



Dated [INSERT DATE]

(1) THE KENT COUNTY COUNCIL

-and-

(2) [INSERT PROVIDER NAME]

CONTRACT

relating to the supply of

[Lot 3 – Supported Living Services]

Contract Number: SC19 012

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	11
2.	CONTRACT PERIOD AND EXTENSION	19
3.	PROVIDER'S STATUS	19
4.	COUNCIL'S OBLIGATIONS	19
5.	NOTICES	19
6.	MISTAKES IN INFORMATION	20
7.	CONFLICTS OF INTEREST	20
8.	THE SERVICES	20
9.	SERVICE LEVELS AND SERVICE CREDITS	21
10.	PROVISION AND REMOVAL OF EQUIPMENT	21
11.	KEY PERSONNEL	22
12.	PROVIDER'S STAFF	22
13.	SAFEGUARDING CHILDREN AND VULNERABLE ADULTS	23
14.	TUPE AND PENSIONS	25
15.	INSPECTION OF PREMISES	25
16.	LICENCE TO OCCUPY COUNCIL PREMISES	25
17.	PROPERTY	26
18.	PARENT COMPANY GUARANTEE	26
19.	PERFORMANCE BOND	26
20.	CONTRACT PRICE	26
21.	PAYMENT AND VAT	27
22.	RECOVERY OF SUMS DUE	27
23.	PRICE ADJUSTMENT	28
24.	PREVENTION OF BRIBERY AND CORRUPTION	28
25.	EQUALITIES	29
26.	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	29
27.	ENVIRONMENTAL REQUIREMENTS	29
28.	HEALTH AND SAFETY	30
29.	DATA PROTECTION	30
30.	CONFIDENTIAL INFORMATION	31
31.	FREEDOM OF INFORMATION	33
32.	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES	34
33.	SECURITY	34
34.	INTELLECTUAL PROPERTY RIGHTS	34
35.	CHANGE CONTROL AND CONTINUOUS IMPROVEMENT	36

36.	AUDIT 36	
37.	TRANSFER AND SUB-CONTRACTING	37
38.	WAIVER.....	38
39.	VARIATION.....	38
40.	SEVERABILITY.....	39
41.	REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE.....	39
42.	REMEDIES CUMULATIVE.....	40
43.	CONTRACT MANAGEMENT	40
44.	ANNUAL REVIEW	40
45.	ENTIRE AGREEMENT	41
46.	COUNTERPARTS	41
47.	LIABILITY AND INDEMNITY	41
48.	INSURANCE	42
49.	WARRANTIES AND REPRESENTATIONS	42
50.	TERMINATION FOR BREACH	44
51.	TERMINATION ON INSOLVENCY AND/OR CHANGE OF CONTROL.....	45
52.	TERMINATION ON DEFAULT	46
53.	TERMINATION NOTICE	47
54.	BREAK CLAUSE.....	47
55.	CONSEQUENCES OF EXPIRY OR TERMINATION	47
56.	DISRUPTION	48
57.	RECOVERY UPON TERMINATION	48
58.	FORCE MAJEURE.....	49
59.	DISASTER RECOVERY	49
60.	GOVERNING LAW AND JURISDICTION	50
61.	DISPUTE RESOLUTION	50
62.	TRANSPARENCY.....	51
63.	EXTREMISM AND RADICALISATION.....	51
64.	CALDICOTT PRINCIPLES.....	51
65.	KENT INTEGRATED DATASET	51
66.	WHISTLEBLOWING POLICY	52
67.	FURTHER ASSURANCES.....	52
68.	CHANGES IN LAW	52
	SCHEDULE 0 – SERVICE SPECIFIC CONDITIONS	53
	SCHEDULE 1 SPECIAL CONDITIONS	54
	SCHEDULE 3 PRICING AND PAYMENT	64
	SCHEDULE TUPE AND PENSIONS	68

SCHEDULE _ DATA PROTECTION AND GENERAL DATA PROTECTION REGULATION	94
SCHEDULE - CALDICOTT PRINCIPLES	104
SCHEDULE INFORMATION GOVERNANCE	108

FORM OF AGREEMENT

THIS CONTRACT is made on the [] day of [Month]] 2020

BETWEEN

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

RECITALS:

- (A) The Council is a local authority as defined by section 270 of the Local Government Act 1972.
- (B) Following a procurement process the Council has appointed the Provider to provide the Services in accordance with this Contract.

IT IS AGREED:

1. this Contract is comprised of the following documents:
 - 1.1 This Form of Agreement;
 - 1.2 The Contract Particulars;
 - 1.3 The Special Conditions (if any);
 - 1.4 The Conditions of Contract;
 - 1.5 The Schedules (excluding **Error! Reference source not found.** (the Tender));
 - 1.6 The Appendices; and
 - 1.7 **Error! Reference source not found.** (the Tender)and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above.
2. Terms and expressions used in this Contract shall have the meanings given in Clause 1.1 of the Conditions of Contract.
3. In consideration for payment of the Contract Price, the Provider undertakes to perform the Services with due skill, care and diligence throughout the Contract Period.

EXECUTION UNDER HAND

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

Signed for and on behalf of **THE KENT COUNTY COUNCIL**

.....
Authorised Signatory

.....
Print Name of Authorised Signatory

Signed for and on behalf of [INSERT PROVIDER NAME]

.....
Authorised Signatory

.....
Print Name of Authorised Signatory

CONTRACT PARTICULARS

- | | | | |
|---|------------------------------------|---|---|
| 1 | Commencement Date: | 1 st April 2020 | (Clauses 1.1 and 2.1) |
| 2 | Contract Period: | 48 months | (Clause 1.1) |
| 3 | Contract Price: | As set out in Schedule 3 | (Clause 1.1) |
| 4 | Contract Extension: | Yes, at the Council's discretion by up to an additional 36 months | (Clause 2.2) |
| 5 | Address for Service of Notices | <p>For the Council:</p> <p>Strategic Commissioning
Kent County Council
Sessions House
County Road
Maidstone
Kent ME14 1XQ</p> <p>For the Provider:</p> <p><i>[insert address and contact details]</i></p> | (Clause 5.3) |
| 6 | Service Levels and Service Credits | Clause 9 does not apply | (Clause 9 and Error! Reference source not found.) |
| 7 | Key Personnel | Clause 11 does not apply | |

8	Safeguarding	Clause 13 applies	
9	TUPE and Pensions	Clause 14 and Schedule 9 apply	(Clause 14 and 0)
10	Licence to Occupy Council Premises	Clause 16 does not apply	(Clause 16)
11	Parent Company Guarantee	<p>Clause 18.1 and Error! Reference source not found. apply/do not apply</p> <p><i>(delete as appropriate at contract award)</i></p>	(Clause 18.1 and Schedule 10)
12	Performance Bond	Clause 19 and Error! Reference source not found. do not apply	(Clause 19 and Schedule 1)
13	Payment and VAT	<p>A. Payment Periods:</p> <p>monthly in arrears</p>	
14	Price Adjustment	<p>Clause 23 applies</p> <p>If Clause 23 applies, the Price Review Date is: 1st anniversary of the Commencement Date and every anniversary thereafter</p>	(Clause 23)

15	Audit	<p>Period for which records must be maintained after the end of the Contract:</p> <p>Where the Contract is executed under hand: 6 years</p>	(Clause 21.7, 24.5, 35, and 36)
16	Liability and Indemnity	The Provider's liability under this Contract shall be limited to the sum of 125% of the annual Contract value	(Clause 47.5)
17	Insurance	<p>Public liability insurance: £10 million per claim</p> <p>Employer's liability insurance: £5 million per claim</p>	(Clause 48.1)
18	Additional Insurances	Adequate Business Use vehicle insurance is required as appropriate	(Clause 48.5 and 48.6)
19	Break Clause	<p>Clause 54 applies</p> <p>The notice period is 6 months</p>	(Clause 54)
20	Force Majeure	Clause 58 applies	(Clause 58)
21	Disaster	Clause 59 applies	(Clause 59)

Recovery

22	Commercially Sensitive Information	Error! Reference source not found. applies	(Schedule 13)
----	------------------------------------	---	---------------

CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

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

“Achieved Service Level”	means in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Error! Reference source not found.).
“Appendix”	means an appendix to this Contract.
“Approval”	means the written consent of the Council.
“Change”	means any change to this Contract including any Variations.
“Change Control Form”	means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.
“Change Control Procedure”	means the procedure for changing this Contract, as set out in Error! Reference source not found.
“Change of Control”	shall have the same meaning as within section 416 of the Income and Corporation Taxes Act 1988 or section 574 of the Capital Allowances Act 2001.
“Commencement Date”	means the date stated in the Contract Particulars or if none is stated, the date of this Contract.
“Commercially Sensitive Information”	means the information listed in Error! Reference source not found. (Commercially Sensitive Information) comprised of information: (a) which is provided by the Provider to the Council in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret.
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Council Personal Data and special data (sensitive personal data) within the meaning of the DPA as such terms are defined in Schedule 16. Confidential Information shall not include information which:

	<p>(a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 30 (Confidential Information));</p> <p>(b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</p> <p>(c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</p> <p>(d) is independently developed without access to the Confidential Information.</p>
“Contract”	means this written agreement between the Council and the Provider which is more particularly described in the Form of Agreement.
“Contracting Authority”	means any contracting authority as defined in section 2 of the Public Contracts Regulations 2015.
“Contract Extension”	means any extension to the Contract Period as set out in the Contract Particulars.
“Contract Particulars”	means the contract particulars contained in this Contract.
“Contract Period”	means the period stated in the Contract Particulars.
“Contract Price”	means the price (exclusive of any applicable VAT), payable to the Provider by the Council under the Contract, as set out in the Contract Particulars, for the full and proper performance by the Provider of its obligations under the Contract.
“Council”	means The Kent County Council of County Hall, Maidstone, Kent ME14 1XQ.
“Crown Body”	means a public body which has Crown status, such that the material which it produces is subject to Crown copyright protection under section 163 of the Copyright Designs and Patents Act 1988.
“Default”	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.
“Disaster”	means an event defined as a disaster in the Disaster

	Recovery Plan.
“Disaster Recovery Plan”	means a plan (including Provider’s internal business continuity provisions which are approved by the Council prior to the date of this Contract and from time to time thereafter), which sets out the procedures to be adopted by the Provider in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Provider in planning and providing for any such event), the Disaster Recovery Plan at the date of this Contract being set out in Error! Reference source not found..
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 as amended and any guidance and/or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such regulations.
“Equipment”	means the Provider’s equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract.
“Exit Manager”	has the meaning set out in paragraph 4 of Error! Reference source not found..
“Exit Obligations”	means the obligations set out in paragraph 2 of Error! Reference source not found..
“Exit Period”	means the period determined in accordance with paragraph 5 of Error! Reference source not found..
“Fees Regulations”	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as amended.
“FOIA”	means the Freedom of Information Act 2000 as amended and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such legislation.
“Force Majeure”	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made precluding the provision or receipt of the Services, but excluding:</p> <ul style="list-style-type: none"> (a) any industrial action occurring within the Provider’s or any Sub-Contractor organisation; or (b) the failure by any Sub-Contractor to perform its obligations under any Sub-

	Contract.
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“Individual”	Means the person receiving the Service.
“Information”	has the meaning given under section 84 of the FOIA.
“Information Commissioner’s Office”	means the public body responsible for the data protection in accordance with the Data Protection Legislation in the UK.
"Information Governance"	means the way organisations ‘process’ or handle information relating to the Service and/ or Individuals.
"Intellectual Property and Intellectual Property Rights"	means any and all intellectual property and appertaining rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, topography rights, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.
“Interface Agreement”	means the document that defines an interface between Parties to the Contract together with associated responsibilities.
“Key Personnel”	means those persons named in the Specification and/or elsewhere in the Contract as being key personnel.
“Law(s)”	any law, statute, regulation, by-law or subordinate legislation in force from time to time, and all subsequent amendments thereto, applicable to a Party or any part of the Services in any jurisdiction in which the Services are supplied as well as regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body, all as amended, of which the Provider is bound to comply.
“Losses”	shall mean all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including

	legal costs and expenses) of such actions and proceedings and the Staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the contractual Clause in question or to its breach.
“Month”	means calendar month.
“Party”	means a party to the Contract.
“Premises”	means the location where the Services are to be supplied, as set out in the Specification.
“Price Review Date”	has the meaning given in the Contract Particulars.
“Processing and Process”	has the meaning given to it under the Data Protection Legislation and for the purposes of this Contract, it shall include both manual and automated processing.
“Prohibited Act”	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010 as amended; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or (iv) defrauding, attempting to

	defraud or conspiring to defraud the Council.
“Property”	means the property, other than real property, issued or made available to the Provider by the Council in connection with the Contract.
“Provider”	means the person, firm or company with whom the Council enters into the Contract.
“Provider Party”	means the Provider's agents and contractors, including each Sub-Contractor.
“Public Sector Contracting Authorities”	means public sector bodies that are subject to the Public Contracts Regulations 2015 and respective successor legislation.
“Public Contracts Directive”	means Directive 2014/24/EU of 26 February 2014 of the European Parliament and of the Council of the European Union.
“Quality Standards”	means the quality standards published by BSI (British Standards Institute), the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
“Receipt”	means the physical or electronic arrival of the invoice at the address of the Council set out in the Contract Particulars or at any other address given by the Council to the Provider for the submission of invoices.
“Regulations”	means The Public Contracts Regulations 2015 and respective successor legislation.
“Regulated Activity”	has the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 as amended. Providers must implement as stipulated by the Regulatory body. Regulated activities are listed in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010
“Regulated Activity Provider”	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 as amended.
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract

	or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.
“Relevant Convictions”	means a conviction that is relevant to the nature of the Services or as listed by the Council from time to time.
“Relevant Index”	means, where used, the index specified Schedule 3 (Pricing and Payment Schedule) or if none is specified, the Consumer Prices Index (CPI).
“Relevant Transfer”	means a relevant transfer for the purposes of TUPE.
“Replacement Provider”	means any third party Service Provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
“Request for Information”	shall have the meaning set out in FOIA or the Environmental Information Regulations 2014 as amended as relevant (where the meaning set out for the term “request” shall apply).
“Schedule”	means a schedule attached to, and forming part of, the Contract.
“Services”	means the description of the services to be supplied under the Contract as set out in Schedule 2 and elsewhere in the Contract, as appropriate, including, where appropriate, the Key Personnel, the Premises and the Quality Standards, in accordance with current health and social care legislation including the Care Act 2014, Health and Social Care Act 2012, Health and Social Care Act 2008, Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and Essential Standards of Quality and Safety March 2010.
“Service Credits”	means the sums attributable to a Service Failure as specified in Error! Reference source not found..
“Service Failure”	means a failure by the Provider to provide the Services in accordance with any individual Service Level
“Service Levels”	means the service levels to which the Services are to be provided, as set out in Error! Reference source not found..
“Specification”	means the description of the Services to be supplied and the required outcomes under the Contract as set out in Schedule 2 and elsewhere in the Contract, as appropriate, including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
“Special Conditions”	means the special conditions (if any) set out in Schedule 1.

“Staff”	means all persons employed or engaged by the Provider to perform its obligations under the Contract together with the Provider’s servants, agents, Providers and Sub-Contractors used in the performance of its obligations under the Contract.
“Staff Vetting Procedure”	means the Council’s procedures for the vetting of personnel and as advised to the Provider by the Council.
“Sub-Contract”	means any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.
“Sub-Contractor”	means the contractor or contractors that enter into a Sub-Contract with the Provider.
“Tender”	means the document(s) submitted by the Provider to the Council in response to the Council’s invitation to Providers for formal offers to supply it with the Services.
“TFEU”	means the Treaty on the Functioning of the European Union, as amended from time to time.
“the Treaties”	means the Treaty on European Union and TFEU, as amended from time to time.
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended.
“Variation”	means a Change only to the Specification, and, if required, an associated Change of Contract Price.
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994 as amended.
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. CONTRACT PERIOD AND EXTENSION

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

3. PROVIDER'S STATUS

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

4. COUNCIL'S OBLIGATIONS

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

5. NOTICES

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

5.3 For the purposes of Clause 5.2, the address of each Party shall be the address stipulated in the Contract Particulars.

5.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

6. MISTAKES IN INFORMATION

6.1 The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

6.2 The Provider agrees and acknowledges that:

6.2.1 it has been provided with and understood all the information that it needed to assess the scope of the Council's requirements for the Services;

6.2.2 it has taken into account the Premises and any applicable Council systems and processes and is aware of the composition, size and requirements of all user groups and customers relevant to the supply of the Services; and

6.2.3 it is aware of and is able to meet all of the Council's requirements for the Services as communicated to the Provider before the execution of this Contract.

6.3 Accordingly, the Provider may not at any time claim any extension of time, relief from its contractual obligations or charge for any additional costs or time incurred on the basis that it was unaware of the scope and extent of the Council's requirements or of the matters described in clauses 6.2.1 to 6.2.3.

7. CONFLICTS OF INTEREST

7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

8. THE SERVICES

8.1 The Provider shall supply the Services during the Contract Period with due skill, care and diligence and in accordance with:

8.1.1 the Quality Standards (if any stipulated in the Specification)

8.1.2 Good Industry Practice;

8.1.3 the Law; and

8.1.4 the requirements of the Contract.

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

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

9. SERVICE LEVELS AND SERVICE CREDITS

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

9.2 Where any part of the Services is stated in **Error! Reference source not found.** to be subject to a specific Service Level, the Provider shall provide that part of the Services in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.

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

9.4 If the Provider fails to provide the Services in accordance with any individual Service Level, the Provider shall pay to the Council the Service Credit set out in **Error! Reference source not found.**

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

10. PROVISION AND REMOVAL OF EQUIPMENT

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

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

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

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

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

- 10.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
- 10.5.2 replace such item with a suitable substitute item of Equipment.
- 10.6 On completion of the Services the Provider shall remove the Equipment together with any other materials used by the Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff.

11. KEY PERSONNEL

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

12. PROVIDER'S STAFF

- 12.1 The Council may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain involved in the delivery of the Services:
 - 12.1.1 any member of the Staff; or
 - 12.1.2 any person employed or engaged by any member of the Staff, whose admission or continued involvement with the delivery of the Services would, in the reasonable opinion of the Council, be undesirable.
- 12.2 At the Council's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.
- 12.3 The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, policies and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 12.4 The Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

- 12.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council may require the Provider to carry out an appropriate Disclosure and Barring Service (DBS) check in respect of any person to be employed or engaged in the provision of the Services. The Provider shall ensure that any person who discloses that he/she has a Relevant Conviction, or is found by the Provider to have a Relevant Conviction (whether as a result of or through a DBS check or otherwise) is risk assessed to ensure safety of Service delivery should that person be employed or engaged in the provision of any part of the Services.
- 12.6 If the Provider fails to comply with Clause 12.2 within 21 days of the date of the request the Provider shall be in Default of its obligations under the Contract.
- 12.7 The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Provider has failed to comply with Clause 12.2 shall be final and conclusive and the Provider shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under Clause 12.1.

13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 13.1 Without prejudice to the provisions of this Clause 13 the Provider shall at all times in providing the Services comply with the provisions of all Law and guidance that are relevant to the Services and shall take all steps necessary to promote preserve and ensure the wellbeing of the Individuals.
- 13.2 This Clause 13 shall apply where stipulated in the Contract Particulars.
- 13.3 The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 13.4 The Provider shall ensure that all individuals engaged in the provision of the Services:
- 13.4.1 are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the adults' barred list or the children's barred list, as appropriate; and
 - 13.4.2 shall monitor the level and validity of the checks under this Clause 13.4 for each member of Staff.
- 13.5 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 13.6 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 13 have been met.
- 13.7 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Individuals /children/vulnerable adults.

- 13.8 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Individuals.
- 13.9 All Staff shall comply with the Kent and Medway Safeguarding Children's Procedures 2007 and the Multi Agency Adult Protection Policy, Protocols and Guidance for Kent and Medway (updated six monthly) and the Provider's own policy and procedure concerning Adult Protection/Safeguarding.
- 13.10 The Provider's Safeguarding Policy shall include safeguarding vulnerable adults and children from any form of abuse or exploitation which includes physical, financial, psychological or sexual abuse, neglect, discriminatory, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance.
- 13.11 The Provider shall have in place robust procedures for responding to suspicion or evidence of abuse or neglect to ensure the safety and protection of the Individual. The procedures shall reflect local multi-agency Policy, Protocols and Guidance, including informing the Care Quality Commission and where appropriate involving the police in accordance with the Public Interest Disclosure Act 1998 and the Department of Health guidance "No Secrets" and the Disclosure and Barring Service
- 13.12 The Provider's Safeguarding Policy and Procedures must ensure that all allegations and incidents of abuse are followed up in a prompt, specified timeframe. All details and actions taken are recorded in a special record/file kept specifically for the purpose, and on the personal file of the Individual.
- 13.13 The Provider shall have in place policies and procedures for Staff regarding the individual's will and bequests. The policies and procedures shall prevent the involvement of any Staff or members of their family in the making of, or benefiting from, the individual's will, soliciting any other form of bequest or legacy, acting as a witness or executor, and being involved in any way with any other legal arrangement.
- 13.14 All Staff shall receive training on the prevention of abuse within three months of employment and this must be updated annually. Adult Protection level 1 is the minimum requirement for all staff and levels 1 and 2 for managers.
- 13.15 All Staff shall comply with the Mental Capacity Act (MCA) 2005 (including all amendments that have been introduced at the time of signing the contract as well as future amendments during the term of the contract), and the Deprivation of Liberty Safeguards (DOLS). The Provider's processes need to incorporate consideration of whether a person has capacity to consent to the services which are to be provided and whether their actions are likely to result in a deprivation of liberty. The Provider's records must provide evidence of compliance with the MCA and DOLS where appropriate.
- 13.16 All Staff shall receive training on MCA and DOLS within 3 months of employment.
- 13.17 The Provider shall have in place MCA policies and procedures to ensure that all staff understand and comply with their duties and responsibilities under the MCA 2005 for all care and support services.
- 13.18 The Provider shall have in place DOLS policies and procedures to ensure that potential deprivation of liberty is identified, applications for DOLS authorisations are promptly made where appropriate, conditions are properly followed and reviews are regularly undertaken.

- 13.19 All Staff will be aware of the conditions under which to instruct and consult the statutory advocacy service, Independent Mental Capacity Advocacy (IMCA) service, under MCA. All Staff shall understand the role of the IMCA and the role of the paid Relevant Person's Representative (RPR) under DOLS.

14. TUPE AND PENSIONS

The Parties agree that the provisions of 0 shall apply to any Relevant Transfer of Staff under or in connection with this Contract.

15. INSPECTION OF PREMISES

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

16. LICENCE TO OCCUPY COUNCIL PREMISES

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

17. PROPERTY

- 17.1 Where the Council issues Property free of charge to the Provider such Property shall be and remain the property of the Council and the Provider irrevocably licences the Council and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times only possess the Property as fiduciary agent and bailee of the Council. The Provider shall take all reasonable steps to ensure that the title and proprietary rights of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Staff and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.
- 17.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Council otherwise within 5 Working Days of receipt.
- 17.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 17.4 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 17.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Provider shall inform the Council within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.
- 17.6 Where the Council pays, directly or indirectly, for Property, real or otherwise, in relation to the Contract, the Council will retain ownership of such Property unless stated otherwise in Contract. The Provider shall return such Property to the Council upon request and at the end of the Contract.

18. PARENT COMPANY GUARANTEE

- 18.1 Where stipulated in the Contract Particulars the Provider shall procure the delivery of a parent company guarantee substantially in the form contained in **Error! Reference source not found..**

19. PERFORMANCE BOND

- 19.1 Where stipulated in the Contract Particulars the Provider shall procure the delivery of a performance bond substantially in the form contained in **Error! Reference source not found..**

20. CONTRACT PRICE

- 20.1 In consideration of the Provider's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with Clause 21 (Payment and VAT).

- 20.2 The Council shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

21. PAYMENT AND VAT

- 21.1 Unless otherwise specified in Schedule 3, the Council shall pay all sums due to the Provider within 30 days of receipt of a valid invoice, submitted monthly in arrears.
- 21.2 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 21.3 Where the Provider enters into a Sub-Contract with a Provider or Sub-Contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 21.4 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
- 21.5 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause 21.5 shall be paid by the Provider to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.
- 21.6 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under Clause 52.3 (Termination on Default) for failure to pay undisputed sums of money.
- 21.7 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council during the Contract Period and following the end of the Contract for the period specified in the Contract Particulars.

22. RECOVERY OF SUMS DUE

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

- 22.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

23. PRICE ADJUSTMENT

- 23.1 Unless otherwise indicated in the Contract Particulars, the Contract Price shall apply for the Contract Period without adjustment.
- 23.2 Where stipulated in the Contract Particulars, the Contract Price shall be adjusted on each Price Review Date by an amount equal to the annual percentage change in the Relevant Index(s) as published in the December preceding the relevant Price Review Date or the average annual percentage change over the three months ending December or the average annual percentage change over the six months ending December, whichever is the lowest.

24. PREVENTION OF BRIBERY AND CORRUPTION

- 24.1 The Provider:

- 24.1.1 shall not, and shall procure that any Provider Staff or Provider Party shall not, in connection with this Contract commit a Prohibited Act;
- 24.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

- 24.2 The Provider shall:

- 24.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
- 24.2.2 within 10 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this Clause 24 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

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

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

- 24.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of Clause 24.1, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the period specified in the Contract Particulars following the expiry or termination of this Contract.

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

24.7 Any notice of termination under Clause 24.6 must specify:

24.7.1 the nature of the Prohibited Act;

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

24.7.3 the date on which this Contract will terminate.

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

24.8.1 the interpretation of Clause 24; or

24.8.2 the amount or value of any gift, consideration or commission,

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

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

25. EQUALITIES

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

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

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

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

27. ENVIRONMENTAL REQUIREMENTS

The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

28. HEALTH AND SAFETY

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

29. DATA PROTECTION

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

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

30. CONFIDENTIAL INFORMATION

- 30.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 30.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 30.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 30.2 Clause 30.1 shall not apply to the extent that:
- 30.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the

Environmental Information Regulations pursuant to Clause 31 (Freedom of Information);

- 30.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 30.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 30.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 30.2.5 it is independently developed without access to the other Party's Confidential Information.
- 30.3 The Provider may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 30.4 The Provider shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
- 30.5 At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 30.6 Nothing in this Contract shall prevent the Council from disclosing the Provider's Confidential Information:
- 30.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 30.6.2 to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review as amended or superseded;
 - 30.6.3 for the purpose of the examination and certification of the Council's accounts; or
 - 30.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 30.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause 30.6 is made aware of the Council's obligations of confidentiality.
- 30.8 Nothing in this Clause 30 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal

business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

31. FREEDOM OF INFORMATION

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

32. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 32.1 The Provider shall not make any press announcement or publicise the Contract, the Services or any aspects thereof in any way, except with the prior written consent of the Council.
- 32.2 The Provider shall take reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, Providers, professional advisors and consultants comply with Clause 32.1.

33. SECURITY

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

34. INTELLECTUAL PROPERTY RIGHTS

- 34.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):
 - 34.1.1 furnished to or made available to the Provider by or on behalf of the Council shall remain the property of the Council; and
 - 34.1.2 prepared by or for the Provider on behalf of the Council for use, or intended use, in relation to the performance by the Provider of its obligations under the Contract shall belong to the Council; and the Provider shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.
- 34.2 The Provider hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 34.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation necessary to execute this assignment.
- 34.3 The Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.
- 34.4 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Provider or to any other third party supplying services to the Council.
- 34.5 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and

expenses and other liabilities which the Council or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:

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

within 15 Working Days of receipt of the Provider's notification the Council may terminate the Contract with immediate effect by notice in writing.

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

35. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

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

36. AUDIT

- 36.1 The Provider shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records and any other reasonable data request as may be requested by the Council in connection with the Contract.
- 36.2 The Provider shall, on request, provide to the Council financial information related to their business(es). This may include, however is not limited to, the below. The Provider

will further answer any queries and provide necessary information to the Council where the Council deems this appropriate and/or necessary.

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

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

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

37. TRANSFER AND SUB-CONTRACTING

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

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

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

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

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

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

37.6.1 any Contracting Authority; or

37.6.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

37.6.3 private sector body which substantially performs the functions of the Council, ("the Transferee") provided that any such assignment, novation or other

disposal shall not increase the burden of the Provider's obligations under the Contract.

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

38. WAIVER

- 38.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 38.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 5 (Notices).
- 38.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

39. VARIATION

- 39.1 Subject to the provisions of this Clause 39, the Council may request a Change to the Specification. Such a Change to the Specification is hereinafter called a Variation and may include a Change to the Contract Price.
- 39.2 The Council may request a Variation by notifying the Provider in writing of the Variation and giving the Provider sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Provider shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Provider accepts the Variation it shall confirm the same in writing.
- 39.3 In the event that the Provider is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;
- 39.3.1 allow the Provider to fulfil its obligations under the Contract without the variation to the Specification;

39.3.2 terminate the Contract with immediate effect.

39.4 The Provider may propose Variations to the Contract, provided that the Council shall be under no obligation whatsoever to accept any request for a Variation. A Variation proposed by the Provider shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.

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

40. SEVERABILITY

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

41. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

41.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Council shall be entitled to investigate the complaint in accordance with the contract monitoring and management procedures contained in **Error! Reference source not found.** (Contract Management). The Council may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 52 (Termination on Default) of the Contract.

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

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

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

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

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

41.4 The Provider shall ensure that the Service is delivered as commissioned. In the event there is a difference between commissioned and delivered activities, the Provider shall inform the Council prior to the submission of an invoice to enable all relevant changes to be made on Council systems to effect accurate payments. Should the Provider fail to do this, the Council shall be entitled to recover (i) all sums due in accordance with Clause 22 and (ii) interest calculated in accordance with the Late Payment of Commercial Debt (Interest) Act 1998 as subsequently amended.

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

41.6 In the event that:

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

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

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

42. REMEDIES CUMULATIVE

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

43. CONTRACT MANAGEMENT

The Provider shall comply with the monitoring and contract management arrangements set out in the **Error! Reference source not found.** (Contract Management) including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

44. ANNUAL REVIEW

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

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

44.1.2 reduce the Contract Period; or

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

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

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

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

45. ENTIRE AGREEMENT

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

46. COUNTERPARTS

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

47. LIABILITY AND INDEMNITY

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

47.1.1 death or personal injury caused by its negligence; or

47.1.2 Prohibited Act; or

47.1.3 fraudulent misrepresentation; or

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

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

47.2.1 breach of Council Intellectual Property and Intellectual Property Rights;

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

47.2.3 breach of Council Confidential Information.

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

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

47.3.2 the act, omission or default of the Provider, any Sub-Contractor or any member of Staff including in respect of any death or personal injury, loss of or damage

to property, financial loss arising from any advice given or omitted to be given by any such party; and

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

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

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

48. INSURANCE

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

48.1.1 public liability insurance; and

48.1.2 employer's liability insurance

with the levels of indemnity cover for each claim stipulated in the Contract Particulars.

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

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

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

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

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

49. WARRANTIES AND REPRESENTATIONS

The Provider warrants and represents on an ongoing basis that:

- 49.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider,
- 49.1.2 in entering the Contract it has not committed any Prohibited Act;
- 49.1.3 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider,
- 49.1.4 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- 49.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.1.6 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 49.1.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 49.1.9 in the three 3 years prior to the date of the Contract:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
 - (c) it is and has not been subject to any contractual obligations which might have a material adverse effect on its performance in the provision of the Services to the Council; and
 - (d) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

- 49.1.10 each warranty and representation is separate and shall not be limited or restricted by reference to, or inference from, the terms of other representations or warranties; and
- 49.1.11 if Provider becomes aware that a warranty or representation given in this Contract is either untrue, misleading or has been breached, it shall immediately notify the Council.

50. TERMINATION FOR BREACH

- 50.1 The Council may terminate this Contract with immediate effect by the service of written notice on the Provider in the following circumstances:
 - 50.1.1 if the Provider is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Council may only terminate this Contract under this Clause 50.1 if the Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a Remediation Notice) to do so;
 - 50.1.2 if a consistent failure has occurred;
 - 50.1.3 if a catastrophic failure has occurred;
 - 50.1.4 if a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
 - 50.1.5 if the Provider ceases or threatens to cease to carry on business in the United Kingdom;
 - 50.1.6 if there is a Change of Control of the Provider to which the Council reasonably objects;
 - 50.1.7 if this Contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Regulations;
 - 50.1.8 if the Provider has, at the time of this Contract's award, been in one of the situations referred to in regulation 57(1) to (3) of the Regulations and should therefore have been excluded from the procurement procedure; or
 - 50.1.9 if this Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure pursuant to Article 258 of TFEU, as amended.
- 50.2 The Council may terminate this Contract in accordance with the provisions of Clause 24 and Clause 58.
- 50.3 If this Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

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

51. TERMINATION ON INSOLVENCY AND/OR CHANGE OF CONTROL

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

- 51.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 51.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 51.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- 51.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 51.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 51.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 51.1.7 being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 51.1.8 any event similar to those listed in Clauses 51.1.1 -51.1.7 occurs under the law of any other jurisdiction.

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

- 51.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
- 51.2.2 a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy; or
- 51.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 51.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

- 51.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days; or
- 51.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- 51.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

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

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

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

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

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

52. TERMINATION ON DEFAULT

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

- 52.1.1 the Provider has not remedied the Default to the satisfaction of the Council within 15 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 52.1.2 the Default is not, in the opinion of the Council, capable of remedy; or
- 52.1.3 the Default is a material breach of the Contract.

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

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

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

53. TERMINATION NOTICE

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

54. BREAK CLAUSE

54.1 Where stipulated in the Contract Particulars, the Council shall have the right to terminate the Contract at any time by giving written notice (of not less than the period specified in the Contract Particulars) to the Provider.

54.2 Where the Council exercises its right to terminate the Contract under Clause 54.1, the Provider shall only be entitled to payment for Services duly rendered up to the date of termination and the Council shall incur no liability to the Provider in respect of any other losses whatsoever whether:

54.2.1 loss of future profits;

54.2.2 redundancy or Sub-Contractor breakage costs; or

54.2.3 any other costs whatsoever incurred by the Provider as a consequence of such termination which shall include but not be limited to licence fees, redeployment fees and other contract break fees resulting directly or indirectly from the termination of the Contract.

55. CONSEQUENCES OF EXPIRY OR TERMINATION

55.1 Where the Council terminates the Contract under Clause 52 (Termination on Default):

55.1.1 the Council may recover from the Provider the cost reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.

55.1.2 no further payments shall be payable by the Council to the Provider (for Services supplied by the Provider prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this Clause.

55.2 Save as otherwise expressly provided in the Contract:

55.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

55.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses 21 (Payment and VAT), 22 (Recovery of Sums Due), 24 (Prevention of Bribery and Corruption), 29 (Data Protection Act), 30 (Confidential Information), 31 (Freedom of

Information), 34 (Intellectual Property Rights), 36 (Audit), 42 Remedies Cumulative), 47 (Liability and Indemnity), 48 (Insurance), 55 (Consequences of Expiry or Termination), 57 (Recovery upon Termination) and 60 (Governing Law and Jurisdiction).

56. DISRUPTION

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

57. RECOVERY UPON TERMINATION

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

- 57.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under Clause 57.1.3 and 57.1.4 free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

58. FORCE MAJEURE

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

59. DISASTER RECOVERY

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

60. GOVERNING LAW AND JURISDICTION

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

61. DISPUTE RESOLUTION

- 61.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 61.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 61.3 If the dispute cannot be resolved by the Parties pursuant to Clause 61.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 61.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.
- 61.4 The obligations of the Parties under the Contract shall not cease or be suspended or delayed by the reference of a dispute to mediation and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- 61.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
 - 61.5.1 a neutral adviser or mediator (the “Mediator”) shall be appointed by the Centre for Effective Dispute Resolution.
 - 61.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
 - 61.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - 61.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - 61.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - 61.5.6 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may

be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

62. TRANSPARENCY

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

63. EXTREMISM AND RADICALISATION

- 63.1 This Clause is to be read in conjunction with Clause 13 (Safeguarding Children & Vulnerable Adults) and all requirements of that Clause are to be adopted herein.
- 63.2 The Provider must comply with the requirements and principles in relation to section 26 Counter Terrorism and Security Act 2015 and Prevent to include:
- 63.2.1 in its policies and procedures, and comply with, the principles contained in the Government Prevent Strategy, the Prevent Guidance and Channel Guidance; and
 - 63.2.2 in relevant policies and procedures a programme to raise awareness of the Government Prevent Strategy among Staff and volunteers in line with the Contracting Authorities Prevent Training and Competencies Framework;
 - 63.2.3 the Council's policies and procedures in relation to the Prevent agenda.

64. CALDICOTT PRINCIPLES

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

65. KENT INTEGRATED DATASET

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

66. WHISTLEBLOWING POLICY

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

66.1.1 a criminal offence has been committed, and/or

66.1.2 someone has failed to comply with a legal obligation, and/or

66.1.3 a miscarriage of justice has occurred, and/or

66.1.4 the health and safety of an individual is being endangered, and/or

66.1.5 there are or may be financial irregularities, and/or

66.1.6 there may be a Safeguarding concern.

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

67. FURTHER ASSURANCES

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

68. CHANGES IN LAW

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

SCHEDULE 0 – SERVICE SPECIFIC CONDITIONS

Not Used

SCHEDULE 1
SPECIAL CONDITIONS

1. APPLICABILITY OF CONTRACT CLAUSES

- 1.1.1. The Provider may have one or more properties or clusters allocated to it for the purposes of delivery of the Service. The Provider recognises and agrees that Clauses within the Contract may be applied based on Properties and/or Areas/Clusters(s) and/or County-wide (meaning the entire Contract). The meaning of Contract Clauses shall be taken to be as required based on which locality they are being applied to.
- 1.1.2. As part of the Council's Contract Management, the Council may, as appropriate:
- 1.1.3. The Provider may have one or more properties or clusters allocated to it for the purposes of delivery of the Service. The Provider recognises and agrees that Clauses within the contract may be applied based on Properties and/or Areas/Cluster(s) and/or County-wide (meaning the entire Contract). The meaning of Contract Clauses shall be taken to be as required based on which locality they are being applied to.
- 1.1.4. Sanction the Provider in accordance with Schedule 2 (Specification) and Schedule 14 (Contract Management) by Property(s) and/or Cluster Area(s) (as applicable to the Provider) and/or County-wide (meaning the entire Contract);
- 1.1.5. Vary the Contract to cease delivery on Property(s) and/or Cluster Area(s) (as applicable to the Provider) and/or County-wide (meaning the entire Contract);
- 1.1.6. Terminate the Contract in its entirety.

2. HANDING BACK OF PACKAGES OF CARE / INDIVIDUALS

2.1. Termination

- 2.1.1. Both Parties shall be entitled to terminate an Order(s) in relation to one or more packages of care for any reason by serving written notice unto the other Party in accordance with the following Clauses:
- 2.1.2. (a) One or more packages of care with an accumulative total of up to and including seventy (70) hours per week – notice required is ten (10) Working Days; and

- 2.1.3. (b) One or more packages of care with an accumulative total of seventy one (71) or more hours per week – notice required is twenty (20) Working Days.
- 2.1.4. In the event of termination of an Order/Package of Care, the Provider agrees to provide the Council with any assistance required to ensure that the move of an Individual to another Provider is made with the least disruption for the Individual.
- 2.1.5. The Council reserves the right, at its sole discretion, to reduce the timeframes referenced within 2.1.1. in the event of safeguarding concerns, or any other relevant factors.
- 2.1.6. Following the outcome of any safeguarding investigation or quality in care concerns as referenced within 2.1.3 above, that may have resulted in a contract sanction being placed against the provider during a notice period, the Council reserves the right, at its sole discretion, to not make any new referrals with the provider until such assurance, actions and reductions in contract sanction have been evidenced.
- 2.1.7. When considering the reason and rationale given by a provider when handing back a package of care and support, the Council reserves the right, at its sole discretion, to not make any new referrals with the provider until such assurance that any required actions relating to the issue that triggered the initial hand back request have been completed and resolved.
- 2.1.8. Where the Transfer of Undertakings for the Protection of Employment (TUPE) legislation applies in relation to the staff servicing any Individuals, the notice periods referenced within 2.1.1. shall be the length of the TUPE transfer.
- 2.1.9. The Provider shall have, at all times, regard to the continuity of care for Individuals, and shall seek to minimise disruption at all times.
- 2.1.10. The notice period referenced in Clause 2.1.1 will commence upon KCC Commissioning receiving confirmation via email to communitysupport@kent.gov.uk and adultspurchasingteam@kent.gov.uk from the Provider of all KCC funded client identification numbers (including relating to any clients funded by KCC direct payment) to be handed back and a detailed breakdown of the support being currently provided as this information is a basic requirement before alternative support provision can be sourced.
- 2.1.11. Where notice has not, or cannot, be provided as per 2.1.1, the Provider shall reimburse the council for any additional costs received during the specified notice period. The Council reserves the right to apply a debit note against the Provider's account.
- 2.1.12. Reasonable costs can include, but are not limited to

- 2.1.13. The difference in cost between the initial providers contracted rate and the replacement providers rate.
- 2.1.14. Any costs incurred by the transfer of clients to the new provider, such as provider client assessment.
- 2.1.15. Where the Council fails to give such notification in line with the notice periods, the Council will pay the Provider a reasonable part of the Contract Price taking into account any savings the Provider was able to make due to Staff not having had to attend an Individual, and other relevant factors. For the avoidance of doubt, the Provider shall provide the Council with full information as to the savings made when providing an invoice in accordance with the Contract.
- 2.1.16. Where reasonable notice has not, or cannot, be provided (except in the event of 2.15), the Council shall pay the Provider, for a period of one week:
- 2.1.17. (a) of up to and including seventy (70) hours per week – 1/7th of the weekly Contract Price;
- 2.1.18. (b) of seventy-one (71) or more hours per week – 3/7th of the weekly Contract Price

2.2. Temporary Hand back of packages of care

- 2.2.1. Temporary postponement of an Order(s) in relation to one or more packages of care for any reason by the Provider is discouraged within this contract.
- 2.2.2. It is recognised that there may be occasions where meeting the demands of all clients becomes difficult and as such all providers are asked to provide their emergency procedures plans and business continuity
- 2.2.3. As part of these plans the Council will expect providers to engage with other providers within the area to consider joint protocols and procedures.
- 2.2.4. Should local provider collaboration prove unsuccessful and the need to temporarily hand back clients to KCC become unavoidable the provider must contact the Councils purchasing team by telephone and the commissioning team by email to communitysupport@kent.gov.uk.
- 2.2.5. The notice period as supplied in 2.1.1 will apply to temporary hand backs.
- 2.2.6. Where notice has not, or cannot, be provided as per 2.1.1, the Provider shall reimburse the council for any additional costs received during the specified notice period.
- 2.2.7. Reasonable costs are laid out in section 2.1.8 to 2.1.10.

2.3. Modification / Temporary Modification

- 2.3.1. The Council shall be entitled to serve notice in writing onto the Provider to modify an Order (SDO/FAN) in line with the relevant notice periods for an Order for Services set out within the Contract.
- 2.3.2. Reasons for the modification of an Order may include, but are not limited to, planned absences of an Individual and changes to an Individual's care plan.
- 2.3.3. Where the Council fails to give such notification in line with the notice periods, the Council will pay the Provider a reasonable part of the Contract Price taking into account any savings the Provider was able to make due to Staff not having had to attend an Individual and other relevant factors. For the avoidance of doubt, the Provider shall provide the Council with full information as to the savings made when providing an invoice in accordance with the Contract.
- 2.3.4. Where reasonable notice has not, or cannot, be provided (except in the event of 2.15), the Council shall pay the Provider, for a period of one week:
- 2.3.5. (a) of up to and including seventy (70) hours per week – 1/7th of the weekly Contract Price;
- 2.3.6. (b) of seventy-one (71) or more hours per week – 3/7th of the weekly Contract Price

2.4. Death

- 2.4.1. The Council and Provider agree and accept that in the event of an Individual's death, provision of the Service will cease immediately, and no notice period shall be required. The Council will, however, pay the Provider, in lieu of notice, for an Order for Services:
- 2.4.2. (a) of up to and including seventy (70) hours per week – 1/7th of the weekly Contract Price;
- 2.4.3. (b) of seventy-one (71) or more hours per week – 3/7th of the weekly Contract Price
- 2.4.4. The payments stipulated under 2.4.1. shall be made for a period of One Week, following an Individual's death.

3. VACANCY INFORMATION AND ADVERTISING

3.1. The Provider shall register with the Council's online care service directory (or any site that succeeds it). The Provider shall keep their contact details up to date on the site and any failure to do so may result in a contract sanction. The Provider shall update the Council with the number of current vacancies they have within their home weekly and by the close of business each Friday using the Council's online care service directory. This is important to ensure that the Provider maximises the opportunity to receive placements from the Council and for business continuity purposes. The Provider's contact details shall be used to communicate with the Provider, including any service changes, enhancements, developments, changes to price and vacancy information on a weekly basis.

3.2. The online care service directory is a public-facing website and will be used by the Council as a tool to help individuals to make an informed choice about which property they would like to live in. It is the responsibility of the Provider to ensure that the information held on the online care directory is full, accurate and up to date.

4. SOCIAL MEDIA

4.1. Social media/networking is recognised as a tool for an organisation to support communication. However, it is important for providers to establish and maintain robust security protocols to safeguard individuals supported by the organisation, employees, providers and KCC;

4.2. This provision includes online social media/networking and blogging sites such as Facebook, Twitter, LinkedIn, Google+, YouTube, Pinterest, Instagram, Flickr, Reddit, Snapchat, WhatsApp and Tumblr, as well as any other image, data and video-sharing sites currently available or developed in the future. This list is not intended to be exhaustive as this is a constantly evolving area. Employees and all provider associates should adhere to this requirement in relation to any social media;

4.3. The Provider will have appropriate mechanisms in place to maintain the dignity, integrity and privacy of all individuals supported by the service whilst keeping the reputation of the organisation and KCC in good repute. This involves protocols for the use of all communication mechanisms to include social media/networking and all digital activity in general both within the workplace and out of work. This should include browsing websites, posting, downloading, publishing anything to and from the web;

- 4.4.** The supplier shall ensure reasonable protocols are in place within the relevant associated policies and procedures e.g. Induction Programme, Equality and Diversity or Data Protection, to prevent the unauthorised use of social media/networking;
- 4.5.** Unauthorised staff must not take part in comment, interaction or requests which compromise, or may have the capacity to compromise the service or individual privacy;
- 4.6.** The Provider will have a plan of action in place should a security breach or public relations crisis occur; this may be incorporated within a Business Continuity Plan.

SCHEDULE 2

SPECIFICATION

CARE AND SUPPORT IN THE HOME SERVICES SPECIFICATION

Service	This Schedule defines the Services and activities in scope to be delivered within the Supported Living Services within the overarching Care and Support in the Home Service.
Strategic Commissioning Lead	Tracey Schneider Senior Commissioner

Copyright © Kent County Council 2019. This material may not be copied or published without the prior written permission of
The Kent County Council

1. Introduction

- 1.1.1. This Service Specification (“the specification”) sets out the requirements of the Supported Living Services, forming part of the overarching Care and Support in the Home Services. The objective of Supported Living Services is to support the Kent County Council (“the Council”) strategic objective ‘to help people to improve or maintain their well-being and to live as independently as possible’. The Council has an ambition to deliver the Service through a sustainable market that has the capability and capacity to deliver a quality and accessible Service countywide, in both urban and rural locations.
- 1.1.2. The specification should be read in conjunction with all appendices, and the Supported Living Service terms and conditions. All additional documents and strategies referenced within this specification are available on request.
- 1.1.3. The specification is an integral part of the contractual arrangements and provides the criteria by which service quality, efficiency and effectiveness will be monitored and evaluated by the Council as well as the Care Quality Commission (“the Regulator”) where relevant.
- 1.1.4. The Council will need to meet the changing agenda within Social Care provision, both nationally and locally, together with people who use the services, their families, local communities, Health, social care providers and other stakeholders. The provider must recognise this factor and be willing to work with the Council and comply with any future amendments to this specification, approved standards, contract compliance requirements, monitoring procedures and any other policies and procedures where reasonably requested by the Council.
- 1.1.5. The specification is a live document and that given the duration of the framework being 4 years, it will be regularly reviewed and updated in respect of changes to policy, statute and statutory guidance and in pursuit of improved outcomes to our service users. Where there are any changes to this specification, providers will be consulted regarding those changes and a 'change control' process put in place.

1.2. Supported Living Services Definition

- 1.2.1. The Council defines Supported Living Services as care and support services that are delivered in property-based model, in most cases the accommodation will be occupied by more than one tenant, with a combination of individual one to one support and shared support, where an opportunity exists for a care and support worker to potentially support several tenants with either a defined activity or mitigating risk through their presence as a watching brief. This shared support can be delivered either within a single property or within a

mews / courtyard type setting with onsite staff office or Sleep Night accommodation if applicable.

- 1.2.2. In some cases, a tenant may live in their own independent accommodation but require care and support on a 24/7 basis to safely and appropriately ensure that their presenting needs are met. In these circumstances, as the staff are usually working formal shift patterns with no gaps in delivery to ensure continuity of care more aligned to that of property-based services outlined in 1.2.1, these cases will be considered as Supported Living Services for the purposes of this contract specification and associated terms and conditions.
- 1.2.3. Also, due to their Support staff operating a shift style rota, individuals that receive 70 hours or more Care and Support per week will also be considered as Supported Living for the purposes of this contract, specification and associated terms and conditions.
- 1.2.4. These care and support interventions delivered in Supported Living Services aim, wherever possible, to support a person to achieve the outcomes that are important to them, in line with the Care Act and the vision set out by the Council in its 'Your life, your well-being' Strategy, maximising each person's potential level of independence.
- 1.2.5. The Council's Supported Living Service model is designed to promote individual well-being and promote independence wherever possible, enabling people to do as much as they can for themselves, ensuring that people can live as independently as possible in their own home and are enabled to access and integrate with their local community. Supported Living services include but are not limited to: dedicated single or shared supported living schemes, rented accommodation, owner occupied property and extra care schemes.
- 1.2.6. In Kent, Supported Living Services will form part of the overarching suite of services delivered under the Care and Support in the Home Services umbrella. This suite of care and support ranges from support to access communities and care for people in their own homes, through to specific supported accommodation with appropriate levels of care for assessed need, through to non-tenanted accommodation.
- 1.2.7. This Specification describes the key features of the Supported Living Service and the outcomes required and should be read in conjunction with the Terms and Conditions of the Contract, including the Contract Management Schedule.
- 1.2.8. It is imperative that people are at the heart of adult social care Services and activities are delivered in the way the person would like to receive them, with courtesy, dignity, compassion and respect. It is important that people receive Services that are easy to access, of good quality and that increase choice and control. Supported Living Services must support people's well-being and maximise their ability to live independently and safely in their community.

- 1.2.9. This Specification also details how Services are to be delivered by Providers, including with clear governance protocols and principles as a guide to their actions.
- 1.2.10. This Specification encourages those Providers with the ability and skills to organise their resources in the best way possible to achieve the outcomes specified. Providers are encouraged to operate flexibly and be innovative with delivery, with an emphasis on continuous learning and improving the delivery style.

2. Scope of the Contract

- 2.1.1. The scope of this Contract (which constitutes One element of Phase 2 of Care and Support in the Home) focuses on Supported Living services. The Council may choose to change any aspect of this Specification during the life of the Contract. If the Council chooses to do this, they will discuss with the Provider(s) any proposed changes and how they may be implemented. Changing national or local policies and priorities may also necessitate changes to the Specification. The views of Providers, people receiving support, their families/carers and their Care/Support Workers will be considered in any review of the Specification and their views will be welcomed at any time during the life of the Contract.
- 2.1.2. This Specification has been developed to be outcome-focused and therefore articulate Service requirements specific to improving the outcomes delivered to the people receiving the Service. The Care Needs Assessment identifies the needs and outcomes of each individual, the Person-centred Care and Support Plan describes the eligible needs and the outcomes the Council has agreed to meet. The Provider must deliver a flexible approach towards achieving these goals and priorities. This principle reflects the added value delivered by a flexible care approach rather than only focussing on the task undertaken.
- 2.1.3. This Specification supports the aim of developing an outcome-focused care model throughout the Contract term to meet the Council's strategic objective that 'People at risk are safe and supported with choices to live independently'. There are a number of programmes which together deliver the objectives of the 'Your life, your well-being' Strategy and implement new pathways across adult social care. These projects are delivering changes which sit under three key strands of activity:
 - **Promoting well-being:** Services which aim to prevent, delay or avoid people from entering formal social care or health systems, by helping people to manage their own health and well-being.

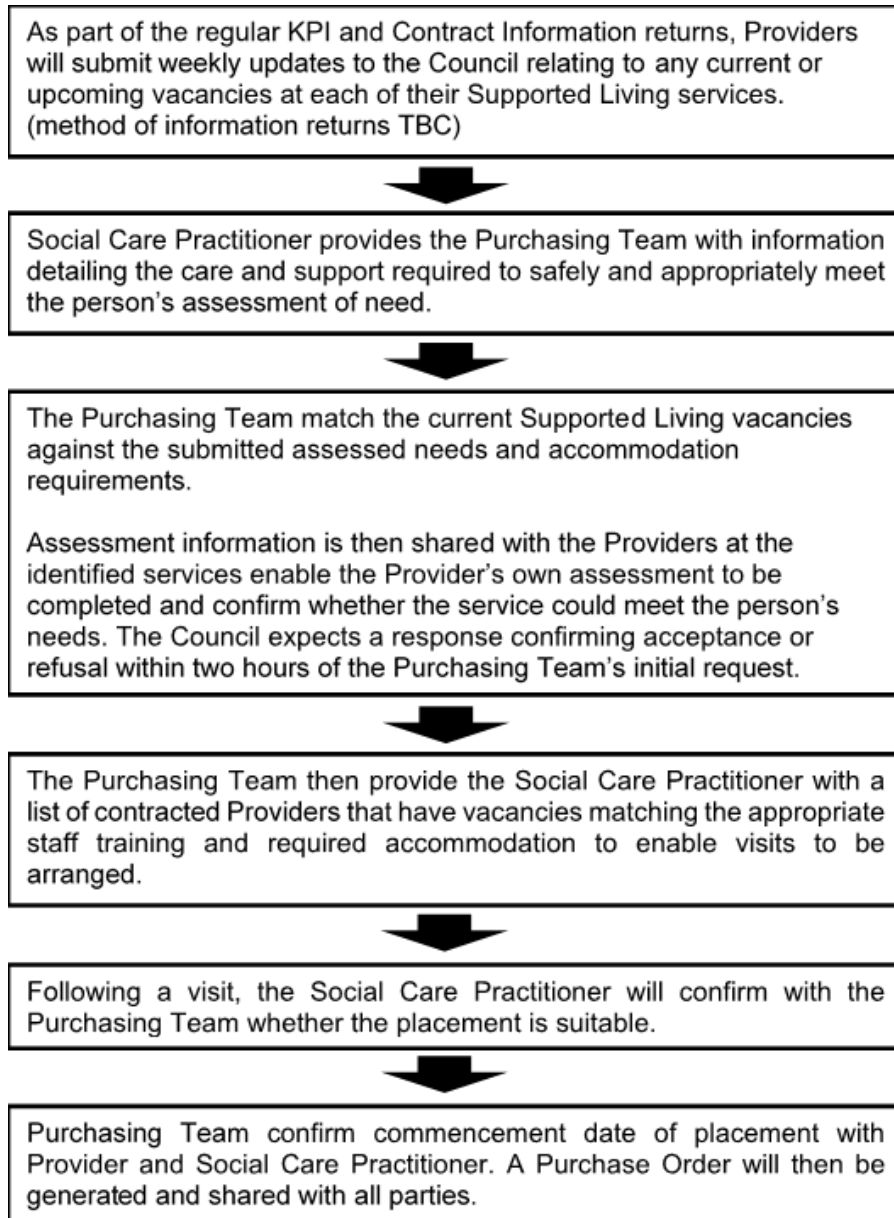
- **Promoting independence:** Providing short-term support that aims to prevent or delay people's entry to the system and provide the best long-term outcome for people. They will have greater choice and control to lead healthier lives.
 - **Supporting Independence:** Services for people who need ongoing support that aims to maintain well-being and help people do as much as they can for themselves. The aim is to meet people's needs, keep them safe and help them to live in their own homes, maintain their tenancies, stay connected to their communities and in some cases, avoid unnecessary stays in hospitals or care homes.
- 2.1.4. The services detailed within the specification will fall within all three of the categories above and will support people in the longer term to ensure their needs are met in a way that maintains their dignity and choice. The Strategy can be found here:
- 2.1.5. https://www.kent.gov.uk/_data/assets/pdf_file/0003/66576/Your-life,-your-wellbeing-full-strategy.pdf
- 2.1.6. The Council's aspiration is to encourage and incorporate feedback by embracing the opportunity to work with people receiving Services and Providers over the life of the Contract and where necessary further define and refine the Service requirements and mechanisms for delivery. This will include but is not limited to further integration with Health colleagues, use of technology and delivery through consortia of Providers.
- 2.1.7. Providers will input into the design and piloting of any new activities to ensure the benefits of a co-produced model which will inform both this Service and future provision. The Council recognises the opportunity to improve the understanding of supply and demand and reserves the right to ask Providers for information, such as their workforce to help inform such areas.

3. Service Overview

3.1. The people who can access this Service will be:

- a) Anyone that has been assessed as meeting the national eligibility criteria for social care services as set out by the Care Act 2014 and for whom a supported living placement has been agreed to help meet the outcomes identified in their Care and Support Plan;
- b) All groups including Adults living with Learning Disabilities and/or Physical Disabilities, those with Mental Health needs, Older People, People living with Dementia, Substance Misuse or Dual Diagnosis.
- c) Ordinarily resident and living in Kent. *(not an exhaustive list)
- d) Referral pathway (see below)

Referral Pathway and Purchasing Protocol



- 3.1.1. The referral process for accessing the Service is detailed above, however, within the contract term covered by this Service Specification, changes may occur to document types and names, and to access and referral pathways. The Provider will use the new documents, pathways and systems as instructed by the Council. The document templates issued to Providers will include but not be limited to Review templates, goal monitoring sheets and Care Plan templates.
- 3.1.2. The Service will be commissioned to meet the person's eligible needs under the Care Act based on the Council's social care eligibility assessment. The Service will, based on a person's assessed need, be available up to 365 days

a year, 24 hours a day, incorporating Day and Night support as required, including Bank Holidays. Unsocial rates will not be applied, as these will be accounted for in the unit cost of the Service.

- 3.1.3. The referral will be allocated to the Provider based on the person's assessed need, accommodation requirements with consideration of any local connection and will follow the purchasing protocol and instructions agreed between the person and their social care practitioner. These instructions should include:
- a) The level of commissioned support hours to meet the assessed need;
 - b) A start date for the Service.
 - c) Any special requirements that the person has and should be supported with;
 - d) A copy of the statement of need/ relevant sections of the Care and Support Plan.
 - e) Risk Assessment.
 - f) Behavioural Plan.
 - g) Clear identification of any Regulated Activities that would require a CQC registered provider;
 - h) A clear statement of the person's agreement with the Service, or any specific parts of the Service for which the person lacks capacity and relevant decisions are therefore made in their best interests by the Council in consultation with their families and advocates (with the person's permission where applicable), clearly detailing any existing DoLS that may be in place.
- 3.1.4. Once all assessments are complete the provider will ensure all areas of need, support and outcome expectations are part of any internal support planning documentation, including:
- The tasks to be undertaken by Care and Support Workers;
 - When they shall be carried out;
 - Who shall carry them out
- 3.1.5. Ordinarily these assessments will be completed before a service is commences. Exceptionally, where a service is put in place on an emergency basis, the assessments should be completed within a maximum of 5 calendar days.

3.2. Providing Service Information

- 3.2.1. Providers will register with the Council's On-Line Service Directory (or any site that succeeds it). Providers will keep their contact details up to date on the site and any failure to do so may result in a Contract Sanction. These details will

be used to communicate with the Provider including any Service changes, enhancements, developments, price increases etc.

- 3.2.2. The Council requires Providers to register and actively monitor a suitable generic email address (i.e. admin@provider.com or office@provider.com) that will be used as the main means of communication between the Council and the Provider. This email address cannot change with any staff turnover within the Provider's organisation and avoids the need for many amendments and possible miscommunications. This must be in compliance with Data Security recommendations from the NHS Data Security & Protection toolkit: <https://www.dsptoolkit.nhs.uk/>
- 3.2.3. The Council requires Providers to follow the Council's Contract Change Control process.

3.3. Units of Purchase

- 3.3.1. Support Living services will not have a differentiated Social and Unsocial hourly rate. Therefore, the below units of purchase will apply.
 - a) **Day Support (07:00 – 22:00);** Day Support within Supported Living services will be purchased and calculated for payment based on the Provider's contracted hourly rates for each of the hours of support required on a pro rata basis.
 - b) **Night Support (22:00 – 07:00);** Night Support within Supported Living services will be purchased and calculated for payment based on the Provider's contracted hourly rates for each of the nine hours of the of the shift.
- 3.3.2. The number of units and frequency of delivery will be outlined in the Purchase Order (previously a Service Delivery Order (SDO) or Financial Activation Notice (FAN). No change to the status of the Contract will be made without formal consultation and agreement with the Council
- 3.3.3. The specific Service for each person must be delivered in accordance with the requirements of the Purchase Order and must not be varied without the appropriate authorisation.
- 3.3.4. The Council will monitor compliance to the Purchase Order through the person's Care and Support Plan Reviews and annual Statutory Reviews, feedback via the Council's complaint process and the agreed KPI through Contract Management. The KPIs are detailed in Schedule [TBC], Contract Management.

3.3.5. In the event the Provider does not deliver in accordance with the commissioned units of delivery, the Council is entitled to remedies in accordance with but not limited to Clause 41.4 of the Terms and Conditions.

3.3.6. The Council's Position on Banking / Flexible use of hours for Care and Support in the Home Services:

- a) The Council commissions services based on the identified needs of an individual following assessment by the Council's in-house qualified practitioners.
- b) The Provider then agrees to deliver these hours at their contracted rates, within the agreed units set out in Section 3.7 above and invoice in line with their payment cycle or agreed payment period (a full week is calculated Monday through Sunday).
- c) The invoice MUST contain the following:
 - I. Individual's Name and Council Identification Number
 - II. Name of the Contract the invoice relates to
 - III. Dates the invoice relates to
 - IV. Invoice Number

*There MUST be one invoice per individual per period, not multiple individuals on a single invoice
- d) The provider may flexibly provide the commissioned hours within the agreed payment cycle or period but must not exceed the total unless by agreed exception.
- e) In addition to the flexible use of support hours detailed within Section 3.7, the Council reserves the right to work with providers, on a limited time Pilot basis, during the lifetime of the contract to look at alternative flexible models of support delivery in order to inform further evidence-based decisions on future delivery models.

3.3.7. The following table provides examples of both correct and incorrect use of flexible use of support hours. In this example the Individual requires 10 hours of one to one support each week, totalling 40 hours over a 4-week period:

		Week 1	Week 2	Week 3	Week 4	Total	
	Commissioned Hours	10	10	10	10	40	
Example A	Actual Hours Delivered	10	12	10	8	40 (commissioned hours flexibly used within period)	✓
Example B	Actual Hours Delivered	10	16	10	8	44 (no KCC approval sought by exception for additional hours)	✗
Example C	Actual Hours Delivered	10	6	8	10	34 (commissioned hours are under delivered and provider wishes to roll remainder over)	✗
Example D	Actual Hours Delivered	10	6	8	10	34 (commissioned hours are under delivered but the provider only invoices for actual hours delivered and communicated with Care Manager)	✓
Example E	Actual Hours Delivered	8	8	8	8	32 (commissioned hours are under delivered but the provider has invoiced for the full 80 commissioned hours)	✗

3.3.8. Administration time, including record keeping, forms part of each provider's price build, making up their hourly rate. However, the Council recognises that some individuals may require greater levels of record keeping and through transparent communication and agreement between Council Practitioners and Providers, these expectations need to be clearly outlined and conveyed in the individual's care and support plan.

3.3.9. Please see Schedule 3 Pricing for further information.

3.4. Shared Support

3.4.1. Shared support is defined as hours of support delivered in a service where there will be support delivered to multiple tenants by a single or multiple, appropriately trained and competent member(s) of staff at the same time.

3.4.2. Shared Support can either be delivered for multi tenants for a specific activity such as meal preparation etc but can also include staff presence within the property to mitigate risk as a watching brief.

3.5. Night Support

3.5.1. In some cases, Night Support is required to ensure the needs of individuals are met on a 24/7 basis, on weekends and bank holidays as assessed. Night Support is defined as support delivered between the hours of 22:00 and 07:00,

as required through either a Sleep Night or Waking Night provision. Night Support can range from direct support (1:1, 2:1 etc) to an on-call or technological solution. The Provider must ensure that management support is available for its support workers as a contingency.

- 3.5.2. Where a Sleep Night provision has been assessed as required, a separate sleep-in accommodation facility must be provided, in the form of a separate bedroom. The provider will be responsible for purchasing the necessary furniture/ bed linen required for this facility.
- 3.5.3. **Disturbed Nights:** Any disturbances and associated care and support delivered during either a Sleep Night or Waking Night must be recorded in a timely manner and then communicated with the Council's operational teams at the earliest opportunity. The provider will be expected to note patterns of disturbances or unexpected care and support at Night and share this information with the Council's operational teams as this information may indicate a need to adjust the commissioned hours for the individual

3.6. Standard and Complex Support

- 3.6.1. Standard level is defined as any Care and Support that can be delivered by staff within agreed Mandatory training as outlined in the tables in Appendix A
- 3.6.2. Complex level services are for people requiring Support who are assessed by the Council as having complex and/or challenging needs, where higher risks are present that cannot be reduced by additional Staffing. Complex level Support will also require additional training in addition to those included in Mandatory training outlined above.
- 3.6.3. The Council's Practitioners are responsible for assessing the need for Complex Services and defining the Service required in the Care Plan. Where people are assessed by a Practitioner as requiring Complex Services, this will be approved by the Council and may be underpinned by risk assessment alongside the Care and Support Plan.
- 3.6.4. In recognition of the additional training requirements set out above, the Complex Service contracted rates are higher than those of Standard Support
- 3.6.5. Complex Service requires the Provider's Staff to be trained to a higher level to meet the greater complexity of needs of the people requiring Support. In addition to the Standard level, Providers will:
 - a. Prepare in depth risk assessments and positive risk management plans around the areas of higher risk and/or specific behaviour(s) together with what has been put in place to minimise and manage those risks;

- b. Provide clear Behavioural Support Plan for people requiring Support that details: the identified behaviour(s); how the behaviour(s) manifest; clear guidelines as to how the person requiring Support should be Supported to reduce the behaviour(s) and what alternative solutions have been considered and/or implemented;
- c. Have clear boundary settings;
- d. Evidence that Care and Support Workers have had training appropriate to the complex needs of the individual where there are clinical presentations of mental health issues; Substance Misuse; Dementia and Neurological function;
- e. Evidence that Care and Support Workers have had training in the delivery of intervention strategies;
- f. Engage with professionals from other agencies who provide specific Support and guidelines and that you follow their guidelines as required; and;
- g. Engage with relevant professional support networks.

3.7. Care and Support Planning

- 3.7.1. All care and support plans relating to the services being commissioned, should be based on a Person-Centred Approach to care planning is required, and expertise in Person-Centred Planning (PCP) should be utilised. The individual's circle of support will be fully involved. Relationships will be developed with the multi-disciplinary team and maintained to ensure a positive service design is achieved for an individual. The provider shall immediately inform the Council's operational teams if they have any reason to believe that an individual is at risk through self-neglect, deterioration of health or as a result of their behaviour or lifestyle, or because of the actions or behaviour of others.
- 3.7.2. Formal Reviews of the person's Care and Support Plan will be conducted by the Council. The first Review will be held by a Social Care Practitioner within the first 6 - 8 weeks following the commencement of the person's care and support package, in line with requirements under the Care Act. Thereafter, a Review will be held as often as the Council, the Provider and the person feels is necessary; at least annually, or as determined by the milestones detailed in the action plan. This will include updates to the Care and Support Plan where required. Reviews undertaken by Social Care Practitioners may take place with or without the Provider being present but in all cases the Council has the expectation that Provider's views are considered.
- 3.7.3. The Provider must define their approach through their Care Plan, which will detail how the Provider will achieve the outcomes agreed in the Care and Support Plan and the goals they will work towards to meet these outcomes. Provider Care Plans will be underpinned by SMART principles to ensure that goals are Specific, Measurable, Agreed, Realistic and Time-based. The

Provider Care Plan must also include a comprehensive Risk Assessment which is personalised according to the person's specific needs.

- 3.7.4. The lists of activities detailed in this Specification are neither exhaustive, prescriptive or needed in all cases and will depend on the tasks identified to best support the person's outcomes and meet their needs, as identified in their Care and Support Plan and the presenting needs of the person on the day. The activities may require varying degrees of support and an enabling approach. Where the person requires support in decision making or lacks the mental capacity to make specific decisions for themselves the Principles of the Mental Capacity Act 2005 must be applied.
- 3.7.5. Care and Support Plans and the delivery of care and support packages must be aligned to the Council's Social Care Eligibility Criteria, which are detailed in Section 4.10, which will form the basis for the individualised outcomes detailed in each person's Care and Support Plan, and the goals that the Provider will work towards to achieve these.
- 3.7.6. Support planning documentation will include health action plans where applicable and will specify which Practitioners or Clinicians will remain involved and the frequency of their inputs / support. It will focus on improving an individual's health, personal development and social wellbeing. All plans will have an underlying focus on increasing the individual's choice, rights, independence and control.
- 3.7.7. It is expected there will be a robust key worker system in place to support the implementation of person-centred planning. Specific plans relating to complex needs and personal development will specify the inputs and interventions of different staff members and multi-disciplinary team professionals to support positive outcomes for individuals.
- 3.7.8. Individual support plans will be reviewed as specified and as a minimum every six months or as required by the Provider where the needs of a Service Users warrant such due to changes in levels of dependency. Reviews must be person centred and where applicable should involve the Commissioner. Providers should note how all prescribed treatments and therapies will be monitored to ensure they are provided as specified.
- 3.7.9. Where there is any significant change in a person's assessed need, then the Provider should request an ad-hoc review, outside of the scheduled reassessments as above.

3.8. Outcomes

3.8.1. An outcome can be described as the impact a Service has on the person. Outcome-focused Services are fundamentally person-centred in approach, recognising that each person is unique and will have different needs and requirements. The Health and social care act 2012 and Care Act 2014 gives a framework for Local Authorities and Health to achieve a new direction for community services:

- Improved quality of life
- Increased health and emotional wellbeing
- Increased choice and control
- Increased engagement and interaction
- To make a positive contribution
- Freedom from discrimination and harassment
- Economic wellbeing
- Maintain personal dignity and respect

3.8.2. It is expected that the providers will adopt these principles and will play a critical role in enabling the achievement of these outcomes through:

3.8.3. Day to day delivery based on the supported living ethos set out in this service specification.

3.8.4. An active commitment to facilitating the on-going development of person-centred Planning. In practical terms, this means providers may need to, depending on the needs of the individual, engage with the individual's relatives, friends, advocates and other key members of an individual's circle of support.

3.8.5. Targeting activities around the achievement of outcomes for the individual, which feed the overarching outcomes outlined above.

3.8.6. Continued and ongoing engagement with social care practitioners on translating the key individual outputs which contribute to the above broad outcomes will be essential.

3.8.7. Incorporating "community / social elements" into every outcome, e.g. if someone is becoming independent at cooking then they will need to purchase food, providing the opportunity to develop relationships in shops, increasing confidence and communication skills as part of the wider task, rather than just focusing on the task itself. Building community / social elements into outcomes in this way as a core part of the activities, further supports the potential sustainability of the outcome and leads to greater opportunities for people to lead inclusive lives promoting increased quality of life / choice and control, as people develop increased levels of community resilience and social support.

- 3.8.8. Progress towards outcomes will be recorded by the Provider and reassessed by a Social Care Practitioner within the first 6 – 8 weeks, following commencement of the placement and then annually thereafter, by the respective Social Care Practitioner. Providers will be expected to be key contributors to this process.
- 3.8.9. The Supported Living Service will focus on the person's wellbeing. Not all outcomes detailed in Section 3.4 will be relevant to every care and support package. However, the Care Act Eligibility Outcomes relating to the person's Care and Support Plan will be the basis on which the effectiveness of the Service will be determined. A person's Care Act Eligibility Outcomes will be documented in their Care and Support Plan.
- 3.8.10. The precise details of how the outcomes agreed in the Care and Support Plan will be met will be negotiated and agreed between the person, relatives, carers, advocates, Social Care Practitioner and, where appropriate, the Provider. The Provider's Care Plan must demonstrate how the activities delivered will achieve the outcomes stated in the Care and Support Plan within the package of care and support hours.
- 3.8.11. Providers will support people to use their own abilities and strengths to be as resilient and independent as they can. Providers will support people to identify and build on ways they can care for themselves, and will support people to access support from family, friends and carers to resolve problems themselves and deliver their own solutions. This will include:
- 3.8.12. Valuing the capacity, skills, knowledge, connections and potential in the person, their families and their communities;
- 3.8.13. Working in collaboration, helping people to do things for themselves becoming co-producers of support and developing shared care partnerships;
- 3.8.14. Promoting persons becoming active consumers of support, preventing passive consumption.
- 3.8.15. Using a strengths-based approach to maintain and improve social networks and enhance well-being;
- 3.8.16. Encouraging and supporting self-care and exercise.
- 3.8.17. The Provider will be expected to work in partnership to provide care and support that enables people to be resilient regarding their health and social care needs so that they maintain a good level of well-being and can live healthy lives.

3.9. Transport

3.9.1. Vehicle Usage: With a view to promoting independence, in the first instance, it is expected that the Provider should be assisting the person to use their own or public transport. If neither of these transport options are possible, to ensure that the person is transported safely and appropriately and in accordance with the current legal requirement the Provider must ensure all Care/Support Workers driving vehicles for people accessing the Service shall:

- a) Hold the appropriate vehicle insurance;
- b) Hold the appropriate vehicle licensing;
- c) Have a valid licence with no more than a maximum of six endorsements, and no disqualifications;
- d) Have regular driving licence validity, endorsements and disqualifications checks directly with the DVLA using a Driver Check Code, every six months – paper/card licence checks are not valid;
- e) Ensure the vehicle is taxed and has a valid MOT;
- f) Have awareness of their responsible for safety of the vehicle whilst driving, etc. and will therefore need to ensure the appropriate pre-driving vehicle checks for road worthiness are completed with the vehicle at the start of each period of driving; the provider will ensure this training forms part of the core training needed for the Care/Support Worker.
- g) Have time to familiarise themselves with the vehicle, to include understanding of any bespoke features, seat belt usage for wheelchair users, and any other additional non-standard features of vehicles by the person who is the owner of the vehicle.
- h) Have awareness of the protocols for correct use of Blue Badges where necessary.

3.9.2. The provider will work with the person accessing to the Service to ensure the following:

- a) The vehicle owner has the appropriate valid documentation for the vehicle each time a Care/Support Worker commences a driving period with the vehicle; to include MOT (Ministry of Transport) test certificate, V5C (vehicle registration document), a print out of vehicle tax validation from the DVLA, and insurance certificate;
- b) The vehicle owner or appropriate person demonstrates all bespoke controls and safety features, seat belt usage for wheelchair users, and any other additional non-standard features of the vehicle.

3.9.3. Concessionary Travel: The Provider will ensure all Care/Support Workers are aware of the protocols for correct use of the following:

- a) English National Bus Pass/Kent County Council;
- b) Concessionary Bus Pass Scheme;
- c) Disabled Persons Railcard;

- d) Kent Karrier;
- e) Any form of assistive travel.

3.10. Multi-Disciplinary Teams (MDTs)

- 3.10.1. Providers may be represented at Local Care Multi-Disciplinary Teams as they develop and will engage with Local Care development in their area where appropriate.
- 3.10.2. Providers will ensure that any social care needs are recognised, and the correct specialisms are fully engaged.

3.11. Promoting Choice and Control

- 3.11.1. Individuals will be both supported and actively encouraged to be involved in all decisions about their support. Providers will be expected to have a comprehensive policy for individual involvement and be able to demonstrate how this is implemented and evaluated in relation to improved outcomes for the individual. This policy will have regard to the need for independent advocacy where appropriate.
- 3.11.2. The Council wants to support initiatives which promote choice and control for individuals receiving care and support services. Increased choice will be underpinned by increasing the use of the Direct Payments Scheme and Personal Budgets which place the person at the centre of planning their support. Service providers will be required to fully co-operate with the Commissioner to develop and promote such initiatives in future years.
- 3.11.3. If any individual does not have capacity to give informed consent on any decision affecting them then the Mental Capacity Act (2005) must be followed with any 'best interest' decision making being recorded.
- 3.11.4. Providers may be required to contribute to and/ or attend Best Interest Decision meetings.
- 3.11.5. Providers must comply with the principles of the Mental Capacity Act and empower people to make decisions for themselves wherever possible. Assessments of capacity are time and decision specific, where a person has been assessed as lacking capacity in a decision then any action taken, or any decision made for or on behalf of that person, must be made in his or her best interests and the Provider should ensure such decisions are clearly documented, as this may be required for any requests or application of the Deprivation of Liberty Safeguards (DoLS).

3.12. Wellbeing

3.12.1. The Provider will contribute to the person maintaining good physical and mental health for as long as possible and ensure they feel satisfied that arrangements are in place to access treatment. People will be supported in managing any long-term conditions and disabilities through promotion of self-care, self-management, self-determination etc. The Provider will support the person to improve their management of long-term conditions and/or disabilities.

3.12.2. People will maintain well-being, independence and feel in control of their lives. They will:

- a) Feel the Service has assisted them to regain confidence and access choices;
- b) Receive Services that reflect and support their changing circumstances and where possible are encouraged to undertake physical activities appropriate to their health, circumstances and abilities;
- c) Maintain good health, and feel confident that Care/Support Workers are aware of their personal, cultural or otherwise special dietary and nutritional needs;
- d) Have physical, mental and emotional needs identified (including sadness and depression) and supportive measures put in place e.g. befriending and mental health support Services as appropriate;
- e) Build on Strengths and interests, including meaningful engagement with the community.
- f) Be supported to monitor and maintain both nutritional and fluid intake to promote well-being.

3.12.3. The person is central to decision making concerning the support they receive and is encouraged to carry out and engage day to day menu planning and shopping as well as accessing leisure and social activities to maximise independence and mental and physical well-being. They feel part of the community, are informed about and participate in local activities and initiatives. The person will:

- a) Maintain maximum independence both in their own home and local community and be involved in day to day decisions about the care or level of support offered and taking greater control of their life;
- b) Where possible develop personal resilience and resilience within their wider support networks e.g. family, local community etc;
- c) Be supported to undertake useful and meaningful activities and lead a fulfilling life, with whatever assistance is required and is supported to access local social, cultural, vocational, working and/or leisure activities;

- d) Have the opportunity and feel supported to follow their cultural and/or spiritual beliefs within legal boundaries, to include recent and changing legislation e.g. the Prevent Duty Guidance;
- e) Be satisfied with the support they receive to access training and employment (where this is an appropriate outcome for the person);
- f) Be supported to maintain social/community and family networks;
- g) Receive ongoing information relating to the local community and be satisfied with the arrangements made to assist them in making or retaining contacts with the wider community and encouragement to participate in activities;
- h) Be supported to maintain health and hygiene within their personal environment;
- i) Experience support in accessing dentists, opticians, chiropodists and other healthcare Services;
- j) Develop life skills; including where appropriate support to find employment, reduce debts and manage money better;
- k) Be encouraged to be involved in local decision making;
- l) Supporting the person in all aspects of community and social relationships;
- m) Be supported to continue to develop their decision-making capacity in relation to their own care and support needs.

3.12.4. The person will be supported to maintain their independence and manage this as much as they can themselves, through the delivery of self-care advice and techniques and expert by experience schemes. Through the achievement of commissioned outcomes, the person will be enabled to move on to greater independence and / or reduced levels of support, developing personal resilience and resilience in their wider support network.

3.12.5. People will be supported to manage their independence utilising a strengths-based approach, which will focus on their abilities rather than their disabilities or long-term conditions. Where care and support arrangements must be put in place, the least restrictive option must always be considered first and actively promoted, in line with Deprivation of Liberty Safeguards 2005.

3.12.6. Avoidable admissions to hospital will be managed as much as possible with people being supported to access the right care at the right time through the Provider's liaison with health and social care partners. The person will:

- a) Be supported to better manage their long-term conditions and disabilities and experience improvements through this, wherever possible;
- b) Be supported by the Provider working across the health and social care economy;
- c) with colleagues in Health teams, social care and within private and voluntary sector Providers and community groups, working in a consortia approach as appropriate;

- d) Stay in their own home, as independently as possible, for as long as possible;
- e) Have a delayed and / or reduced need to access residential care;
- f) Be supported to consider broader housing options;
- g) Experience increased independence through the utilisation of equipment and Telecare / Telehealth solutions to meet needs previously met in a hands-on way;
- h) Be supported to consider positive risk taking and be able to identify and manage risks within their environment, making informed choices based on sufficient information;
- i) Maintain health and hygiene within their personal environment;
- j) Take prescribed medication safely in accordance with the Provider organisation's medication policy/protocol;
- k) Understand the benefits of eating healthily.

3.12.7. Families, carers and advocates will be, with the person's permission, aware of the support delivered and any improvement in outcomes for the person. Families and carers will feel involved and informed about the support delivered with the person's permission. Where possible and appropriate, the person, their families, carers and advocates will be involved in any Care and Support Plan Review.

3.12.8. The Provider will support the person to:

- a) Be supported to develop communication skills and have a strong voice in the support received;
- b) Be enabled to control the Service they receive, with minor changes enabled to meet day to day changing needs;
- c) Experience consistency in the scheduling of Services and times the person expects or requires;
- d) Experience continuity of care, supported by a 'trusted team' of Care/Support Workers, who they trust and respect, with early introductions made to reduce the fear of new people. Take different opportunities and use a variety of methods to feed back to the Provider regarding care received and have confidence that appropriate policies and procedures are in place;
- e) Be better informed regarding their care choices and better able to access information on Providers of care in their local area;
- f) Experience consistency in the good quality of provision;
- g) Be assisted in writing/designing their Care Plan;
- h) Have their individuality promoted.

3.13. Risk Assessment and Positive Risk Management

- 3.13.1. The provider shall conduct a needs and risk assessment on each individual and ensure this is reviewed on a regular basis; in any event not longer than six-monthly intervals. This shall include a fire risk assessment and associated Personal Emergency Evacuation Plan (PEEP) as required.
- 3.13.2. People will be empowered take control of their lives with the support of Providers and the Council's Practitioners. People will be supported to manage the tension between promoting safety and positive risk taking. This will be supported by:
- a) Ensuring people are supported by a team they trust and not receiving care from numerous Care/Support Workers, the Council recognise that continuity of support is important in building trusting relationships;
 - b) People and their support team identifying, assessing and then managing risks whilst understanding that risk is an everyday experience;
 - c) Care/Support Workers accepting the need to work within a wide range of home conditions, subject to a risk assessment;
 - d) Ensuring people and Care/Support Workers assess risk dynamically, understanding that decision making can be enhanced through positive collaborations;
 - e) Understanding that risks can be minimised, but not eliminated;
 - f) Empowering the person requiring support, within reason, to decide the level of risk they are prepared to take with their own health and safety. This includes working with the tension between promoting safety and positive risk taking, including assessing and dealing with possible risks for people requiring support, carers, family members, and the wider public.
 - g) Providers taking responsibility in encouraging a no-blame culture whilst not condoning poor practice;
 - h) Providers working with the Council to understand and meet the changing needs and expectations of people and their families and supporting them to have more control over their lives, health and care;
 - i) Conducting risk assessments where there is potential for significant harm, self- neglect, injury or death. Examples could be but are not limited to the following: choking/falling/scalding/transfers (hoisting)/not following specialist instruction/skin integrity/infection control/Control of Substances Hazardous to Health /labelling and signage (for persons living with Dementia)
- 3.13.3. The provider shall also undertake risk assessments in relation to their staff in the work environment in line with the Health and Safety at Work, Act 1974 (as amended) and any associated legislation.

3.14. Commencement and Recording

3.14.1. The Provider will commence provision of the Service on the start date specified by the Council and shall continue to provide the Service until the end date, unless the package is cancelled, suspended or varied in accordance with the Contract. Providers will:

- a) Records should be made daily and time stamped to accurately reflect and evidence the care and support provided, clearly identifying who wrote each note. Record must be reviewed at least once a month, to ensure receipt of feedback from the person, carers and staff and to inform whether a more formal Provider or Council review is necessary;
- b) Provide information to the Council prior to the annual Statutory Review to maximise the effectiveness of the Statutory Review and enable participation from the person receiving the Service where appropriate;
- c) Maintain oversight of any special requirements and changes to special requirements, and ensure these are integral to all of the person's records the Provider holds;
- d) Consider the person's requests for adjustments in the Service and following approval with the Council's operational teams, make changes in arrangements as required, provided there has not been a substantial change in the person's circumstances or needs which would require a formal reassessment of need by the Council's operational team;
- e) Ensure staff know how to notify the Provider and the Council of any increase or deterioration in physical or mental health and/or any other relevant events and record these in the person's notes kept by the Provider;
- f) Notification the Council of hospital admissions to ensure the appropriate break or suspension of service can be applied;
- g) Ensure processes are in place to notify the Council of these changes and ensure that the support provided remains at an appropriate level;

3.14.2. To ensure transparency and resolution of potential service reviews or investigations or audits, the Council requests that Staff Rotas are kept for a minimum of eighteen months.

3.15. Continuity of Care

3.15.1. To ensure that the person is comfortable with their Care/Support Worker(s), the Provider will:

- a) Ensure people are supported by a team they trust; the Provider should try and match Care/Support Workers to meet specific needs of the person wherever possible;
- b) The amount of Care/Support Workers in this trusted team should ideally be kept to no more than four and in any case as low as possible, or in the case

- of a high number of support hours delivered, (including two to one support ratios and above) eight Care/Support Workers;
- c) The person is consulted and kept informed about their 'trusted team' always and any changes that may become necessary.

3.16. Notice Periods

- 3.16.1. Regarding any notification to the Council with regard to notice being given on a package of care and support, whether part of a planned and managed transition for move-on or the handing back packages of care and support packages, Providers must immediately discuss with the Council, and give the Council notice as laid out in Schedule 1 of the Terms and Conditions, except as otherwise mutually agreed. The Provider and the Council will work together to minimise any disruption and maintain continuity of Service to the person whilst supporting a transition plan for the person.
- 3.16.2. The communications book and action plan for the person must be handed back to the Council or the alternative provider on the last day of Service delivery to ensure continuity of care and support.

3.17. Payment Mechanisms

- 3.17.1. The Council is currently implementing a replacement of its current Swift client database to MOSAIC. Over time, a new Provider Payment Portal will be implemented but further communication will follow ahead of any commencement of a new system and associated payment mechanism.
- 3.17.2. Until the implementation of the Provider Payment Portal, all Providers should continue to use the existing payment mechanisms that are in place, namely through:
 - a) Adult Payment Team;
 - b) ContrOCC;
 - c) Accounts Payable;

3.18. Notifications to the Council

- 3.18.1. Providers must notify the Council immediately in writing via email of any:
 - a) Safeguarding concerns in respect of the person;
 - b) Emergency incidents as detailed in section 6.3, including serious accidents or incidents involving the person or the Care/Support Worker, hospital admissions and/or deaths of the person, including any other change in the Service related to circumstances or emergency;

- c) Regular and/or persistent (three or more times in consecutive visits) refusal by the person to accept support to meet outcomes mutually agreed in the Care and Support Plan;
- d) Failure to provide the Service to the person;
- e) Deterioration in the person's health or well-being;
- f) Improvement in the person's circumstances, including mental capacity issues – improvement or deterioration of the person's mental capacity in relation to specific decisions of the Care and Support Plan. This may also include the achievement of a goal and/or outcome which may be associated with a reduction in the hours of care and support required.
- g) If an individual is not able to receive the planned one to one support or is not able to attend a planned visit to day service / college etc, the reason must be clearly recorded and evidenced by the Provider. Notification of any additional support that may be required, proportionate to assessed need, must be approved by the Council's Practitioner prior to any invoicing for that period or delays in payment could result.
- h) Any change in need or presentation of a person's behaviour must be clearly recorded and communicated with the Council's Practitioner to ensure that patterns and trends can be identified, which may trigger a re-assessment of need and associated support required.

4. Quality Assurance and Contract Monitoring

- 4.1.1. Quality assurance is a central part of the providers performance monitoring and will be measured on outcomes centred on each individual's needs, wishes and ambitions and the outcomes identified in the Government White Paper 'Our Health, Our Care Our Say', Care Act 2014.
- 4.1.2. Providers must ensure that a quality management system is in place to ensure internal quality control and consistency of practice. Providers must also be committed to a process of continuous Service improvement driven by feedback from people receiving Services, the Regulator where appropriate and the Council. Outcomes, key performance indicators and contract management information will be reviewed throughout the life of the contract and the Council reserve the right to utilise a third-party representative to manage this on our behalf.
- 4.1.3. Providers will inform the Council within 7 days regarding any defaults linked to poor practice and non-contractual compliance.
- 4.1.4. The Council will regularly audit compliance with each area of this service specification, and the corresponding Framework Agreement. This will be done through a combination of:
 - a) Individual reviews by Commissioners and Officers or the Council;

- b) Pre-arranged reviews by groups consisting of individual tenants, their families, carers and other professionals;
- c) Regular meetings with the providers to discuss current issues about the service;
- d) Announced annual contract monitoring visits by officers of the Council;
- e) Submission of contract information via an online form;
- f) Unannounced monitoring visits by officers of the Council (this may include tenants, their families and carers) when necessary;
- g) Responding to individual concerns, complaints or commendations raised about the service;
- h) Reviewing written procedures and records for both individuals and staff;
- i) Feedback from the CQC;
- j) Feedback from and consultation with parents/carers other professionals and advocates where appropriate;

4.1.5. As part of these processes, the provider will be expected to:

- a) Work with individuals, family carers, Council Officers including Social Care Practitioners and advocates to develop, implement and evaluate improved outcomes (and indicators) for the individual;
- b) Work with the Council to ensure that the agreed programme of support for the individual, as set out in his/her support plan, is being implemented;
- c) Acknowledge that the Council may make arrangements to independently monitor the quality of the service provided by direct contact with individual tenants;
- d) Provide the Council any information reasonably required for monitoring the performance of the service, preparation of Local Authority Reports, Government statistics or information required to respond to enquiries/ complaints from Councillors or members of the public, CQC or which is necessary for the performance of the Council's statutory responsibilities;

4.1.6. The provider will be expected to demonstrate internal quality monitoring mechanisms that assist in the ongoing delivery of value for money, and that are designed to identify and address poor practice and falling standards.

4.1.7. The Provider acknowledges and agrees that Council Officers, including Social Care Practitioners may take Photographic evidence of risks and concerns identified during contract monitoring visits, and for this to be used to formulate a plan of action to ensure the Service Provider complies with the Contract.

4.1.8. The Provider acknowledges and agrees that in circumstances where the Council has concerns about the safety and/or wellbeing of Service Users the Council may in its sole absolute discretion require access to the Service at any time without notice in order to monitor the Services and the requirements of

this Contract provided that the Council's staff have appropriate authorisations in place prior to taking any such action.

- 4.1.9. Contract review visits may be either pre-planned or unannounced and the Council (or our representative) reserves the right to view all records that relate to both our people and those of self-funders that reside in Kent to fulfil safeguarding and Care Act requirements.

4.2. Contract Sanctions

- 4.2.1. The Council will utilise contract Sanctions to denote non-compliance with the Contract and Specification. Sanctions will also be used as a temporary measure whilst investigating concerns, which may not result in an offence being found. Non-compliance with the Contract and Specification will be identified through KPIs, Contract Management and Monitoring processes and notifications from the Council's Practitioners. There are three types of Contract Sanctions:

- Poor Practice Sanctions to express levels of non-compliance with the Service Specification;
- Contract Compliance Sanctions to express levels of non-compliance with the Terms and Conditions;
- Safeguarding Sanctions where a person(s) is/are reported to be at risk of harm, abuse or neglect.

- 4.2.2. Each of these Contract Sanctions have three risk levels starting at Level 1 and escalating up to Levels 2 and 3. A copy of these can be found at Annex B. A Level 3 flag will prevent the Provider from being offered or accepting referrals from the Council. The Council will immediately apply a Level 3 Contract Sanction if:

- The Regulator has issued a Warning Notice;
- Significant risks to people have been identified;
- The assessed needs of people are not being met.

- 4.2.3. Where contractual non-compliance is evidenced, the Council will require the Provider to draw up an action plan that addresses areas of concern and articulates the milestones to be achieved. This must be returned to us within 7 calendar days of the non-compliance being evidenced. The plan will be agreed by the Council and must be delivered by the Provider within the identified timescales

- 4.2.4. The Council will escalate Sanctions where Providers fail to meet the plan. It is the Provider's responsibility to evidence that improvements have been made and the Council will not commit to monitoring visits with Providers who have not shared some evidence of improvement following a desk top review.
- 4.2.5. Continuous non-compliance or more than three episodes of non-compliance within a 12-month period could lead to the termination of an order or the Contract itself and the removal of all persons funded by the Council. The Council will be entitled to terminate the Contract or any order without issuing a sanction if the Council finds the Provider to be in serious breach of the Contract.
- 4.2.6. Providers (owners, corporate managers and local managers) must participate in local health and social care Provider meetings organised by the Council and its partners. The Provider will take part in any events in relation to The Care Act, other legislative work and the Transformation agenda. Failure to do so may result in a Contract compliance sanction being placed on the Provider. The Council reserve the right to:
- a) Publish any information in relation to compliance Sanctions or any contractual or quality audits undertaken by the Council or our representatives;
 - b) Publish lists of Providers who attend events managed by the Council and those who do not;
 - c) Recoup any costs incurred in supporting the recovery or managed exits of Services, where Providers have demonstrated an unwillingness or inability to improve or manage the Service themselves;
 - d) Alter this policy at any time and will provide notice to Providers of any changes.

4.3. Complaints and Compliments

- 4.3.1. Providers must ensure an easily understood, well-publicised and accessible procedure is in place to enable people to make a complaint or compliment and for complaints to be investigated. The Provider's complaints and compliments policy should also refer to the Regulator, Ombudsman and the Council Complaint Team, if the complaint requires an alternate signposting route. The Provider will be expected to investigate any complaints, compliments or quality issues that arise concisely with all evidence clearly documented.
- 4.3.2. The Provider will have an established Complaints and Compliments Policy. The Provider must evidence how they ensure learning from complaints and compliments improves the quality of the Service, and an enhancement to the training provided to staff.

- 4.3.3. Where there is a local advocacy group or Peer Forums, it is expected that the Provider will make constructive use of these organisations always and specifically to help resolve complaints and problems as early as possible. All complaints whether they have been formally or informally resolved should be recorded.
- 4.3.4. The Provider will report serious complaints and issues to the appropriate organisations e.g. RIDDOR, Police, etc. in addition to the Council.
- 4.3.5. A record of compliments should be maintained together with evidence if available and be used to reinforce good practice. Providers must be able to evidence how they share feedback on the Service via their quality assurance process.
- 4.3.6. The record of the complaint / compliment must include:
 - a) The date of the complaint / compliment;
 - b) Details of who made the complaint/compliment;
 - c) Details of the organisational staff member who managed the complaint/compliment;
 - d) Full details of the actual complaint / compliment;
 - e) The date the complaint / compliment was received (if different);
 - f) The date when the complaint / compliment was responded to;
 - g) The outcome of the complaint;
 - h) Details of whether the complainant was satisfied with the response/outcome;
 - i) Any further actions arising from the complaint / compliment to ensure improvement in the Service quality.

4.4. Keeping Customers Informed - Information Packs

- 4.4.1. Providers will provide an information pack that will include basic information as set out below and will ensure that this is available to the person, their family and carers as the Service commences. The information pack will be in an accessible format e.g. large print, good standard of English, photographs, audio tape, Braille (where necessary), easy read, video etc. and will be made available to person and their Care/Support Workers. It will include:
 - a) Statement of purpose: aims of the Service, model of care and support, who the Service is for, including the range and level of care and support Services provided, cultural and social needs catered for and support for Care/Support Workers;
 - b) Contact details for the Service including telephone numbers for the Service and its Duty Managers/co-ordinator (including out of hours and emergency contact numbers);
 - c) Service provision: the type of Service, facilities, and range of activities;

- d) A statement of person's rights to self-determination;
- e) A statement regarding the consequences of unacceptable behaviour; The procedures/contingency arrangements in place in the event of emergency temporary closure, Service reduction or permanent closure;
- f) Safeguarding information, including procedures followed;
- g) The process of quality assurance;
- h) Where applicable, information regarding where a copy of the most recent CQC and/or other relevant inspection reports or information can be obtained;
- i) Details of payment options should they pay all or part of their care direct to the Provider;
- j) Information management assurance;
- k) Contact details of the relevant Council departments;
- l) Complaints/compliments procedure.

4.4.2. Providers will act as first point of contact and triage all queries and/or issues relating to the individual's care and support e.g. issues or concerns with individual Care/Support Workers, refusals of care and support, etc. Providers will resolve all issues and queries except those where Social Services have a statutory responsibility (for example safeguarding or social work).

4.5. CQC Registration and delivery of Personal Care and Support

4.5.1. Requirements of the Regulator, Providers must conform to the requirements of relevant Health and Social Care legislation.

4.5.2. The Council recognises that not all Supported Living services are providing regulated activities such as personal care and support and as such, will not be registered with CQC. However, in a service not registered with CQC, should a tenant's needs change and personal care and support be required going forward, the Council does not expect this to affect the person's tenancy in any way. The Provider would be expected to either;

- a) Apply for registration with CQC to ensure continuity of care is maintained;
- b) Where a registration is not held we would expect providers to work alongside another CQC registered contracted provider to deliver the personal care and support element of the package to the tenant.

4.5.3. Delivery of personal care and support is defined by the Regulator as meaning physical assistance given to a person and could be in connection to the following types of tasks:

- a) Keeping clean and presentable in appearance according to the person's personal choice, this may require daily changes and flexibility based on personal choice etc;
- b) Direct assistance with or regular encouragement to perform daily living tasks;
- c) Training and providing advice and support on self-care skills including signposting to sites such as Support for Carers, Kent 24hr Dementia Helpline etc.;
- d) Assistance with all aspects of daily living e.g. to get up or go to bed, transfers from or to bed / chair / toilet, dressing, all aspects of toileting and continence management, washing/bathing (excluding any activity that requires a health care professional e.g. podiatrist, tissue viability nurse etc.).
- e) Assistance with skin care such as moisturising very dry skin;
- f) Medication management in relation to home from hospital support.

4.5.4. If a provider wishes to be eligible for services that require regulated activity such as the tasks listed above, the provider must comply with all registration and inspection requirements of the Care Quality Commission (CQC) in relation to the provision of Supported Living services, and co-operate fully with all reasonable requirements and requests of the CQC. The provider shall be required to meet relevant future registration requirements and comply with the provisions of the Health and Social Care Act 2012 and the Care Act 2014.

- a) Where registration for regulated activity is required, the Service provider must provide a Statement of Purpose and other information, materials, i.e. a guide setting out its aims and objectives, range of services it offers to individuals and the Terms and Conditions on which it does so in accordance with Paragraph 4(1)(c) of the National Care Standards Commission Regulations 2001.
- b) The provider shall be required to adhere to the CQC Essential Standards of Quality and Safety and comply with Section 20 regulations of Health and Social Care Act 2008 (as amended). The CQC will provide information in respect of the registration and inspection of the Service provider to the Council.
- c) Providers who are not registered for regulated activities such as personal care are prohibited from providing any such services. Should the provider feel that an individual's needs have changed to the point that such services are required, they should inform the Council's operational teams urgently so that a registered provider can be sourced to meet these regulated needs, whilst the existing provider maintains delivery of the other aspects of support. The need for additional personal care or regulated activity must not affect the person's tenancy.

- d) Where Providers are working alongside other agencies to deliver care and support packages, they will work in partnership with the other agencies to ensure the Services are provided in accordance with the person's Care and Support Plan and to maximise gains. Providers will sign up to an interface agreement provided by the Council and will actively support a consortia approach.

5. Workforce

- 5.1.1. The Provider will ensure that staff receive the appropriate levels of training to ensure each person receives care that reflects their specific needs in all areas. Providers will also consider longer term workforce development and demonstrate action planning to meet longer term development goals, including the development of succession plans to ensure continuity of care and support is maintained.
- 5.1.2. Providers will maintain awareness of and adhere to the Council's equalities policies, all relevant UK employment laws and workers' rights. They will ensure their employees work in an environment where they are shown respect and are not subject to any form of discrimination.
- 5.1.3. The Provider is expected to use recruitment and selection procedures that, regardless of registration, meet the CQC minimum standards; ensuring records are maintained to demonstrate best practice in this area. Providers must comply with Disclosure and Barring Service (DBS) requirements for staff.
- 5.1.4. All roles within the Provider's organisation must also have written job descriptions and person specifications and an Equality Policy for the recruitment, selection, development and care of the workforce (including volunteers, trustees/management committee members, apprentices, work experience, management) must be in place.
- 5.1.5. Providers must deliver a workplace induction to new Care and Support Workers and ensure that they complete the Care Certificate within 12 weeks. Providers should also use the Care Certificate as a refresher for their Care and Support Workers where appropriate.
- 5.1.6. All staff should meet formally on a one to one basis with their line manager for supervision, to discuss their work on a quarterly basis (every three months) and written records of these supervision sessions must be kept demonstrating the range, content and outcome of the discussion at each meeting.
- 5.1.7. Providers should be able to demonstrate how staff are supported and advised between supervisions and that additional meetings are facilitated where required.

- 5.1.8. With the consent of the person, at least one supervision a year should incorporate direct observation of the Care/Support Worker providing care and support to the person with whom they regularly work to observe competencies.
- 5.1.9. Regular meetings must be held at least quarterly with peers and/or other team members to discuss and share issues and best practice. This must be recorded.
- 5.1.10. All staff must have an annual appraisal, and this must include identification of training and development needs with their line manager. A copy of the appraisal will be placed on the personnel file for each Care and Care/Support Worker.
- 5.1.11. The Provider must ensure that there is a clear link between staff appraisals, identified training and development needs and the training plan. Managers and supervisors must receive training in supervision skills, undertaking performance appraisals and planning for workforce development.
- 5.1.12. A record must be kept of any disciplinary incidents and details entered in the personal file of the Care/Support Worker concerned, referrals to the Independent Safeguarding Authority must be made, if appropriate, and recorded on the Care and Care/Support Worker's file, or person staff member's personal file. the Council must be kept informed.
- 5.1.13. Providers must take appropriate measures to understand whether the Care/Support Workers within their employment are also engaged in other employment. The Provider must regularly review with each Care/Support Worker whether any care Sanctions or incidents involving the police and criminal justice system will affect their capacity to carry out their role and responsibilities as a Care/Support Worker
- 5.1.14. The Provider must have a written policy for the management of violence and aggression towards staff and ensure that suitable training and relevant risk assessment is provided to reduce the risk of violence and aggression towards staff. Adherence to the Health and Safety at Work Act 1974 will ensure that staff are safe whilst at work.

5.2. Workforce Development & Training

- 5.2.1. Providers will be registered with the Skills for Care National Minimum Dataset for Social Care (NMDS-SC) and the following criteria must be met:
 - a) All establishments will complete a NMDS-SC organisational record and must update all its organisational data at least once in the financial year;

- b) The establishment must fully complete person NMDS-SC worker records for a minimum of 90% of its total workforce (this includes any staff who are not care- providing);
- c) Person records for workers which are included in the 90% calculation must be both fully completed and updated at least once in the financial year;
- d) The establishment must agree to share information via the facility within NMDS-SC with the Council, CQC and NHS Choices.

5.2.2. Providers must show that they are complying with the relevant Regulations covering staff competence and training. Providers must ensure the completion of the Care Certificate (or other standards as set out by the CQC) for all new Care/Support Workers and other employees within 12 weeks of starting their employment.

5.2.3. Induction training must specifically include Mental Capacity Act 2005 (MCA), Safeguarding, Deprivation of Liberty Safeguards (DoLS), Mental Health First Aid and Dementia training. Providers will consider, where appropriate, incorporating the Skills for Care values-based recruitment guidance into their recruitment processes.

5.2.4. Providers must assess workforce training levels and ensure that mandatory staff training complies with those listed in point 3.3.10 of this specification, depending on the category of individual need at each service. The training already achieved and skills gap for the workforce as a group. Providers must have financially resourced plans in place to address workforce development requirements. The Provider must have a training plan, a training matrix and keep records of successfully completed training on a person's file and central file to continuously monitor and develop the plan.

5.2.5. Registered Managers must complete the Manager Induction Standards and have or undertake a recognised qualification for registered managers within the first year of employment. This must be completed within 2 years of employment. Managers should undertake periodic management training to update their knowledge, skills and competence to manage the Service. Where appropriate, Registered Managers should access peer support networks such as local Registered Manager networks to support their development and share best practice.

5.2.6. Staff must be supported to ensure appropriate skills are maintained to ensure that the highest level of care and support is provided by qualified and competent staff. Providers will ensure:

- a) All staff are competent and trained to undertake the activities for which they are employed and responsible;

- b) All Care/Support Workers hold a relevant qualification recognised under the Skills for Care Regulated Qualifications Framework e.g. Level 2 Diploma in Health and Social Care or equivalent;
- c) Those who do not already hold a qualification at the relevant standard should be supported to achieve the above qualification as a minimum within one year from commencing employment;
- d) Care/Support Workers receive specific advice and training about human rights in relation to Home Care Services within three months of starting employment and updated every two years;
- e) All staff have training on the prevention of abuse within three months of employment and this must be updated every two years;
- f) Any staff aged under 18 are supported in their work and must undertake an approved apprenticeship training programme – it is advised that the Health and Social Care Apprenticeship framework is used;
- g) Providers will support the development of staff and ensure that at least 2.3% of their workforce is accessing development through approved apprenticeship standards;
- h) Specialist advice, training and information is provided to Care/Support Workers working with specific groups and / or medical conditions and long-term conditions to ensure they are professionally qualified to do so;
- i) Staff have training in the requirements of MCA (Mental Capacity Act 2005) and DOLS (Deprivation of Liberty Safeguards);
- j) All staff are aware of their Safeguarding responsibilities both for Children and Adults;
- k) All staff are aware of and familiar with the Provider's policies and procedures;
- l) All staff are aware of and support equality and diversity principles, in line with the Equality Act 2010;
- m) All staff are aware of their responsibility regarding the Prevent Duty Guidance.

5.2.7. Providers must support the implementation of the ESTHER model countywide. The ESTHER Model was created in region Jönköping in Sweden in 1997. The model has two main purposes: to create smoother and safer pathways for ESTHER and to support more efficient use of Provider resources with a communal goal to always do what matters to ESTHER. Adult Social Care and Health are committed to the roll out of this model in Kent and therefore expect providers to deliver and work to this model. More information on ESTHER: <https://designandlearningcentre.com/overview-of-our-work/esther/>

5.3. Workforce Presentation

- 5.3.1. The Provider will ensure Care/Support Workers, when carrying out caring of domestic tasks with people, will not wear nail varnish, artificial nails, hair accessories of any kind and jewellery that is likely to cause a health and safety risk including cross infection.
- 5.3.2. The Provider shall provide all personal protective equipment necessary for the supply of Services and any small pieces of equipment that help Care/Support Workers to support people back to independence. The Provider will ensure all Care/Support Workers have the appropriate clothing, footwear whilst on duty to comply with Infection Control procedures, and the guidance detailed in the Health and Safety at Work Act 1974 and PUWER.

5.4. Provider Supporting Infrastructure

- 5.4.1. Providers must ensure that during all hours of operation, all Care/Support Workers have access to the Provider's Duty manager/Co-ordinator. An out of hours contact is available to provide advice, information and support to Care/Support Workers and persons outside of office hours but within the hours of Service provision. This will be staffed by a suitably qualified and experienced supervisor/manager with access to all the information for people and Care/Support Workers necessary to ensure the provision of Care/Support Workers and Service as a contingency at short notice.
- 5.4.2. The Provider must have a robust Business Continuity Plan in place to ensure prevention, planning and management of potential harm to the business are identified and minimised effectively.
- 5.4.3. The Provider will ensure all Care/Support Worker annual leave and sickness is covered within the Service.
- 5.4.4. The Provider will respond to referrals within 2 hours of receiving the email from the Council's Purchasing team. The Council accepts that this response may be first thing the next working day if the referral is received after 15:00 a weekday afternoon.
- 5.4.5. Responses to referrals will be monitored as part of the contract management arrangements, i.e. reasons for refusals, frequency and type to support further trend analysis and service model improvements.

6. Home, not a Workplace

6.1. Respecting someone's Home:

- 6.1.1. Provider staff are guests in the individual's homes. Consequently, provider staff will be unable to eat the individual's food or drink without the individual's

permission. Where a support worker is eating with a person or contributing to the weekly shopping the provider should ensure there is a clear policy in place.

- 6.1.2. The provider shall not show groups of people or individuals around individual's homes unless at the agreement of the people living there.
- 6.1.3. The provider shall ensure that houses used are not marked or otherwise identified in any way that might institutionalise them.
- 6.1.4. Some consumables in the house may be shared by individuals and provider staff e.g. soaps & toilet rolls. The provider is expected to contribute towards the purchase of such items, where this is the case.

6.2. Relationship with Housing Providers

- 6.2.1. The provider will be expected to co-operate and work closely with relevant housing providers for the benefit of individual tenants. It may be necessary where appropriate for the provider to enter into management agreements and/or referral protocol with the Council and housing provider, which will set out the responsibility of each.
- 6.2.2. In the case of any form of rented accommodation, that even when the Landlord and Support Provider may be the same organization, it is required that the support provision is not linked to the tenancy agreement. Individuals should be free to choose another service provider if they wish, without putting their tenancy at risk.

6.3. Tenancy Agreements

- 6.3.1. In relation to a Tenancy Agreement, in order for a person to have contractual capacity, the person must be able to understand the nature of the agreement in question prior to any request for signature being undertaken and completed.
- 6.3.2. Where required, Plain English and Easy Read versions of the Tenancy Agreement must be made available to support a mental capacity assessment relating to an individual's capacity to understand their contractual responsibilities in relation to the Tenancy.
- 6.3.3. Mental Capacity is time and decision specific and evidence of any assessment relating to an individual's contractual capacity in relation to the Tenancy Agreement must be shown to the landlord and local housing officer prior to any agreement or commencement of occupation and rent being agreed.
- 6.3.4. If a person lacks the mental capacity to make his or her own informed decision about whether or not to accept a tenancy offer, then an appropriate person can make the decision through the best interest process outlined in the Mental Capacity Act 2005.

- 6.3.5. Alternatively, if there is a registered enduring or lasting power of attorney in place; or a deputy for property and affairs has already been appointed, then the attorney or deputy would usually make that decision.
- 6.3.6. Although the Mental Capacity Act 2005 enables the making of certain decisions without the need to obtain any formal authority to act, it does not extend to signing legal documents, such as tenancy agreements. Someone can only sign a tenancy agreement on the person's behalf if they are:
- a) An attorney under a registered lasting power of attorney (LPA) or enduring power of attorney (EPA);
 - b) A deputy appointed by the Court of Protection; or
 - c) Someone else authorised to sign by the Court of Protection.
- 6.3.7. In some circumstances, landlords may be willing to accept unsigned tenancies, but this guidance applies to the situation where the landlord wants the tenancy to be signed. Even if the landlord will accept an unsigned agreement, it would also be appropriate to make an application where there is a dispute or if it is not clear whether the tenancy offer is in the person's best interests.
- 6.3.8. If the person has a registered attorney under an EPA or LPA, or has a deputy appointed to make decisions on their behalf, then the deputy or attorney can terminate or enter into a tenancy agreement without further authorisation from the court. Please note, however that deputies acting under an old style short order or receivership order made before the Mental Capacity Act came into force, may not have sufficient authority to sign the agreement, and it may be necessary to apply for 'reappointment' with the full powers of a deputy.
- 6.3.9. A landlord is obliged by law to provide their tenants with their name and address, regardless of whether or not the tenant has a written tenancy agreement.
- 6.3.10. It is good practice for a written tenancy agreement to include the following details:
- a) The tenant's name and the landlord's name and the address of the property which is being let;
 - b) The date the tenancy began;
 - c) Details of whether other people are allowed the use of the property, and if so, which rooms;
 - d) The duration of the tenancy, that is, whether it runs out on a certain date;
 - e) The amount of rent payable, how often and when it should be paid and how often and when it can be increased. The agreement could also state what the payment includes, for example, fuel or council tax (if not exempt).

- f) Whether the landlord will provide any services, for example, laundry, maintenance of common parts and whether there are service charges for these;
- g) The length of notice which the tenant and the landlord need to give if the tenancy is to be ended in accordance with the statutory rules about how much notice should be given, dependent on the type of tenancy and why it is due to end;
- h) The agreement may also contain details of the landlord's obligations to repair the property, depending on the type of tenancy.

7. Key Service Principles

7.1. Safeguarding Adults

- 7.1.1. The person will feel and be safeguarded from neglect and abuse and will know that any concerns will be listened to and acted upon promptly. The person will:
 - a) Be free of deliberate abuse and neglect, with the Provider responding promptly to the sharing of any concerns and understanding when this can/should be escalated to the Council;
 - b) Know who to report concerns to and issues regarding their care and support;
 - c) Know that concerns are taken seriously and addressed through the appropriate governance;
 - d) Live safely in their own home/community;
 - e) Know that home security is not compromised by the Service;
 - f) Be supported to develop good communication skills and be enabled to have a voice regarding any concerns, alleged discrimination and/or harassment.
- 7.1.2. To ensure that the person is free from abuse and appropriate action is taken where it is suspected, the Provider will:
 - a) Respond to alerts immediately after ensuring the person is safe;
 - b) Attend Safeguarding Adults Review meetings;
 - c) Comply with the requirement that Safeguarding Adults Review Panel requests for Independent Management Reports are completed within six weeks;
 - d) Comply with any relevant guidance to safeguard children, including but not limited to Working Together to Safeguard Children (2015) and Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges (September 2016);
 - e) Ensure that all staff are aware of their duties in keeping young people safe from Child Sexual Exploitation and have training in this which is recorded.

Staff must be able to identify risks associated with Child Sexual Exploitation and Providers will agree a risk management strategy with the Council;

- f) Comply with the Government's multi-agency statutory guidance on female genital mutilation (April 2016) including any updates;
- g) Make representation in court as and when necessary;
- h) Ensure there is a Safeguarding Adults policy available that compliments the Multi- Agency Safeguarding Policy, Protocols and Guidance for Kent and Medway (protocols available at
- i) https://www.kent.gov.uk/__data/assets/pdf_file/0018/11574/Multi-Agency-Safeguarding-Adults-Policy,-Protocols-and-Guidance-for-Kent-and-Medway.pdf
- j) Ensure staff are familiar with the Kent and Medway Adult Protection Procedures and with the Providers' own policy and procedures on Safeguarding and Adult Protection;
- k) Ensure the Kent Adult Safeguarding Form (KASAF) (available at <http://www.kent.gov.uk/social-care-and-health/information-for-professionals/adult-protection/adult-protection-forms-and-policies/adult-protection-forms>) is completed to notify the Council if adult abuse is witnessed or reported;
- l) Work in partnership with officers of the Council (or any others that the Council chooses), to make enquires in fulfilling its duties under section 42 of The Care Act 2014;
- m) Participate in adult protection assessments and enquiries and comply with any recommendations where practicable in post abuse action plans;
- n) Ensure staff training is provided in safeguarding and is refreshed at regular intervals (minimum of every 2 years) and ensure staff attend relevant safeguarding adults training appropriate to their position;
- o) Comply with the Disclosure and Barring Service (DBS) requirements for staff. These checks should be done every three years as a minimum;
- p) Take positive action to combat discrimination in line with UK legislation;
- q) Respond to the Prevent Duty Guidance.

7.2. Deprivation of Liberty Safeguards (DoLS)

- 7.2.1. Legislation to replace the Deprivation of Liberty Safeguards (DoLS) received Royal Assent in May 2019, introducing a new model for authorising deprivations of liberty in care, dubbed the Liberty Protection Safeguards (LPS). The government has still to confirm an implementation date for the LPS, but it is anticipated to commence from October 2020, however this implementation date is subject to change.
- 7.2.2. The existing DoLS legislation and processes will run concurrently alongside the LPS for a year after implementation to ease the transition of existing cases.

The government will draft a series of regulations and a code of practice and when published, providers will be expected to implement training and share guidance on the new LPS system to ensure full compliance with the legislation.

- 7.2.3. Following Implementation of the new LPS legislation and code of practice, the Council will formalise these changes as a contract variation to ensure this specification remains factually accurate and compliant.

7.3. Financial Protection

- 7.3.1. The Provider will have policies and procedures in place for staff on the safe handling of money and property belonging to the person, which covers:

- a) Recording the amount and purpose of all financial transactions undertaken on behalf of the person. Records which must be signed and dated by the Care/Support Worker and the person or nominated advocate, attorney or deputy;
- b) Collection of pensions or benefits;
- c) Safeguarding the property of the person whilst undertaking care and support tasks;
- d) Reporting the loss or damage to the property whilst providing care and support.

- 7.3.2. The Provider's Safeguarding policies and procedures must make clear that staff must not:

- a) Use credit or debit cards, pre-payment cards, or any on-line accounts, cheques belonging to the person, or have knowledge of the person's PIN number;
- b) Accept gifts (beyond a very minimal value of £5);
- c) Use loyalty cards except those belonging to the person for the person;
- d) Use offers, vouchers, stamps or discounts other than for the person;
- e) Undertake personal activities during time allocated to provide care and support to the person;
- f) Witness or support with writing legal documentation for the person e.g. Will writing;
- g) Make personal use of the person's property (e.g. broadband);
- h) Involve the person in gambling syndicates (e.g. National Lottery, online betting);
- i) Borrow from or lend money or vouchers to people within the Service;
- j) Sell or dispose of goods belonging to the person and their family; Sell goods or Services to the person and/or buy goods or Services from the person including any free Services e.g. Freecycle;
- k) Incur a liability on behalf of the person;
- l) Take responsibility for looking after any valuables on behalf of the person;

- m) Allow any unauthorised person (including children) or pets to accompany them when visiting the person, with exception of assistance dogs with consent of the person, without their permission and the Council's approval;
- n) Make or receive telephone calls that are personal or are regarding other people;
- o) Use time allocated to care and support the person for any other purpose;
- p) Undertake any activity which is in breach of UK legislation.

7.3.3. Provider must have policies and procedures in place for Staff concerning the investigation of allegations of financial irregularities and the involvement of Police, Customs Officials, Adult Social Care and Health and other professional bodies.

7.4. Security

7.4.1. Providers must have clear protocols in place in relation to maintaining security within the Supported Living setting. In some cases, it may be necessary for Care/Support Worker to have keys, entry fobs, and/or entry codes. The protocols will cover:

- a) Knocking/ringing bell and speaking out before entry;
- b) Written and signed agreements on key/fob/entry code holding;
- c) Safe handling and storage of keys/fob/entry codes;
- d) Confidentiality of entry codes;
- e) Alternative arrangements for entering the home;
- f) Action to take in case of loss or theft of keys/fobs/entry codes;
- g) Action to take when unable to gain entry;
- h) Securing doors and windows;
- i) Discovery of an accident involving the person;
- j) Other emergency situations.

7.4.2. Providers will ensure that all Care/Support Worker and/or staff are identifiable employees of the Provider by supplying identity cards to Care/Support Workers entering the home of the person. Identity cards must display:

- a) A photograph of the member of Care/Support Worker or staff member;
- b) The name of the Care/Support Worker and/or staff member and Provider organisation in large print and braille if required for the person in receipt of the Service;
- c) The contact number and/or textphone number of the Provider;
- d) Date of issue and expiry date, which must not exceed 36 months from the date of issue.

7.4.3. Identity cards must be:

- a) Available in large print for people with visual impairments and/or braille if needed by the person in receipt of the Service;
- b) Laminated or otherwise tamper proof;
- c) Renewed and replaced within 36 months from the date of issue;
- d) Returned to the Provider and destroyed appropriately within 24 hours when employment ceases or when the card is renewed.

7.4.4. The Provider will keep up to date with the developments in new security technology and where necessary provide enhancements to a person's security after gaining the person's permission and informing the Council.

7.5. Emergency Protocols

7.5.1. Occasionally Care/Support Workers are faced with emergency situations throughout the course of their work/activities. This can be stressful and upsetting. The procedures below give clear instructions about action which should be taken. Care/Support Worker will have received immediate support from the appropriate provider organisation's manager/senior. Guidance will be immediate, clear, calm and supportive of the person receiving care and the Care/Support Worker.

7.5.2. If the Care/Support Worker can see the person in receipt of the Service and they are on the floor or not responding Providers should advise Care/Support workers to:

- a) Ring for an ambulance dialling 999 immediately;
- b) Ring the provider organisation's allocated Duty Manager/Senior;

7.5.3. If a Care/Support Workers finds a person in receipt of the Service who appears dead when the Care/Support Worker arrives – providers should advise Care/Support Workers to:

- a) Call the emergency Services by dialling 999 immediately and advise about the situation;
- b) Call the Provider office, your provider Duty Manager/Senior;
- c) Avoid touching anything;
- d) Wait for the provider to send a senior member of personnel to assist you at once.

7.5.4. Should an emergency occur while care and support is being provided, Care/Support Workers must ensure the following protocol is followed:

- a) If a person falls and may be injured, they must not be moved unless they are in serious and imminent danger, e.g. from fire, drowning, road traffic accident etc.;
- b) They must be made comfortable and dial 999 immediately;

- c) If it is known that the person may be prone to occasional falls or collapse this should be considered in the risk assessment and a contingency action plan devised for this eventuality;
- d) If a person collapses or is taken seriously ill dial 999 immediately and make the person made as comfortable as possible – the emergency Services personnel may advise you of action to take while awaiting their arrival;

7.5.5. Providers shall:

- a) Ensure the person (and where appropriate, carers, advocates) is aware of this Emergency protocol at the commencement of the Service, and is included within the Information Pack;
- b) Call ahead to advise people in receipt of the Service with the Care/Support Worker/s about the incident and whether they will receive a different Care/Support worker or whether their scheduled support will be late;
- c) Advise the appropriate Council personnel by phone and followed up with an email within 12 hours of the incident;
- d) Ensure Care/Support Worker's Induction Training encompasses Emergency Protocols;
- e) Ensure a refresh of Emergency Protocols is conducted every quarter
- f) Draft an Emergency Protocols pocket guide is carried at all times by Care/Support workers;
- g) Decide whether the format of the pocket guide to Emergency Protocols e.g. laminated A6 format, credit card size format, or included on the reverse of the identification worn by Care/Support Workers;
- h) Put in place additional support for Care/Support Workers who have witnessed a distressing situation;
- i) Work cooperatively with any additional statutory agency regarding follow-up investigations.

7.5.6. If an emergency or crisis arises the Provider will deploy additional Care/Support Worker time without the prior consent of the Council for the period of 1 hour. The Provider will notify the Council of such a change and any additional Care/Support Worker hours utilised immediately, clearly stating the reasons for the additional hours and any ongoing need. The person will not be required to make any payment to the Provider.

7.6. Health and Safety

7.6.1. Accidents and Injuries: To ensure the Provider's Staff are informed and deal confidently with accidents, injuries and emergencies the Provider must ensure that:

- a) All staff are aware of the Providers' policies and procedures for dealing with medical emergencies;

- b) Any accidents or injuries to the person that require hospital or GP attendance that the Care/Support Worker has knowledge of, are reported to the Council and noted in the person's Contact Book

7.6.2. Risk Assessments: To ensure the appropriate risk assessments are conducted for the acquisition, use, and ongoing support of equipment used in the person's home, and activities supporting the person. This will include regular safety checks, appropriate training and preventative measures put in place whilst conducting duties to minimise the risk of harm to the person and Care/Support Workers, associated with the acquisition, use, and ongoing support of equipment used carry out duties for the person, by ensuring:

- a) There are clearly defined and designated roles and responsibilities for the management of the device/equipment;
- b) Equipment Audits are carried out annually to include current test certification organised by the equipment owner;
- c) Care and Support Plans received the Council contain consent forms for the use of bed rails, and these were signed the person or a family member where the person was unable to do this themselves;
- d) Equipment has an annual assessment for safety and recorded to include LOLER, should this be conducted by another Provider or the Council, this must be shared with the provider;
- e) Care/Support Workers understand how to use bedrails, shower commode chairs, and how safety straps are fitting to make sure people are safe.

7.6.3. Transmittable Diseases: To ensure that the person, his/her family, staff and visitors are protected from transmittable diseases, the Provider must ensure that:

- a) A policy in relation to transmittable diseases (e.g. HIV/AIDS and Hepatitis A, B and C) is available and known to all staff;
- b) Appropriate risk assessments are in place;
- c) All staff are trained to work safely with people always.

7.6.4. Data Protection and personal security to ensure that the protection of the person's home is maintained, and is not compromised by any action undertaken by a Care/Support Worker from the Provider's organisation, the Provider must

- a) Comply with GDPR requirements set out in Schedule 20 Annex 1a/ 1b;
- b) Make staff aware of the risk of unintended breaches of confidentiality and make sure staff can identify situations in which it may occur through the provision of appropriate training
- c) Ensure that staff know of the policies and procedures which are in place in respect of the person's safety;

- d) Make sure that staff do not carry with them more confidential information than they need for a week's work programme (e.g. lists of names and addresses);
- e) Ensure, when it is necessary for staff to keep written information detailing passwords or keypad numbers with them, that they understand the need to preserve security; The Provider must also make sure passwords or keypad numbers are not kept alongside names and addresses and key fobs should not carry the name or address of the person on them;
- f) Liaise and negotiate with the person if a change of Care/Support Worker or a suspected breach of security occurs, to see whether a change of access code number will be acceptable to them;
- g) Have policies and procedures in place to make sure that when Care/Support Workers leave or change, an appropriate transition plan is in place for the person;
- h) Ensure, where appropriate, that they have achieved or are working towards the NHS Data Security and Protection toolkit.

7.7. Equality and Human Rights

- 7.7.1. The Equality Act 2010 introduced a public-sector equality duty which must be exercised by the Council in performing its functions. The Duty underpins this specification and Service Providers must pay due regard to:
- a) Eliminating unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - b) Advancing equality of opportunity between people who share a protected characteristic and those who do not;
 - c) Fostering good relations between people who share a protected characteristic and those who do not.
- 7.7.2. These are sometimes referred to as the three aims and arms of the general equality duty. Simplified, the act describes the need to have due regard for the advancing of equality which involves:
- a) Removing or minimising disadvantages suffered by people due to their protected characteristics; Taking steps to meet the needs of people from protected groups where these are different from the needs of other people;
 - b) Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
- 7.7.3. Providers must operate in accordance with the Human Rights Act 1998, the statute which made the European Convention on Human Rights (ECHR) part of English law. It requires public authorities and those Services they commission to act compatibly with the ECHR.

- 7.7.4. It is a priority of the Council to meet its Human Rights Act obligations. This Service specification has been designed to help promote and protect the human rights of people receiving Care and Support Services within Supported Living settings. Contracted Providers must deliver Supported Living Services in ways that protect persons' rights to respect, dignity, privacy and autonomy.
- 7.7.5. The Equality and Human Rights Commission's framework for human rights in Care and Support in the Home has been adopted by the Council and underpins our expectations for the delivery of this Service. The Council will take positive steps to protect the human rights of people who receive Care and Support in the Home Services.

7.8. Accessible Communication Standards

- 7.8.1. Service Providers are under a contractual obligation to promote and protect human rights, with a zero tolerance of neglect and abuse. Providers must find effective ways of communicating with each person to ensure that they are at the centre of their Care and Support Plans
- 7.8.2. Ensure staff are aware and use the Accessible Communication Standards published by the Department for Work and Pensions, Office for Disability Issues (August 2014).

7.9. Partnership Working

- 7.9.1. The principle of improved cross-sector working will be supported through the contract management approach using a balanced scorecard methodology with specified KPIs to encourage integrated, participative working with statutory bodies, other Care and contracted Supported Living Providers, private and voluntary Providers of social care Services and other organisations outside of the social care system.
- 7.9.2. Providers will be required to sign up to an interface agreement to support long-term consortia plans.
- 7.9.3. The Council wishes to work in partnership with Providers in delivering a high-quality comprehensive Supported Living Service to its people. By signing up to a partnership approach the Council and Service Providers are making a commitment to:
 - a) Seek to develop and maintaining constructive working relationships with the person requiring support, carers, families, colleagues, professionals and wider networks;
 - b) Have a contract that is flexible enough to reflect changing needs, priorities, strategy, seek continuous improvement through fostering a learning

environment and working together, and which has person and Care/Support Worker participation at the centre;

- c) Strengthen continuity of care through a planned Move On transition;
- d) Work towards achieving key outcomes and objectives;
- e) Communicate openly and honestly with each other clearly and regularly;
- f) Share relevant information, expertise and plans;
- g) Avoid duplication wherever possible;
- h) Monitor the performance of all parties;
- i) Seek to avoid conflicts but, where they arise, to resolve them quickly at a local level wherever possible.

7.9.4. Improve cross-sector working to ensure integrated, participative working, not only across statutory and voluntary providers of Services and social care but also with and between providers outside the social care system. These could include:

- a) Faith groups;
- b) Minority ethnic community organisations;
- c) Libraries;
- d) Employers and employment organisations;
- e) Colleges;
- f) A full range of providers of sports and leisure activities;
- g) an Informal support groups.

7.10. Informed Decision Making

7.10.1. Kent's residents will be provided with improved information, advice relating to care and support Services for adults and carers in Kent in accordance with The Care Act requirements. This will include:

- a) Being asked for feedback by their Provider and knowing that a customer feedback loop is influencing continuous improvement of their Service, along with other quality monitoring systems;
- b) Receiving open and transparent communications from their Provider regarding the quality of their organisation's Services both personally and when benchmarked against competitors;
- c) Knowing that contracted Providers will be maintaining a Key Performance Indicator (KPI) dashboard to maintain their focus on continuous improvement and the delivery of quality Services;
- d) The publishing of KPI analysis and any quality audits conducted by us or any third-party representative the Council have appointed to act on our behalf;
- e) Knowing that the confidentiality of personal information is paramount, unless a disclosure is necessary to protect the health, safety or welfare of the person or other people.

7.11. Supporting the Whole Population

- 7.11.1. The Council has a duty under The Care Act to support informed choices for all adults within the Council boundary, not just those who are eligible for Council funding.
- 7.11.2. The Council will regularly collect and collate information from the Provider regarding all customers of the Provider's Services to meet our responsibilities to self-funders under The Care Act. The Council will expect Providers to engage proactively with any such data requests and expect the measurement of outcomes, KPIs and self-funder data to contribute to our shared understanding.
- 7.11.3. The Council will expect Provider support in ensuring the Council and Provider communication channels dovetail in the provision of information and advice.

7.12. Social value

- 7.12.1. The Council's Services have a social purpose and therefore the Council will require that services become smarter at determining social value. This will be through improving the economic, social and environmental well-being of Kent. This encourages commissioners to look beyond the price of a service and consider how to maximise the wider impact and benefits which could be possible with the resources available.
- 7.12.2. The Commissioning Framework sets out some overarching principles for how we will use social value.
- 7.12.3. The Provider will ensure that they support the Council's Commissioning Framework principles for social value which include;
 - a) Local Employment: creation of local employment and training opportunities, including employment of individuals with disabilities;
 - b) Buy Kent First: buying locally where possible to reduce unemployment and raise local skills (within the funding available and whilst minimising risk to the Council);
 - c) Community development: development of resilient local community and community support organisations, especially in those areas and communities with the greatest need;
 - d) Good Employer: support for staff development and welfare within Providers' own organisations and within their supply chain Community Day Opportunities for Individuals with Disabilities;
 - e) Green and Sustainable: protecting the environment, minimising waste and energy consumption and using other resources efficiently, within Providers' own organisations and within their supply chain.

- 7.12.4. These themes have been singled out as practical ways to deliver social value outcomes in line with KCC's ambitions. However, there may be other priorities which are particularly relevant for your service.

8. Future Aspirations

- 8.1.1. During the contract period it is anticipated that there will be movement from the status quo towards the delivery of more outcomes-focused, personalised care.
- 8.1.2. This will be achieved through negotiation, pilots and collaboration with contracted providers and following any necessary periods of consultation.
- 8.1.3. Supported Living Services embrace the following key principles, all of which should seek to promote the maximum possible independence for people requiring care and support and to assist them to lead fulfilled lives.
- 8.1.4. This section of the Specification details elements of the overarching Care and Support in the Home services that will not be delivered from 6 April 2020 but will be tested and phased in over the life of the Supported Living Contract as appropriate. The Council will work in partnership with Providers to design and test new methods for care delivery, systems and recording which will support improved outcomes for people and a continuous improvement approach.

8.2. Electronic call monitoring and technology

- 8.2.1. At present there is inconsistency in the use of Electronic call monitoring systems and other technological systems supporting tasks such as automated invoicing, creation of rotas and record keeping across the Provider market.
- 8.2.2. As part of the Council's aspirations in relation to market-shaping and ensuring market capability to deliver in a more flexible and personalised way, the Council wishes to see increased use of available technology underpinning the delivery of Supported Living Services. Some of the types of systems that the Council wishes to see Providers scoping and implementing and their associated benefits are listed below:
- 8.2.3. Consideration given to electronic care plans that support person-centred care and assist providers to more effectively demonstrate and ensure compliance;
- 8.2.4. Electronic Medication Administration Records (eMAR) enable care and nursing staff to more effectively coordinate, monitor and administer medications and provide more accurate and timely medication information for staff, and further improve safety;
- 8.2.5. Smart scheduling and rostering systems can enhance accessibility to personalised care services in the most efficient ways. This allows an

organisation to deliver more flexible and personalised care, therefore driving improved outcomes for the Service user;

- 8.2.6. Medication alerts, pressure sensors, epilepsy monitors etc to improve the quality of life and reinforce least-restrictive practice.
- 8.2.7. It is expected that Providers who are successful in their bid for a Supported Living Service Contract will work with the Council to test and implement new technological systems which will support more efficient ways of working. Providers will be engaged to design any pilot projects and given appropriate notification of their commencement. The Council will work with providers to agree reasonable timescales for the implementation of new systems.

8.3. Piloting providers delivering statutory annual reviews

- 8.3.1. As part of the aspiration to enable Providers to deliver care and support more flexibly, and the recognition that the Provider is best placed to understand and meet a person's changing needs, a long-term aspiration for the Council is to delegate responsibility for annual statutory reviews to the Provider. This will support a reduction in duplication of activity, as it is known that at present both Providers and the Council conduct their own annual reviews of a person's care and support package.
- 8.3.2. In order to delegate authority for carrying out statutory reviews to Providers, the Council will need to enact robust risk mitigation measures and be assured of the market's capability and capacity to deliver these activities, and the maintenance or improvement of outcomes for people using Services.
- 8.3.3. During the life of the Supported Living Service Contract, the Council intends to select a number of Providers who will test and pilot the delivery of annual reviews. Testing the concept will enable the Council to build an evidence base and demonstrate the value of delegating this activity to Providers. It will also allow a time period where the Council can provide a higher level of oversight of these activities to quality assure the delivery before implementing across the market.
- 8.3.4. It is expected that Providers who are successful in their bid for a Supported Living Service Contract will work with the Council to test the delivery of annual statutory reviews.
- 8.3.5. Subject to successful testing of Providers delivering reviews, there will be a further competition for a Contract which delegates responsibility for annual statutory reviews to the Provider. It is expected that Providers will develop their capability and capacity over an agreed timeframe to support this objective.

9. Compliance and Governance

9.1. Roles and Responsibilities of the Council

- 9.1.1. Strategic Commissioning is responsible for the commissioning and procurement of this contract. This is the team that Providers should inform of any Regulatory Warning Notices or other actions required by this contract that relate to Service delivery and Service quality. Providers should email [TBC]@kent.gov.uk with this information. Providers will be informed should this email address change; the commissioner will use the generic email address that the Provider has given. The commissioning team also lead on Contract management, arrangement of price uplifts, any Contract variations, and the review of KPIs, although the Council reserve the right to utilise a 3rd party representative to manage this (wholly or in part) on our behalf.
- 9.1.2. Purchasing Staff support the management and control the offering of care packages to Providers in line with the Purchasing Protocol outlined in section 3. They will issue the Service Delivery Order or the equivalent when MOSAIC is adopted and confirm the persons' details and Care and Support Plan.
- 9.1.3. Assistant Directors and their Service Managers have the responsibility of overseeing Adult Social Care and Health's new geographical areas which have been aligned to the Clinical Commissioning Groups geographical areas where appropriate. Providers should escalate practice concerns to Service Managers if they have not been resolved by the Council in their geographical area, and only then to Assistant Directors if the issue is not resolved.
- 9.1.4. Team Managers are deployed to arrange and review Services of sufficient quality for people who have been found on assessment to be owed a duty under various enactments. This should also be taken to include the relevant Social Care Practitioner, Health Clinician, Occupational Therapist, Physiotherapist qualified/state registered, Purchasing Officer and any other authorised representative.
- 9.1.5. The Payments Team is responsible for the payment cycle, person billing and any issues relating to payment.
- 9.1.6. The Safeguarding Team has the role of safeguarding adults at risk and statutory duties regarding adult protection. Providers are expected to work with all the Safeguarding Adults Team to address any relevant issues.
- 9.1.7. The Complaints Team has the responsibility of co-ordinating activity and investigation to support complaint resolution.

9.2. Legal / Legislation Statutes

- 9.2.1. The Care Act 2014 was the biggest reform in health and social care for 60 years; the act has made care and support more consistent across the country

and puts the well-being of people at the heart of health and social care Services.

- 9.2.2. Section 29 National Assistance Act 1948 (NAA 1948) and Section 2 Chronically Sick and Disabled Persons Act 1970 are the key provisions for Care and Support in the Home and community-based Services. There is significant overlap between the various statutes, but it is these two provisions that the majority of a person's legal entitlement to support within the home stems from.
- 9.2.3. Section 30 NAA 1948 allows a local authority to provide the Services itself or to make arrangements for the Services to be provided by a third party. Section 1 Local Government Act 1997 in general terms permits a local authority to contract with that third party to provide the necessary support to people for whom they have a responsibility for.
- 9.2.4. However, such a contract does not discharge the Council of its duty to the person to ensure that they receive the necessary care. The Council must ensure that the support provided is both adequate and effective. If the care provided to the person is inadequate and inconsistent this could amount to breach of statutory duty. This will of course depend on the seriousness of the complaint and the reasons for the failings e.g. staff sickness, the behaviour of the person etc. Notwithstanding this there is the potential risk of there being a case for maladministration against the Council for failing to have systems in place which keep under review the quality of care delivered and compliance of the Contract with the Care and Support in the Home Service.

9.3. Regulation

- 9.3.1. The Health and Social Care Act 2008 sets out the framework for the regulation of care Services. Section 8 is an introduction to Chapter 2 of Part 1 of the Act which deals with registration of provision of health and social care. Its starting point is to define a "regulated activity" as an activity that involves or is connected to the provision of health or social care. Section 9 (3) defines "social care" as including all forms of personal care and other practical assistance.
- 9.3.2. Any person who carries out a regulated activity without being registered as a Service Provider will be guilty of an offence under section 10 and is liable on summary conviction to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 12 months, or both. If convicted on indictment, then the penalty will of course be greater and there is no upper limit on the fine that the court could impose. The requirement to register pursuant to section 10 applies to a natural person, a partnership or a company.
- 9.3.3. The Mental Capacity Act 2005 is the primary legislation for all adult social care and the 5 statutory principles should be an integral part of all the work of care

Providers. Section 44 of the MCA 2005 introduces two new criminal offences, namely ill treatment and wilful neglect of a person who lacks capacity to make relevant decisions.

9.3.4. Additional legislation, regulations and checking Services is listed below however the list should not be regarded as complete or exhaustive but constitutes guidance for Providers. Providers must ensure they remain aware of and comply with all relevant and applicable legislation, this specification and UK law to include the following:

- a) Care Standards Act 2000;
- b) Care Act 2014;
- c) Control of Substances Hazardous to Health Regulations 1989;
- d) Data Protection Act 2018;
- e) General Data Protection Regulation 2016
- f) Disclosure and Barring Service;
- g) Employment Rights Act 1996;
- h) Essential Standards of Quality and Safety March 2010;
- i) Equality Act 2010;
- j) Health and Safety at Work etc. Act 1974;
- k) Health and Social Care Act 2012;
- l) Health and Social Care Act 2008;
- m) Health and Social Care Act 2008 (Regulated Activities) Regulations 2010;
- n) Human Rights Act 1998;
- o) Lifting Operations and Lifting Equipment Regulations 1998;
- p) Management of Health and Safety at Work Regulations 1992;
- q) Management at Work Regulations 1992;
- r) Manual Handling Operations Regulations 1992;
- s) Mental Capacity Act 2005;
- t) National Association for the Care and Resettlement of Offenders (NACRO) leaflet;
- u) National Minimum Wage Act 1998 and Regulations 1999;
- v) Part V Police Act 1997;
- w) Personal Protective Equipment Regulations 1992;
- x) Provision and Use of Workplace Equipment Regulations 1999;
- y) Public Interest Disclosure Act 1998;
- z) Public Interest Disclosure Act 1998 (Whistle Blowing);
- aa) Rehabilitation of Offenders Act 1974;
- bb) Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
- cc) Working Time Regulations 1998 and 1999;
- dd) Workplace (Health Safety and Welfare) Regulations 1992.

- 9.3.5. This list will be kept under review and updated as appropriate throughout the life of the Contract. Any updates to the list will be issued via the Portal. It is the Provider's responsibility to ensure they maintain an awareness of and comply with any updates to this list.

9.4. Provider Failure

- 9.4.1. If a Provider exits the contract before the end of the contract term, Schedule 1, Clause 2 in the Terms and Conditions will be followed, led by the Council.

9.5. Strategic Direction and Legislative Context

- 9.5.1. Understanding the Council's Strategic Commissioning Direction
- 9.5.2. The Council is continuing its journey to transform adult social care in Kent, as detailed in Section 4. This Service is supporting us towards making this vision a reality.
- 9.5.3. Providers are expected to attend the Strategic Provider meetings and those detailed in Schedule 14 Contract Management. Provider meetings will support an ongoing understanding of the Council's Strategic Direction and progress towards achieving its long-term objectives.

9.6. Contract Reviews

- 9.6.1. The Council reserve the right to utilise third party Auditors in undertaking any performance management elements including Contract monitoring, quality assurance and KPI measurement. The Council will develop the roles of various Council staff in relation to this Contract, its Contract management and reviews, therefore a range of Council representatives may conduct any of the performance management elements. However, any third-party auditors will follow the review arrangements set out in Schedule 14.

This specification is the property of the Council.

Kent County Council – Strategic and Corporate Services
Sessions House
County Hall Maidstone Kent
ME14 1XX

Glossary

Adult Protection – safeguarding adults at risk from abuse, harm and exploitation.

ASCH – the Adult Social Care and Health Directorate within the Kent County Council.

Area Referral Management Service (ARMS) – the main access points for people wanting to contact Social Care, Health and Well-being about needs relating to themselves or others. They deal with contacts regarding adults with a physical and/or learning disability, people with sensory needs and older people.

Assistive technology – any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of people with support needs.

Behavioural Support Plan – a document created to help understand and manage behaviour in children and adults who have learning disabilities and display behaviour that others find challenging. It provides carers with a step by step guide to support a good quality of life and to identify when they need to intervene to prevent an episode of challenging behaviour.

Breach (of contract) – an action in the direct opposition to defined agreed requirements.

Branch – the physical office registered with the CQC from which packages of care are Serviced.

Business Continuity Plan – an effective plan of helping business to build resilience against any disaster.

The Care Act – the paper that takes forward the Government's commitments to reform social care legislation and improve the quality of care following the findings of the Francis Inquiry.

Care in the Home (previously referred to as Domiciliary/ Home Care) – Care provided in a person's home following an assessment of need.

Care Package – a combination of Services put together to meet a person's needs arising from an assessment or a review.

Care and Support Plan – a document produced by the Council giving particulars of how to support, enable and achieve independence and well-being. It is a written statement regularly updated and agreed by all parties, setting out the health and social care support that a person requires in order to achieve specific outcomes and meet assessed needs.

Care Quality Commission (CQC) – the Regulatory body that ensures that standards of quality and safety are being met where regulated activity is provided. The body has a wide range of enforcement powers if Services do not meet the standards required.

Care/Support Worker – a member of staff employed by a Provider organisation to deliver the Care and Support in the Home Service.

Cluster – the geographic boundary(s) that the County has been divided into for the provision of the Services.

Consortium – an association of two or more organisations who participate in a common activity and pool resources to achieve a common objective.

ContrOCC – the Council's database that contains key information on the needs and treatment of children and young adults up to and including 25 years old, receiving a Service as well as the organisations providing care.

Commission – the process by which local authorities decide how to spend money to get the best possible outcomes for persons and communities, based on identified needs.

Commissioner – Members of the Council's staff who have responsibility for determining what Services will be purchased to meet assessed eligible needs.

Common Induction Standards – standards that are set by the CQC that state that all adult social care practitioners should reach within 12 weeks of starting their job.

Communication / Contact book – book used by staff to record interaction with the person.

Co-produce – active input into Service design by the people who refer into and use the Service.

Core Team – means the Care/Support Workers who are rostered to provide the relevant care to the Service User under the Contract. The Provider will seek to match Care/support Workers to meet specific needs of the person wherever possible. This team does not include workers on scheduled annual leave / holiday, however would be impacted by other absences including sickness, failure to report to work and any other reasonable explanation.

The Council – Kent County Council – the Council has a duty to arrange and review Care and Support in the Home Services for people who have an assessed need. In this agreement the Council could include the relevant Social Care Practitioner, Health Clinician, Occupational Therapist, Physiotherapist qualified/state registered, Purchasing Officer and any other authorised representative.

DVLA - Driver and Vehicle Licensing Agency.

Declined Package of Care – will be defined and confirmed via the Strategic Provider Forum by the end of the first quarter of the Contract. For the first quarter of the Contract KPIs relating to this definition will be monitored but not enforced.

Deprivation of Liberty Safeguards (DOLs) – extension of the Mental Capacity Act (2005) which aims to ensure that the person in receipt of social and health care are looked after in a way that does not inappropriately restrict their freedom.

Disclosure and Barring Service (DBS) – the tool that helps employers make safer recruitment decisions and prevent unsuitable people from working with people at risk groups, including children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

Driver Check Code – This is a code the owner of a driving licence can generate with the DVLA directly, to give to an organisation to enable them access to the driver's licence history and check whether there are any endorsements/penalties or disqualifications on a driving licence.

European Convention on Human Rights (ECHR) – is an international treaty to protect human rights and political freedoms in Europe.

Expert patient schemes – a self-management programme for people with support needs or are living with long-term conditions.

Financial Activation Notice (FAN) – a document which outlines the costs associated with the assessed needs of an individual for the package of care and support.

Flexible Package of Support – a package of hours for a person in receipt of the Service to be used in an outcomes-based way to support the person's care and support needs as specified on the Care and Support Plan.

Improvement Plan – a response to raise standards in key areas in Service development and delivery within agreed specified timescales.

Kent Enablement at Home (KEaH) – the Council's in-house provider of enablement Services.

Key Performance Indicator (KPI) – criterion that helps to measure Service quality and providers' contractual obligations.

Key Performance Indicator dashboard – a tool that communicates Service achievement in a succinct way that facilitates the process of action being taken to raise the quality of the Service.

Late/Early Call – Calls made more than 45 minutes after/before the time stated on the Service Delivery Order.

Locality Team – integrated community health and social care professionals managing the care of people with LD and MH issues (some areas).

Manager Induction Standards – benchmark for managers new in post in adult social care.

Market Position Statement – a declaration that summarises Commissioners' purchasing intentions which also provides intelligence to Providers (the market) to enable them to plan how to respond to the Commissioner's needs.

Missed Call – Non-attendance by staff or attendance more than two hours after time of call identified on the Service Delivery Order.

(Contract) Mobilisation – The development and execution of proposed Service provision.

Mosaic – the Council's new database/ system that will be phased in to replace SWIFT from January 2019.

Must (must) / Will (will) – to be obliged or required by law.

Needs assessment – appraisal of a person's care and support needs for community care Services.

Newly Offered – refers to packages of care that have not been previously offered to the Provider.

NMDS-SC – Skills for Care National Minimum Dataset for Social Care.

Ombudsman / Local Government Ombudsman Officer – whose role is to investigate complaints where persons have been treated unfairly or have received poor Service from government departments and other public organisations and NHS in England.

Outcome – Consequence, impact or result of an activity, plan, process or agreed intervention and the comparison with the intended projected result.

People / Person – refers to the users of this Service.

Personal Care – care and support provided to people that includes assistance with bodily functions such as washing, bathing or shaving, toileting/continence, getting in or out of bed, eating, drinking and taking medication.

Policy – a set of statements which help person to make sound judgments based on legislation, legal terms and conditions and any Regulatory requirements.

Provider Pre Review Information Form (PPRIF) – A form for the Provider to complete two weeks before the Review which highlights the support being delivered, the level of ability of the individual and the goals that are currently being worked towards. This form is a method of identifying issues to be addressed at the Review so that Council Officers including Social Care Practitioners and Providers can be prepared for the review meeting. Where appropriate, it should be completed with the person receiving the Service.

Practice Assurance Panel – a panel of Practitioners who quality assure assessed needs and Care and Support Plans and agree spend for care and support packages.

Procedure – the method by which a policy is put into practice.

Protocol – a code of correct conduct.

Provider Care Plan – a statement of intent written by the Provider (usually in conjunction with the person using the Service) describing the goals and aspirations of the person and how these will be achieved. These plans must be Specific, Measurable, Achievable, Relevant and Time-bound.

Purchase Order – a document which outlines the costs associated with the assessed needs of an individual for the package of care and support.

Purchasing Officer – an employee of the Council who is authorised to buy goods and Services.

Purchasing Protocol – the process that the Purchasing Officers and Area teams need to follow to allocate the packages of care to ensure continuity of the clusters that have been designed in collaboration with the Provider market.

PUWER – The Provision and Use of Work Equipment Regulations 1998

Registered Manager – the person appointed by the Provider to carry out duties as stated in the Health and Social Care Act (2008). Providers must meet the Regulator's requirements in this regard. All Providers must have a Registered Manager and each regulated activity is required to be supervised by the Regulated Manager.

Registered Practitioners/ Case Officers – a targeted, community-based and pro-active Council workforce that assesses people who may have care needs, reviews packages of care and produces co-ordinated Care and Support Plans.

Regulator – the body which is established by statute and whose powers the Provider is subject to. Currently, this is the Care Quality Commission.

Regulatory inspection – an organised examination of an organisation's systems and processes by an authorised body with enforcement powers.

Response time – is the time taken between the package of care being offered to the Provider and the Provider informing the Purchasing Officer if they can take the package of care.

Reviews:

- Care and Support Plan review – a statutory Review of a person's Care and Support Plan which must take place at least annually, in line with the Care Act. A Review may also be triggered at any time by a change in circumstances, such as a deterioration or improvement in condition, or the introduction of a piece of equipment. Providers are expected to treat the delivery of care as a continuous informal review which may trigger a formal Review of the Care and Support Plan. Reviews of the Care and Support Plan will provide assurance that the care and support package, goals and outcomes remain appropriate.

RIDDOR – Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.

Safeguarding – describes the multi-agency process of protecting adults and children at risk from abuse or neglect and putting systems in place to prevent harm.

Scorecard – a dashboard-style tool which collects and presents Key Performance Indicator data from Providers and the Council to inform Contract Management processes.

Self-care advice – an umbrella term that includes a range of different situations whereby people are given information on how to better manage conditions or impairments with minimal or no involvement of Services.

Service Delivery Order – a document which outlines the costs associated with the assessed needs of an individual for the package of care and support.

Strengths based approach – Person led activities that focus on positive outcomes with emphasis on the resources and traits that the person has.

Supervision – a formal recorded meeting on a one to one basis with the Staff member's line manager to enable administrative review, discussion of and reflection on the Staff member's work; learning from practice; personal support; professional development and mediation. Supervision will take place at least quarterly (every three months). Written records of these Supervisions must be kept demonstrating the range, content and outcome of the discussion at each meeting.

Supporting People – the act of assisting a person to complete a task or access the community to remain as independent as possible.

SWIFT – the Council's database that contains key information on the needs and treatment of adults from 26 years receiving a Service as well as the organisations providing care.

Modernisation Agenda – the Council's strategy and teams to improve its Services. This includes innovative ways of working with the Council's partners with renewed focus on rapid response, prevention, targeted interventions, supporting careers and empowering people.

V5C – Vehicle Registration Document.

Warning Notices – to formally make aware in advance of actual or potential harm to the Service or persons receiving care and support.



Appendix A- Mandatory Training by Need Categories

Course	Update	Learning Disability	Mental Health	Autism / Asperger	Sensory Impairment	Physical Disability	Managers / Supervisors*
1-Day First Aid	3 yearly	X	x	x	x	x	x
Adult Protection Awareness / Safeguarding	2 yearly	X	x	x	x	x	x
Autism & Asperger's	One off			x			x
Autism Awareness	Every 3 years			x			x
British Sign Language	As Required				* as required		x
Care & Support Plans	Annually or when update published	X	x	x	x	x	x
Care Act Overview	Annually or when update published	X	x	x	x	x	x
Child Protection Awareness	3 Yearly	X	x	x	x	x	x
Conflict Resolution and Personal Safety	3 Yearly	X	x	x	x	x	x
COSHH	3 Yearly	X	x	x	x	x	x
County Lines	Every 3 years	X	x	x	x	x	x
Data Protection / GDPR	Every 2 years	X	x	x	x	x	x
Dementia Awareness	Every 3 years						x
Diploma in Health & Social Care Level 2 (After probationary period completed)	Minimum for standard support services	X	x	x	x	x	x
Diploma in Health & Social Care Level 3 (After probationary period completed)	Minimum for complex support services	X	x	x	x	x	x
Domestic Abuse	Every 2 years	X	x	x	x	x	x
Epilepsy	3 Yearly	X	x	x	x	x	x
Equality & Diversity	Every 2 years	X	x	x	x	x	x

Esther Ambassador Awareness	Every 3 years	X	x	x	x	x	x
Female Genital Mutilation	Every 3 years	X	x	x	x	x	x
Course	Update	Learning Disability	Mental Health	Autism / Asperger	Sensory Impairment	Physical Disability	Managers / Supervisors*
Fire Safety Awareness	3 Yearly	X	x	x	x	x	x
Food Hygiene Awareness	Annually	X	x	x	x	x	x
Generic Risk Assessment	One off	X	x	x	x	x	x
Hate & Mate	Every 3 years	X	x	x	x	x	x
Health & Safety Awareness	3 Yearly	X	x	x	x	x	x
HIV and AIDS / HEP	One off	X	x	x	x	x	x
Infection Control		X	x	x	x	x	x
Information Governance	2 yearly	X	x	x	x	x	x
Learning Disability Awareness	Every 3 years	X		x			x
Makaton	As Required				* as required		x
Medication Training	Annually or when update published	X	x	x	x	x	x
Mental Capacity Act	Every 3 years	X	x	x	x	x	x
Mental Health Awareness	Every 3 years		x				x
Modern Slavery and Human Trafficking	Every 3 years	X	x	x	x	x	x
Moving & Handling	Every 2 years	X	x	x	x	x	x
Moving & Handling Risk Assessment	One off	X	x	x	x	x	x
NHS Data and Security Awareness level 1 training	Annually						x
Positive Behavioural Support	One off						x
Positive Risk Management	One off						x
Prevent	2 Yearly	X	x	x	x	x	x
Sensory Impairment Awareness	Every 3 years				x		x
Telecare Assessor/Assistive Technology Awareness	Every 3 years						x

***as required by service for supervision & compliance of staff practice**

SCHEDULE 3

PRICING AND PAYMENT

The Pricing for the Care and Support in the Home: Supported Living contract is set as a fixed price according to the pricing zone of the selected Cluster area. Providers will be unable to submit different rates and any provider taking part in the tender will be expected to agree the below rates as part of the tender process.

For the purpose of the Care and Support in the Home: Supported Living contract the tender will be evaluated based on the Quality Questions and the proposed provision.

Providers are expected to complete the Schedule 3 pricing spreadsheet explaining the organisational commercial information, how the organisation will break down the hourly rate to cover all overheads and to submit information in relation to the properties and provision available.

Standard and Complex Day Support (07:00 – 22:00)

The Pricing of Standard and Complex Day Support Hours within the Care and Support in the Home: Supported Living contract has been applied using regional variance, taking into consideration cost of living and existing unit volumes across Kent. Clusters have been grouped into Pricing Zones.

The Council has formulated the pricing rates based on several factors including Office for Budgetary Responsibility / Office for National Statistics forecasts in relation to National Living Wage, National Minimum Wage and Inflation (CPIH).

The wage forecasts are available below. Where these forecasts vary significantly at the point of Negotiation stage (during December), the Council will require Providers to reconsider and resubmit their pricing proposals as appropriate.

National Living Wage: £8.63

National Minimum Wage: £8.10 (based on the same differential being maintained between NLW and the upper NMW for 21-24 year olds).

Sleep Night Support (22:00 – 07:00)

The Council remains committed to ensuring sustainable compliance with HMRC guidance in relation to the National Living Wage and will presently maintain its approach in responding to uplift requests from providers to achieve a sustainable average rate of pay for employees at the end of a monthly pay period.

However, further to the Court of Appeal decision on 13 July 2018, overturning a tribunal ruling that social care staff should be paid the national Living Wage for Sleep Night shifts, the Council continues to review its position and following any further decision by the Supreme Court, the Council's approach to the funding of Sleep Nights may be subject to change.

Wake Night Support (22:00 – 07:00)

Wake Night Support within the Care and Support in the Home: Supported Living service will be funded at the respective contracted full hourly rate of Day Support for the 9-hour shift.

Property Banding and core support.

Supported Living Providers will be contracted with named properties/services, with any new property needing to be agreed with the Council's commissioning team in advance of that property/service being added to the contract.

It is the Council's aspiration that throughout the life of this contract all properties will be banded according to provision and agreed core support hours. The Council has no intention to mobilise any existing clients however upon a client review they may be offered the opportunity and choice to change location if a more suitable placement can be found.

Providers will be expected, as a part of this tender process, to submit current information in regards properties as well as submitting information in regards the future aims of the property.

An example is available of the next page

Current Services

Provider 'A'	Postcode	Property Information													Level of Intervention			Gender		Clients 'Category' of Need							Comments
		Capacity	Vacancies	Self contained single occupancy	Shared house	Bedrooms with ensuite	Bedrooms NO ensuite	Communal Areas	DDA Access rooms	Office/Accommodati	Staff available	Wake Night Service	Sleep Night Service	Technology Available (please comment)	Low level	Medium	High	Forensic	Mixed	Single Gender	Learning Disability	Mental Health	Sensory Need	Autism	Forensic	Drug or Alcohol	
Property A	AB1	3	1	0	Yes	2	1	Yes	1	No	Yes	No	No	No	1	1	0	0	yes	No	1	1	0	0	0	0	
Property B	AB2	5	0	0	Yes	5	0	Yes	2	Yes	Yes	No	Yes	Yes	0	4	1	1	yes	No	3	3	1	1	1	1	Clients with Multiple Needs
Property C	AB3	8	2	8	No	0	8	No	1	Yes	Yes	Yes	Yes	Yes	4	2	0	0	Yes	No	5	0	2	1	0	0	Single flats in a Mews enabling shared support
Property D	AB4	1	0	1	0	0	1	0	0	0	0	Yes	No	Yes	0	0	1	0	0	Yes	0	1	0	0	1	1	Sensors Available

Future Service (as above but with the following additions)

Provider 'A'	Postcode	Level of Intervention				Gender		Clients 'Category' of Need						Future Core Elements			
		Low level	Medium	High	Forensic	Mixed	Single Gender	Learning Disability	Mental Health	Sensory Need	Autism	Forensic	Drug or Alcohol	Core Day Shared Hours per Client	Staff on site Hours	Sleep Shared between XX?	Sleep or Wake
Property A	AB1	0	0	2	1	No	Yes	0	3	0	0	0	3	35	24 hrs	3	Wake
Property B	AB2	5	0	0	0	yes	No	5	0	0	0	0	0	11	9 til 5	5	Sleep
Property C	AB3	0	8	0	0	Yes	No	4	0	0	4	0	0	7	24 hrs	8	Sleep
Property D	AB4	0	0	1	0	No	Yes	0	1	0	0	0	1	0	24 hrs	1	Wake

SCHEDULE

TUPE AND PENSIONS

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

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

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

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

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

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

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

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

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

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

Eligible Employees: means any Transferring Employees and/or any Relevant Employees who transferred to the Outgoing Provider or to any Sub Contractor from the Council in connection with the provision of the Service and who have

been continuously part of the economic entity providing the Service since that transfer and who are active members of (or eligible to join) the LGPS or a broadly comparable scheme on a Relevant Transfer Date.

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

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

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

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

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

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

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

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

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

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

Party: means a party to the Contract.

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

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

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

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

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

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

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

The Transfer Date: means in respect of Transferring Employees employed by the Outgoing Provider prior to the Transfer Date or by any Sub Contractor appointed by the Outgoing

Provider prior to the Transfer Date the date upon which the Provider or any Sub Contractor appointed by the Provider become responsible for the delivery of the Service.

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

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

TUPE TRANSFER AND EMPLOYMENT ISSUES UPON THE COMMENCEMENT OF THE CONTRACT

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

- 1.1. The Council hereby makes the Provider aware that in its opinion in connection with this Contract and in connection with the delivery of the Service under this Contract there may be a Relevant Transfer of Transferring Employees employed or contracted by the Outgoing Provider or their Sub Contractors from the Outgoing Provider or their Sub Contractors to the Provider. The Council can offer no warranties or indemnities in respect of this and It is the responsibility of the Provider to take advice as to the applicability of TUPE and request up to date TUPE information.
- 1.2. The Council hereby makes the Provider aware that in relation to the operation of the Service the Provider may be required to offer Transferring Employees employed or contracted by the Outgoing Provider or their Sub-Contractors membership of the LGPS or equivalent scheme. The Council can offer no warranties or indemnities in respect of this and It is the responsibility of the Provider to take advice as to the scope of any such pension scheme membership that will need to be provided.
- 1.3. The Provider shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the rates and prices stated and which shall (except in so far as it is otherwise provided in the Contract) include all of its obligations under the Contract and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or effecting his tender.
- 1.4. The Council is unable to offer the Provider any warranties or indemnities in respect of any Transferring Employees who are transferring from the Outgoing Provider or any Sub- Contractor appointed by any Outgoing Provider to the Provider.

1.5. Apportionments

1.5.1 The Outgoing Provider shall be responsible for all emoluments and outgoings in respect of all Transferring Employees employed (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to the Transfer Date. The Council offers the

Provider no indemnities against the Outgoing Provider's failure to comply with this clause.

1.5.2 The Provider or any Sub-Contractor appointed by the Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period on and after the

Transfer Date and for any employment related liabilities that transfer to it or to any Sub Contractor pursuant to TUPE and the Provider will indemnify the Council in respect of the same.

1.6. Information and Consultation

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

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

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

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

1.7. Indemnities

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

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

1.7.1.2 any claim or demand by any Relevant Employee employed by the

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

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

1.7.2 Without prejudice to the foregoing, the Provider shall comply at all times with its obligations under TUPE and shall ensure that any Sub Contractor complies with its obligations and shall indemnify and hold harmless the Council and the Outgoing Provider from and against all Losses, arising in connection with or as a result of any breach of such obligations.

1.8 The Provider shall immediately on request by the Outgoing Provider or the Council provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Transferring Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact.

2. TUPE AND EMPLOYMENT ISSUES DURING THE LIFETIME OF THE CONTRACT

Transfer of Transferring Employees to the Provider

2.1 The Council and the Provider agree that any transfer of Transferring Employees from the employment of the Outgoing Provider or of any Sub-Contractor appointed by the Outgoing Provider into the employment of the Provider or a Sub-Contractor, will, (subject to Transferring Employees' rights under Regulation 4(7) of TUPE) be by operation of TUPE on the Transfer Date. The Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.

2.2 The Provider confirms and agrees that at all times during the term of this Contract it shall comply with and shall ensure that any Sub-Contractor appointed by the Provider shall comply with clauses 5 to 14 of this Schedule and with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 and where applicable comply with the Pensions Schemes Act 1993, the Pensions Acts 2004, 2008 and 2011, the Public Service Pensions Act 2013 and any other statutory provision, guidance or regulation relating to workforce matters or pensions in local authority/public sector service contracts or related matter whether in existence or to be enacted and will fully indemnify the Council and any Replacement Provider from all Losses arising from its failure to do so.

2.3 The Provider shall be liable for and indemnify and keep indemnified the Council and any Replacement Provider against any failure by the Provider or by any Sub-Contractor appointed by the Provider to meet all Employee Emoluments for the Transferring Employees and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Service from and including the Transfer Date up to but not on or after a relevant Future Transfer Date.

2.4 The Provider shall indemnify and keep indemnified the Council and the Replacement Provider against any Losses, incurred by the Council or by the Replacement Provider in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee by the Provider or any Sub-Contractor appointed by the Provider or from the termination of that employment. This indemnity shall apply provided that it arises from any wrongful act, fault or omission of the Provider or the Sub Contractor in relation to any Transferring Employee on or after the Transfer Date or as a result of any failure to comply with its or their obligations under clauses 1 and 2 of this Schedule.

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

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

3.1.1 to the Council (for use by the Council or by a Replacement Provider) the Employee Liability Information required pursuant to Regulation 11 of TUPE in respect of any Relevant Employees in accordance with the timescale specified therein, and shall

warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE; and

3.1.2 will keep the Council and the Replacement Provider indemnified in full against all Losses arising from any claim against the Council or against the Replacement Provider by any person or organisation as a result of the Provider or any Sub Contractor failing to provide or promptly to

provide the Council or to the Replacement Provider with any Employee Liability Information in respect of any Relevant Employees or as a result of any material inaccuracy in or omission from the Employee Liability Information; and

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

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

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

3.2.2 any claim or demand arising out of or in connection with employment with the Provider or of any Sub Contractor or the termination thereof, by any past, present or future employee who is not a Relevant Employee (including but not limited to any claims relating to a failure to provide or failure adequately to provide a pension);

3.2.3 any claim by or on behalf of any Relevant Employee pursuant to Regulation 4(9) of TUPE on the grounds that the identity of the Council or of any Replacement Provider as his employer is both a substantial change and to his material detriment;

3.2.4 subject to Clause 3.3.3 of this Schedule below, any claim arising out of any failure by the Provider or by any Sub Contractor to comply with TUPE regulations 11 or 13 prior to the Future Transfer Date;

3.2.5 any claim or demand by any trade union or staff association or employee representatives (whether or not recognised by the Provider in respect of any Relevant Employees) arising from or connected with any failure by the Provider or by any Sub Contractor to comply with any legal obligation to such trade union, staff association or employee representative.

3.3 On assignment, expiry or termination of this Contract, the Council shall fully indemnify the Provider against all Losses arising out of-

3.3.1 any claim by any Relevant Employee arising from and relating to his employment or the termination of his employment with the Council or with the Replacement Provider on or after the Future Transfer Date and

arising from the Council's or the Replacement Provider's act, fault or omission in relation to any Relevant Employee on or after the Future Transfer Date;

3.3.2 any claim arising from the Council's (but not from the Replacement Provider's) failure to supply the Provider with information in respect of "measures" under TUPE

regulation 13(4) but only in relation to a transfer of Staff taking place on the Future Transfer Date;

3.3.3 any claim arising from the Council's (but not from the Replacement Provider's) failure to comply with the Council's obligations to consult the Relevant Employees or their representatives pursuant to regulation 13 of TUPE but only in relation to a transfer of Staff taking place on the Future Transfer Date.

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

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

3.5 The Provider shall fully indemnify the Council and the Replacement Provider against all Losses arising from the Provider's or any Sub Contractor's failure to comply with Clause 3.4 of this Schedule and the Council shall fully indemnify the Provider against all Losses arising from the Council's and the Replacement Provider's failure to comply with Clause 3.4 of this Schedule.

3.6 At any point during the duration of or upon the expiry, termination or assignment of this Contract and where the Council believes that TUPE may apply and within 15 working days of being so requested by the Council, the Provider shall fully and accurately disclose to the Council (and at no cost to the Council) any and all information in relation to the Provider's Staff or any such staff employed by a Sub Contractor who are assigned to the provision of the Service in the manner prescribed in Clause 3.13 of this Schedule, a list of all Relevant Employees who are liable to transfer as a consequence of a Future Transfer as in the form set out in Clause 3.14 of this Schedule and such information regarding the manner in which the Provider organises and carries out the provision of the Service as the Council may request.

3.7 The Provider shall warrant the accuracy of all the information provided to the Council pursuant to Clause 3.6 of this Schedule and the Provider authorises the Council to use any and all the information as the Council may consider necessary for the purposes of the Council's business or for informing any prospective tenderer for any Service which are substantially the same as those provided by the Transferring Employees under this Contract.

3.8 The Provider shall notify the Council as soon as reasonably practicable in writing of any material changes to the information supplied in accordance with Clause 3.6 of this Schedule as soon as reasonably practicable as and when such changes arise and the Provider shall fully indemnify the Council against all Losses arising from the Provider's failure to comply with Clauses 3.6 to 3.8 of this Schedule.

3.9 The Provider agrees that it shall not and shall not permit with reference to any Relevant Employees in the period following a likely TUPE transfer being identified by either Party other than with the Council's prior consent and in accordance with prevailing market condition-

3.9.1 other than in circumstances where an individual resigns voluntarily or where an individual's employment is terminated pursuant to the policies and procedures of the

Provider or any Sub Contractor (in which cases the said individual may be replaced) make or allow any material increase or decrease in the numbers of Relevant Employees;

3.9.2 make or allow to be made any material increase in the remuneration or other material change in the terms and conditions of the Relevant Employees other than in the ordinary course of business and with the Council's prior written consent;

3.9.3 transfer or allow to be transferred any of the Relevant Employees to another part of the business of the Provider or any Sub Contractor or move other employees from elsewhere in the business of the Provider or any Sub Contractor who have not previously been subject to the terms of this Contract save with the Council's prior written consent.

3.10 The Provider shall indemnify the Council and the Replacement Provider and shall keep the Council and the Replacement Provider indemnified in full against all Losses arising from any claim by any person or organisation as a result of the Provider's failure to comply with its obligations under Clauses 3.9, 3.9.1, 3.9.2 and 3.9.3 of this Schedule above save that this indemnity shall not apply in respect of any failure to the extent that such information was originally provided to the Provider by the Council or the Replacement Provider and was materially inaccurate or incomplete when originally provided.

3.11 The Provider agrees that if it fails to provide the TUPE information requested by the Council pursuant to Clauses 3.6 to 3.9 of this Schedule or to clarify submitted information within the time allowed for the provision of the same by this Schedule the Council may withhold 25% of all applications for payment until the information is received and further where failure to submit the TUPE information to the timescales stated results in more than two days delay to the procurement timetable, the Provider shall be liable to pay liquidated damages of £200 per day to cover the costs of altering documents, re-scheduling bidder briefings, responding to requests for information from tenderers and notifying tenderers.

3.12 If, by operation of law, the contract of employment of any individual who is not at the relevant time identified under Clause 3.6 and Clause 3.14 of this Schedule by the Provider as being a Transferring Employee due to transfer under TUPE on a Future Transfer Date takes effect or is alleged to take effect as if originally made with the Council or with any Replacement Provider (as applicable) as a consequence of the expiry, termination or assignment of this Contract, the Provider agrees that:

3.12.1 in consultation with the Council or with the Replacement Provider (as applicable), the Provider will, within 7 days of being so requested by the Council or by the Replacement Provider (as applicable) (as long as the request is made no later than 14 days after the Council or the Replacement Provider (as applicable) become aware of such transfer of employment), make to that individual an offer in writing to employ him under a new contract of employment or to continue employing him under the terms of his existing employment contract to take effect upon the termination referred to below; and

3.12.2 the offer to be made will be such that none of the terms and conditions of the new contract save insofar that they relate to any occupational pension scheme will differ from the corresponding provision of that person's contract of employment immediately prior to the Future Transfer Date; and

3.12.3 the Council or the Replacement Provider (as applicable) shall be entitled to terminate the employment of the individual and the Provider shall indemnify and keep indemnified the Council or the Replacement Provider (as applicable) against all Losses arising from or in connection with the employment of such an individual until such termination and the termination of the employment itself.

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

3.13 Employee Information

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

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

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

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

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

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

- (a) redundancy procedures and payments;
- (b) redeployment procedures;
- (c) sickness absence and sick pay entitlements;
- (d) equal opportunities;
- (e) disciplinary matters;
- (f) maternity and other parental rights;

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

3.13.5 Copies of any job descriptions.

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

Collective bargaining

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

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

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

Disputes

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

might give rise to such.

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

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

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

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

Dismissals

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

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

Working Time Regulations 1998

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

Health and Safety

3.13.18 Details of any health and safety committees/representatives.

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

Trainees/Consultants

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

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

Absent employees

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

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

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

Job Evaluation Scheme

3.13.25 A copy of any job evaluation scheme.

Pension

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

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

Agency Workers

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

The total number of Agency Workers engaged;

The areas of business in which they are engaged; and The types of work that they are contracted to undertake.

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

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

3.14 Transferring Employees

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

4. THIRD PARTY RIGHTS

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

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

5. PENSIONS

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

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

6. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

6.1 Where the Provider or Sub-Contractor has elected to offer the LGPS Employees membership of the LGPS, the Provider shall or shall procure that it and/or each relevant Sub- Contractor shall enter into an Admission Agreement ("Provider Admission Agreement") to have effect from and including the Transfer Date. The Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate or Bond

value in respect of any LGPS Employee who is eligible to elect to join the LGPS on or after the Transfer Date.

6.2 The Provider shall indemnify and keep indemnified the Council and the Authority and/or any Replacement Provider from and against all Losses suffered or incurred by it or them, which arise from any breach by the Provider or Sub-Contractor of the terms of the Provider Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.

6.3 The Provider shall and shall procure that it and any Sub-Contractor shall prior to the Transfer Date obtain any indemnity or Bond required in accordance with the Provider Admission Agreement.

6.4 The Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the LGPS Employees under the LGPS Regulations in circumstances where the LGPS Employees would have received such benefits had they been employed by the Council. The Provider shall be responsible for meeting all costs associated with the award of such benefits.

6.5 The Council shall have a right to set off against any payments due to the Provider under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Provider or from any relevant Sub-Contractor (as applicable) under the Provider Admission Agreement.

6.6 The Provider agrees to become and will ensure that any Sub-Contractor will become an Admission Body on a fully funded basis from the start and the Provider agrees and acknowledges-

6.6.1 That the Council does not guarantee any funding deficiency.

6.6.2 Other than as otherwise provided for in clauses 5 and 6 of this Schedule or as required for by the LGPS Regulations or by the terms of the Provider Admission Agreement or Bond the Provider shall be responsible for the LGPS funding deficit in respect of any LGPS Employees if it or the Sub Contractor opts to become an Admission Body.

6.6.3 Other than as otherwise provided for in clause 6 of this Schedule the Provider will be entirely responsible for any liability which the Provider or the Sub-Contractor may have to pay as contributions or any other sum of money payable (including all payments due to be paid by the Provider or any Sub-Contractor as a Provider Admission Agreement employer under the LGPS Regulations (including Regulations 67 to 71 inclusive of the LGPS Regulations) under the said the LGPS Regulations including any payments payable by an exiting employer within the meaning of Regulation 64 of the LGPS Regulations as a result of the Provider

Admission Agreement or the termination or expiry of that agreement or the termination of this Contract and the Provider will indemnify the Council or the Replacement Provider (as the case may be) in respect of the same.

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

7. PROVIDER PENSION SCHEME

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

7.1.1 established no later than three months prior to the Transfer Date; and

7.1.2 certified by the GAD as providing benefits that are broadly comparable to those provided by the Authority's LGPS scheme;

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

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

8. PENSION PROVISION FOR THE PROVIDER'S EMPLOYEES

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

8.2 The Provider shall indemnify the Council and/or any Replacement Provider from and against all Losses suffered or incurred by it or them which arise from successful claims by any of the Provider's or Sub Contractors' employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such employees and which relate to any failure of the Provider or any Sub Contractor to offer access to pension arrangements in accordance with the provisions of this clause 8 of this Schedule.

9. UNDERTAKINGS FROM THE PROVIDER

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

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

9.1.2 it shall not without the consent in writing of the Council (which shall only be given subject to the payment by the Council of such reasonable costs as the Council reasonably requests) consent to instigate, encourage or assist any event which could impose on the LGPS, the

Authority or on the Council a cost in respect of any Transferring Employee or any Relevant Employee greater than the cost which would have been payable in respect of that Transferring Employee or Relevant Employee had that consent, instigation, encouragement or assistance not been given;

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

9.1.4 it shall not take or omit to take any action which would materially affect the benefits under the LGPS, or under the Provider Pension Scheme of any LGPS

Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Provider will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any LGPS Employees.

10. DISCRETIONARY BENEFITS

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

10.2 Where the award of benefits in clause 10.1 is not permitted under the Compensation Regulations and/or the LGPS Regulations or the Provider and/or a Sub-Contractor is not an Admission Body, the Provider shall and/or shall procure that any Sub-Contractor shall award benefits to the LGPS Employees which are no less favourable than the benefits the LGPS Employees would have received under the Compensation Regulations and/or the LGPS Regulations in circumstances where the LGPS Employees would have received such benefits had they been employed by the Council.

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

11. CLAIMS FROM TRANSFERRING EMPLOYEES OR FROM TRADE UNIONS

11.1 The Provider hereby indemnifies and shall procure that any relevant Sub-

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

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

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

12. TRANSFER TO ANOTHER EMPLOYER

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

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

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

13. PENSION ISSUES ON EXPIRY OR TERMINATION

13.2 The Provider shall:

13.2.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Provider or by any Sub Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the LGPS Employees, the Transferring Employees or the Relevant Employees)

13.2.2 promptly provide to the Council or to the Authority such documents and information mentioned in clause 13.1.1 which the Council or the Authority may reasonably request in advance of the expiry or termination of this Contract; and

13.2.3 fully co-operate (and procure that the trustees of the Provider's

scheme shall fully co-operate) with the reasonable requests of the Council or the Authority relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub Contractor in the provision of the Services on the expiry or termination of this Contract.

Appendix 1 – Sanctions

For the purposes of this Annex A, Clause 41.5 of the Contract states:

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

Adult Protection

An Adult Protection Level 1 means:

"Adult Protection concerns have been identified and are being investigated. There is a low risk of harm, abuse or neglect to Service Users."

An Adult Protection Level 2 means:

"An Adult Protection case is being assessed/ investigated and it is possible that other Service Users may be at risk of significant harm due to abuse or poor practice. Some or all Service Users are being assessed in relation to these concerns".

This sanction also constitutes an 'Improvement Notice' under Clause 41.5 of the Contract.

An Adult Protection Level 3 suspension prevents new placements being made until further notice and means that:

"An Adult Protection case is being assessed/investigated and there is evidence of significant risk to other Service Users due to abuse or poor practice."

This sanction also constitutes an 'Improvement Notice' under clause 41.5 of the Contract.

Poor Practice

A Poor Practice Level 1 Warning means:

"Poor practice concerns have been identified and are being investigated. There is a low risk of harm, abuse or neglect to Service Users."

This sanction also constitutes an 'Improvement Notice' under clause 41.5 of the Contract.

A Poor Practice Level 2 warning means:

"Poor practice concerns have been identified and are being investigated. There is a moderate risk of harm, abuse or neglect to Service Users."

This sanction also constitutes an 'Improvement Notice' under clause 41.5 of the Contract.

A Poor Practice Level 3 Suspension means:

"Serious poor practice concerns have been raised and are being investigated. There is a significant risk of harm, abuse or neglect to Service Users."

This sanction also constitutes an 'Improvement Notice' under clause 41.5 of the Contract.

Contract Compliance

A Contract Compliance Level 1 Warning means:

"Contractual concerns have been identified and are being investigated. There is a low risk of harm, abuse or neglect to Service Users."

This sanction also constitutes an 'Improvement Notice' under clause 41.5 of the Contract.

A Contract Compliance Level 2 Warning means:

"Contractual concerns have been identified and are being investigated. There is a moderate risk of harm, abuse or neglect to Services Users."

This sanction also constitutes an 'Improvement Notice' under clause 41.5 of the Contract.

A Contract Compliance Level 3 means:

"Serious contractual concerns have been raised and are being investigated. There is a significant risk of harm, abuse or neglect to Service Users."

This sanction also constitutes an 'Improvement Notice' under clause 41.5 of the Contract.

Appendix 4

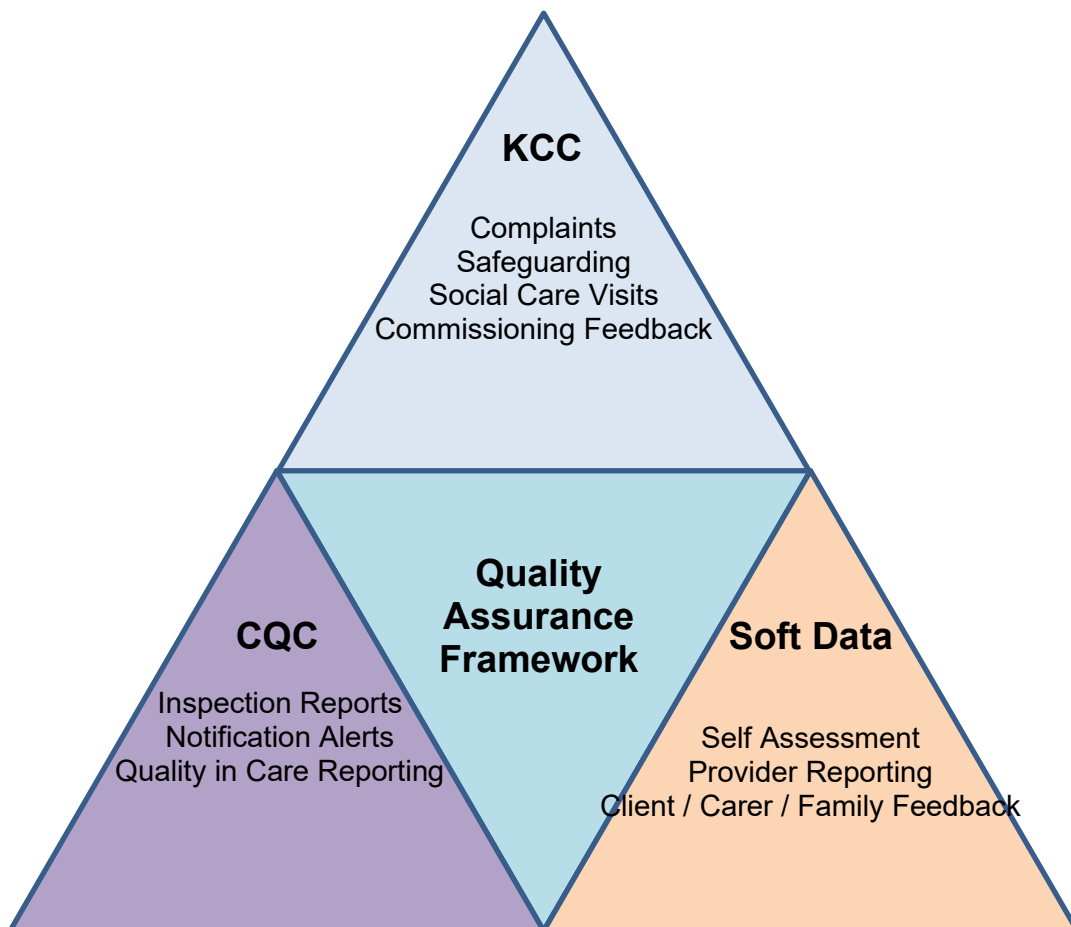
Quality & Risk Matrix / Framework

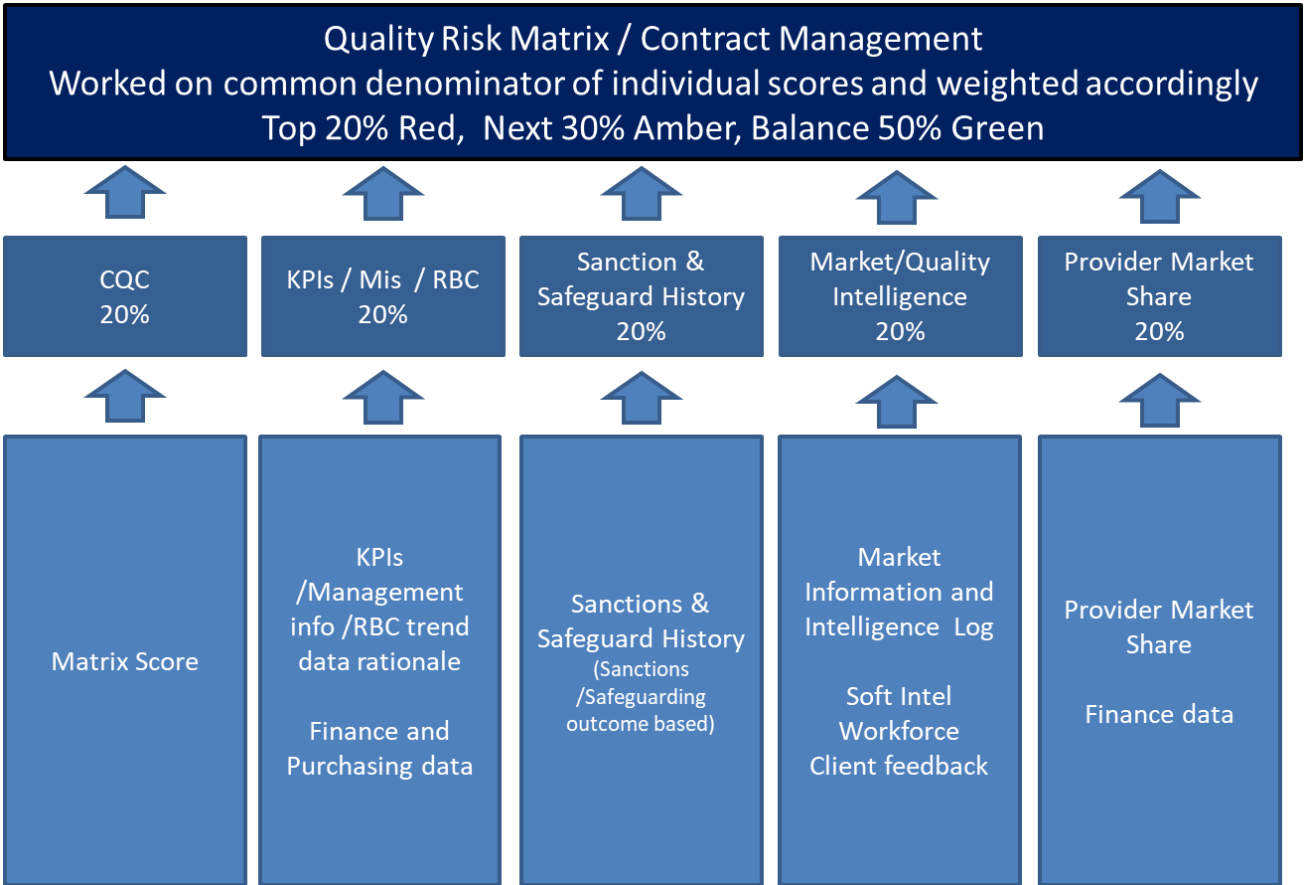
With supporting methodology and linking to a Scorecard & Key Performance Indicators enabling triangulation of data sources, including:

- Soft data / intelligence received from feedback from experts and professionals
- Provider Self-assessment and reporting
- Balanced Scorecard / KPI input
- CQC inspection results
- Contract Sanctions & Safeguarding
- Market Share

Will facilitate:

- Identification of themes and trends,
- Identification of system-wide and local risks,
- High-level Dashboards to show compliance levels and improvements over time, allowing for deep dive reports





SCHEDULE _ DATA PROTECTION AND GENERAL DATA PROTECTION REGULATION

The Contract concerns the processing of Personal Data? Yes

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

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

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

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

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

PARTIES

The Kent County Council

The Provider (“Provider”)

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

The following new definitions shall be introduced:

“Controller” has the meaning given in the GDPR;

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

“Data Protection Legislation” means:

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

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

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

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

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

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

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

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

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

“Processor” has the meaning given in the GDPR;

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

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

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

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

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

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

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

- 7.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
8. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
9. The parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
10. Before allowing any Sub-processor to process any Personal Data related to this Deed, the Processor must:
 - 10.1. notify the Controller in writing of the intended Sub-processor and processing;
 - 10.2. obtain the written consent of the Controller;
 - 10.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 1.9 such that they apply to the Sub-processor; and
 - 10.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
11. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
12. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor require it to amend this Deed to ensure that it complies with any guidance issued by the Information Commissioner's Office.

ANNEX 1 TO SCHEDULE 'GDPR'

Schedule of Processing, Personal Data and Data Subjects

PART A

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

PART A

The Kent County Council

Data Controller

The Provider

Data Processor

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

the Processing	<p>Data Controllers for information provided on individuals referred to the service. The Provider is the Data Processor for the personal and sensitive information relating to this contract.</p> <p>Where the Provider collects data in excess of the requirements of this Contract, the Provider will be the Data Controller of that data and this is covered within Part B of this Annex. The Provider is the Data Controller of its employee information; where reviewed through Contract Monitoring, the Council will be the Processor of that data.</p> <p>Due to the nature of the service provided, the high-risk area of information will be that which is collected manually. The information will either be transferred to a computerised system with paper records filed in locked cabinets. This could be for client records, staff files or other requirements. The expectation is that where records are filed in locked cabinets, the keys are kept in a locked storage box in a locked office and the office is locked each time it is not in use. Access to the data will only be given to Council staff requiring it for Contract management and associated purposes.</p> <p>Computerised records would need to be backed up with up to date security software. Email accounts are specific to the service and are not utilising Gmail, Yahoo or other generic or personal accounts and need to be enabled to use secure email to and from KCC and other necessary organisations.</p> <p>Information that is portable and used in the community, for instance service delivery that requires a visit to hospital, GP or for an outing must be kept to a minimum with key relevant information being transported. This information has to be kept secure in a folder in a closed bag, preferably with a lock. If information is left unattended in a car for a short period, this must be locked in the boot out of sight.</p> <p>Fire grab packs containing personal or sensitive information held within services must be secured in a break-glass (or similar) unit with key access for regular reviewing and updating. It must be accessible in the case of emergency.</p> <p>Further information and advice around the suitability of storage, transfer and handling of information can be found at https://ICO.org.uk</p> <p>The nature of the Processing under this Contract will cover the following: receiving, collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p>
----------------	--

	<p>Information must be Processed and reported according to:</p> <p>Data Protection Act Information Governance – general responsibilities section of this Contract (Contract Terms and Conditions) and the GDPR Schedule.</p> <p>The purpose of the Processing are as follows:</p> <ul style="list-style-type: none"> • To measure and/or accept suitability of care packages, • To liaise with Kent County Council Case/Care Managers • To inform staff of service to be delivered and escalation routes. • To deliver services to Specification according to need. • To manage unforeseen situations, and emergencies • To invoice KCC according to the individual's details. • To analyse current and future service provision via KPI data • To ensure safe working practice via monitoring of training, DBS collection, registration and insurances. <p>Information will be shared with the Commissioner of the Service, the Regulator, the NHS/CCG and Ambulance Trust where and when necessary in a timely and legitimate manner, obtaining consent where required.</p> <p>Due to the nature of the data collected, GDPR compliance will also be appended to any contract management schedules.</p>
Type of Personal Data	<p>Personal and sensitive data required includes:</p> <p>Information on Service recipients: name, address, date of birth, NHS details, social care identification number, NI number, telephone number, medical conditions and assistance needs, key safe information as needed, next of kin information, risk assessment information.</p>
Categories of Data Subject	<p>Individuals/Residents/Clients – the person using the service</p> <p>Next of Kin or Carer to the person using the service.</p> <p>Contact details of Accommodation manager or Key worker (where client is in a residential or nursing accommodation setting)</p> <p>Witness and Investigation information in relation to complaint, safeguarding and criminal investigations (may include photographic evidence)</p>
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to	<p>Retention of data as per 'Contract particulars' in the Terms and Conditions</p> <p>Or Retention as required by legislation or regulatory</p>

preserve that type of Data	<p>bodies, whichever period is the greatest.</p> <p>Storage, Transfer and Destruction of data as per Data Protection Act Information Governance – general responsibilities section of the Contract Terms and Conditions</p> <p>On early termination of contract all data to be returned to Kent County Council as per section 'recovery upon termination' within the Contract Terms and Conditions.</p>
----------------------------	---

PART B

The Kent County Council Data Processor
The Provider Data Controller

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

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

SCHEDULE - CALDICOTT PRINCIPLES

Part A Summary of the 6 Caldicott General

Principles Principle 1: Justify the purpose(s)

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

Principle 2: Don't use personally identifiable information unless it is absolutely necessary

Personally identifiable information items should not be used unless there is no alternative.

Principle 3: Use the minimum necessary personally identifiable information

Where use of personally identifiable information is considered to be essential each individual item of information should be justified with the aim of reducing identifiability.

Principle 4: Access to personally-identifiable information should be on a strict need to know basis

Only those individuals who need access to personally identifiable information should have access to it and they should only have access to the information items that they need to see.

Principle 5: Everyone should be aware of their responsibilities

Action should be taken to ensure that those handling personally identifiable information – both practitioner and non-practitioner staff – are aware of their responsibilities and obligations to respect an individual's confidentiality.

Principle 6: Understand and comply with the law

Every use of personally-identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements.

Part B Information Governance

Information Security Requirements

The Provider shall apply appropriate technical and organisational measures to adequately secure the Council's personal data during processing, storage and transfer. These measures must fulfil the Council's legal obligation to comply with data protection principle 7 (Information Security) of the Data Protection Act 1998. In furtherance of this the Provider shall indemnify the Council for loss or damages caused by any action, authorised or unauthorised, taken by himself, his employees, servants, agents or Sub-Contractors.

1. Information security policy shall be in place, approved by management, communicated to employees and Sub-Contractors and available for inspection.
2. Information security responsibilities shall be assigned to one or more competent individuals.
3. The Provider shall notify the Council's Information Security Officer of any incidents of breach or loss of the Council's data as soon as reasonably practical and in any case no later than 72 hours after becoming aware of an incident.
4. Background checks are undertaken and employment contracts and sub-contracts include appropriate terms, conditions and disciplinary sanctions to minimise risks to the confidentiality and integrity of Council data.
5. Business continuity / Business Continuity Plan(s) shall be in place (or will be at Service commencement) to address unavailability event(s) or incident(s).
6. The Provider shall comply with any reasonable request for change to its Service that is required to ensure the council's continued compliance with the Public Service Network (PSN) Code of Connection (CoCo). This applies a baseline security standard to which all PSN connected parties are required to adhere.
7. Appropriate controls shall be in place to protect Council data from malicious code or cyber-attacks.
8. Assets storing or processing Council data shall be appropriately protected against physical tampering, loss, damage or seizure.
9. Audit logs shall record relevant user activity, exceptions and information security events such that incidents or suspicious activity can be adequately investigated and attributed.
10. Measures shall be in place to identify and treat technical vulnerabilities (e.g. patching and updates) in a timely and appropriate manner.
11. Controls shall be in place to ensure other customers of the Provider's Service are unable to access the Council's data or threaten its Service (either maliciously or as a result of their own Service being compromised).

12. Controls shall be in place to minimise the risk of portable or online storage devices and/or services being used by the Provider's employees or Sub-Contractor for the unauthorised copying or removal of Council data.
13. Provider employee and Sub-Contractor accounts shall be revoked in a timely manner in the event of termination of employment or change of role.
14. System Administrator accounts shall not be shared and shall only be allocated to named individuals who are accountable for their actions.
15. User accounts shall be created or revoked in a timely manner in response to requests from the Council or on the Provider's termination of employee agent or Sub-Contractor.
16. Secure Remote Access shall be available as an option.
17. The Provider shall agree to supply to the Council personal information relating to employees, agents and sub-Contractors with access to Council information for the purpose of completing background checks in accordance with our obligations under PSN CoCo.
18. The Provider's employees, agents and sub-Contractors shall complete specialist data protection training designed for those who handle data at this classification within the first six months of Service commencement.
19. Networks shall be managed and controlled in a way that is appropriate to this classification of data.
20. Measures shall be in place to enable the detection and attribution of misuse or unauthorised activity.

Cloud Security Requirements

The Provider shall comply with ALL of the following requirements for any part of their Service that uses web hosting, web applications or cloud services:

Requirements for OFFICIAL or Personal Data	
1.	User access via browsers shall be configured to use HTTPS security and using Transport Layer Security version 1.2 as a minimum (TLS1.2).
2.	Cryptography certificates shall be issued by a current member of the Certificate Authority Security Council (CASC).
3.	A Penetration Test of web facing services shall be performed by a CREST registered tester and high risk issues remediated before Service commencement.
4.	Appropriate controls shall be in place to protect Council data from malicious code or cyber-attacks.
5.	Appropriate technical controls shall be in place to protect Council data in the event of the theft, loss or transfer of ownership of a privately owned device previously used to access the Service.
6.	Two-factor authentication (2FA) shall available as an option.

Requirements for OFFICIAL-SENSITIVE or Sensitive Personal Data ¹ or CONFIDENTIAL INFORMATION ²	
1.	Extended Validation (EV or Green Bar) cryptography certificates shall be provided (or will be at Service commencement) by a current member of the Certificate Authority Security Council (CASC).
2.	The Provider shall supply to the Council such personal information relating to employees with access to Council data in this classification as is necessary for background checks to be initiated as required for the council to comply with its PSN Code of Connection.
3.	The Provider's employees will complete specialist data protection training designed for those who handle data at this classification within the first six months of Service commencement.
4.	Networks shall (or will at Service commencement) be managed and controlled in a way that is appropriate to this classification of data.
5.	Web applications and/or Cloud services shall (or will be prior to Service commencement) be penetration tested by a CREST approved Provider at annual intervals. Test results shall be made available to the contracting Council on request.

¹ 'Sensitive Personal Data' means Data Protection Act definition relating to an individual's health, race, ethnicity, political or religious beliefs.

² 'Confidential Information' relates to an individual's health or ADULT social care (Health and Social Care Act 2012).

SCHEDULE INFORMATION GOVERNANCE

The Health and Social Care Information Centre requires that all Health and Social Care service providers, commissioners and suppliers must have regard to the Information Governance Toolkit Standard approved by the Standardisation Committee for Care Information (SCCI), which replaces the Information Standards Board (ISB) for Health and Social Care (ISB) and is a sub-group of the National Information Board (NIB).

The Provider shall have regard to and meet all relevant requirements under the NHS Data Security and Protection Toolkit.

The Provider shall complete an annual IG Assurance Questionnaire to evidence compliance.

The Provider shall additionally ensure that all data of any type meets the requirements of the Code of Practice on Confidential Information, as required under the Health and Social Care Act 2012.