



Kent County Council

Pre Placement Agreement

_____ for _____

'Residential Care Homes for Persons with Mental Health Needs'

This Pre Placement Agreement is a part of the contract documentation. It should be read in conjunction with the Specification and associated Good Care / SCIE Guides

Documents Prepared By:

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VARIATION TO AGREEMENT

These Conditions are issued as a variation to the existing agreement. These Conditions will take precedence over any previously issued and agreed Conditions and will be current as of the Conditions commencement date.

The commencement date of these Conditions will be: July 2014

BETWEEN:

THE KENT COUNTY COUNCIL of County Hall, Maidstone, ME14 1XQ (the "Council");
and

[SERVICE PROVIDER NAME] LIMITED (The Service Provider):

Name of Organisation:

Registered Address:

Company Registration Number:

IT IS AGREED:

That this variation to the Conditions of Contract will take precedent over any preceding Conditions of Contract.

Please confirm acceptance to this amendment by signing in the specified place below. Please make sure that the person who signs has the authority to act for the business in contractual matters.

Please return a signed copy of the 'Variation to Agreement sheet', via e-mail to: AccommodationSolutions@kent.gov.uk . The Document will then be counter signed by an Authorised KCC individual and a copy returned to the Service Provider, for retention

Signed on behalf of and authorized by the Council:

Signature 

Name [printed] CHRISTY HOLDEN

Position HEAD OF STRATEGIC COMMISSIONING
ACCOMMODATION SOLUTIONS

Date July 2014

Signed on behalf of and authorized by the Service Provider:

Signature

Name [printed]

Position

Date

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Definition

Term	Meaning
"Data Protection Act"	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
"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 Recovery Plan"	means a plan which sets out the procedures to be adopted by the Contractor in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Contractor in planning and providing for any such event), the Disaster Recovery Plan at the date of this agreement being set out in in Clause 57
"Environmental Information Regulations	" means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
"Force Majeure"	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

Term	Meaning
	<p>disaster, natural or man-made, but excluding:</p> <p>(a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or</p> <p>(b) the failure by any sub-contractor to perform its obligations under any sub-contract.</p>
"Law"	<p>means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21 (1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.</p>
"Quality Standards"	<p>means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization 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 Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed and required in the Specification</p>
"Regulated Activity"	<p>in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.</p>
"Regulatory Bodies"	<p>means those government departments and regulatory, statutory and other entities,</p>

Term	Meaning
	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.
"Schedule"	means a specific Contract requirement attached to, and forming part of, the Contract.
"Specification"	means the description of the Services to be supplied under the Contract as set out in the Specification including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
"Staff"	means all persons employed or engaged by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and sub-contractors
Agreement	all the terms and Appendices of this Pre Placement Agreement
Appendix	Means an appendix to this Agreement
Approval	Means the written consent of the council
Care Coordinator	The person we have deployed to arrange and review residential care for people who have been found on assessment to be owed a duty under section 21 of the National Assistance Act 1948 and under section 117 of the Mental Health Act 1983.
Care Manager	the practitioner who usually assesses the needs of Service Users and arranges services to meet them and whose work is controlled by the Council
Care Plan	the plan the Council produces to describe the needs of a Service User

Term	Meaning
	and the service response that is in his or her best interests
Commencement Date	Means the date stated in the document as date of enactment
Commercially Sensitive Information	<p>means the information listed in Schedule 11 (Commercially Sensitive Information) comprised of information:</p> <p>which is provided by the Contractor to the Council in confidence for the period set out in that Schedule; and/or</p> <p>that constitutes a trade secret.</p>
Confidential Information	<p>means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:</p> <p>(a) was public knowledge at the time of disclosure (otherwise than by breach of clause 27 (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>

Term	Meaning
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	the Agreement, the Specification and the Contract Award Letter
Contract Award Letter	the letter from the Council to the Service Provider which communicates the Council's acceptance of the Service Provider's standing offer to provide the Service
Contract Period	means the period stated in the Agreement
Contract Price	<p>The gross price that we will pay you for each Service User who, as a resident admitted on or after 1 April 2005 under a statement of terms and conditions with you, receives the service. This sum will be varied over time in accordance with clause 10.</p> <p>Service Users who were living in the Home prior to the contract award date will be covered by this contract, and will remain at the existing price. This sum will be varied over time in accordance with clause 10.</p> <p>For the Service Users you admit from the contract award date, you will be paid the gross price that you have determined as payable to you for one bed place per week as set out in Appendix 2 and varied over time in accordance with clause 10.</p>
Contracts Manager	the employee of the Council who is responsible for managing the Social Services Directorate's contracts for social care services for Mental Health Residents covered under Contract by Kent County council.
Council	The Kent County Council

Term	Meaning
Council's Elected Members	
Enhanced Care	An additional on-going payment for a Service User, whose need for care in the home has been assessed and agreed by the Care Co-ordinator as meeting the eligibility criteria for Enhanced Care and as part of the Care Programme Approach. Enhanced Care is defined in further detail in the Specification.
Financial Activation Notification	the form which is generated by the Council's information system when a Care Manager arranges a placement in an independent care home. It activates the Council's first payment, confirms the Contract Price and period of the initial payment and provides information to facilitate future invoicing
Home	The registered care home that is detailed in Appendix 1
Intellectual Property Rights	" means patents, inventions, trademarks, service marks, logos, design rights applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registered or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
Long-term Placement	Residency where it is intended that the Service User will not return home.
One to One Support	A short-term flexible service which will be purchased by a care Co-ordinator on an individual hourly basis. The service will be Care Plan specific, time limited and intended to cover the cost of back filling for care workers. One to One Support is defined in further detail in the Specification.
Order	the Service Delivery Order and Care Plan constitute the Council's order for

Term	Meaning
	service under the Contract for an individual Service User
Personal Expenses Allowance	the allowance payable by the Department of Social Security to a Service User for his or her personal use
Regulator	The body which is established by statute and to whose regulatory powers you are subject. At the start date this will be the Commission for Social Care Inspection.
Serious Breach	a breach of duty of care to a Service User by which the Service User suffers harm or any malicious act toward the Council
Service	The accommodation together with personal care, that you will provide in your Home for a Service User in accordance with the provisions of the Care Standards Act 2000 and the terms of this Agreement.
Service Delivery Order	the form produced by the Council which records the detail of the service necessary to meet the Service User's needs
Service Provider	the legal owner of the Home who is named in Appendix 4 of the Agreement
Service User(s)	A person aged 18 years or over who has been found on assessment to be in need of accommodation together with care and to qualify under our eligibility criteria for our financial support. You will have a Service Delivery Order for him or her
Short-term Placement	Residency where it is intended that the Service User will return home. A Short-term Placement may be referred to as respite care.
Specification	Our "Specification for Care Homes for People with Mental Health Problems" which is Appendix 3.

Term	Meaning
Staff	the managerial, professional and care employees of the Service Provider who are involved in providing the Service
Sub-Contractor	A person or organisation that supplies services to the Service Provider
Trial Period	the Service User's first 28 days of a stay in the Home
Variation	has the meaning given to it in clause 19 (Variation).
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
Working Day(s)	means Monday, Tuesday, Wednesday, Thursday and Friday between the hours of 0900 and 1700, except when these days are recognised Bank Holidays

Conditions of Agreement

1	Start date and period of agreement	1.1	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 1.2.
		1.2	Where stipulated the Council may, by giving written notice to the Service 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 6 (Price Adjustment)) throughout any such extended period
2	Entire Agreement	2.1	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.
3	Allocation of Places	3.1	You have the right to refuse admission to a prospective resident referred through a Care Co-ordinator.
		3.2	Staff may not move a Service User to another bedroom in the Home or to other accommodation unless an emergency necessitates it or the Service User's and the Care Co-ordinator's consent is gained beforehand.

- 3.3 You will offer accommodation in a single room, unless the Service User specifically requests otherwise.
- 4 Contacts**
- 4.1 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 the Contract Manager or such other person as is notified in writing by the Service Provider to the Contracts Manager.
- 4.2 For the purpose of an Order, the Service Provider's contact for the Council will be the Care Manager named on the Order.
- 4.3 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 as per the Clause [29]' Notices'
- 5 Review**
- 5.1 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. in line with any associated Contract Management (CM) practises.
- 5.2 The Council will carry out a fundamental review of the Contract at least five years after the date on which it takes effect and then at least once during every subsequent five year period. In line with associated Contract Management practises.
- 5.3 The Council will review an Order at least once a year and also at the reasonable request of any party to it. In line with associated Contract Management practises.
- 6 Price**
- 6.1 On the first and subsequent anniversaries of the date on which the Contract takes effect, the Council will assign an increase

decrease or static award to the Contract Price which takes account of known changes in the costs of provision over the previous twelve months and has been authorised by the Council's Elected Members in accordance with the Council's constitution.

6.2 The Service Provider will not accept any payment from the Service User or his or her representative for any part of the Service that is deemed to be included in the Contract Price.

6.3 If the Service Provider provides additional services at the request of the Service User or his or her representative, the Council will regard this as a private arrangement and outside of the Order. Within 5 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. The additional services will usually be as the Service Provider has recorded in Appendix 3 of the Agreement.

6.4 The Service User will have absolute discretion in spending his or her Personal Expenses Allowance and any other money belonging to him or her. The Service Provider must inform the Care Manager without delay if a Service User becomes incapable of handling his or her money.

7 Payments Arrangements

7.1 On placement of a Service User, the Council will issue a Financial Activation Notification to the Service Provider.

7.2 On the first day after the payment cycle recorded on the Financial Activation Notification ends, the Service Provider will send an invoice for the agreed amount to the Council.

7.3 On its receipt of the invoice, the council will pay the Service Provider once every four weeks (two weeks in

advance and two weeks in arrears) by the Banks automated clearing system.

- 7.4 The Service 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
- 7.5 Where the Service Provider enters into a sub-contract with a supplier or Service Provider 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 Service Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 7.6 The Service Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
- 7.7 The Service 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 Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this clause 0 shall be paid by the Service 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.
- 7.8 The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Contract under

clause 53 (Termination on Default) for failure to pay undisputed sums of money.

7.9 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council during the Contract Period and following the end of the Contract for the period in line with the CM Schedule.

8 Monitoring Performance

8.1 The Service Provider will comply with the monitoring and evaluation arrangements set out in the Specification and In line with associated Contract Management practises. .

8.2 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.

8.3 The Council reserves the right to visit the Home and/or a Service User at any reasonable time without giving notice and without prejudice to the Service User's privacy.

8.4 The Council reserves the right to directly elicit the views of consenting Service Users in the Home having regard to their privacy.

8.5 The Council reserves the right to request details of the financial standing of the Service Provider at any time during the life of the Contract. This right will not be exercised unreasonably by the Council and it will treat any information gained in accordance with the provisions for confidentiality at clause 27.2. (Confidentiality)

9.1 The Council and the Service Provider will make every reasonable effort to resolve by agreement any dispute between them about any issue relating to the Contract. In line with associated Contract Management practises

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

9.2.1 a neutral adviser or mediator (the “**Mediator**”) shall be appointed by the Centre for Effective Dispute Resolution.

9.2.2 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.

9.2.3 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.

9.2.3 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

9.2.5 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.

9.2.6 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

10	Default	10.1	<p>If either party considers that the other is in default of its particular obligations under the Contract or an Order, it will notify the other party in writing of the default In line with associated Contract Management practises.</p>
		10.2	<p>Where the matter remains unresolved after the specified time then it may be referred to the disputes procedure contained in clause 9 of the Agreement or the termination procedures contained in clauses 11 and 12 of the Agreement.</p>
11	Termination of Contract	11.1	<p>The Service Provider will notify the Council without delay if it cannot meet its commitments under the Contract. In this circumstance and without prejudice to the continuation of the Contract, the Council may help the Service Provider to ensure the continuity of the Service In line with associated Contract Management practises.</p>
		11.2	<p>The Contract may be ended at any time by either party giving to the other not less than 3 months prior notice in writing to expire at any time. Any such notice will state the reasons for termination.</p> <p>The Council may terminate the Contract without notice and recover from the Service Provider the amount of any loss resulting from the</p>

termination if the Service Provider:

11.2.1 is in Serious Breach of the Contract;

11.2.2 is in Continuing Breach of the Contract;

11.2.3 fails to remedy a breach which is capable of being remedied within 20 Working Days of receiving notice from the Council specifying the breach complained of;

11.2.4 is convicted of an offence under the provisions of the Care Standards Act 2000 and regulations thereto and any subsequent amendments;

11.2.5 ceases to hold appropriate registration under the Care Standards Act 2000;

11.2.6 sells or otherwise disposes of the Home;

11.2.7 becomes bankrupt or is the subject of any application or arrangement under the provisions of the Insolvency Act 1986;

11.2.8 has a winding-up order made (except for the purposes of amalgamation or reconstruction) or a resolution of a voluntary winding-up is made;

11.2.9 has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;

11.2.10 has an administrative receiver as defined in the Insolvency Act 1986 appointed;

11.2.11 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;

11.2.12 takes financial advantage of a Service User;

11.2.13 inappropriately solicits money from a Service User's representative;

11.2.14 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;

11.2.15 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 Agreement;

11.2.16 defrauds the Council.

11.2.17 fails to comply with Contract Management practises

11.3 On termination for any reason other than the Home closing, the Contract will remain in force for those Service Users already in the care of the Service Provider who choose to stay so that their health, safety, well-being and dignity are protected until they are discharged from the Service Provider's care.

11.4 The Service Provider will be entitled to any of the payments due to it on the date of such termination pursuant to clause 7. Any funds paid to the Service Provider in advance will be re-calculated on a pro rata basis and the Council will be entitled to repayment of any sums paid to the Service Provider in respect of any period after the date of termination.

11.5 The Service Provider shall notify the Council immediately if the Service Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("change of control"). The Council may terminate the Contract by notice in writing with immediate effect within six months of:

11.5.1 being notified that a change of control has occurred; or

11.5.2 where no notification has been made, the date that the Council becomes aware of the change of control,

11.5.3 but shall not be permitted to terminate where an Approval was granted prior to the change of control.

12 Termination of an Order

12.1 During a Trial Period, the Council or the Service Provider may terminate an Order by giving to the other party at least 5 Working Days prior notice in writing.

12.2 The Council or the Service Provider may terminate an Order for a short-term placement by giving to the other party at least 5 Working Days prior notice in writing, or at least 2 Working Days prior notice in writing if the placement is for less than a week or in line with Contract Management practises .

12.3 In the case of a longer-term placement, the Council may terminate the Order by giving to the Service Provider at least 20 Working Days prior notice in writing if in its opinion the Service User no longer requires the Service.

12.4 The Service Provider may terminate an Order for a longer-term placement by giving to the Council at least 20 Working Days prior notice

in writing if the needs of the Service User are such that it is agreed the Home is unable to provide appropriate care.

12.5 Where either party to the Contract fails to give such notification, it will pay to the other party a sum proportional to the Contract Price which makes up the notice period due when it is added to the number of day's notice given, or any lesser amount that the other party accepts.

12.6 Where both parties agree it is in the best interests of either the Service User concerned or other residents for him or her to move to alternative accommodation urgently, the Council will arrange the move as soon as possible. In such circumstances, the Order and payment will terminate on the day the Service User moves from the Home unless the absence is expected to be temporary where the provisions at clause 14 will apply.

12.7 The Service Provider may terminate an Order without notice if a Service User's condition or behaviour is having a persistent and detrimental effect on the well-being of other residents and the Council has not arranged alternative accommodation for him or her after a reasonable written request by the Service Provider.

12.8 The Council may terminate an Order without notice if it has to move a Service User because the Home is to close.

13 Trial Period

13.1 After consultation with the Service User and his or her representative, the Trial Period may be extended by agreement between the Care Manager and the Service Provider.

13.2 The Order may be reviewed where a Service User becomes absent from

			the Home for a continuous period of more than 42 days in the case of hospitalisation or 21 days in the case of other absences or such other period as is agreed between the parties an in line with the Contract Management practises.
		13.3	The Contract Price will be paid until the Service User returns or the Order ends (or the shorter period that you and we may agree on). Our suspension of any payment for extra support will be subject to negotiation with you and will be in line with Contract management practises.
		13.4	The Service Provider and the Council may not let or otherwise use the Service User's allocated room during any absence without the prior consent of the Service User, his or her representative and the other party to the Order.
14	Temporary absence from the home	14.1	The Order may be reviewed where a Service User becomes absent from the Home for a continuous period of more than 42 days in the case of hospitalisation or 21 days in the case of other absences or such other period as is agreed between the parties an in line with the Contract Management practises.
		14.2	The Contract Price will be paid until the Service User returns or the Order ends (or the shorter period that you and we may agree on). Our suspension of any payment for extra support will be subject to negotiation with you and will be in line with Contract management practises.
		14.3	The Service Provider and the Council may not let or otherwise use the Service User's allocated room during any absence without the prior consent of the Service User, his or her representative and the other party to the Order.
15	Death or	15.1	The Service Provider will notify the

	Discharge of a Service User		Care Manager without delay if the Service User either dies or discharges himself or herself from the Home.
		15.2	When a Service User dies, the Order will end 7 days after his or her death (counting from the first day after the day of death) if the bedroom is unoccupied or any other period by agreement between the Care Manager and the Service Provider.
		15.3	The Service Provider will be responsible for asking the Service User's next of kin or where appropriate the responsible public authority to make necessary arrangements, including a funeral, upon the death of a Service User.
		15.4	In the event that a Service User discharges himself or herself from the Home, the date of discharge will be deemed as the start of the period of notice from the Council pursuant to clause 12 unless notice was previously served by either of the parties.
16	Closure of the Home	16.1	In the event of a planned closure or an actual or potential emergency closure of the Home, the Service Provider will inform the Council as soon as possible and in line with Contract Management practises.
		16.2	In an emergency like a fire or a flood, the Service Provider will move the Service User to a safe and appropriate place with the minimum of fuss. The Service Provider will inform the Care Manager as soon as is reasonably possible.
17	Statutory Obligations	17.1	The Council and the Service Provider will comply with all relevant current and future legislation applicable to the provision of the Service
18	Insurance / Liability and Indemnity	18.1	The onus is on the Service Provider to ensure that its insurance policies are adequate to cover eventualities

**Please note:
Employers Liability
Insurance does not
have to be
effected where a
business employs
family only**

- pertaining to its business.
- 18.2 The Service Provider will maintain the following minimum insurance cover:
- 18.2.1 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
- 18.2.2 Employers Liability Insurance: £5 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
- 18.2.3 Professional Indemnity Insurance: £5 relating to Medical Malpractice 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
- 18.2.4 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
- 18.2.5 adequate insurance cover to enable it to fulfil its responsibility under the Contract in the event of material damage which causes the Service to be continued at another or multiple other locations
- 18.3 The Service Provider will procure and maintain the above mentioned insurances with a reputable company or companies.
- 18.4 The Service Provider will provide to the Council on request or on renewal 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.

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

18.5.1 death or personal injury caused by its negligence; or

18.5.2 Prohibited Act; or

18.5.3 fraudulent misrepresentation; or

18.5.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

18.6 Subject to clause 18.6 and 18.7 the Service 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:

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

18.6.2 the act, omission or default of the Service 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

18.6.3 any other loss which is caused directly or indirectly by any act or omission of the Service Provider.

18.7 The Service 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.

18.8 Subject to clause 18.1, the Service Provider's liability under this Agreement shall be limited to the amount stated in Contract

19 Variation

19.1 Subject to the provisions of this clause 19, the Council may request a variation to the Specification including a change to the Specification. Such a change is hereinafter called a "Variation".

19.2 The Council may request a Variation by notifying the Service Provider in writing of the "Variation" and giving the Service 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 Service 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 Service Provider accepts the Variation it shall confirm the same in writing.

19.3 In the event that the Service 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;

19.3.1 allow the Service Provider to fulfil its obligations under the Contract without the variation to the Specification;

19.3.2 terminate the Contract with

immediate effect

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

20 Ombudsman

20.1 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.

20.2 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 mal-administration causing injustice is made as a result of fault by the Service Provider.

20.3 The Service Provider may complain to the Ombudsman about maladministration by the Council which caused injustice to the Service Provider after the Council has been given an opportunity to consider the complaint.

21 Assignment and Sub-Contracting

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

21.2 The Service Provider may sub-contract for the hiring of employment bureaux staff to cover vacancies in crucial posts and may, with the prior consent in writing of the Council, sub-contract the day activities element of the Service. The Service Provider may not sub-contract any of its other responsibilities under the Contract.

- 21.3 The Service Provider may, with the prior consent in writing of the Council, use self-employed persons to carry out activities which complement the Service.
- 21.4 The Service 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 Service Provider of any of its obligations or duties under the Contract.
- 21.5 The Service Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 21.6 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 Service Provider to the Council as soon as reasonably practicable
- 21.7 The Service 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.
- 21.8 The provisions of clause 7 (Payment Arrangements) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.

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

21.9.1 any Contracting Authority; or

21.9.2 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

21.9.3 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 Service Provider's obligations under the Contract.

21.10 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.

21.11 The Council may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service 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 Service 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.

21.12 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.

22 Change of Legal Status

22.1 Where the Service Provider undergoes a Change of Control without obtaining the prior written approval of the Council, the Council may terminate the Contract forthwith by notice in writing to that effect, provided that the Council exercises its right to terminate within 6 months of:

22.1.1 receiving notification of the Change of Control from the Service Provider; or

22.1.2 otherwise becoming aware of the Change of Control.

22.2 For the purposes of this clause, a Change of Control shall mean:

Any sale, transfer or disposal of any legal, beneficial or equitable interest in relation to more than 50% of the outstanding voting securities or capital stock of the Service Provider, or any other comparable equity or ownership interest with respect to the Service Provider as defined in section 1124 of the Corporation Tax Act 2010, except where such sale or transfer of shares relates to.

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 Service Provider of the Council.
24	Probity	24.1	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.
		24.2	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.
		24.3	Any additional costs related to the transfer of the Service User is the responsibility of the Service Provider
25	Declaration of Interests	25.1	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 life of the Contract.

25.2 The Service Provider shall take appropriate steps to ensure that neither the Service 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 Service Provider and the duties owed to the Council under the provisions of the Contract. The Service Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

25.3 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 Service 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.

26 Waiver

26.1 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.

26.2 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 29 (Notices).

26.3 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.

27 **Confidentiality** 27.1

Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

27.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

27.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

27.2

Clause 27.1 shall not apply to the extent that:

27.2.1 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 [?] (Freedom of Information);

27.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

27.2.3 such information was obtained from a third party without obligation of confidentiality;

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

27.2.5 it is independently developed

without access to the other party's Confidential Information.

27.3 The Service 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.

27.4 The Service 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 Agreement.

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

27.6 Nothing in this Agreement shall prevent the Council from disclosing the Service Provider's Confidential Information:

27.6.1 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;

27.6.2 to any consultant, Service Provider or other person engaged by the Council or any person

conducting an Office of Government Commerce gateway review

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

27.6.4 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.

27.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause 27.6 is made aware of the Council's obligations of confidentiality.

27.8 Nothing in this clause 27 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 use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

28

Council Obligations

28.1 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 Service Provider.

29	Notices	29.1	Except 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.
		29.2	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 0. 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.
		29.3	For the purposes of clause 29.2 the address of each Party shall be the address stipulated in the Conditions
		29.4	Either Party may change its address for service by serving a notice in accordance with this clause
30	Mistakes in Information	30.1	The Service Provider shall be responsible for the accuracy of all documentation and information supplied to the Council by the Service 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.
31	Service Levels	31.1	Where any part of the Services is

	and Service Credits		subject to a specific Service Level, the Service 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.
		31.2	The Service Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 32
		31.3	If the Service Provider fails to provide the Services in accordance with any individual Service Level, the Service Provider shall pay to the Council the Service Credit set out in line with the Contract management practises.
		31.4	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.
32	Provision and Maintenance of Equipment	32.1	The Service Provider shall provide all the Equipment necessary for the supply of the Services
		32.2	The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition. The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
33	Safeguarding Children and Vulnerable Adults	33.1	The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

33.2 The Service Provider shall ensure that all individuals engaged in the provision of the Services are:

33.2.1 subject to a valid enhanced disclosure check undertaken through the Disclosure and

33.2.2 the Service Provider shall monitor the level and validity of the checks under this clause 33 for each member of staff.

33.3 The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service 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.

33.4 The Service 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 33 have been met.

33.5 The Service Provider shall refer information about any person carrying out the Services to the ISA 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 service users/children/vulnerable adults.

- 33.6 The Service 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 service users.
- 33.7 The Service Provider shall comply and shall ensure that all Staff comply with the Kent and Medway Safeguarding Children's Procedures 2007¹ and the Multi Agency Adult Protection Policy, Protocols and Guidance for Kent and Medway² (updated six monthly) and the Service Provider's own policy and procedure concerning Adult Protection/Safeguarding
- 33.8 The Service 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.

¹ <http://www.mscb.org.uk/Files/Procedures/MedwayandKentSafeguardingProcedures.pdf>

² http://www.kent.gov.uk/adult_social_services/information_for_professionals/service_information/adult_protection/documents_library/policies_and_acts/policy.protocol_and_guidance.aspx

- 33.9 The Service 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 Service User. 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
- 33.10 The Service 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/ electronic file kept specifically for the purpose, and on the personal file of the Service User.
- 33.11 The Service Provider shall have a 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 can include situations when Staff believe that:
- 33.11.1 a criminal offence has been committed;
 - 33.11.2 someone has failed to comply with a legal obligation;
 - 33.11.3 a miscarriage of justice has occurred;
 - 33.11.4 the health and safety of an individual is being endangered; and
 - 33.11.4 there are or may be financial

irregularities

- 33.12 The Service Provider shall have in place policies and procedures for Staff regarding the service user's will and bequests. The policies and procedures shall prevent the involvement of any Staff, or family members of Staff, in the making of, or benefiting from, the service users 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.
- 33.13 The Service Provider shall ensure that all Staff shall receive training on the prevention of abuse within [one month] 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.
- 33.14 The Service Provider shall ensure that all Staff shall comply with the Mental Capacity Act (MCA) 2005 (as amended and updated from time to time), and the Deprivation of Liberty Safeguards (DOLS). The Service Provider's processes shall 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 Service Provider's records must provide evidence of compliance with the MCA and DOLS where appropriate. The Service Provider shall ensure that all Staff shall receive training on MCA and DOLS.

33.15 The Service Provider shall have in place throughout the Contract Period 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.

33.16 The Service Provider shall have in place throughout the Contract Period 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.

33.17 The Service Provider shall ensure that 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.

33.18 The Service Provider shall (at no additional cost to the Council) assist the Council by providing such information as the Council may request in relation to a serious case review. If for any reason, the Service Provider cannot assist they must inform the Council in writing within 48 hours of request. The Service Provider must also stipulate why they cannot assist with the request.

34

**Parent
Company
Guarantee**

34.1 Where the Service Provider stipulated shall procure the delivery of a parent company guarantee in line with the CM practices.

35**Recovery of Sums**

- 35.1 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 agreement or contract with the Council.
- 35.2 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.
- 35.3 The Service 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 Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.
- 35.4 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.

36

**Prevention of
Bribery and
Corruption**

36.1

The Service Provider:

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

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

36.2

The Service Provider shall:

36.2.1 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;

36.2.2 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 Service Provider) compliance with this clause 36 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

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

36.4 If any breach of clause 36.1 is suspected or known, the Service Provider must notify the Council immediately.

36.5 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 36.1, the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the period specified in the Contract Particulars following the expiry or termination of this Agreement

36.6 The Council may terminate this Agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 36.1.

Any notice of termination under clause 36 must specify:

36.7.1 the nature of the Prohibited Act;

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

36.7.3 the date on which this Agreement will terminate.

		36.7	<p>Despite clause 9 (Dispute resolution), any dispute relating to:</p> <p>36.7.1 the interpretation of clause 36; or</p> <p>36.7.2 the amount or value of any gift, consideration or commission,</p> <p>shall be determined by the Council and its decision shall be final and conclusive.</p> <p>Any termination under clause 36.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.</p>
37	Equalities	37.1	<p>The Service Provider shall and shall ensure its sub-contractors 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.</p>
		37.2	<p>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 Condition 37.</p>
38	The Contract (Rights of Third Parties) Act 1999	38.1	<p>Unless expressly stated in this Agreement, a person who is not a Party to the Contract shall have no right to enforce any of its provisions</p>

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.

39 **Environmental Requirements** 39.1

The Service 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.

40 **Health and Safety** 40.1

The Service 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 Service Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Service Provider in the performance of its obligations under the Contract.

40.2

The Service 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 of the Resident(s).

- 40.3 The Service 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 on the Premises in the performance of its obligations under the Contract.
- 40.4 The Service 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.
- 41 Data Protection Act 1999/2003**
- 41.1 For the purposes of this clause 41, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing shall have the meaning prescribed under the DPA
- 41.2 The Service Provider shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- 41.3 Notwithstanding the general obligation in clause 41.2, where the Service Provider is processing Personal Data (as defined by the DPA) as a Data Processor for the Council the Service Provider shall:
- 41.3.1 process the Personnel Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Council;

41.3.2 comply with all applicable laws;

41.3.3 process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body;

41.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

41.3.5 take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;

41.3.6 obtain prior written consent from the Council in order to transfer the Personal Data to any sub-contractor for the provision of the Services;

41.3.7 not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Council;

41.3.8 ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the

obligations set out in this clause 41;

41.3.9 ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council

41.3.10 not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council; and

41.4 41.4.1 a request from a Data Subject to have access to that person's Personal Data; or

41.4.2 a complaint or request relating to the Council's obligations under the DPA

The provision of this clause 41 shall apply during the Contract Period and indefinitely after its expiry.

42

Freedom of Information Act 2000

42.1

The Service 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.

42.2 The Service 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;

42.2.1 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

42.2.2 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.

42.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement 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

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

42.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 42) 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 Service Provider or the Services in certain circumstances:

42.5.1 without consulting the Service Provider; or

42.5.2 following consultation with the Service Provider and having taken their views into account;

provided always that where clause 42.5.1 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.

42.6 The Service 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.

42.7 The Service 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 42.

43	Publicity, Media and Official Enquires	43.1	The Service 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.
		43.2	The Service Provider shall take reasonable steps to ensure that its servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 43.1.
44	Intellectual Property Rights	44.1	All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the " IP Materials "): <p style="margin-left: 20px;">44.1.1 furnished to or made available to the Service Provider by or on behalf of the Council shall remain the property of the Council; and</p> <p style="margin-left: 20px;">44.1.2 prepared by or for the Service Provider on behalf of the Council for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract shall belong to the Council;</p>
		44.2	The Service 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 <p style="margin-left: 20px;">44.2.1 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 Service Provider. The Service Provider shall</p>

execute all documentation
necessary to execute this assignment

- 44.3 The Service Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract..
- 44.4 The Service 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 Service Provider or to any other third party supplying services to the Council.
- 44.5 The Service Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Service 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:

44.5.1 items or materials based upon designs supplied by the Council; or

44.5.2 the use of data supplied by the Council which is not required to be verified by the Service Provider under any provision of the Contract.

44.6 The Council shall notify the Service Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Service Provider

44.7 The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Service Provider, provided always that the Service Provider:

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

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

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

44.8 The Council shall at the request of the Service Provider afford to the Service Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Service Provider by a third party for infringement or alleged infringement of

44.9 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 Service Provider in connection with the performance of its obligations under the Contract.

44.10 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 Service Provider is likely to be made, the Service 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:

44.10.1 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 mutates mutandis to such modified Services or to the substitute Services; or

44.10.2 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 Service Provider is unable to comply with clauses 44.10.1 or 44.10.2 within 15 Working Days of receipt of the Service Provider's notification the Council may terminate the Contract with immediate effect by notice in writing.

		44.11	The Service 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 Service 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.
45	Audit	45.1	The Service Provider shall keep and maintain for the period stipulated in the Contract Management practises 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 Service Provider shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.
46	Severability	46.1	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.
47	Remedies for inadequate Performance	47.1	To be delivered as per the Contract Management Practises
48	Remedies Cumulative	48.1	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.

49	Contract Management	49.1	The Service Provider shall comply with the monitoring and contract management arrangements set out in the Contract Management practises including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Contract.
50	Entire Agreement	50.1	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.
51	Counterparts	51.1	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.
52	Warranties and Representations	52.1	<p>The Service Provider warrants and represents that:</p> <p>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 Service Provider;</p>

- 52.2 In entering the Contract it has not committed any Prohibited Act;
- 52.3 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;
- 52.4 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;
- 52.5 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;
- 52.6 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 Service 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 Service Provider's assets or revenue;
- 52.7 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;

52.8 In the three 3 years prior to the date of the Contract:

52.8.1 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;

52.8.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

52.8.3 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.

53 Termination on Default

53.1

53.1.1 the Service 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

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

53.1.3 the Default is a material breach of the Contract.

53.2 In the event that through any Default of the Service Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Service 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.

53.3 If the Council fails to pay the Service Provider undisputed sums of money when due, the Service 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 Service 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 35 (Recovery of Sums) Where the Council terminates the Contract under clause 53 (Termination on Default):

54

Consequences of Expiry or Termination

54.1

54.1.1 the Council may recover from the Service 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.

54.1.2 no further payments shall be payable by the Council to the Service Provider (for Services supplied by the Service 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.

Save as otherwise expressly provided in the Contract:

54.2 Save as otherwise expressly provided in the Contract:

54.2.1 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

54.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Service Provider under clauses 7 (Payment and VAT), 35 (Recovery of Sums Due), 36 (Prevention of Bribery and Corruption), 41 (Data Protection Act), 27 (Confidential Information), 42 (Freedom of Information), 44 (Intellectual Property Rights), 45 (Audit), 48 (Remedies Cumulative), 18 (Liability and Indemnity and Insurance), 54 (Consequences of Expiry or Termination), 35 (Recovery upon Termination) and 60 (Governing Law and Jurisdiction).

55 Recovery on Termination

55.1 On the termination of the Contract for any reason, the Service Provider shall:

55.1.1 immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which

was obtained or produced in the course of providing the Services;

55.1.2 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Service Provider.

55.1.3 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 Service Provider to conduct due diligence.

55.2 Where the end of the Contract Period arises due to the Service Provider's Default, the Service Provider shall provide all assistance under clause 55.1.2 and 55.1.3 free of charge.

56 Force majeure 56.1

This clause 56 shall apply where:

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 1 Month, either Party may terminate the Contract with immediate effect

by notice in writing.

56.2 Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

56.3 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 56 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.

57 Disaster Recovery

57.1 The Service Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

57.2 Following the declaration of a Disaster in respect of any of the Services, the Service Provider shall:

57.2.1 implement the Disaster Recovery Plan;

57.2.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and

57.2.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

		57.2	To the extent that the Service Provider complies fully with the provisions of this clause 57 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Service 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.
58	Financial Assessment	58.1	The Service Provider will be responsible for assessing financial viability of clients who enter the service under a private arrangement. If the client's wealth depletes and they become eligible for Local Authority funding, the price payable in respect of the client will automatically revert to the Council's usual price.
59	Information Governance	59.1	The Service Provider shall ensure that prior to the start of the contract they will have set up and provided the Council with their generic email address, (i.e. admin@Service Provider.com , office@Service Provider.com , manager@Service Provider.co.uk). The use of Hotmail, AOL and any other personal email addresses will not be accepted by the Council. If the Service Provider fails to provide the Council with the address new referrals at the start of the contract will not be sent.

60

**Governing Law
and Jurisdiction**

60.1

Subject to the provisions of clause 7, the Council and the Service 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.