arising under statute, contract or at common law including without limitation by reason of any breach by the Provider of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the Agreement save that, subject to the other provisions of this guarantee (including without limitation clause 2(c)), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Provider under the Agreement; and
- (c) agrees to indemnify the Contracting Authority on demand against all losses whether arising under statute, contract or at common law which may be awarded against the Contracting Authority or which the Contracting Authority may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Provider's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. LIABILITY

The Guarantor agrees that it shall not in any way be released from liability under this guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

- (a) any arrangement made between the Provider and the Contracting Authority; or
- (b) any alteration in the obligations undertaken by the Provider whether by way of any addendum or variation referred to in clause 4 or otherwise; or
- (c) any waiver or forbearance by the Contracting Authority whether as to payment, time, performance or otherwise; or
- (d) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Provider or any other person; or
- (e) any unenforceability, illegality or invalidity of any of the provisions of the Agreement or any of the Provider's obligations under the Agreement, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or

- (f) any legal limitation, disability, incapacity or other circumstances relating to the Provider, or any other person; or
- (g) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Provider or any other person.

4. ADDENDUM OR VARIATION

- 4.1 The Guarantor by this guarantee authorises the Provider and the Contracting Authority to make any addendum or variation to the Agreement, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this guarantee.

5. GUARANTEE

- 5.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Contracting Authority shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Provider, to make any claim against or any demand of the Provider, to enforce any other security held by it in respect of the obligations of the Provider under the Agreement or to exercise, levy or enforce any distress, diligence or other process of execution against the Provider. In the event that the Contracting Authority brings proceedings against the Provider, the Guarantor shall be bound by any findings of fact, interim or final decision award or judgement made by an adjudicator, arbitrator or court in such proceedings.
- 5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Provider, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Provider under the Agreement have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Contracting Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

6. OUTSTANDING PAYMENTS

- 6.1 Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Contracting Authority or claim or prove in competition with the Contracting Authority against the Provider or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Contracting Authority.
- 6.2 The Guarantor shall not hold any security from the Provider in respect of this guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Contracting Authority.

- 6.3 Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 6.1 and clause 6.2) the Guarantor has any rights of subrogation against the Provider or any rights to prove in a liquidation of the Provider, the Guarantor agrees to exercise such rights in accordance with the directions of the Contracting Authority.

7. CHANGE OF CONTROL

- 7.1 The Guarantor shall procure that, during the term of this guarantee, there shall be no Change of Control of the Provider.

8. PAYMENT AND EXPENSES

- 8.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Contracting Authority receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 8.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.3 The Guarantor shall reimburse the Contracting Authority for all legal and other costs (including VAT) incurred by the Contracting Authority in connection with the enforcement of this guarantee.

9. SETTLEMENT

- 9.1 Any settlement or discharge between the Contracting Authority and the Provider and/or the Guarantor shall be conditional upon no settlement with security or payment to the Contracting Authority by the Provider or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Contracting Authority's other rights hereunder) the Contracting Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Contracting Authority has placed upon such settlement or security or the amount of any such payment.

10. WARRANTIES

- 10.1 The Guarantor warrants and confirms to the Contracting Authority :
- (a) that it is duly incorporated with limited liability and validly existing under the laws of England;
 - (b) that it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;

- (c) that it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
 - (d) that it has been duly authorised to enter into this guarantee;
 - (e) that it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
 - (f) that this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
 - (g) that all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and
 - (h) that it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.
- 10.2 The Guarantor warrants and undertakes to the Contracting Authority that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.
- 10.3 The Guarantor warrants and confirms to the Contracting Authority that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Contracting Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.
- 11. ASSIGNMENT**
- 11.1 The Contracting Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.
- 12. NOTICES**
- 12.1 Any notice to or demand on the Guarantor to be served under this guarantee may be delivered or sent by first-class recorded delivery post or telex or facsimile transmission to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Contracting Authority in accordance with this clause 12.
- 12.2 Any such notice or demand shall be deemed to have been served:
- (a) if delivered, at the time of delivery; or
 - (b) if posted, at 10.00 am on the second day after it was put into the post; or
 - (c) if sent by telex or facsimile process, at the expiration of 2 hours after the time of dispatch, if dispatched before 3.00 pm on any day, and in any other case at 10.00 am on the next day.

- 12.3 In proving service of a notice or demand it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a pre-paid first-class recorded delivery letter or that the telex or facsimile message was properly addressed and dispatched, as the case may be.

13. WAIVER

- 13.1 No delay or omission of the Contracting Authority in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Contracting Authority provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.

- 13.2 A waiver given or consent granted by the Contracting Authority under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

- 13.3 A waiver by the Contracting Authority shall not constitute a continuing waiver and shall not prevent the Contracting Authority from subsequently enforcing any of the provisions of this guarantee.

14. SEVERABILITY

- 14.1 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 15.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 11.

16. GOVERNING LAW

- 16.1 This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English Law.

- 16.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims).

17. ENTIRE AGREEMENT

- 17.1 This guarantee contains the whole agreement between the parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the parties relating to the transactions.

17.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this clause 17.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

17.3 Nothing in clause 17.1 limits or excludes any liability for fraud.

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

EXECUTION AS A DEED

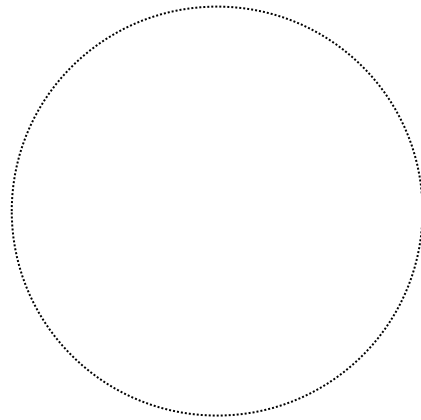
EXECUTED as a Deed by the Council

The COMMON SEAL of
THE KENT COUNTY COUNCIL

was affixed in the presence of:

.....
Authorised Signatory

.....
Print Name of Authorised Signatory



Notes for Provider on Execution as a Deed

1. For the purpose of execution as a deed, two forms are provided for execution, one for the Council and the other for the Provider. For execution by the Provider four methods of execution, (A) to (D) are provided for use as appropriate. The full name of the Provider (whether an individual, a company or other body) should be inserted where indicated at top of the form. This applies irrespective of the method used.
2. For public and private companies incorporated and registered under the Companies Act, the three principal methods of execution as a deed are:
 - (A) Through signature by a Director and the Company Secretary or by two Directors.
 - (B) By affixing the company's common seal in the presence of a Director and the Company Secretary or of two Directors or other duly authorised officers; or
 - (C) Signature by a single Director in the presence of a witness who attests the signature
3. Where the Employer or Provider is an individual, he should use method (D) and sign where indicated in the presence of a witness who should then sign and set out his name and address.

Executed as a Deed by the Provider

namely

(A) EXECUTED as a deed by the Provider acting by a Director and the Company Secretary / two Directors **of the Company**

.....
Print Name of Director

.....
Signature Director

.....
Print Name of Director / Company Secretary

.....
Signature Director / Company Secretary

(B) EXECUTED as a Deed by the Provider By affixing hereto the common seal **of the company**
The COMMON SEAL of
(CONTRACTORS NAME)

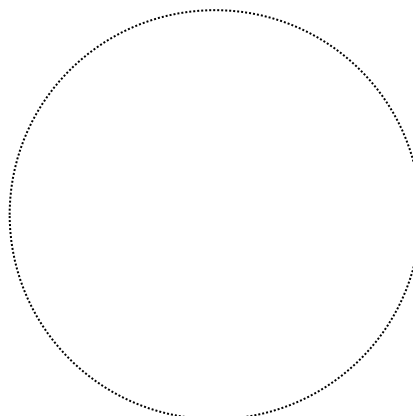
was affixed in the presence of

.....
Signature Director

.....
Print Name of Director

.....
Signature Company Secretary/Director

.....
Print Name of Company Secretary/Director



(C) EXECUTED as a deed by the Provider by attested signature of a single Director **of the Company**

.....
Print Name of Director

.....
Signature Director

In the presence of

Witness' signature (Print Name)

Witness' address

Witness' occupation

(D) EXECUTED as a deed by the Provider by attested signature **of the individual**

.....
Print Name of Individual

.....
Signature Individual

In the presence of

Witness' signature (Print Name)

Witness' address

Witness' occupation

EXECUTION UNDER HAND

IN WITNESS whereof this Agreement has been executed by the Parties in accordance with their respective constitutions:

Signed for and on behalf of
THE KENT COUNTY COUNCIL

.....
Authorised Signatory

.....
Print Name of Authorised Signatory

Signed for and on behalf of **[THE CONTRACTOR]** in the presence of:

.....
Authorised Signatory

.....
Print Name of Authorised Signatory

SCHEDULE 11

PERFORMANCE BOND

Not Used

THIS DEED is dated **[DATE]**

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Surety");
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Provider");
- (3) THE KENT COUNTY COUNCIL of County Hall, Maidstone, Kent, ME14 1XQ ("Contracting Authority")

BACKGROUND

- (A) By the Contract the Provider has agreed with the Contracting Authority to perform the Services therein described upon and subject to the terms and conditions therein set out.
- (B) The Surety has agreed with the Contracting Authority at the request of the Provider to guarantee the performance of the obligations of the Provider under the Contract upon the terms and conditions of this Performance Bond.

AGREED TERMS

1. INTERPRETATION

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

"Contract": an agreement in writing dated [DATE] between the Contracting Authority and the Provider.

"Contract Period" has the meaning given in the Contract.

"Contract Sum": the Contract Sum of the Contract.

"Business Day": a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

"Maximum Amount": the sum of £[].

"Services": the services referred to in the Contract, provided by or on behalf of the Provider in accordance with the Contract.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.4 The annex forms part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the annex.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.9 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 Any obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 A reference to writing or written includes faxes but not e-mail.
- 1.13 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this deed) at any time.
- 1.14 References to clauses or the annex are to the clauses or the annex of this deed.
- 1.15 Where the words include(s), including or in particular are used in this deed, they are deemed to have the words "without limitation" following them.

2. PROMISE TO PAY UP TO MAXIMUM AMOUNT

- 2.1 If the Provider fails to pay any sum that becomes due from it to the Contracting Authority under or in connection with the Contract (including any debt, damages, interest or costs), the Contracting Authority may give notice to the Surety requiring the Surety to pay that sum, up to the Maximum Amount, to the Contracting Authority. The Surety shall pay that sum to the Contracting Authority within 10 Business Days of receipt of the Contracting Authority's notice. The Contracting Authority's notice may be in the form set out in the Annex.
- 2.2 The Contracting Authority may give different notices to the Surety on different occasions, each requiring the Surety to pay the sum referred to in clause 2.1, but the Surety shall not be obliged to pay to the Contracting Authority more than the Maximum Amount in total.

3. AMENDMENTS TO THE CONTRACT

- 3.1 The Contract or the Services may be modified, amended or supplemented in any way without the consent of the Surety. No such modification, amendment or supplement shall affect, release or impair the liability of the Surety under this deed. The Surety's liability shall extend to all the liabilities of the Provider under the Contract as modified, amended or supplemented.
- 3.2 The invalidity, avoidance or termination of the Contract shall not affect, release or impair the liability of the Surety under this deed.
- 3.3 No waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Provider shall affect, release or impair the liability of the Surety under this deed. The terms of this deed shall apply to the terms of any such waiver, concession, allowance of time, compromise or forbearance as they apply to the Contract.

4. CONCLUSIVE LIABILITY AND EXTENT OF LIABILITY

- 4.1 For the purposes of this deed, any money judgment or adjudicator's decision against the Provider in favour of the Contracting Authority under or in connection with the Contract shall be conclusive evidence of any liability of the Provider to which that judgment or decision relates.
- 4.2 Subject to clause 5.1, the Surety may rely on any term of the Contract and may raise equivalent rights of defence in respect of any claim by the Contracting Authority under this deed as it would have had if the Surety had been named as a joint contractor with the Provider under the Contract (excluding any set-off or counterclaim against the Contracting Authority).
- 4.3 The inability of the Provider to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or the entry of the Provider into liquidation, administration, receivership, bankruptcy or any compromise or arrangement with some or all of its creditors (or any equivalent process in any other jurisdiction) shall not reduce, release or impair the liability of the Surety under this deed.
- 4.4 The Contracting Authority shall not be obliged to pursue any means of recourse against the Provider before being entitled to enforce this deed against the Surety.
- 4.5 The Contracting Authority may compromise, release, waive or neglect any security as it sees fit, without impairing its rights under this deed.

5. EXPIRY

- 5.1 Subject to clause 5.2, this deed shall expire at the end of the Contract Period.
- 5.2 If the Contracting Authority has given any notice under clause 2.1 before the end of the Contract Period, clause 6.1 shall not affect that notice and the Contracting Authority may continue its claim under that notice.

6. ASSIGNMENT

- 6.1 The Contracting Authority may assign or charge the benefit of this deed, without the consent of the Surety or of the Provider or to any person to whom the Contracting Authority assigns the benefit of the Contract.

6.2 The Contracting Authority may notify the Surety and the Provider of any assignment. If the Contracting Authority fails to do this, the assignment shall still be valid.

6.3 The Provider and the Surety shall not contend that any person to whom the benefit of this deed is assigned may not recover any sum (including any debt, damages, interest or costs) under this deed because that person is an assignee and not a named party to this deed.

7. NOTICES

7.1 Any notice required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

(a) [CONTRACTING AUTHORITY]: [CONTACT] [ADDRESS]

(b) [CONTRACTOR]: [CONTACT] [ADDRESS]

(c) [SURETY]: [CONTACT] [ADDRESS]

or as otherwise specified by the relevant party by notice in writing to each other party.

7.2 Any notice shall be deemed to have been duly received:

(a) if delivered personally, when left at the address and for the contact referred to in this clause; or

(b) if sent by pre-paid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting; or

(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

7.3 A notice required to be given under this deed shall not be validly given if sent by e-mail.

7.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action (including any adjudication, litigation or arbitration).

8. THIRD PARTY RIGHTS

8.1 A person who is not a party to this deed shall not have any rights under or in connection with it.

9. GOVERNING LAW AND JURISDICTION

9.1 This deed and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the Law of England.

9.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this

deed or its subject matter or formation (including non-contractual disputes or claims).

10. TRANSPARENCY

- 10.1 The Council may disclose to other Public Sector Contracting Authorities any of the Contractors information, tender documentation and supporting documentation (including any that the Provider has indicated to be confidential and/or Commercially Sensitive Information) such as specific tender information which has been submitted by the Provider as part of the tender process. The Provider shall ensure that such information shall not be disclosed to any other party except to other Public Sector Contracting Authorities. The Provider acknowledges and agrees that by virtue of taking part in the tender process they hereby consent to such disclosure by the Council as a part of the tender process and the Council shall have no liability to the Provider under this clause or otherwise and the Provider shall indemnify and keep indemnified the Council against any Losses in respect of the same."

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

THE COMMON SEAL OF)
THE KENT COUNTY COUNCIL)
was affixed to this deed)
in the presence of:)

Authorised Signatory

EXECUTED AND DELIVERED)
as a deed by [THE SURETY])
acting by the signatures of)

Director

Director/Secretary

EXECUTED AND DELIVERED)
as a deed by [THE CONTRACTOR])
acting by the signatures of)

Director

Director/Secretary

Annex Form of notice

[Refer to in clause 2.1.]

From: [CONTRACTING AUTHORITY'S ADDRESS: SEE clause 8]

To: [SURETY'S ADDRESS: SEE clause 8]

CC: [CONTRACTOR'S ADDRESS: SEE clause 8]

Sent by [hand OR first-class pre-paid post OR recorded delivery OR commercial courier].

Dear Sirs

Demand under a bond dated [DATE] (Bond) relating to the Contract

This letter is a notice under the Bond. Defined terms used in this letter have the same meanings as in the Bond.

[We are the assignee of the benefit of the Bond by a [deed of assignment OR an assignment agreement] dated [DATE] between [PARTY] and [PARTY].]

The Provider has failed to properly pay a sum due to us under or in connection with the Contract. We require you to pay to us £[SUM] OR [, the Maximum Amount] within 10 Business Days.

[We attach a copy of the [money judgment OR adjudicator's decision] against the Provider in our favour as conclusive evidence of your liability to us under the Bond.]

OR

[The sum due to us from the Provider is summarised in the attachment to this notice.]

Please make payment to [PAYMENT DETAILS].

Yours faithfully

[SIGNED]

For and on behalf of the Contracting Authority

Enclosure.

SCHEDULE 12

DISASTER RECOVERY PLAN

The Council is required to continue to provide essential services at all times regardless of emergencies or business interruptions. Providers must therefore have in place their own resilient contingency arrangements to enable the Council's obligations in relation to this Contract to be met. Specifically, the Provider is required to have in place a Disaster Recovery Plan which must contain required information in accordance with the Civil Contingencies Act 2004.

The Provider is required to assist the Council in meeting these duties by:

- Developing and adopting a Disaster Recovery Plan which complies with the Civil Contingencies Act 2004;
- Operating the Disaster Recovery Plan for the duration of this Contract;
- Providing the Council with a copy of any such plan upon request.

It should be acknowledged that Provider commitments under this Contract shall include regular risk assessments and business impact analysis in relation to this Contract to be carried out on an annual basis, or more frequently if the Council requests that additional testing be undertaken.

The Disaster Recovery Plan must include but is not limited to the following:

Distribution List

- The Provider must note all the individuals to whom the completed Disaster Recovery Plan has been sent. The list should include the number of each recipient's copy, along with the recipient's name and location.

Table of Contents

This enables information in the plan to be located quickly. The number and name of the section should be given along with a page reference.

Aims and Objectives

The Provider should be clear about why he is completing this plan and what it aims to achieve if the plan is activated.

Considerations

- The Provider's aim is to prepare its business to cope with the effects of an emergency or disruption to enable continuity of delivery under this Contract;
- The Provider's organisation must know how to act in the event of an emergency or crisis;
- The Provider intends that its usual working patterns will recover as quickly as possible and with as little impact as possible;
- Additional Provider-specific objectives of the plan may include:

- To prevent customers going elsewhere;
- To ensure that the Provider's credit rating is unaffected; and
- To prevent cash-flow problems.

Note: requirements specific to the Provider's own organisation should also be listed.

Critical Function Analysis and Recovery Process

- A critical function is an operation that the Provider's business cannot survive without. Each of the Provider's 'critical functions' should be analysed, and the Provider should assign a level of importance to each.
- The Provider needs to work out the effect of disruption of a 'critical function' over time - after 24 hours, between 24-48 hours, up to a week and up to two weeks.
- This allows the Provider to identify the actions it may need to take in the short-term (immediately following an emergency) and in the long- term (to fully recover).
- The Provider will also need to identify what resources, including people, will be required to recover its business from the emergency.

Priority List of Critical Functions

- In the event of an emergency or extended period of disruption the Provider may need to refer to its list of priorities in order to prepare an Action Plan.
- This will serve as a reminder about which functions must be reinstated first and will be most crucial in the recovery process.
- By prioritising and organising in advance, the Provider's course of action will be clearer if a crisis occurs.

Emergency Response Checklist

- This should include all actions that need to be completed to ensure the most efficient method of recovery. The Provider will need to note who has completed each action, and the date it was completed.

Actions may include:

- Liaison with emergency services;
- Noting damage to the organisation, including staff, premises, equipment, data or records;
- Identification of disrupted "critical functions"; and
- Provision of briefings to staff, customers, public and interested parties.

Key Contacts Lists

- The Provider should keep a list of people who need to be informed in case of an emergency, or will need to be involved in action planning following a disruption.

- Details should include name, email, mobile number and other details as appropriate. Next of kin details for staff members within the Provider's organisation may also be relevant.

Layout/Map

- The Provider should consider including with its disaster recovery document up-to-date plans of any premises that the Provider's organisation may occupy.
- This is of use to the emergency services and should include locations of main water stop-cock; switches for gas and electricity supply; any hazardous substances; and items that would have priority if salvage became a possibility.

Emergency Pack

- As part of the disaster recovery plan for the Provider's organisation, the Provider should hold copies of all important documents, records and/or equipment off-site. Their location should be recorded in the Provider's Disaster Recovery Plan.
- This emergency pack may be crucial to the recovery process.

Expenses Log

- All expenses incurred should be recorded. Details of who made the decision and reasons why should be given.

Keep the plan up to date

The Provider organisation should not only prepare a Disaster Recovery Plan, but must ensure it is kept up to date. Plans should be updated:

- If there are any changes to the Provider's organisation, including restructuring;
- If the Provider changes the method of delivery of its critical activities;
- If there is a change to the external environment in which the organisation operates;
- With lessons learned from an incident or exercise;
- If there are changes to staff;
- If the Council requires any changes to the Disaster Recovery Plan in relation to ensuring continuity of delivery under this Contract.

SCHEDULE 13

COMMERCIALLY SENSITIVE INFORMATION

The following information is considered by the tenderer to be commercially sensitive and not subject to disclosure under Freedom of Information. For the avoidance of doubt, the content of the table below should not be construed so as to purportedly indicate any extension of the scope of the Council's statutory obligations under FOIA to disclose information pursuant to FOIA.

Whilst the Council shall endeavour to retain the confidential nature of any information, the final decision regarding the disclosure of any information contained within the submission shall rest entirely with the Council.

Any exclusion must be specific; a generic statement purporting to exclude the entire document contents from disclosure shall have no standing. **I/we consider the following information to be commercially sensitive:**

Description of Information	Location/Reference in the Tender	Implications of disclosure	Estimated period during which the information will remain commercially sensitive

SCHEDULE 14

CONTRACT MANAGEMENT

Overview

This Schedule sets out how the Contract will be managed and monitored during the Contract Period. This may be modified by agreement of the Parties. Where applicable this Schedule will be read in conjunction with Annex 1 of this schedule (Contract Sanctions). The Council will during the Contract Period monitor the improvement, compliance, sustainability and value added to the Services by the Provider. The Contract Manager will be based in the Commissioning team for Social Care and Health. However, any changes throughout the lifetime of the Contract will be communicated to Providers.

The Contract Manager is accountable to KCC senior management for maintaining a contractual relationship that delivers the Contract required.

1. Performance Measurements

Key Performance Indicators (KPI's), Key Operational Indicators (KOI's), Escalation Process and Sanctions are key tools together with accountability, that the Council will utilise during the contract management process.

- 1.1 The Council and the Provider will utilise the indicators set out in this Schedule to continue delivering a continuously improving service, thereby increasing value and reducing process and supply chain waste and costs whilst culminating in a better value operation.
- 1.2 The Key Operational Indicators (KOIs) and Key Management Indicators (KMIs) will be submitted by Providers to the Council using a web based online form. This information will then be collated, and performance reports may be published for the benefit of Providers, health and social care professionals and the public to enable them to make more informed choices.

2. Reporting

- 2.1 Reporting related to the KMI's and the KOI's, will be required by the Council from the Commencement Date of this Contract, which will be consolidated, in certain cases, to support statistical reporting. The Council reserves the right to request additional information, if required, during the Contract Period.
- 2.3 Information in these Reports may be used by the Council to populate various information such as bulletins, Cabinet papers and analysis of business need etc. as seen appropriate for the benefit of Residents in Kent. This information will be gathered 6 monthly.
- 2.5 The Quality Data will be made available to other Government organisations and operating partners, including: The Clinical Commissioning Groups, Care Quality Commission, Ofsted and the NHS. Information may also be required for issue under statutory legislation and for Public distribution, if deemed in the public interest and not in breach of Statutory Regulations i.e. Data Protection Act.
- 2.6 KPI reporting Schedule:

2.6.1 The Council will publish a reporting schedule, to all Providers operating under the Contract which will highlight the reporting dates and time of submission. This schedule will be issued annually.

2.7 All submissions will be required via a Web form. Details of the link to use will be communicated to Providers within 10 days of the Contract Commencement Date.

3 Key Performance Indicators (KPI's)

3.1 The 6 monthly submission deadlines or cut-off date/s will be communicated to Providers prior the Commencement Date. The Council reserves the right to vary the number and type of KPI information requested from Providers and this will be notified to Providers as appropriate via change control (Schedule 7).

3.1.1 Failure to submit KPIs to the published dates may result in the imposition of a contract sanction.

3.1.2 A Default will be discussed and resolved by using the escalation process in Clause 52 of the main body of the Contract. An unsuccessful completion of the escalation process will result in the termination of Services or temporary suspension, as per Annex 1, Contract Sanctions.

The table set out below outlines all KPI's that Providers must complete and submit under the agreed terms of this Contract.

	Key Performance Indicator	Response
1	Has the Care Home service had a Registered Manager vacancy for this Home, for more than a total of three months over the previous 12 months?	
2	Has the Care Home service received any Notice of Proposal notifications from CQC for this Home over the past 12 months?	
3	Has the Care Home service received any Warning Notices from CQC for this Home during the past 12 months?	
4	Has the Care Home service had a Suspension Notice placed on this Home by the Council/ other Local Authority to prevent further placements at any time over the past 12 months?	
5	Has the Care Home service had any complaints regarding this Home escalated to the Local Government Ombudsman over the past 12 months?	
6	Has the most recent Skills for Care, The Adult Social Care Workforce Data Set (ASC Workforce Data Set) (Formerly the National Minimum Dataset for Social Care) return been completed for this Care Home service?	
7	Have all of the Care Home service care staff participated in an accredited quality improvement programme?	
8	Does the Care Home service have a Quality Management System that ensures internal control of quality and consistency of practice for this Home?	
9	Does the Care Home service have a resident-informed activity programme for the Home that maximises social interaction and wellbeing of residents and includes varied weekly events,	

	community involvement and 1:1 activity for those who require this? Please provide date this was last reviewed.	
10	Has the Care Home service had any enforcement or improvement notices issued from Kent & Medway Fire Authority (or any other Fire Authority) / HSE / Environmental Health over the past 12 months?	
11	Has the annual self-assessment document been completed? Please supply date of last submission.	
12	Has the 6monthly Provider Survey been completed? Please give date of last submission	

3.2 The Council will review the KPI reporting requirements annually during the lifetime of the Contract and any changes will be made following consultation and communication with all contracted Providers.

4 Key Operation Information (KOI)

4.1 In addition Providers will also need to submit Key Operational Information quarterly using an online web form intervals, as outlined in the following table:

	Management Information	Reporting Period
1	No. permanent residents	Quarterly
2	No. of permanent self-funding residents	Quarterly
3	No. permanent KCC funded residents	Quarterly
4	No. of permanent CHC funded residents	Quarterly
5	No. of permanent residents funded by other local authorities	Quarterly
6	No. beds registered with CQC	Quarterly
7	No. of Deprivation of Liberty Safeguards (DoLS) applications made during the quarterly reporting period	Quarterly
8	No. of DoLS applications made but not yet granted standard authorisation during the quarterly reporting period	Quarterly

5 Contract Monitoring

- 5.1 The Council will conduct contract monitoring activities within an Risk matrix intelligence framework using information from a variety of sources not limited to the following:
- Inspection findings from the Regulator (currently the Care Quality Commission- CQC) and intelligence including any Warning Notices or Notices of Proposal
 - Complaints
 - Whistleblowing
 - Safeguarding alerts/Serious Case Reviews
 - Monitoring reports from other public bodies e.g. Public Health England, Kent Fire and Rescue Service, Health and Safety Executive, Environmental Health, other local authorities
 - Reports from Health watch Kent or other body representing consumers
- 5.2 The frequency of announced or unannounced visits to the Provider will be determined by the above intelligence.
- 5.3 Within 12 months of the Contract Commencement Date (and yearly thereafter) the Provider shall submit to the Council a completed contract monitoring form by email for each of the Care Homes that operate within the Contract. The format of the form will be published to all Providers within three months of the Contract Commencement Date prior to the annual contract review. The evidence presented by the Provider will then be reviewed at the Annual Contract Review.
- 5.4 The purpose of the Annual Contract Review is to identify:
- Providers adherence to the Service Specification
 - An objective and a subjective review of the last 12 months service delivery and performance specifically dealing with the Provider's contribution to the Service activities such as planning, business continuity, contract management, training, people development, value for money, innovation and continuous improvement.
 - The performance measures, which demonstrate the Provider's contribution to meeting the Council's transformation objectives in relation to the Services.
 - The cumulative year-to-date view of how the Provider is meeting (or has met) the performance criteria set out in this Schedule.

6 Strategic Business Meetings

- 6.1 The Council's Strategic Commissioning will meet with Provider organisations with three or more Care Homes operating in Kent on a strategic basis to review performance, quality and contracting issues across the group on a regular basis and no less than twice per year.
- 6.2 The purpose of these meetings will be to provide for:
- 6.2.1 A strategic overview of the Supplier's performance over the preceding period and shall contain all information on quality, performance and pricing to enable strategic oversight
- 6.2.2 Sharing of business priorities and an exploration of how the Provider could meet the Councils strategic objectives.

7 Meetings

- 7.1 All meetings shall be attended by the Council's Contract Manager and the Provider's Key Personnel for each service area (or any other Council or Provider officer with delegated authority to act in relation to the Services).
- 7.2 The Parties shall meet at a time and in a location specified by the Council's Contract Manager in the meeting notice.
- 7.3 The agenda will be as circulated by the Council's Contract Manager in advance of the meeting.

8 Sanctions and Escalations

- 8.1 Full details of the Sanctions procedures, relevant to this Contract can be found in Annex 1, Contract Sanctions.

Annex 1 – Contract Sanctions

Please note, the Contract Sanction guidance outlined below are for guidance only; The Council reserves the right to amend sanctions procedures, as part of the ongoing Contract Management process.

Contract Sanction will apply in the following circumstances:

1. Safeguarding

Safeguarding Level 1 means:

*"Safeguarding concerns have been identified and are being investigated. There is a **low risk** of harm, abuse or neglect to individuals. '*

If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then The Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as The Council may direct.'

This constitutes an '*Improvement Notice*'

Safeguarding Level 2 means:

*"A safeguarding issue is being assessed/ investigated and it is possible that other individuals may be at risk of **significant harm** due to abuse or poor practice. Some or all individuals are being assessed in relation to these concerns".*

'If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then The Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as The Council may direct.'

Decision as to contract sanctions will be based on the outcome of the safeguarding investigation process.

Safeguarding Level 3 Suspension means:

*A safeguarding issue is being assessed/investigated and there is evidence of **significant risk** to other individuals due to abuse or poor practice."*

Prevents new placements being made until further notice and means that: 'If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then The Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as The Council may direct.'

Decision as to contract sanctions will be based on the outcome of the safeguarding investigation process.

2. Poor Practice

A Poor Practice Level 1 Warning means:

*“Poor practice concerns have been identified and are being investigated. There is a **low** risk of harm, abuse or neglect to individuals.”*

This sanction also constitutes an ‘Improvement Notice’ ‘If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then The Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as The Council may direct.’

A Poor Practice Level 2 Warning means:

“Poor practice concerns have been identified and are being investigated. There is a moderate risk of harm, abuse or neglect to individuals. ‘If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then The Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as The Council may direct.’

This sanction also constitutes an ‘Improvement Notice’:

A Poor Practice Level 3 Suspension means:

*“Serious poor practice concerns have been raised and are being investigated. There is a **significant** risk of harm, abuse or neglect to individuals.” If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then The Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as he Council may direct.’*

This sanction also constitutes an ‘Improvement Notice’

3. Contract Compliance

A Contract Compliance Level 1 Warning means:

“Contractual concerns have been identified and are being investigated. There is a low risk of harm, abuse or neglect to individuals.”

If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then The Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as The Council may direct.’

This sanction also constitutes an ‘Improvement Notice’

A Contract Compliance Level 2 Warning means:

“Contractual concerns have been identified and are being investigated. There is a moderate risk of harm, abuse or neglect to services users.”

‘If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then The Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as The Council may direct.’

This sanction also constitutes an ‘Improvement Notice’

A Contract Compliance Level 3 means:

“Serious contractual concerns have been raised and are being investigated. There is a significant risk of harm, abuse or neglect to individuals.”

If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then The Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as The Council may direct.

This sanction also constitutes an Improvement Notice.

SCHEDULE 15
MOBILISATION AND TRANSITION

Not Used

SCHEDULE 16

DATA PROTECTION AND GENERAL DATA PROTECTION REGULATION

The Contract concerns the processing of Personal Data? **Yes**

If “Yes”: The processing of Personal Data applies to the Contract.

If “No”: The Processing of Personal Data does not apply to the Contract.

If the answer given is originally “No” and the situation changes to involve the processing of Personal Data, this Schedule will apply in its entirety and need to be completed in full.

Whether “Yes” or “No”, Annex 1 must be completed in accordance with the guidance at Annex 1.

Whether “Yes” or “No”, the Provider shall at all times comply with the Data Protection Legislation.

PARTIES

The Kent County Council

The Provider (“Provider”)

The Parties agree that the Contract includes this Schedule 16 - Data Protection and General Data Protection Regulation and its Annex 1.

The following new definitions shall be introduced:

“Controller” has the meaning given in the GDPR;

“Data Loss Event” means any event that results or may result in unauthorised access to Personal Data held by the Council under this Deed, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement including any Personal Data Breach;

“Data Protection Legislation” means:

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

“Data Protection Officer” has the meaning given in the GDPR;

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“Data Subject” has the meaning given in the GDPR;

“DPA” means the Data Protection Act 2018 as amended from time to time;

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679);

“LED” means the Law Enforcement Directive (Directive (EU) 2016/680);

“Personal Data” has the meaning given in the GDPR;

“Protective Measures” appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Processor” has the meaning given in the GDPR;

“Processor Personnel” all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor;

“Personal Data Breach” has the meaning given in the GDPR;

“Staffing Information” the reference to “DPA” shall be replaced with “Data Protection Legislation”;

“Sub-processor” any third party appointed to process Personal Data on behalf of the Processor related to this agreement.

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor unless otherwise specified in this Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects). The only processing that the Processor is authorised to do is listed in Annex A (Processing Personal Data) by the Controller and may not otherwise be determined by the Processor.
2. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
3. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects):
 - 3.1. process that Personal Data only in accordance with Annex 1 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 3.2. ensure that it has in place Protective Measures which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - 3.2.1. nature of the data to be protected;
 - 3.2.2. harm that might result from a Data Loss Event;

- 3.2.3. state of technological development; and
- 3.2.4. cost of implementing any measures;
- 3.3. ensure that:
 - 3.3.1. the Processor Personnel do not process Personal Data except in accordance with this Schedule 16 and (and in particular Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects));
 - 3.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this paragraph;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects); and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 3.4. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - 3.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - 3.4.2. the Data Subject has enforceable rights and effective legal remedies;
 - 3.4.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- 3.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 3.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Deed unless the Processor is required by Law to retain the Personal Data.
- 4. Subject to paragraph 5, the Processor shall notify the Controller immediately if it:
 - 4.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 4.2. receives a request to rectify, block or erase any Personal Data;
 - 4.3. receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 4.4. receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data processed under this Deed;
 - 4.5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 4.6. becomes aware of a Data Loss Event.
- 5. The Processor's obligation to notify under paragraph 1.4 shall include the provision of further information to the Controller in phases, as details become available.
- 6. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 1.4 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - 6.1. the Controller with full details and copies of the complaint, communication or request;

- 6.2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 6.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 6.4. assistance as requested by the Controller following any Data Loss Event;
 - 6.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
7. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
 8. The parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
 9. Before allowing any Sub-processor to process any Personal Data related to this Deed, the Processor must:
 - 9.1. notify the Controller in writing of the intended Sub-processor and processing;
 - 9.2. obtain the written consent of the Controller;
 - 9.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 1.9 such that they apply to the Sub-processor; and
 - 9.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
 10. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
 11. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor require it to amend this Deed to ensure that it complies with any guidance issued by the Information Commissioner's Office.

ANNEX 1 TO SCHEDULE 16

Schedule of Processing, Personal Data and Data Subjects

1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Schedule.
3. Part A and/or Part B, as appropriate, describe the Data relationship(s) between the Parties. Only completed Part(s) apply and an uncompleted Part indicates that the Data relationship pertaining to that Part does not exist within the Contract. If the Contract concerns the processing of Personal Data at least one Part must be completed and both Parts may be completed but the latter must apply to different Data within the Contract. The same Party cannot be both a Controller and a Processor for the same Data in one contract but can be for different data within the same contract.

PART A

The Kent County Council

Data Controller

The Provider

Data Processor

Description	Details
Subject matter of the Processing	<p>Processing of personal or sensitive data in relation to the provision of Adult Social Care service provision</p> <p>All Providers delivering a service on behalf of Kent County Council are contractually obliged to manage personal or sensitive data to enable the delivery of the service commissioned. This may be through a framework contract, individual or spot contract or other arrangement whereby payment is made.</p> <p>Personal or sensitive data includes that of the person receiving the service, as commissioned or purchased on behalf of Kent County Council.</p>
Duration of the Processing	<p>The Terms and Conditions of the Contract state the duration of Processing throughout the duration of the contract and held for the agreed period of time after contract expires.</p> <p>The information is required to be held in accordance with the subject matters use, in line with the organisations' record retention policy or governing body / legislation whichever is the greatest.</p> <p>On early termination of contract, refer to the Contract particulars as detailed in the Terms and Conditions of the Contract.</p>
Nature and purposes of the Processing	<p>In the delivery of this Contract Kent County Council are the Data Controllers for information provided on individuals referred to the service. The Provider is the Data Processor for</p>

	<p>the personal and sensitive information relating to this contract.</p> <p>Where the Provider collects data in excess of the requirements of this Contract, the Provider will be the Data Controller of that data and this is covered within Part B of this Annex. The Provider is the Data Controller of its employee information; where reviewed through Contract Monitoring, the Council will be the Processor of that data.</p> <p>Due to the nature of the service provided, the high-risk area of information will be that which is collected manually. The information will either be transferred to a computerised system with paper records filed in locked cabinets. This could be for client records, staff files or other requirements. The expectation is that where records are filed in locked cabinets, the keys are kept in a locked storage box in a locked office and the office is locked each time it is not in use. Access to the data will only be given to Council staff requiring it for Contract management and associated purposes.</p> <p>Computerised records would need to be backed up with up to date security software. Email accounts are specific to the service and are not utilising Gmail, Yahoo or other generic or personal accounts and need to be enabled to use secure email to and from KCC and other necessary organisations.</p> <p>Information that is portable and used in the community, for instance service delivery that requires a visit to hospital, GP or for an outing must be kept to a minimum with key relevant information being transported. This information has to be kept secure in a folder in a closed bag, preferably with a lock. If information is left unattended in a car for a short period, this must be locked in the boot out of sight.</p> <p>Fire grab packs containing personal or sensitive information held within services must be secured in a break-glass (or similar) unit with key access for regular reviewing and updating. It must be accessible in the case of emergency.</p> <p>Further information and advice around the suitability of storage, transfer and handling of information can be found at https://ICO.org.uk</p> <p>The nature of the Processing under this Contract will cover the following: receiving, collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>Information must be Processed and reported according to:</p>
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	<p>Data Protection Act Information Governance – general responsibilities section of this Contract (Contract Terms and Conditions) and the GDPR Schedule.</p> <p>The purpose of the Processing are as follows:</p> <ul style="list-style-type: none"> • To measure and/or accept suitability of care packages, • To liaise with Kent County Council Case/Care Managers • To inform staff of service to be delivered and escalation routes. • To deliver services to Specification according to need. • To manage unforeseen situations, and emergencies • To invoice KCC according to the individual's details. • To analyse current and future service provision via KPI data • To ensure safe working practice via monitoring of training, DBS collection, registration and insurances. <p>Information will be shared with the Commissioner of the Service, the Regulator, the NHS/CCG and Ambulance Trust where and when necessary in a timely and legitimate manner, obtaining consent where required.</p> <p>Due to the nature of the data collected, GDPR compliance will also be appended to any contract management schedules.</p>
Type of Personal Data	<p>Personal and sensitive data required includes:</p> <p>Information on Service recipients: name, address, date of birth, NHS details, social care identification number, NI number, telephone number, medical conditions and assistance needs, key safe information as needed, next of kin information, risk assessment information.</p>
Categories of Data Subject	<p>Individuals/Residents/Clients – the person using the service</p> <p>Next of Kin or Carer to the person using the service.</p> <p>Contact details of Accommodation manager or Key worker (where client is in a residential or nursing accommodation setting)</p> <p>Witness and Investigation information in relation to complaint, safeguarding and criminal investigations (may include photographic evidence)</p>
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of Data	<p>Retention of data as per 'Contract particulars' in the Terms and Conditions</p> <p>Or Retention as required by legislation or regulatory bodies, whichever period is the greatest.</p> <p>Storage, Transfer and Destruction of data as per Data</p>

	<p>Protection Act Information Governance – general responsibilities section of the Contract Terms and Conditions</p> <p>On early termination of contract all data to be returned to Kent County Council as per section 'recovery upon termination' within the Contract Terms and Conditions.</p>
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PART B

The Kent County Council
The Provider

Data Processor
Data Controller

Description	Details
Subject matter of the Processing	<p>Additional information received relating to the individual using the service and shared with the Council</p> <p>Employee information collated by the Provider to deliver the Service and shared with the Council through Contract Monitoring, Safeguarding or other legitimate requirement</p>
Duration of the Processing	For the duration of the Service and Contract – refer to the Terms and Conditions of the Contract or Safeguarding and other Legislation
Nature and purposes of the Processing	<p>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose to include employment processing, statutory obligation, recruitment assessment etc.</p>
Type of Personal Data	<p>Staff/Volunteers. professional registrations, insurances, proof of ID, NI details, Bank details, training details, DBS information</p> <p>Additional Personal or Sensitive information collated in relation to a Service recipient in order to deliver the Service</p>
Categories of Data Subject	<p>Individuals/Residents/Clients – the person using the service</p> <p>Next of Kin or Carer to the person using the service.</p> <p>Staff (including volunteers, agents, and temporary workers)</p> <p>Suppliers/third parties in the delivery of the service, including trainers</p>

	Witness and Investigation information in relation to complaint, safeguarding and criminal investigations (may include photographic evidence)
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of Data	<p>Retention of data as per 'Contract particulars' in the Terms and Conditions</p> <p>Or Retention as required by legislation or regulatory bodies, whichever period is the greatest.</p> <p>Storage, Transfer and Destruction of data as per Data Protection Act information governance – general responsibilities section of the Contract Terms and Conditions</p> <p>On early termination of the Contract all data to be returned to Kent County Council as per section 'Recovery Upon Termination' within the Contract Terms and Conditions.</p>

SCHEDULE 17

CALDICOTT PRINCIPLES

Part A Summary of the 6 Caldicott General

Principles Principle 1: Justify the purpose(s)

Every proposed use or transfer of personally-identifiable information within or from an organisation should be clearly defined and scrutinised with continuing uses regularly reviewed by an appropriate guardian.

Principle 2: Don't use personally identifiable information unless it is absolutely necessary

Personally identifiable information items should not be used unless there is no alternative.

Principle 3: Use the minimum necessary personally identifiable information

Where use of personally identifiable information is considered to be essential each individual item of information should be justified with the aim of reducing identifiability.

Principle 4: Access to personally-identifiable information should be on a strict need to know basis

Only those individuals who need access to personally identifiable information should have access to it and they should only have access to the information items that they need to see.

Principle 5: Everyone should be aware of their responsibilities

Action should be taken to ensure that those handling personally identifiable information – both practitioner and non-practitioner staff – are aware of their responsibilities and obligations to respect an individual's confidentiality.

Principle 6: Understand and comply with the law

Every use of personally-identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements.

Part B Information Governance

Information Security Requirements

The Provider shall apply appropriate technical and organisational measures to adequately secure the Council's personal data during processing, storage and transfer. These measures must fulfil the Council's legal obligation to comply with data protection principle 7 (Information

Security) of the Data Protection Act 1998. In furtherance of this the Provider shall indemnify the Council for loss or damages caused by any action, authorised or unauthorised, taken by himself, his employees, servants, agents or Sub-Contractors.

1. Information security policy shall be in place, approved by management, communicated to employees and Sub-Contractors and available for inspection.
2. Information security responsibilities shall be assigned to one or more competent individuals.
3. The Provider shall notify the Council's Information Security Officer of any incidents of breach or loss of the Council's data as soon as reasonably practical and in any case no later than 72 hours after becoming aware of an incident.
4. Background checks are undertaken and employment contracts and sub-contracts include appropriate terms, conditions and disciplinary sanctions to minimise risks to the confidentiality and integrity of Council data.
5. Business continuity / Business Continuity Plan(s) shall be in place (or will be at Service commencement) to address unavailability event(s) or incident(s).
6. The Provider shall comply with any reasonable request for change to its Service that is required to ensure the council's continued compliance with the Public Service Network (PSN) Code of Connection (CoCo). This applies a baseline security standard to which all PSN connected parties are required to adhere.
7. Appropriate controls shall be in place to protect Council data from malicious code or cyber-attacks.
8. Assets storing or processing Council data shall be appropriately protected against physical tampering, loss, damage or seizure.
9. Audit logs shall record relevant user activity, exceptions and information security events such that incidents or suspicious activity can be adequately investigated and attributed.
10. Measures shall be in place to identify and treat technical vulnerabilities (e.g. patching and updates) in a timely and appropriate manner.
11. Controls shall be in place to ensure other customers of the Provider's Service are unable to access the Council's data or threaten its Service (either maliciously or as a result of their own Service being compromised).
12. Controls shall be in place to minimise the risk of portable or online storage devices and/or services being used by the Provider's employees or Sub-Contractor for the unauthorised copying or removal of Council data.
13. Provider employee and Sub-Contractor accounts shall be revoked in a timely manner in the event of termination of employment or change of role.
14. System Administrator accounts shall not be shared and shall only be allocated to named individuals who are accountable for their actions.
15. User accounts shall be created or revoked in a timely manner in response to requests from the Council or on the Provider's termination of employee agent or Sub-Contractor.

16. Secure Remote Access shall be available as an option.
17. The Provider shall agree to supply to the Council personal information relating to employees, agents and sub-Contractors with access to Council information for the purpose of completing background checks in accordance with our obligations under PSN CoCo.
18. The Provider's employees, agents and sub-Contractors shall complete specialist data protection training designed for those who handle data at this classification within the first six months of Service commencement.
19. Networks shall be managed and controlled in a way that is appropriate to this classification of data.
20. Measures shall be in place to enable the detection and attribution of misuse or unauthorised activity.

Cloud Security Requirements

The Provider shall comply with ALL of the following requirements for any part of their Service that uses web hosting, web applications or cloud services:

Requirements for OFFICIAL or Personal Data
<ol style="list-style-type: none">1. User access via browsers shall be configured to use HTTPS security and using Transport Layer Security version 1.2 as a minimum (TLS1.2).2. Cryptography certificates shall be issued by a current member of the Certificate Authority Security Council (CASC).3. A Penetration Test of web facing services shall be performed by a CREST registered tester and high risk issues remediated before Service commencement.4. Appropriate controls shall be in place to protect Council data from malicious code or cyber-attacks.5. Appropriate technical controls shall be in place to protect Council data in the event of the theft, loss or transfer of ownership of a privately owned device previously used to access the Service.6. Two-factor authentication (2FA) shall available as an option.

Requirements for OFFICIAL-SENSITIVE or Sensitive Personal Data ¹ or CONFIDENTIAL INFORMATION ²
<ol style="list-style-type: none">1. Extended Validation (EV or Green Bar) cryptography certificates shall be provided (or will be at Service commencement) by a current member of the Certificate Authority Security Council (CASC).2. The Provider shall supply to the Council such personal information relating to employees with access to Council data in this classification as is necessary for background checks to be initiated as required for the council to comply with its PSN Code of Connection.3. The Provider's employees will complete specialist data protection training designed for those who handle data at this classification within the first six months of Service commencement.4. Networks shall (or will at Service commencement) be managed and controlled in a way that is appropriate to this classification of data.5. Web applications and/or Cloud services shall (or will be prior to Service commencement) be penetration tested by a CREST approved Provider at annual intervals. Test results shall be made available to the contracting Council on request.6. Two-factor authentication (2FA) shall be provided.

¹ 'Sensitive Personal Data' means Data Protection Act definition relating to an individual's health, race, ethnicity, political or religious beliefs.

² 'Confidential Information' relates to an individual's health or ADULT social care (Health and Social Care Act 2012).

SCHEDULE 18

INTERFACE AGREEMENT

The Provider will be expected to work in partnership with the Council, other Contracted Providers and other agencies involved in the delivery of a person's care and support such as voluntary organisations and Health partners.

It is expected that the Provider will demonstrate a commitment to:

1. Share values and ethos in delivering high quality, person-centred care and support Services
2. Collaborate where possible for mutual benefit
3. Communicate with each other clearly and regularly
4. Value all partners' contributions
5. Support the sharing of relevant information, expertise and knowledge
6. Self-monitor and quality audit the performance of the service
7. Be willing to develop and innovate in line with new initiatives and technology
8. Be flexible enough to reflect changing needs, priorities and lessons learned
9. Promote and actively encourage participation of people who use or have used care and support Services.

The Council anticipate that a sustainable relationship is fostered throughout the Contract period, which meets the expectations of the Contracted stakeholder partners and Commissioners, according to the Contracted position established at the inception of the Contract within the Cluster Group.

The Provider will be expected to build and utilise effective partnerships to support:

- Effective management of referral pathways, ensuring Contracted Provider capacity and capability within the Cluster Group.
- Manage demand, prioritise activity and resource mapping.
- Robust data collection, consistent reporting and performance management approach that demonstrates delivery of commissioned care and support.
- Effective mobilisation of the contract in line with the specification.
- Plans are in place for business continuity, resilience and disaster recovery.
- Quality assurance processes in place to manage risks effectively and proactively.
- Work with the Commissioners to effectively assess the impact and outcomes delivered through the service.
- Share best practice, learning and changes in policy/legislation.

SCHEDULE 19

INFORMATION GOVERNANCE

The Health and Social Care Information Centre requires that all Health and Social Care service providers, commissioners and suppliers must have regard to the Information Governance Toolkit Standard approved by the Standardisation Committee for Care Information (SCCI), which replaces the Information Standards Board (ISB) for Health and Social Care (ISB) and is a sub-group of the National Information Board (NIB).

The Provider shall have regard to and meet all relevant requirements under the NHS Data Security and Protection Toolkit.

The Provider shall complete an annual IG Assurance Questionnaire to evidence compliance.

The Provider shall additionally ensure that all data of any type meets the requirements of the Code of Practice on Confidential Information, as required under the Health and Social Care Act 2012.

