

**Advocacy Services for People with a
Learning Disability in Kent**

***Terms and
Conditions***

This document sets out the terms and conditions of providing
advocacy services purchased by Kent County Council

September 2011

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Appendices

Appendix 1 (TUPE)

Appendix 2 (The Specification)

THIS CONTRACT is dated the FIRST day of APRIL 2012

Between:

- 1) KENT COUNTY COUNCIL of County Hall, Maidstone ME14 1XQ (“the Council”) and
- 2) ‘Provider Name’ (“the Service Provider”) whose registered address is _____ and whose company registration number is _____.

TERMS AND CONDITIONS OF CONTRACT

1. DEFINITION OF TERMS

When they are used in this Contract, the terms and expressions set out below in the first column have the meanings set out in the second column.

Breach	Failure to meet the conditions set out in the terms and conditions and service specification
Business Continuity Plan	Has the meaning given in clause 24
Business Continuity Event	means an event (of a type contemplated in the Business Continuity Plan) the occurrence of which will cause the Service Provider to invoke the Business Continuity Plan and thereby continue to provide the Service
Care Manager	A registered professional employed by the Service Provider who undertakes assessments of needs of a Service User as well as reviews, where appropriate;
Commercially Sensitive Information	means the subset of Confidential Information identified in the Service Provider’s Tender comprised of information: (a) which is provided by the Service 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 which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, and the Commercially Sensitive Information.
Convictions	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1 (1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemption specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment of that Order.
Continuing Breach	A breach in contractual duty or duties as a result of repeated failures to

remedy non-performance or to sustain performance over a reasonable period of time

Contract	means this agreement containing the contract documents described in clause 3.2
Contracts Manager	The person authorised and appointed by the Council to administer the Contract
Contract Price	The gross price or prices the Council will pay the Service Provider for each hour (as set out in the Service Provider's Tender. The Contract Price excludes VAT, and will be varied over time in accordance with clause [9.2]
CRB	means the Criminal Records Bureau established pursuant to Part V of the Police Act 1997.
DOLS (Deprivation of Liberty Safeguards)	Introduced into the Mental Capacity Act 2005 through the Mental Health Act 2007. The Safeguards cover people in hospitals and care homes registered under the Care Standards Act 2000, who suffer from a disorder or disability of the mind, and lack capacity to give consent to the arrangements made for their care or treatment which, after independent assessment, is considered to be a necessary and proportionate response in their best interest to protect them from harm. The Safeguards give those representatives, rights of appeal and for the deprivation to be reviewed and monitored.
Hour of Service	means an hour spent by an advocate carrying out the Service. This is to include: direct contact, travel to/from the contact, training, supervision, consultation with other professionals, capacity assessments, reviewing information and report writing.
Independent Mental Capacity Advocate(IMCA)	An Independent Mental Capacity Advocate is a person of integrity and good character with appropriate experience and training who is approved by the Local Authorities to act independently of any persons instructing them. An independent service provider, approved by a Local Authority.
ISA	means the Independent Safeguarding Authority
Contract Period	means the period of the contract referred to in clause 2
Law	means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.
Party	Means either of the parties to this Contract.
Provider Support Programme	The Support Plan drawn up for each Service User, with the Service Users consent and prepared between the Service User, the Support Worker and their circle of support.
Referral	Identified in the Specification

Schedule of Current Usage	The list of Services, venues and staffing, currently supplied by this service and which must be available on the Start Date of the Contract.
Serious Breach	A breach of the terms and conditions, specification or duty of care, which material risks the health, safety or Welfare of a Service User.
Service	Means the services, more particularly described in the Specification, which are to be provided to Service User's in accordance with the terms of this Contract.
Service User	means any person (more particularly described in the Specification) for whom the Service Provider is required to provide the Service
Specification	the Specification for the Service – Appendix 2
Staff	means all persons employed or engaged by the Service Provider to perform the Agreement together with the Service Provider's servants, agents (including any volunteers) and sub-contractors used in the performance of the Contract.
Start Date	means 1st April 2012
(KASS) Support Plan	The written statement produced by the Case Manger, which sets out the social care support that the Individual/Service User requires to meet his or her needs and aspirations. This will be agreed by all the parties to it and updated regularly.
Terms and Conditions	these terms and conditions of Contract
Travel Time	A sum of money that takes account of the amount of time in his or her working day that a worker spends travelling from one appointment to another.
Variation	a variation to this Contract
Vulnerable Adult	means someone over 18 years of age who may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself, or unable to protect against significant harm or exploitation.
Working Day	Means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.
Working Hours	Means between 9:00am and 5:00pm Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays.'

2. START AND DURATION OF THIS CONTRACT

- 2.1. This Contract will start on 1 April 2012 and continue until 31st March 2015 or until terminated in accordance with the provisions of this Contract or by operation of Law, whichever is the earliest.
- 2.2. The Service will be reviewed annually. The Contract may be extended by agreement of both parties for a further period of up to 2 years.

3. ENTIRE CONTRACT

- 3.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
- 3.2 In the event of and only to the extent of any conflict between the body of the Contract, Specification, Invitation to Tender, Service Provider's Tender and other documents referred to or attached to the Contract], the conflict shall be resolved in accordance with the following order of precedence:
 - (1) the body of the Contract shall prevail over;
 - (2) the Schedules;
 - (3) the Invitation to Tender;
 - [(4) the Service Provider's Tender]
 - [(5) any other document referred to in the Contract.]

Unless expressly agreed, a document varied pursuant to clause 43 shall not take higher precedence than specified here.

- 3.3 The 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.

4. NATURE OF THE SERVICE

- 4.1. During the Contract Period the Service Provider shall provide the Service in a proper skilful and diligent manner to the standard and to the entire satisfaction of the Contract Manager at the times and in the manner and at the frequencies specified in the Specification at the price or prices specified in the Service Provider's tender applicable to the Service and Support to be carried out under this Contract including any instructions issued by the Contract Manager regarding the Service and/or Support.

5. THE SERVICE PROVIDER'S EMPLOYEES

- 5.1. The Service Provider shall employ sufficient persons to ensure that the Service is provided at all times and in respects to the standard set out in the Specification.
- 5.2. The Service Provider shall ensure that every person employed in and about the provision of the Service is at all times properly and sufficiently qualified, competent, careful, skilled, honest, experienced, instructed and supervised as the case may be with regard to the Service and in particular with respect to:

- (i) the task or tasks such person has to perform;
 - (ii) all relevant provisions of the Contract;
 - (iii) all relevant policies, rules, procedures and standards of the Council;
 - (iv) all relevant rules, procedures and statutory requirements concerning health and safety at work, including the Council's General Statement of Safety Policy;
 - (v) the need to recognise situations which may involve any actual or potential danger or personal injury to any person and where possible without personal risk, to make safe such situations, and forthwith to report such situations to the Contract Manager
- 5.3. The Contract Manager (acting reasonably) shall be entitled, to require the Service Provider, by notice in writing, to remove from the provision of the Service any employee of the Service Provider specified in such notice. Upon receiving such notice, the Service Provider shall forthwith remove any employee named from the provision of the Service and shall immediately provide a replacement if necessary. The Service Provider shall not employ any employee of the Service Provider so removed from the provision of the Service for the purposes of carrying out any services for the Council under this Contract or any other agreement extant at the time of the removal without obtaining the prior written consent of the Council, which consent shall not be unreasonably withheld or delayed.
- 5.4. The Council shall in no circumstances be liable either to the Service Provider or to the employee in respect of any liability, loss or damage occasioned by such removal as referred to within clause 5.3 and the Service Provider shall fully indemnify the Council against any claim made by such an employee.
- 5.5. If owing to the nature of the Service, employees of the Service Provider are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, then the Provider shall ensure that all employees engaged in provision of the Service shall provide information in accordance with the said Act and Order about convictions which would otherwise be spent under the provision of the said Act.
- 5.6. The Service Provider shall throughout the Contract Period and in a timely manner carry out or arrange to have carried out on its behalf the most extensive checks available to it through the CRB and ISA in respect of matters of record for the purposes of the Police Act 1997 in respect of its employees and sub-contractors, to be engaged under this Contract, and shall at the commencement of the Contract and on or before each anniversary of the Contract, or at any time as directed by the Council, disclose to the Contract Manager evidence that all required checks have been undertaken and/or all information disclosed by such checks.
- 5.7. All staff employed in connection with the Service shall be first checked via the ISA in line with the Service Provider's duty under the Safeguarding Vulnerable Groups Act 2006 and the Service Provider shall carry out an enhanced Criminal Records Bureau check at the time of recruitment. The Council may require any employee or sub-contractor revealed not to have been checked or not to have received clearance to perform the Service to be removed from the provision of the Service or a specified part thereof.
- 5.8. The Service Provider shall not permit any employee who has not been checked in accordance with clause 5.6, or whose check has disclosed information that would deem such checked employee to be unsuitable to perform the Service, to be engaged in the provision of the Service.

6. VETTING AND BARRING

- 6.1. In addition to the checks required pursuant to clause 5, the Service Provider shall refer any Staff to the Independent Safeguarding Authority (ISA) who it considers are not suitable for working with vulnerable adults, who shall be responsible for making barring decisions.
- 6.2. The Service Provider acknowledges that the ISA will automatically bar a person without a referral when the ISA receive information from the police that the person concerned received a new conviction or caution for the specified serious offence and the Service Provider warrants that any person so barred by the ISA shall not be engaged on or, if engaged, shall be immediately removed from, the provision of the Service and, in the case of removal, shall immediately in writing notify the Contract Manager of such removal.
- 6.3. Pursuant to its duties to the ISA the Council shall, in response to a request from the ISA, provide the ISA with any information held by or known to the Council about the Service Provider's Staff, whether such information is held or known in relation to the Contract or otherwise.
- 6.4. The Service Provider acknowledges that failure by the Service Provider to comply with this clause 6 is deemed to be a criminal offence and shall entitle the Council (at the Council's sole discretion) to terminate the Contract by notice in writing with immediate effect and in such circumstances the provision of clause 14 shall apply.
- 6.5. The Service Provider shall have in place and shall actively implement a Safeguarding Adults Policy. The Service Provider shall ensure that all Staff working with Service Users are trained in this area and are made fully aware of the Safeguarding Adults Policy and that the principles of the Safeguarding Adults Policy are put into practice in the delivery of the Service.
- 6.6. The Service Provider shall ensure that every person engaged in the provision of Services and Support works strictly in accordance with the EC working Time Directive (No. 2003/88), the Working Time Regulations 1998 and all and any subsequent Directives, Regulations, Statutes or Acts pertaining to working time.
- 6.7. The Service Provider shall fully indemnify the Council for any costs, expenses and any additional liabilities resulting from or connected with any claims made by an employee of the Service Provider against the Council which arises from or is connected with any act or default on the part of the Service Provider or any breach of its contractual or statutory obligations to such Staff.

7. CONTACTS

- 7.1. For the purposes of this Contract, the Service Provider's contact for the Council will be the Contracts Manager and the Council's contact for the Service Provider will be such person as is notified in writing by the Service Provider to the Contracts Manager.
- 7.2. For the purpose of Service, the Service Provider's contact for the Council will be the Contracts Manager named as confirmed in writing by the Council.
- 7.3. All correspondence relating to the Contract, from either the Council to the Service Provider or the Service Provider to the Council, will be sent in writing to the applicable address shown on the Contract.

8. REVIEW

- 8.1. The Council will review the Contract at any time of legislative change which in its opinion may have a fundamental effect on its authority to arrange the Service.
- 8.2. The Council will carry out annual reviews of the Services before each anniversary of this Contract.

9. PRICE

- 9.1. The Contract Price will include all costs of whatever kind which are incurred by the Service Provider in delivering the Service.
- 9.2. On the first and subsequent anniversaries of the Contract, the Council may (in its absolute discretion) consider varying the Contract Price taking into consideration known changes in the costs of the Service over the previous twelve (12) months, the Council's budget and the economic situation. For the avoidance of doubt, this may cause a change to the Contract Price upwards or downwards, as authorised by the Council's elected Members.
- 9.3. Irrespective of any increase in costs the Council shall not be required to increase the amount payable to the Service Provider if the Council has not received at least the corresponding increase in the budget available to the Council for the Service and Support and/or authorisation by the Council's elected Members.
- 9.4. The Council is solely responsible for paying the Service Provider in connection with the Services and the Service Provider will not accept any payment from the Service User or his or her representative in connection with the provision of the Service to such person.
- 9.5. If the Service Provider provides additional services which are outside the scope of the Service at the request of the Service User or his or her representative, the Council will regard this as a private arrangement and the Council will not provide payment for the same. Within 2 Working Days of the start of any such arrangement, the Service Provider will notify the Care Manager about the arrangement and any subsequent changes to it.

10. PAYMENT ARRANGEMENTS

- 10.1. The Service Provider shall invoice the Council 4 (four) weeks in arrears in relation to the Service and the Council will make payment for the Service by BACS, on the Council's standard payment terms, namely within 20 days from the date of the invoice, subject to any changes as notified in writing by the Council in advance. Invoices should show a detailed breakdown of the Service, including:
 - a) Your name and address
 - b) The invoice date (as dd/mm/yy)
 - c) The period to which the invoice relates
 - d) A breakdown of the payment between block contract hours and additional hours
- 10.2 The Contract Price is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Service Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to

account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.

- 10.3 We reserve the right to look at your accounts during the life of this Contract for the purpose of validating your financial viability. We will be reasonable in exercising this right.
- 10.4 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service 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 Service Provider under the Contract or under any other Contract or contract with the Council.

11. MONITORING PERFORMANCE

- 11.1. The Service Provider will comply with the monitoring and evaluation arrangements set out in the Specification.
- 11.2. The Service Provider will keep records which ensure that the Council can assess its performance against the Contract. The records will clarify resource inputs, organisational processes and outcomes related to the Service and Service Users.
- 11.3. The Council reserves the right to visit the Service Provider and/or a Service User at any reasonable time without giving notice and without prejudice to the Service User's privacy.
- 11.4. The Council reserves the right to directly elicit the views of consenting Service Users who use the Service having regard to their privacy.

12. DISPUTE RESOLUTION

- 12.1. The Council and the Service Provider will make every reasonable effort to resolve by agreement any genuine dispute between them arising out of or in connection with the Contract.
- 12.2. If a mutually satisfactory agreement cannot be reached by the parties when the issue arises, the following will happen:
 - a) The issue will be discussed by the Service Provider's representative and the Contracts Manager within 10 Working Days.
 - b) If the dispute is not resolved within 20 Working Days after their discussion, the issue will be referred to senior managers of the Council and the Service Provider.
 - c) If they fail to resolve the dispute after 20 Working Days of its referral to them, the parties may agree to refer the issue for mediation to an individual who is acceptable to both.
 - d) If such acceptance cannot be achieved, either party may seek the appointment of a mediator to be nominated by the President of the Law Society.
- 12.3. Use of the disputes procedure will neither delay nor take precedence over any use of the default or termination procedures.

13. DEFAULT

- 13.1 Where a complaint is received by or on behalf of any Service User or a problem is otherwise indicated about the standard of Services or about the way any Services have been delivered or work has been performed or about any other matter connected with the performance of the Contract, then the Contracts Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of clause 14.2 of the Contract.
- 13.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Service Provider, or the Service Provider's performance of its obligations under the Contract has failed to meet the requirement set out in the Specification, then the Council may, without prejudice to its rights under clause 14.2 of the Contract, do any of the following:
- (a) make such deduction from the Contract Price to be paid to the Service Provider as the Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Service Provider shall have failed to provide or performed inadequately;
 - (b) without terminating the Contract, itself provide or procure the provision of part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Council that the Service Provider will be able to perform such part of the Services in accordance with the Contract;
 - (c) 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 provide or procure a third party to provide such part of the relevant Services; and/or
 - (d) terminate, in accordance with clause 14, the whole of the Contract.
- 13.3 The Council may charge to the Service Provider any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Council or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Service Provider for such part of the relevant Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 13.4 If the Service Provider fails to perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall instruct the Service Provider to remedy the failure and the Service 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.
- 13.5 In the event that:
- (a) the Service Provider fails to comply with clause 13.4. above and the failure, is materially adverse to the interests of the Council or prevent the Council from discharging a statutory duty; or
 - (b) the Service Provider persistently fails to comply with clause 13.4 above,
- the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

14. TERMINATION OF THE CONTRACT

- 14.1 The Contract may be ended at any time by either party giving to the other not less than 6 months prior notice in writing to expire at any time. Any such notice will state the reasons for termination.
- 14.2 The Council may terminate the Contract by notice in writing having immediate effect and recover from the Service Provider the amount of any loss resulting from the termination if the Service Provider:
- a) Is in Serious Breach of the Contract
 - b) commits a Continuing Breach of the Contract
 - c) Fails to remedy a breach which is capable of being remedied within 15 Working Days of receiving notice from the Council specifying the breach complained of;
 - d) Is convicted of an offence under the provisions of the Care Standards Act 2000, Health and Social Care Act 2008 and regulations thereto and any subsequent amendments;
 - e) Ceases to hold appropriate registration under the Health and Social Care Act 2008;
 - f) Becomes bankrupt or is the subject of any application or arrangement under the provisions of the Insolvency Act 1986 (as amended);
 - g) Has a winding-up order made (except for the purposes of amalgamation or reconstruction) or a resolution of a voluntary winding-up is made;
 - h) Has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;
 - i) Has an administrative receiver as defined in the Insolvency Act 1986 (as amended) appointed;
 - j) Is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager or an administrative receiver, or which entitle the court to make a winding-up order;
 - k) Takes financial advantage of a Service User;
 - l) Commits or cause the commission of any criminal offence in providing the Service and/or Support;
 - m) As a result of any misconduct or mismanagement on the Service Provider's part has a Regulatory Body make an order of any kind in relation to the Service Provider's affairs
 - n) Fails to comply with ISA requirements in relation to employees engaged in the provision of the Services and/or Support
 - o) Inappropriately solicits money from a Service User or their representative;
 - p) Offers any inappropriate inducements or exerts pressure on a potential Service User or his or her representative to encourage him or her to choose the Home;
 - q) Offers, gives or agrees to give any gift or consideration of any kind to any Officer or elected Member of the Council in order to gain any advantage in the performance of the Contract;
 - r) Defrauds the Council or otherwise commits a breach of clause 34.

14.3 Where the Council terminates the Agreement under clause 14.2, or terminates the provision of any part of the Agreement under that clause 14.2, and then makes other arrangements for the provision of Service, the Council shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements 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. Where the Agreement is terminated under clause 14.2, no further payments shall be payable by the Council to the Contractor until the Council has established the final cost of making those other arrangements.

15. STATUTORY OBLIGATIONS

15.1 The Service Provider will comply (at no addition to the Contract Price) with all relevant current and future Laws applicable to the provision of the Service.

16. EQUALITIES

16.1 The Service Provider as an employer and provider of the Service and Support shall take all reasonable steps to ensure elimination of all forms of discrimination in relation to gender, religion, race, disability, age and sexual orientation in both its employment practice and in its delivery of the Service and Support in accordance with an established equal opportunities policy, which policy shall include effective monitoring.

16.2 In complying with its obligations under clause 17.1, the Service Provider shall have due regard to the Council's Equalities Scheme, a copy of which can be made available on request, and the Service Provider shall ensure compliance with its obligation under:

- The Equality Act 2010;
- The Equality and Human Rights Commission's Guidance for Employers

and all amendments, re-enactments, or any subsidiary legislation, enactments, regulations, codes of practice or guidance issued or in force during the Contract Period.

16.3 The Service 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 Service Provider of this clause 17.

17. INSURANCE AND INDEMNITY

17.1 The Service Provider will maintain the following minimum levels of insurance cover throughout the Contract Period:

- a) Public Liability Insurance: £10 million in respect of any one claim which the Service Provider becomes legally liable to pay for accidental injury or accidental damage to third parties or their property
- b) Employers Liability Insurance: £10 million in respect of any one claim which the Service Provider becomes legally liable to pay for accidental injury sustained by an employee arising out of and in the course of his or her employment with the Service Provider
- c) Professional Indemnity Insurance: £5 million in respect of any one claim which the Service Provider becomes legally liable to pay for any negligent act, error or omission occurring or committed in good faith in the conduct of its activities or duties
- d) Motor Vehicle Insurance: Third Party cover with unlimited indemnity for Third Party injury and £5 million for Third Party property damage in respect

of any one claim

- 17.3 The Service Provider will procure and maintain the above mentioned insurances with a reputable company or companies.
- 17.4 The Service Provider will provide to the Council on request such information as the Council may reasonably require to confirm that the insurances referred to above have been effected and are adequate and in force at all times.
- 17.5 The Service Provider shall indemnify and keep indemnified the Council against all claims, costs, losses, liabilities or expenses arising as a consequence of the injury to, or death of, any person, or the loss of, or damage to, any property (including property belonging to the Council) as a consequence of any act, omission or default on the part of the Service Provider, its employees, agents or sub-contractors, except and to the extent that such liabilities may arise out of the act, default or negligence of the Council..

18. VARIATION

- 18.1 The Council reserves the right to vary any part of this Contract at any time as a result of any change in Law or a direction of Central Government or outcome of review or audit by or for the Council provided that the variation:
- a) fits within the scope of the Service
 - b) and is to be effected in accordance with any statutory timetable that prevails or any other period that is agreed between the parties and then notified in writing by the Council to the Service Provider.
- 18.2 If the funding provided to the Council for the provision of the Service shall be reduced or withdrawn at any time during the Contract Period, the Council may, following consultation with the Service Provider require the Service Provider to cease to provide a substantial part of the Service or substantially vary or reduce the Service to be provided by the Service Provider in return for a commensurate reduction in the Contract Price, providing always that the Service remains a similar service to that for which the Contract was originally awarded, in which circumstances all provisions of this Contract shall remain in full force.

19. OMBUDSMAN

- 19.1 Under the Local Government Act 1974, the Ombudsman may investigate a complaint about an action taken by the Service Provider on behalf of the Council.
- 19.2 The Service Provider will co-operate fully with any such investigation and will reimburse to the Council any payment made to any complainant where a finding of maladministration causing injustice is made as a result of fault by the Service Provider.
- 19.3 The Service Provider shall not complain to the Ombudsman about any alleged maladministration by the Council until the Council has been given an opportunity to consider the complaint.

20. ASSIGNMENT AND SUB-CONTRACTING

- 20.1 This Contract is personal to the Service Provider who may not assign it without the prior consent in writing of the Council.

21. CHANGE OF LEGAL STATUS

- 21.1 In the event of a change affecting the legal status of the Service Provider, the Service Provider will inform the Council without delay.

22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 22.1 The Parties do not intend that any of the terms of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

23. PARTNERSHIP AND AGENCY

- 23.1 The Council and the Service Provider expressly agree that nothing in this Contract in any way creates a legal partnership between them.
- 23.2 The Service Provider will not hold itself to be the agent of the Council or try to bind the Council to any undertaking.
- 23.3 The Service Provider may, with the prior consent in writing of the Council, advertise itself as a contractor of the Council.

24. BUSINESS CONTINUITY

- 24.1 Under the Emergency Planning Act 2006 all public bodies must have business continuity plans in place. The Council expects the Service Provider to have an appropriate business continuity plan in place and shall, upon request make the same available to the Contract Manager and, if requested shall make changes to the business continuity plan as reasonably requested by the Council.
- 25.2 The Business Continuity Plan shall make provision for the continuation of the Service upon the occurrence of a Business Continuity Event with such limitations or reductions to the scope of the Service as may be necessary in all the circumstances.
- 25.3 On the occurrence of a Business Continuity Event, the Service Provider shall make such arrangements as may be necessary to continue providing the Service.

25. SUSTAINABILITY

- 25.1 The Service Provider shall use all reasonable endeavours to ensure that the Service is delivered in a sustainable way and to minimise its impact on the environment wherever possible.

26. PROBITY

- 26.1 The Service Provider will immediately inform the Contracts Manager of any conflict of interest that has arisen or is likely to arise as a result of the Service Provider undertaking work for or providing the Service to a third party other than a Service User.
- 26.2 The Council may seek an alternative provider for some or all of the Service if it has reasonable grounds for believing that such a conflict has arisen or is likely to arise as a result of information received from the Service Provider or otherwise.

27. DECLARATION OF INTERESTS

27.1 The Service Provider will inform the Council in writing if any Officer or elected Member of the Council has or acquires any interest in the Service Provider's business at any time during the Contract Period.

28. NO WAIVER

28.1 If either party fails to insist on the other party upholding any part of the Contract, it does not mean the provision in question no longer applies and it affects neither the validity of the Contract nor the right of either party to enforce any provision in accordance with its terms.

29. RECOVERY OF SUMS

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

30. DATA PROTECTION

30.1 The Contractor shall (and shall procure that any of its Staff involved in the provision of the Agreement) comply with any notification requirements under the Data Protection Act 1998 ("DPA") and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.

30.2 Notwithstanding the general obligation in clause 31.1, where the Contractor is processing "personal data" (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

(a) provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

(b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 31.2; and

(c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

30.3 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

31. FREEDOM OF INFORMATION 2000 (FOI) & ENVIRONMENTAL REGULATIONS 2004 (EIR)

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

- 31.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within three days of receiving a Request for Information;
 - b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within seven days (or such other period as the Council may specify) of the Council requesting that Information; and
 - c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
- 31.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- a) is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations;
 - b) is to be disclosed in response to a Request for Information, and in no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 31.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 31.5 The Service Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004), be obliged under FOIA or the Environmental Information Regulations to disclose Information without consulting with the Service Provider, or following consultation with the Service Provider and having taken its views into account provided always that where clause 31.6 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 31.6 The Service Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 31.7 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 31.5.

32. WHISTLEBLOWING

- 32.1 The Service Provider is encouraged to report to the Contract Manager any concerns regarding the Council, its officers, Members, clients or anyone with whom the Service Provider is engaged. Should the Service Provider consider that the Contract Manager is involved in the issue or that the Contract Manager may have a conflict of Interest, the Service Provider should, report the matter via the Council's website.

33. CONFIDENTIALITY

33.1 Each Party:-

- a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

33.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement:

- a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

33.3 The Contractor shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Agreement.

33.4 The provisions of clauses 33.1 to 33.4 shall not apply to any Confidential Information received by one Party from the other:

- a) which is or becomes public knowledge (otherwise than by breach of this clause);
- b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- d) is independently developed without access to the Confidential Information; or
- e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 34.

33.5 Nothing in this clause shall prevent the Council:

- a) disclosing any Confidential Information for the purpose of:
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources; or

- b) disclosing any Confidential Information obtained from the Contractor:
- (i) to any government department or any other Contracting Council. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Council; or
 - (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Agreement;
 - (iii) provided that in disclosing information under sub-paragraph (b) the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

33.6 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

34. CORRUPTION

34.1 The Service Provider shall not:

- a) offer or agree to give any person working for or engaged by the Council any gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to this agreement, or any other agreement between the Service Provider and the Council, including its award to the Service Provider and any of the rights and obligations contained within it; or
- b) enter into this agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the by or for the Service Provider, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Council before execution of this agreement.

34.2 If the Service Provider (including any Service Provider employee, Sub-Contractor or agent, in all cases whether or not acting with the Service Provider's knowledge) breaches:

- a) Clause 34.1 or
- b) the Bribery Act 2010,

in relation to this agreement or any other contract with the Council, the Council may terminate this agreement by written notice with immediate effect.

34.3 Any termination under clause 14 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council.

34.4 Notwithstanding clause 14, any dispute relating to:

- a) the interpretation of clause 33 to clause 37 inclusive; or
- b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and the decision shall be final and conclusive.

35. TUPE

35.1 The provisions of Appendix 1 (TUPE) shall apply to any transfer of employees under or in connection with this Contract.

37. LAW

37.1 The Contract will be considered as a Contract made in England and according to English Law and the parties submit to the exclusive jurisdiction of the English courts.

APPENDIX 1

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT REGULATIONS 2006 ("TUPE"))

For the purposes of this Schedule-

"Costs and Losses" means 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 breach of the contractual paragraph in question.

"Future Transfer" means any subsequent transfer of or re-provision of any service substantially similar to any of the Services or any part thereof by the Council on or following the assignment, expiry or termination of this Agreement.

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

"New Employee" means those employees employed by the Service Provider to provide the Services or any part thereof who will be working alongside the Transferring Employees.

"Outgoing Contractors" means the outgoing providers of the Services,

"Party" means a party to the Agreement.

"Relevant Agency Workers" means those workers who have completed the qualifying period under Regulation 7 of the Agency Workers Regulations 2010.

"Relevant Employees" means Staff who would be liable to transfer under TUPE irrespective of whether they actually transfer (and for the avoidance of doubt shall include Transferring Employees and Relevant Agency Workers);

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

"Replacement Contractor" 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 Agreement.

"Staff" means all persons employed by the Outgoing Contractors or as the case may be by the Service Provider to perform its obligations under this Agreement together with the Outgoing Contractors' or as the case may be the Service Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Agreement.

"Subcontractors" has the meaning given in clause 1.1 of this Agreement;

"The Services" means the services to be supplied as required by the terms and conditions of this Agreement.

"Term" has the meaning given in clause 1.1 to this Agreement.

"The Transfer Date" means 1 April 2012.

"Transferring Employees" means any Staff 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);

TUPE ACKNOWLEDGEMENT, AGREEMENT ON TRANSFER AND CONDUCT PRIOR TO TERMINATION OF THE AGREEMENT

- 1.1 Insofar as they are able to, the Council and the Service Provider acknowledge that in connection with the execution of this Agreement, and in connection with the provision of the Services under this Agreement, no Relevant Transfer of Transferring Employees from the Council to the Service Provider will have occurred.
- 1.2 The Council hereby makes the Provider aware that there may be a Relevant Transfer of Transferring Employees employed or contracted by the Outgoing Contractors or their subcontractors from the Outgoing Contractors or their subcontractors to the Service Provider. The Council is unable to offer the Service Provider any warranties or indemnities in respect of these Transferring Employees or their status.
- 1.3 The Service Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including, without limitation, all wages, 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 will indemnify the Council against all Cost and Losses in respect of the same.
- 1.4 The Service Provider shall indemnify the Council against all Costs and Losses incurred by the Council in connection with or as a result of:
 - 1.4.1 any claim or demand by any Relevant Employee employed by any Outgoing Contractor prior to the Transfer Date (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, claims that he or she has been unlawfully discriminated against by reason of sex, marital or civil partnership status, gender reassignment, race, disability, age, sexual orientation, religion or belief (whether in breach of the provisions of the Treaty of Rome, the Equal Pay Directive, the Equal Treatment Directive, the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Age) Regulations 2006, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 or otherwise) and/or the Equality Act 2010 in each case arising directly or indirectly from any act, fault or omission of the Service Provider or any of its subcontractors in respect of any Relevant Employee before, on or after the Transfer Date;
 - 1.4.2 any failure by the Service Provider to comply with its obligations under Regulation 13 of the Regulations; and/or
 - 1.4.3 any claim or demand by any Relevant Employee employed by any Outgoing Contractor or the Service 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 Service Provider.

- 1.4.4 any claim or demand by any Transferring Employee or any New Employee on or after the transfer to the Service Provider relating to the Service Provider's failure or that of its subcontractors to
- 1.4.4.1 provide any benefits or provisionally entitlement to benefits under any occupational pension scheme or pension scheme of which one or more of the Transferring Employees were members on the day before the Transfer Date to any of the Transferring Employees who were entitled or provisionally entitled to such benefits on the day before the Transfer Date but only where that benefit or provisional entitlement does not fall within Regulation 10(1) of TUPE and so was capable of transferring to the Service Provider or to its subcontractor (as the case may be) under Regulation 4(1) of TUPE; and/or
- 1.4.4.2. to comply with where applicable the Pensions Acts of 2004, 2008 and 2011 and any other statutory provision, guidance or regulation relating to workforce matters in local authority/public sector service contracts or related matter whether in existence or to be enacted.

General

- 1.5 The Council and the Service Provider acknowledge that this Agreement makes no further provision in connection with the Relevant Transfer as described in Paragraphs 1.2 and that Paragraph 2 is included in order to deal with any Future Transfers occurring in connection with this Agreement.

APPLICATION OF TUPE UPON EXPIRY OR TERMINATION OF THIS AGREEMENT

- 2.1 The Council and the Service Provider acknowledge and confirm that in the event of assignment, expiry or termination of this Agreement and in the event of any Future Transfer by the Council, 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 Paragraph 2 is without prejudice to such determination. The Parties hereby confirm that they will comply with their TUPE obligations arising pursuant to a Future Transfer.
- 2.2 The Parties shall (or, if applicable, the Council shall use its reasonable endeavours to procure that the Replacement Contractor shall) comply with their respective obligations under TUPE and 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 Service Provider will provide and shall procure that any sub-contractor shall:
 - 2.2.1 provide to the Council or the Replacement Contractor (as applicable) the employee liability information required pursuant to Regulation 11 of TUPE 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
 - 2.2.2 indemnify and keep indemnified in full the Council and at the Council's request any Replacement Contractor against all Costs and Losses arising from any claim by any party as a result of the Service Provider or sub-contractor failing to provide or promptly to provide the Council or any Replacement Contractor where requested by the Council with any

employee liability information or as a result of any material inaccuracy in or omission from the employee liability information.

2.2.3 comply and shall procure that any sub-contractor shall comply with its obligations (including without limitation under regulation 13(4) of TUPE) in respect of each Future Transfer occurring pursuant to this Agreement whether upon assignment, expiry or termination.

2.3 Immediately on the expiry, termination or assignment of this Agreement, the Service Provider shall fully indemnify the Council and any Replacement Contractor (and if requested by the Council enter into a deed of indemnity with the Council or any Replacement Contractor whereby the Service Provider agrees to pay and to indemnify the Council or the Replacement Contractor (as applicable)) against all Costs and Losses arising out of-

2.3.1.1 any claim or demand by any Relevant Employee arising from and relating to his employment with the Service Provider or one of the Service Provider's subcontractors prior to the Future Transfer Date and due to, arising from or relating to an act, fault or omission of the Service Provider and/or the subcontractor in relation to any Relevant Employee prior to the Future Transfer Date;

2.3.1.2 any claim or demand arising out of or in connection with employment with the Service Provider or one of the Service Provider's subcontractors, or the termination thereof, by any past, present or future employee of the Service Provider or one of the Service Provider's subcontractors, who is not a Relevant Employee;

2.3.1.3 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 the Replacement Contractor (as applicable) as his employer is both a substantial change and to his material detriment;

2.3.1.4 subject to Paragraph 2.4.2 below, any claim arising out of any failure by the Service Provider or one of the Service Provider's subcontractors to comply with TUPE regulations 11 or 13 prior to the Future Transfer Date;

2.3.1.5 any claim or demand by any trade union or staff association or employee representative (whether or not recognised by the Service Provider and/or the relevant sub-contractor in respect of any Relevant Employees) arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, staff association or employee representative;

2.3.1.6 the matters referred to in Paragraph 2.5 below;

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

2.4 On termination or assignment of this Agreement, the Council shall fully indemnify the Service Provider (and if requested by the Service Provider enter into a deed of indemnity with the Council (or, if applicable the Council shall use its reasonable endeavours to procure that the Replacement Contractor shall enter into such a deed with the Service Provider) whereby the Council or the Replacement Contractor (as

the case may be) agree to pay and to indemnify the Service Provider (as applicable)) against all Costs and Losses arising out of-

- 2.4.1 any claim by any Relevant Employee arising from and relating to his employment or the termination of his employment with the Council or the Replacement Contractor (as applicable) on or after the Future Transfer Date and arising from an act, fault or omission of the Council or the Replacement Contractor (as applicable) in relation to any Relevant Employee whether before, on or after the Future Transfer Date; and
- 2.4.2 any claim arising from a failure by the Council or the Replacement Contractor (as applicable) to supply the Service Provider with information in respect of “measures” under TUPE regulation 13(4);
- 2.4.3 any claim arising from a failure by the Council or the Replacement Contractor (as applicable) to comply with its obligations to consult the Relevant Employees or their representatives pursuant to regulation 13 of TUPE prior to the termination or assignment of this Agreement;

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

2.5 If, by operation of law, the contract of employment of any individual who is not a Transferring Employee takes effect or is alleged to take effect as if originally made with the Council or the Replacement Contractor (as applicable) as a consequence of the termination or assignment of this Agreement, the Service Provider agrees that:

- 2.5.1 in consultation with the Council or the Replacement Contractor (as applicable), it will, within 7 days of being so requested by the Client or the Replacement Contractor (as applicable) (as long as the request is made no later than 14 days after the Council or the Replacement Contractor (as applicable) becomes 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
- 2.5.2 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
- 2.5.3 the Council or the Replacement Contractor (as applicable) shall be entitled to terminate the employment of the individual and the Service Provider shall indemnify and keep indemnified the Council or the Replacement Contractor (as applicable) against all Costs and Losses arising from or in connection with the employment of such individual until such termination and the termination of the employment itself.

2.6 All salaries and other 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 borne by the Service Provider or its subcontractors (as applicable) up to the Future Transfer Date and by the Council or the Replacement Contractor (as applicable) on and after

the Future Transfer Date and all necessary apportionments shall be made to give effect to this Paragraph 2.6.

- 2.7 The Service Provider shall fully indemnify the Council and the Replacement Contractor against all Costs and Losses arising from its or its subcontractors failure to comply with Paragraph 2.6 and the Council shall fully indemnify the Service Provider and its subcontractors against all Costs and Losses arising from its or the Replacement Contractor's failure to comply with Paragraph 2.6.
- 2.8 During the 12 months preceding the expiry of this Agreement or after the Council has given notice to terminate this Agreement or at any other time as directed by the Council, and within 15 working days of being so requested by the Council, the Service Provider shall at its expense and shall ensure that its subcontractors shall fully and accurately disclose to the Council or the Replacement Contractor (as applicable) any and all information in relation to all employees and workers whether employed by the Service Provider or by a subcontractor engaged in providing the Services as set out in Paragraph 3 of this Schedule and 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 Paragraph 4 of this Schedule as the Council may request.
- 2.9 The Service Provider shall warrant the accuracy of all the information provided to the Council or the Replacement Contractor pursuant to this Paragraph 2.8 and authorises the Council or the Replacement Contractor (as applicable) to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the specification (or any part thereof) for this Agreement.
- 2.10 The Service Provider shall notify the Council as soon as reasonably practicable in writing of any material changes to the information supplied in accordance with Paragraph 2.9 as soon as reasonably practicable as and when such changes arise;
- 2.11 The Service Provider agrees that it shall not and shall ensure that any subcontractor shall not with reference to any Relevant Employees in the period six months prior to the expiry of the Agreement, other than with the Council's prior consent and in accordance with prevailing market conditions:
- 2.11.1 other than in circumstances where an individual resigns voluntarily or where an individual's employment is terminated pursuant to policies and procedures of the Service Provider or the sub-contractor (in which cases the said individual may be replaced) make any material increase or decrease in the numbers of Relevant Employees;
 - 2.11.2 make 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; and
 - 2.11.3 transfer any of the Relevant Employees to another part of its business or move other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent.
- 2.12 The Service Provider shall indemnify and shall keep indemnified in full the Council and at the Council's request any Replacement Contractor against all Costs and Losses arising from any claim by any party as a result of the Provider's or any subcontractor's failure to comply with the Provider's obligations under Paragraphs 2.8, 2.9, 2.10 and 2.11 above save that this indemnity shall not apply in respect of

any failure to the extent that such information was originally provided to the Service Provider by the Council and was materially inaccurate or incomplete when originally provided.

- 2.13 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Paragraph 2 to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.14 Despite Paragraph 2.13, it is expressly agreed that the parties may by agreement rescind or vary any terms of this agreement 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.

3. EMPLOYEE INFORMATION

Individual terms and conditions

- 3.1 Copies of all current employment contracts, and all other terms and conditions of employment.
- 3.2 A schedule comprising in respect of each Relevant Employee, the following particulars:-
- (a) full name of the employee and his/her current employer;
 - (b) post/job title;
 - (c) hours of work (indicating whether the employment is considered to be full or part time);
 - (d) sex;
 - (e) date of birth;
 - (f) date of commencement of employment (and if different, date of commencement of period of continuous employment);
 - (g) place of work;
 - (h) holiday entitlement;
 - (i) notice period (or, if relevant, duration of fixed-term);
 - (j) normal retirement age;
 - (k) remuneration (including rate and intervals at which paid);
 - (l) pension details;
 - (m) sick pay entitlements
- 3.3 Details of any changes of terms and conditions in relation to any employee within the last 12 months.
- 3.4 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.

3.5 Copies of any job descriptions.

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

Collective bargaining

3.7 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.

3.8 Details of any trade union recognised by the Service Provider and/or any other employer of a Relevant Employee 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.

3.9 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

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

3.11 Details of any litigation threatened or pending within the last 2 years against the Service Provider or any other employer of a Relevant Employee, including any court, employment tribunal or arbitration claims or any matters which might give rise to such.

3.12 Details of any enquiry, correspondence or contact within the last 2 years between the Service Provider or any other employer of a Relevant Employee and the Equality and Human Rights Commission, the Commission for Racial Equality, the Equal Opportunities Commission, the Health and Safety Inspector, the Inland Revenue or any similar body concerning employees.

3.13 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).

3.14 Details, and, if available, copies, of any warnings given to employees under the disciplinary or capability procedure or similar procedures of the Service Provider or any other employer of a Relevant Employee within the last 2 years.

Dismissals

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

3.16 Details of all employees recruited within the last 12 months.
Working Time Regulations 1998

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

Health and Safety

- 3.18 Details of any health and safety committees/representatives.
- 3.18 Details of any health and safety complaints or recommendations or claims within the last 5 years.

Trainees/Consultants

- 3.20 Details of all individuals involved in the provision of the Agreement working on training, work experience or similar schemes.
- 3.21 Details of all consultancy agreements or self-employed personnel who are or may actually be employees.
Absent employees
- 3.22 Details of all employees who have notified the Service Provider or any other employer of a Relevant Employee 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 leave.
- 3.23 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).
- 3.24 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

- 3.25 A copy of any job evaluation scheme.

Subcontractor Employees

- 3.26 All details under Paragraph 3 of any individuals employed by contractors.

Pension

- 3.27 A list of all pension schemes (both occupational and personal) applicable to the employees.
- 3.28 Details of any current or pending applications for early retirement.

TRANSFERRING EMPLOYEES

- 4. The Service Provider represents that in its opinion that by virtue of the Regulations and/or the Directive the following employees will transfer to the Employment of the Council or the Replacement Contractor in the event of a Future Transfer:

(Insert name of Employee and name of the current employer if not the Service Provider)