



WOKINGHAM BOROUGH COUNCIL

-and-

SPOT CONTRACT FOR THE PROVISION OF SEMI-INDEPENDENT LIVING

CONTRACT NUMBER

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This Contract is made

BETWEEN

1. **Wokingham Borough Council** of Civic Offices, Shute End, Wokingham, Berkshire, RG40 1BN ("the Council") and
2. **XXXXXXXXXX** (Company registration number **XXXXXXXXXX**) whose registered office is **XXXXXXXXXXXXXXXXXX** ("the Provider").

1 FORM OF CONTRACT

- 1.1 This Contract relates to the provision of a Supported Living Accommodation Based Service for the Service Users listed in Schedule I, in-line with the terms and conditions of this Contract and any individual Service User Support Plan or arrangements agreed in relation to placements.
- 1.3 The Council makes no guarantee to the number of Service User placements made during the period of the contract or to pay for quantities other than those demanded.

2 DEFINITIONS AND INTERPRETATION

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

"Accounting Period"	Means the payment frequency period as outlined under Clause 10.1, the first of which commences on the Commencement Date of this contract and consecutively thereafter;
"Authorised Officer"	Means the person referred to in Clause 8 (Authorised Officer) ;
"Commencement Date"	Means: 01/01/2025
"Confidential Information"	Means information obtained from or relating to either party or their businesses or affairs, servants, agents or employees, or any information regarding the Service Users;
"Contract Manager"	Means the person referred to in Clause 9 (Contract Manager) ;
"Contract Monitoring"	Means the monitoring of contract compliance and of the Service which is carried out by the Council in accordance with Clause 12 (Contract Monitoring) ;
"Contract Price"	Means the price the Council will make to the Provider in return for the Provider providing the Service;

“Data Loss Event”	Any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this agreement, including any Personal Data Breach.
“Data Processing”	Shall have the same meaning as set out in the DPA 2018.
“Data Protection Impact Assessment”	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	(i) The GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 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 Subjects”	Shall have the same meaning as set out in the DPA 2018.
“Data Subject Access Request”	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.
“Days”	Means Monday to Sunday inclusive;
“Default”	Means any failure, on the part of either party to carry out our respective obligations under this Contract;
“Default Notice”	Means a notice setting out the nature of the Default committed and, if the Default can be put right, the action required to put it right and the timescale within which it is to be put right. Any such timescale must be reasonable in all the circumstances;
“DPA 2018”	Data Protection Act 2018
“Exceptional Circumstances”	Means concerns regarding performance, unacceptable levels of staff cover, fire damage, floods, evidence of criminal activity (including fraud), excessive complaints or any situation resulting in unacceptable levels of risk to Service Users or staff;
“Expiry Date”	Means; 31.12.2025

“Financial Assessment”	Means the review undertaken of the Service User’s financial situation by the Council to establish the amount that the Service User will contribute to the cost of the service;
“Financial Year”	Means a period of 12 months from 1 st April in one year to 31 st March in the next;
“GDPR”	The General Data Protection Regulation (Regulation (EU) 2016/679)
“LED”	Law Enforcement Directive (Directive (EU) 2016/680)
“Mediator”	Means an individual who is appointed in accordance with Clause 31 (Dispute Resolution) to mediate between the parties if they are in dispute;
“Persistent Default”	Means where the Provider has committed more than two Defaults during any consecutive period of 6 months, whether or not these are the same Defaults or different Defaults and even where the Default is corrected;
“Personal Data”	Shall have the same meaning as set out in the DPA 2018.
“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 such measures adopted by it.
“Regulatory Body”	Means a body, which is, established either by statute or in some other way and to whose regulatory powers either or both parties are subject. However, this does not include any body of which membership is voluntary;
“Resumption Notice”	Means a notice referred to in Clause 27 (Defaults and Suspension);
“Serious Default”	Means a Default on the part of the Provider which materially prejudices the health, safety

	or the welfare of a Service User or Service Users;
“Service User”	Means any person who receives the service as outlined on Schedule I. This may change to cater for amendments to existing placements and to include new placements at a later date;
“Service”	Means the Service outlined in Schedule I
“Sub-processor”	Any third Party appointed to process Personal Data on behalf of the Provider related to this agreement.
“Suspension Notice”	Means a notice served on the Provider under Clause 27 (Defaults and Suspension) which sets out details of the Service which are to be suspended whilst the Council carry out an investigation into a Serious Default;
“Termination Notice”	Means a written notice served by one party to the other under Clauses 27 (Defaults and Suspension) and 29 (Termination), setting out details of the Service which are to be terminated;
“TUPE”	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (including any amendments made to these Regulations since 2006 which are still in force) and the Acquired Rights Directive;
“Variation”	Means a variation to this Contract or to the Service, made in accordance with Clause 32 (Variations to the Contract);
“Variation Notice”	Means a notice served in accordance with Clause 32 (Variations to the Contract);
“Working Days”	Means between 9:00am and 5:00pm Monday to Friday inclusive but does not include any days which are bank holidays or public holidays.

2.2 Unless the context makes it clear that this is not what is intended, any reference in this Contract to:

2.2.1 the masculine includes a reference to the feminine and vice versa;

2.2.2 the singular includes a reference to the plural and vice versa;

- 2.2.3 a person includes a reference to an individual or a firm, partnership, company, or corporation;
- 2.2.4 a 'clause' or a 'schedule' in this Contract means a reference to a clause or schedule of this Contract.

2.3 The headings in this Contract are for ease of reference only and do not affect its interpretation.

2.4 Any reference in this Contract to any enactment, order, regulation, or other similar instrument is to be taken to mean a reference to any such enactment, order, regulation, or other similar instrument which is in force for the time being. This includes (for as long as they are in force):

2.4.1 any amendments or modifications to any such enactment, order, regulation, or other similar instrument; and

2.4.2 any re-enactment of any such enactment, order, regulation, or other similar instrument.

3 START AND DURATION OF THIS CONTRACT

3.1 This Contract will start on the Commencement Date and will continue until the Expiry Date (unless both parties agree, in writing, to bring forward or put back the Expiry Date) unless terminated in whole or in relation to any particular Service User placement, under Clause 29 (**Termination**).

3.2 The Council reserves the right to extend the Contract for a period of up to 1 year from the expiry date, subject to written mutual agreement between the Council and the Provider.

4 ENTIRE CONTRACT

4.1 This Contract sets out all the terms and conditions which the parties have agreed regarding the provision of the Service and supersedes any representations, documents, negotiations, or understandings, whether oral or written, made, carried out or entered into before the date of this Contract for the service to which this Contract relates.

5 PRIORITY OF DOCUMENTS

5.1 If there is any inconsistency or conflict between the clauses of this Contract and the Schedules, then the clauses will take precedence.

6 ASSIGNMENT AND SUB-CONTRACTING

6.1 The Provider must not:

6.1.1 assign its interest in the Contract to any other person; or

6.1.2 create any interest in the Contract or any part of it (for example by way of a trust); or

6.1.3 create any security over this Contract or any part of it (for example, by way of a fixed charge); or

- 6.1.4 sub-contract the carrying out of its obligations under this Contract unless first obtaining the written consent of the Council which shall not be unreasonably withheld or delayed.
- 6.2 Notwithstanding Clause 6.1, consent will not be required by the Council for the Provider to create a floating charge over substantially the whole of the Provider's assets, property and undertaking.
- 6.3 If consent is given to subcontract under Clause 6.1.4 it can be withdrawn provided that the Council acts reasonably in doing so and gives reasonable notice.
- 6.4 Any consent given in this Contract under Clause 6.1.4 will not negate any of the Provider's obligations under this Contract and it will be responsible for the acts, defaults and neglect of any sub-contractor or any employee, agent, or servant of any such sub-contractor, as if they were the Provider's own acts defaults and neglect.
- 6.4.1 In accordance with Clause 6.4, the Provider is responsible for ensuring that an agreement is in place between the Provider and subcontractor which lays out the requirements under this Contract. A copy of the agreement with the subcontractor must be sent to the Council.

7 AGENCY

- 7.1 The Provider must not represent to anyone, nor allow any of its employees or agents to represent to anyone, that it is an agent or servant of the Council.
- 7.2 The Provider must not enter into any contract on behalf of the Council or on behalf of any of the Service Users, or in any way claim that it is authorised to do so. This includes not binding the Council or any of the Service Users to carrying out, varying, releasing or discharging any obligation, whether or not by way of a formal contract.
- 7.3 The Provider does not have the power under this Contract to make, vary, discharge, or waive any byelaw or regulation of any kind and it must not represent itself as having any such power.

8 AUTHORISED OFFICER

- 8.1 The Council will appoint a person to exercise its rights and powers under this Contract, called the 'Authorised Officer'. This will not limit in any way either its rights or obligations.
- 8.2 Details of the person appointed to act as Authorised Officer from the Commencement Date (his telephone number, fax number, e-mail address and postal address) are set out in Schedule II.
- 8.3 The Authorised Officer will be entitled to appoint another person or persons to exercise some or all of his functions (each a 'Deputy Authorised Officer') and must give the Provider at least 5 Working Days written notice.
- 8.4 The Council will be entitled to change the identity of the Authorised Officer (and the Authorised Officer may change the identity of any Deputy Authorised Officer) upon giving the Provider at least 5 Working Days written notice, unless for reasons beyond the Council or Authorised Officer's control, this is not possible. In this instance the

Council or Authorised Officer will notify the Provider by whatever means appears reasonable although any such notice will subsequently be confirmed in writing within 5 Working Days. If the contact details of the Authorised Officer or Deputy Authorised Officer change the Provider will be notified and supplied with updated contact details in accordance with Clause 36 (**Notices**).

- 8.5 Any such notice referred to in Clauses 8.3 or 8.4 must contain the same details regarding the replacement Authorised Officer or (replacement) Deputy Authorised Officer as are set out in the schedule regarding the original Authorised Officer.
- 8.6 Until the Provider has been notified of any change in the identity of the Authorised Officer or the Authorised Officer has notified it of any change in the identity of a Deputy Authorised Officer, it will be entitled to treat the last person notified to it as the Authorised Officer or the Deputy Authorised Officer (as the case may be).
- 8.7 All notifications of changes under this Clause 8 (**Authorised Officer**) will be made in accordance with Clause 36 (**Notices**).

9 CONTRACT MANAGER

- 9.1 The Provider will appoint a person to exercise its rights and powers under this Contract, called the 'Contract Manager'. This will not limit in any way either its rights or obligations.
- 9.2 Details of the person appointed by the Provider to act as Contract Manager from the Commencement Date (his telephone number, fax number, e-mail address and postal address) are set out in Schedule II.
- 9.3 The Contract Manager will also be entitled to appoint another person or persons to exercise some or all of his functions (each a 'Deputy Contract Manager') but if he does so, he must give the Council at least 5 Working Days written notice.
- 9.4 The Provider will be entitled to change the identity of the Contract Manager (and the Contract Manager may change the identity of any Deputy Contract Manager) upon giving the Council at least 5 Working Days written notice, unless for reasons beyond the Provider or the Contract Manager's control, this is not possible. In this instance the Provider or Contract Manager will notify the Council by whatever means appears reasonable although any such notice must then subsequently be confirmed in writing within 5 Working Days. If the contact details of the Contract Manager or Deputy Contract Manager change the Council must be notified and supplied with updated contact details in accordance with Clause 36 (**Notices**).
- 9.5 Any such notice referred to in Clauses 9.3 or 9.4 must contain the same details regarding the replacement Contract Manager or (replacement) Deputy Contract Manager as are set out in the schedule regarding the original Contract Manager.
- 9.6 Until the Council has been notified of any change in the identity of the Contract Manager or the Contract Manager has notified the Council of any change in the identity of a Deputy Contract Manager, the Council will be entitled to treat the last person notified to it as the Contract Manager or the Deputy Contract Manager (as the case may be).
- 9.7 All notifications of changes under this Clause 9 (**Contract Manager**) should be made in accordance with Clause 36 (**Notices**).

10 CONTRACT PRICE AND PAYMENT

- 10.1 The Council will pay the Provider the Contract Price outlined in Schedule I, four weekly in arrears.
- 10.2 Payment of the Contract Price will be made on the assumption that the Service has been delivered in accordance with this Contract. Where this is not the case payment may be withheld or reclaimed as appropriate.
- 10.3 For the avoidance of doubt the Contract Price is the total price for the Service.
- 10.4 Within 7 days of the end of an Accounting Period the Provider will submit an invoice to the Council at the following address:

XXXXXXXXXXXXXXXXXXXXXXXXXX

- 10.5 Invoices shall be broken down to show any different levels of support charge, the Service User Social Care ID Number outlined in Schedule I and the relevant Purchase Order Number.
- 10.6 Where the Accounting Period covers 31st March, two separate invoices will need to be submitted; one to cover the start of the Accounting Period to 31st March, then a second to cover the period from 1st April to the end of the Accounting Period.
- 10.7 The Contract Price does not include VAT. If VAT is payable, then the Council must pay this in addition to the Contract Price provided that the Provider supplies the Council with a proper VAT invoice.
- 10.8 The Council shall pay a properly submitted invoice within 30 days of receipt.
- 10.9 The Council reserves the right to reject and return any invoices not submitted strictly in accordance with the above terms and is entitled to set off against the Contract Price, or any sums due to the Provider, any sums owed to the Council by, or recoverable from, the Provider.

10.10 Housing Benefit / Universal Credit:

Young people that are entitled to make a claim for Housing Benefit or Universal Credit shall be assisted by the Provider in making their claim. Due to the nature of Universal Credit, claims may be delayed, and therefore payments delayed, it is an expectation that the Service Provider will anticipate this and assist the young person in troubleshooting any issues.

Changes to Contract Price

- 10.11 The Contract Price may be increased or decreased:
- 10.11.1 The Council undertakes an annual uplift process to ensure changes in statutory payments are fairly reflected within the pricing structure. Any agreed revised fees will take effect from 1st April in the year in which it relates.
- 10.11.2 at any time with a minimum of 4 weeks' notice (or sooner by mutual agreement) to consider changes required to the Support to be

delivered in order to meet a Service User's assessed needs, by an amount determined by the Council.

Late Payments

- 10.12 If the Council is late in making any payment of the Contract Price, then it must pay the Provider interest on the amount of any such late payment (unless the unpaid sum is in dispute between the parties). The interest will be calculated on a daily basis, from the date when payment should have been made to the date when payment is actually made. The interest rate, which will apply will be the base rate of The National Westminster Bank from time to time, plus 2% per annum.

Utilisation of Contract Price

- 10.13 If the Provider does not utilise the full payment it is given, the Council may require it to repay any part of the payment not used.

Periods of absence

- 10.14 If the Service User is absent from the service during the Term of this Agreement, the Provider shall inform the Council within one working day.
- 10.15 The Council shall continue to pay the agreed price to the provider for the first 2 weeks of absence.
- 10.16 At the end of 2 weeks the situation will be reviewed, and the Council will determine whether any payment will continue.

Accounts and Financial Statements

- 10.17 The Provider shall properly maintain accounts during the term of this Contract. The accounts shall contain a full and accurate record of all monies expended by the Provider in observing and fulfilling its obligations under this Contract. The accounts shall be prepared in accordance with accepted accounting principles and shall be audited on the Provider's behalf by a firm of reputable Chartered Accountants (who shall be registered auditors).
- 10.18 The Provider shall supply the Council with copies of the accounts specific to the Service in the format specified by the Council annually (or more frequently if required) and within 6 months of the date of termination of this Contract howsoever terminated.
- 10.19 The Provider shall notify to the Council in writing as soon as possible of any material financial irregularity and shall provide details of any necessary action taken to remedy such irregularity.

11 THE SERVICE STANDARD

- 11.1 The Provider must provide the Service in accordance with its obligations under this Contract and with all the skill, care, and diligence to be expected of a competent provider of services of a similar kind to the Service.

- 11.2 In providing the Service the Provider must also comply with:
- 11.2.1 any and all codes of practice, performance ratings and quality standards that are laid down in this Contract or that are issued to the Provider as part of an agreed Variation Notice; and
 - 11.2.2 all statutory provisions which apply to the Service.
- 11.3 The Provider will notify the Council within 1 working day of any Enforcement Notice or statutory or regulatory action it is issued in relation to any Service to which this contract applies.

12 CONTRACT MONITORING

- 12.1 The Provider and any Services in this Contract are subject to Contract Monitoring which will be undertaken by the Council. The Provider shall use its best endeavours to co-operate in carrying out such monitoring and shall meet the deadlines laid out by the Council.
- 12.2 The Council may carry out regular on-site monitoring visits to ensure compliance with this Contract.
- 12.3 The Provider must allow the Council's staff reasonable access to any premises and paperwork in relation to the Service at any time.

13 STATUTORY DUTIES

- 13.1 The Provider shall observe and perform the requirements of all Acts of Parliament, subordinate legislation made under or by virtue of provisions of any Act of Parliament, the time being in force, and which relate to the service. Inclusion in other provisions of this contract of conditions relating to specific identified legislation shall not prejudice the generality of this clause.
- 13.2 Any reference in this contract to any Act of Parliament, subordinate legislation shall be construed as including a reference to the same as applied, amended, or re-enacted by any subsequent such Act, subordinate legislation, Regulation or Directive as the case may be.
- 13.3 In complying with Clauses 13.1 and 13.2, the Provider must allow the Council or authorised agents access to:
- 13.3.1 the Provider's employees; and
 - 13.3.2 all information, reports, financial accounts, documents, records (whether in human or machine-readable form) and data which is held or accessible
- in each case who or which are relevant to this Contract or the Service.
- 13.4 The Council must be allowed to take copies of the information, reports, etc. referred to in Clause 13.3.2.
- 13.5 Any information, reports etc made available under Clause 13 (**Statutory Duties**) shall be treated as Confidential Information and therefore subject to the provisions of

Clause 22 (**Confidentiality**) except where it is required in respect of the Freedom of Information Act 2000.

14 COMPLAINTS AND WHISTLEBLOWING

- 14.1 The Provider must have complaints and whistleblowing procedures in place which comply with the requirements of any Regulatory Body to which the Provider is subject, including any change in such requirements, and reflect best practice. The Provider must supply the Council with a copy of either procedure on request.
- 14.2 All complaints and whistleblowing activity including their outcome must be recorded and this information made available to the Council upon request.
- 14.3 All staff must be made aware of both policies within the first week of commencing employment.
- 14.4 Service users must receive a copy of the complaints process, upon commencement of the service. This should be provided in a suitable format.

15 SAFEGUARDING CHILDREN AND ADULTS

Safeguarding Children

- 15.1 'Working Together to Safeguard Children' and 'Section 11 of the Children Act 2004' places a statutory duty on all Providers 'who provide services for, or work with children' or young people, to 'safeguard and promote the welfare of children'.
- 15.2 The Provider shall at all times comply with the requirements of Section 11 of the Children Act 2004 and the Child Protection Procedures relevant to the Local Safeguarding Children Board (LSCB) in which the child is placed (e.g., Berkshire Child Protection Procedures). The Provider will at all times have arrangements ("the Provider's Arrangements") in force for safeguarding and promoting the welfare of children which are compliant with the local LSCB Child Protection Procedures and the Provider's duties in 'Working Together to Safeguard Children' and will ensure that any additional internal procedures or inter-agency protocols are consistent with these procedures.

Safeguarding Adults

- 15.3 The Provider shall at all times comply with the requirements of the Berkshire Safeguarding Adults Policy and Procedures, including any updates and/or replacement documents, and also comply with the requirements of any Regulatory Body to which the Provider is subject, including Deprivation of Liberty regulations and any change in such requirements. The Provider will at all times have arrangements ("the Provider's Arrangements") in force for safeguarding and promoting the welfare of vulnerable adults which are compliant with the local Safeguarding Adults Procedures and will ensure that additional internal procedures or inter-agency protocols are consistent with these procedures.

Safeguarding requirements applying to both Adults and Children

- 15.4 Providers shall ensure that:
 - 15.4.1 All staff and volunteers (including temporary staff) 'are made aware of the Provider's Arrangements;'
 - 15.4.2 They publish written policies that explicitly state, 'clear priorities for safeguarding and promoting the welfare of children' and vulnerable adults in 'strategic policy

- documents' and that they ensure the effective dissemination, and implementation, of these policies to staff and volunteers;
- 15.4.3 They provide 'a clear line of accountability within the organisation for work on safeguarding' and promoting welfare and demonstrate 'a clear commitment by the Provider to the importance of safeguarding and promoting welfare';
 - 15.4.4 Their staff and volunteers are subject to Safer Workforce processes and checks, including, 'recruitment and human resources management procedures that take account of the need to safeguard and promote welfare, including arrangements for appropriate checks on new staff and volunteers', this includes conducting appropriate checks with the Disclosure and Barring Service (DBS);
 - 15.4.5 They adhere to local LSCB 'Procedures for dealing with allegations of abuse against members of staff and volunteers', including arrangements for notifying the Local Authority Designated Officer (LADO), for Services in relation to Children and Young People;
 - 15.4.6 They ensure that all staff and volunteers 'undertake appropriate training', and to ensure that this is kept up to date by refresher training at regular intervals;
 - 15.4.7 They respect the confidentiality of individuals and adhere to Wokingham Borough Council's LSCB Information Sharing and Assessment Protocol, which summarises local 'arrangements to work effectively with other organisations to safeguard and promote welfare, including arrangements for sharing information', (subject to any relevant provisions of the Data Protection Act);
 - 15.4.8 They disseminate and implement 'appropriate whistle-blowing procedures, and a culture that enables issues about safeguarding and promoting the welfare of children and vulnerable adults to be addressed;'
 - 15.4.9 They maintain accurate and up-to-date records of decision making and actions taken;
 - 15.4.10 They are at all times sensitive to needs arising from race, culture, religion, sexual orientation, or linguistic background;
 - 15.4.11 They furnish the Client or their agents on their reasonable request, with copies of their records relating to any of the above.
- 15.5 The Provider should refer to the LSCB's website for Safeguarding resources ('Safeguarding Toolkit') to assist them in fulfilling these responsibilities.
 - 15.6 Compliance with these minimum standards will primarily be monitored in review meetings by the Contract Manager/Officer.
 - 15.7 The Local Safeguarding Children Board will monitor Provider compliance with Safeguarding requirements in its Section 11 Audit (Section 11 of the Children Act 2004). Failure to comply with any part of this Clause will be deemed a Material Breach of the Contract.
 - 15.8 The Provider must make available a copy of any of their internal safeguarding policies and procedures to the Council on request.
 - 15.9 Upon the Council's reasonable request, a copy of the Provider's records relating to the protection of vulnerable adults and children from abuse made in relation to the Service(s) and its response must be supplied.
 - 15.10 The Provider shall adopt Safeguarding Policies and such policies shall comply with the Pan Berkshire Safeguarding Policies as amended from time to time and the Provider shall comply at all times with any new local or national safeguarding policies which may be introduced.

- 15.11 At the reasonable written request of the Council, and within the specified timescale, the Provider must provide evidence to the Council that it is addressing any safeguarding concerns.
- 15.12 If request by the Council, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

16 STAFF

- 16.1 The Provider must employ sufficient numbers of people of sufficient ability, skill, knowledge, training, or experience so as to properly provide, and to supervise the provision of, any Service to which this contract applies.
- 16.2 In providing the Service, the Provider shall use personnel who have the necessary standard of English language skills to enable the Council to fulfil its fluency duty set out in the Code of Practice issued under Section 80 of the Immigration Act 2016.
- 16.3 If the Provider has to hire agency staff to cover the absence of permanent staff, the Provider must ensure these staff have sufficient ability, skill, knowledge, training, or experience so as to properly provide the Service.
- 16.4 The Provider must carry out checks with the Disclosure and Barring Service on all staff employed and/or (if any) volunteers engaged.
 - 16.4.1 These checks must be at the enhanced level where staff and any volunteers provide or supervise the provision of the Service.
 - 16.4.2 These checks must be at least at the standard level for staff and any volunteers who do not directly provide the Service but do come into regular contact with Clients.
 - 16.4.3 All checks must be renewed every three years.
 - 16.4.4 The Provider must secure approval from all staff, on commencement of employment, to allow the Council to evidence DBS checks.
 - 16.4.5 The Provider must allow the Council to undertake random inspections to evidence that DBS checks have been undertaken.
 - 16.4.6 The Provider must adhere to the Safeguarding Vulnerable Groups Act 2006.
- 16.5 The Provider shall not engage a member of staff in the Service in any position to which this Clause would apply prior to the receipt of a satisfactory check. In complying with this Clause, it is agreed that the Provider must ensure that any relevant requirements or guidance issued by the Disclosure and Barring Service or any other Regulator, are performed or observed as the case may be.
- 16.6 The Provider must make available to the Council, on request, all relevant information and records which relate to the action and decision the Provider has taken in the instance where a disclosure has been made as a result of a DBS check.

17 EQUAL OPPORTUNITIES

- 17.1 The Provider must operate an Equal Opportunities Policy for as long as this Contract is in force and provide the Council with a copy on request.
- 17.2 The Provider must ensure that its Equal Opportunities Policy complies with the Equalities Act 2010 and all other statutory obligations as regards discrimination on the grounds of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion, or sexual orientation in relation to:
- 17.2.1 decisions made in the recruitment, training or promotion of staff employed or to be employed in the provision of the Service;
 - 17.2.2 the provision of the Service; and
 - 17.2.3 the carrying out of its obligations under this Contract.
- 17.3 In providing the Service, the Provider must observe the Commission for Racial Equality's *Code of Practice for Employment*, (the 'Code'), any updates to the Code, or any code which may replace it.
- 17.4 The Provider must provide the Council with such information as may be required by the Council in order for it to assess the Provider's compliance with the Code.
- 17.5 If any Court or Tribunal, or the Commission for Racial Equality (or anybody which may replace the Commission) makes a finding that the Provider has unlawfully discriminated against any person in the provision of the Service, then it must:
- 17.5.1 take all necessary steps to make sure that the unlawful discrimination does not happen again; and
 - 17.5.2 notify the Council in writing of the finding and the steps taken to prevent its re-occurrence.
- 17.6 In providing the Service, appropriate consideration must be given to each Service User's race, nationality, cultural or ethnic background, marital status, age, gender, religion, sexual orientation, and disabilities.

18 HUMAN RIGHTS

- 18.1 The Provider acknowledges that:
- 18.1.1 in performing its obligations under this Contract it may be a public authority for the purposes of the Human Rights Act 1998; and
 - 18.1.2 that it is unlawful to exercise functions deemed to be of a public nature in a way that is incompatible with those rights contained in the European Convention of Human Rights and incorporated into English Law by the Human Rights Act 1998.
- 18.2 In providing the Service, the Provider shall throughout the Contract term and at its own cost be subject to the same duty in respect of Human Rights in the same way as if it were the Council.

- 18.3 The Provider shall undertake or refrain from undertaking such actions as the Council may request so as to enable the Council to discharge its duty under the Human Rights Act 1998.

18A Compliance with Anti-Slavery and Human Trafficking Laws

- 18A.1 In performing its obligations under the agreement, the Provider shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations (and codes) from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice, or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice, or conduct were carried out in the UK;
- (c) include in contracts with its direct subcontractors and Providers provisions which are at least as onerous as those set out in this Clause 18A
- (d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- (e) maintain a complete set of records to trace the supply chain of all goods and Service provided to the Council in connection with this agreement; and permit the Council and its third-party representatives to inspect the Provider's premises, records, and to meet the Provider's personnel to audit the Provider's compliance with its obligations under this Clause 18A

- 18A.2 The Provider represents and warrants that at the date of this agreement it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

- 18A.3 The Council may terminate the agreement with immediate effect by giving written notice to the Provider if the Provider commits a breach of this Clause 18A.

19 RECORDS AND INFORMATION

- 19.1 The Provider must compile and maintain such information as may be required by the Council to monitor the Provider's adherence to the terms, conditions, and schedules of this Contract
- 19.2 The Provider must make available to the Council the information referred to in Clause 19.1 within any deadline set and ensure that the information is complete and correct.
- 19.3 The Provider must also provide upon reasonable request (but subject to Clauses 20 (**Data Protection Act**) and 22 (**Confidentiality**)) to the Council:
- 19.3.1 all other information which may be required by the Council for the purpose of assessing how the Provider's obligations under this Contract are being carried out and the safety and the welfare of the Service Users; and

19.3.2 information on, and the names of, the Service Users.

- 19.4 In accordance with Clause 19.3, the Provider must seek authorisation from all service users on commencement of the support service to allow the Council to review their files as part of the contract monitoring process.
- 19.5 Notwithstanding Clause 19.3, the Provider must allow the Authorised Officer, or any person authorised by him, together with appropriate staff, at all reasonable times to inspect or witness the provision of the Service.
- 19.6 In inspecting or witnessing the provision of the Service, the Council will have proper regard to the nature of the Service being provided, particularly where this involves victims of domestic violence or other sensitive services for vulnerable client groups.
- 19.7 The Provider must notify the Council if:
- 19.7.1 there is a change in who controls the majority of the shares in, or the voting rights amongst shareholders or members of, the Provider;
 - 19.7.2 the Provider changes its name;
 - 19.7.3 the Provider merges with another organisation;
 - 19.7.4 the Provider transfers its engagements to another organisation;
 - 19.7.5 the Provider in any way transfers its business to another organisation;
 - 19.7.6 as a result of any misconduct or mismanagement on the part of the Provider a Regulatory Body directs an inquiry into, or makes an order of any kind in relation to, its affairs; or
 - 19.7.7 any registration which must be maintained by the Provider in order to provide any of the Service is withdrawn or cancelled or is threatened to be withdrawn or cancelled.
- 19.8 The provider must ensure that all information provided to service users is provided in a clear and easily comprehensible format, appropriate to the client group(s).
- 19.9 If, as a result of termination or contract expiry, the Service(s) are to be taken over, in part or full, by an alternative provider, the Provider must co-operate with the incoming provider. This includes providing information in a timely manner and within any deadline set and liaising with the incoming provider regarding a handover of service user's cases.

20 DATA PROTECTION

- 20.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller, and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in the attached Appendix A by the Council and may not be determined by the Provider.
- 20.2 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

- 20.3 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 20.4 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this agreement:
- (a) process that Personal Data only in accordance with the attached Appendix A unless the Provider is required to do otherwise by Law. If it is so required, the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Provider Personnel do not process Personal Data except in accordance with this agreement (and in particular the attached Appendix A);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Provider's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Provider 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 Council or as otherwise permitted by this agreement; and

(D) have undergone adequate training in the use, care, protection, and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

(i) the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

(iv) the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

(e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the agreement unless the Provider is required by Law to retain the Personal Data.

20.5 Subject to clause 20.6, the Provider shall notify the Council immediately if it:

(a) receives a Data Subject Access Request (or requested Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory Authority in connection with Personal Data processed under this agreement;

(e) 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

(f) becomes aware of a Data Loss Event.

20.6 The Provider's obligation to notify under clause 20.5 shall include the provision of further information to the Council in phases, as details become available.

20.7 Considering the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

(a) the Council with full details and copies of the complaint, communication, or request;

(b) such assistance as is requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 20.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- (a) the Council determines that the processing is not occasional;
 - (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 20.9 The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 20.10 The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 20.11 Before allowing any Sub-processor to process any Personal Data related to this agreement, the Provider must:
- (a) notify the Council in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 20 such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 20.12 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 20.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 20.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

21 HEALTH AND SAFETY

- 21.1 The Provider must comply with the requirements of the Health and Safety at Work Act 1974 insofar as they apply to the provision of the Service.
- 21.2 For as long as this Contract is in force the Provider must have in place a Health and Safety Policy which complies with all statutory requirements and supply this to the Council upon request.

22 CONFIDENTIALITY

- 22.1 The Provider must use its best endeavours to ensure that subject to Clause 20 (**Data Protection Act**) it (and any person employed or engaged by it in connection with the provision of the Service in the course of such employment or engagement) will:
 - 22.1.1 only use Confidential Information for the purposes of this Contract; and
 - 22.1.2 not disclose any Confidential Information to any third party without the prior written consent of the Council (which it shall be entitled to refuse without giving any reason); and
 - 22.1.3 not use the Confidential Information for the solicitation of business from the Council.
- 22.2 The provisions of Clause 22.1 shall also apply to the Council.
- 22.3 Notwithstanding the provisions of Clauses 22.1 and 22.2 both parties shall be allowed to disclose any Confidential Information to any consultant, contractor or other person engaged by either party in connection with this Contract or the provision of the Service provided that in each such case the consultant, contractor or person concerned has signed a confidentiality undertaking on substantially the same terms as set out in this Clause 22 (**Confidentiality**).
- 22.4 The restrictions in Clauses 22.1 and 22.2 shall not prevent either party disclosing to the other (or to any other person) Confidential Information about a Service User where this is in the best interests of the Service User concerned or such disclosure is necessary so as to protect the health, safety or the welfare of the Service User or other Service Users.
- 22.5 The restrictions in Clauses 22.1 and 22.2 shall continue to apply after the Contract has come to an end or, if it takes place earlier, termination of the whole of this Contract but they shall not apply (whether whilst this Contract is in force or after) to information which:
 - 22.5.1 is in, or comes into, the public domain (except if this is as a result of a breach by either parties of this Clause);
 - 22.5.2 is required to be disclosed by law;
 - 22.5.3 was already in the possession of either party without any restriction as to its use; or
 - 22.5.4 subsequently lawfully comes into the possession of either party from a third party; or

22.5.5 is required to be disclosed by any Regulatory Body or governmental body.

- 22.6 This Clause has effect subject to the provisions set out in Clause 23 (**Freedom of Information**).

23 FREEDOM OF INFORMATION

- 23.1 All information relating to, or arising from, this Contract, including information about its performance is covered by the Freedom of Information Act 2000. The Council is therefore under a legal obligation to disclose such information including Confidential information (not personal information to be disclosed under Freedom of Information Act 2000), if requested, unless an exemption applies.
- 23.2 Under the requirements of Clause 23.1, the Provider must provide the Council with any information required to comply with the Freedom of Information Act 2000.
- 23.3 The Council may also be subject to disclosure obligations under other legislation or codes of practice, with which the Provider must supply to the Council any relevant information upon request.

24 INSURANCE

- 24.1 For as long as this Contract is in force the Provider must take out and maintain as a minimum the insurances set out in Clause 24.3. These insurances must provide cover and/or an indemnity, as appropriate, in respect of every aspect of the Services(s) to be provided under this contract and associated Schedules.
- 24.2 The Provider must also ensure that any of its sub-contractors who are providing any or all of the Service(s) on its behalf take out and maintain equivalent insurances, as a minimum.
- 24.3 The insurances referred to in Clauses 24.1 and 24.2 are as follows:
- 24.3.1 Employers Liability insurance in compliance with statutory requirements and provisions; and
- 24.3.2 Public Liability insurance with a Limit of Indemnity of £5,000,000 (or such alternative or higher amount as the Council may from time to time require) applying to each and every claim or series of claims arising from any one cause or occurrence; and
- 24.3.3 where the Provider gives advice of any nature whatsoever whilst undertaking the service, an indemnity in respect of which is not provided by the insurance required in 24.3.2 above, Professional Indemnity insurance with a Limit of Indemnity of no less than £1,000,000 (or such alternative or higher amount as the Council may from time to time require) in the aggregate in any one period of insurance; and
- 24.3.4 Medical Malpractice/Treatment Risk insurance with a Limit of Indemnity of no less than £5,000,000 (or such alternative or higher amount as the Council may from time to time require) in the aggregate in any one period of insurance, if the Provider administers any form of medication (from simply helping someone access their tablets from a pre-packaged dispensing unit to giving injections), or provides any form of medical treatment whilst

undertaking the service, an indemnity for which is not provided by the insurances required in Clauses 24.3.2 and/or 24.3.3 above; and

24.3.5 motor insurance where Clause 48 applies; and

24.3.6 any other insurance(s) which the Council may from time to time require in respect of the services being provided under this contract.

24.4 Where under the terms of this Contract the Provider is required to purchase Professional Indemnity or Medical Malpractice/Treatment Risk insurance such insurance must be maintained in force for a minimum period of 6 years after the expiry of this Contract.

24.5 EVIDENCE OF INSURANCE

24.5.1 The Provider must produce to the Council annually where requested a copy of the policy schedule(s) and/or certificate(s) where applicable for the insurances referred to in Clause 24.3.

24.5.2 If the Provider has received advice from a professionally qualified insurance intermediary that Professional Indemnity and/or Medical malpractice/.Treatment Risk insurance is not required, or if the Provider holds such cover with a lower Limit of Indemnity than specified in Clauses 24.3.3 or 24.3.4, the intermediary must provide written confirmation on its headed business paper that the insurance cover the Provider has in place is sufficient and adequate to fully indemnify the Provider in respect of all risks and/or claims that may reasonably be anticipated to arise from the provision of the services under this Contract including, but not limited to, the provision of any advice, medical treatment or the administration of any form of medication. Such letter must be produced and provided annually where requested of the Provider's other insurances.

25 THE PROVIDER'S LIABILITIES AND INDEMNITIES

25.1 The Provider must fully and promptly indemnify the Council against all direct (but not indirect or consequential) losses, damages, costs, expenses, liabilities, claims or proceedings, whether these arise under statute or common law, (together referred to as 'the Council's losses') which the Council suffers as a result of any negligence, default or breach of statutory duty on the Provider's part in carrying out its obligations under this Contract or on the part of any person it employs or engages to carry out its obligations under this Contract.

25.2 The Provider will not be liable to indemnify the Council as set out in Clause 25.1 to the extent that the Council's losses are due to any negligence, default, or breach of statutory duty on the Council's part, or on the part of any of its employees acting in the course of their employment.

26 THE COUNCIL'S LIABILITIES AND INDEMNITIES

26.1 The Council must fully and promptly indemnify the Provider against all direct (but not indirect or consequential) losses, damages, costs, expenses, liabilities, claims or proceedings, whether these arise under statute or common law, (together referred to as 'the Provider's losses') which the Provider suffers as a result of any negligence, default or breach of statutory duty on the Council's part in carrying out its obligations

under this Contract or on the part of any person it employs or engages to carry out the Council's obligations under this Contract.

- 26.2 The Council will not be liable to indemnify the Provider as set out in Clause 26.1 to the extent that the Provider's losses are due to any negligence, default, or breach of statutory duty on the Provider's part, or on the part of any of its employees acting in the course of their employment.
- 26.3 The Council's liability for any of the Provider's losses which relate to death or personal injury shall be unlimited.

27 DEFAULTS AND SUSPENSION

Defaults

- 27.1 If the Provider commits a Default, then the Council will be entitled to serve on the Provider a Default Notice. This will be without prejudice to any other right or remedy which may be available to the Council, either under this Contract or at law.
- 27.2 If the Council serves on the Provider a Default Notice which relates to a Default which can be put right, then on receiving such a Default Notice, the Provider will take the action specified in the Notice within the timescale set out, at its own cost.
- 27.3 The Provider will be entitled to apply the provisions of Clauses 27.1 and 27.2 except that if the Default concerned is a failure to pay the Contract Price on time, then the Council must make such late payment within 10 Working Days of the Default Notice being served.
- 27.4 If there is any disagreement between the parties as to whether a Default has occurred and/or about the action required to be taken and/or the timescale within which the action is to be taken, then either party can refer the matter for resolution, in accordance with Clause 31 (**Dispute Resolution**).

Persistent Defaults

- 27.5 If the Provider commits a Persistent Default or fails to put right a Default within the timescale set out in the Default Notice concerned, then the Council (acting reasonably) will be entitled to terminate the application of this Contract to the Service concerned by giving the Provider reasonable notice.

Suspension

- 27.6 If the Default is a Serious Default (and if it is, the Default Notice must say so) then the Council will be entitled to arrange for a competent person (which may be one of its employees) to carry out an investigation into the Serious Default.
- 27.7 If the Council considers (acting reasonably) that:
- 27.7.1 the Serious Default is of such seriousness; or
- 27.7.2 there is a continuing threat to the health, safety, or welfare of any or all of the Service Users

such that in either case it is not appropriate for the Provider to carry on providing any or all of the Service then the Council will also be entitled to serve on the Provider a Suspension Notice.

- 27.8 Where a Vulnerable Adults complaint is made against the Provider or any member of staff, the Council reserves the right to serve a Suspension Notice and remove the Service User(s) from the Premises (if required) whilst any investigation into an allegation takes place.
- 27.9 If the Council serves a Suspension Notice, then:
- 27.9.1 the Provider will cease providing the Service set out in the Suspension Notice from the date specified in the Suspension Notice; and
- 27.9.2 the Council will be entitled either to provide some or all of the Service or employ another person to do so on its behalf for as long as the Suspension Notice is in force.
- 27.10 The Council will ensure that any investigation is carried out as quickly as possible and the Council will make available to the Provider a copy of the report of the investigation's findings as soon as possible after it has been made available to the Council.
- 27.11 If the Provider has been served with a Suspension Notice, then as soon as possible after the Council have received the report of the investigation, it shall consider (acting reasonably) whether or not the Provider will resume provision of the suspended Service.
- 27.12 If the Council considers that the Provider is to resume provision of some or all of the suspended Service then it will serve on the Provider a Resumption Notice which shall set out the Service to be resumed and the date upon which they are to be resumed.
- 27.13 The Council will set out in the Resumption Notice such conditions relating to the resumption of the Service as may be reasonable.
- 27.14 If the Council decides that the Provider is not to resume provision of some or all of the suspended Service then:
- 27.14.1 it will be entitled to give notice terminating the application of this Contract to the Service concerned, with immediate effect; or
- 27.14.2 if it considers, acting reasonably, that the findings of the investigation reflect on the Provider's ability to carry out the Service generally it will be entitled to give the Provider notice terminating the entire Contract with immediate effect.
- 27.15 During any period of suspension the Council will continue to pay the Contract Price but if notice of termination is given to the Provider either in accordance with Clause 27.14.1 or 27.14.2, then the Provider must repay all sums paid to it during the period of suspension which relate to the suspended Service concerned. If these sums are not repaid within 20 Working Days of any notice of termination, then the Council will be entitled to recover these sums as a debt and will apply interest in accordance with that outlined in Clause 10.11.

28 MANAGING SERVICE USERS' FINANCIAL AFFAIRS

- 28.1 Where the Provider is managing the Service User's financial affairs on an official basis such as Appointeeship/Deputyship, The Provider shall:
- 28.1.1 provide on demand to the Council such information in order that it can assess the Service User's contribution towards the cost of the Service which shall be calculated in accordance with the Governments Charging for Residential Accommodation Guide (CRAG) or any other relevant legislation or guidance; and
 - 28.1.2 handle the Service User's affairs promptly and efficiently in accordance with the terms agreed with the respective responsibility it holds, in particular the Service User's Personal Expenditure Allowance due under CRAG or other amounts due to the Service User shall be credited to the Service User by the Provider.

29 TERMINATION

- 29.1 Either party may terminate an individual Service User placement under this Contract by giving no less than four weeks written notice to the other (or shorter period by mutual agreement). Where the Provider believes that Termination is required due to the Service not being able to meet the needs of the Service User, the Provider should endeavour to consult with the Council before Termination is issued.
- 29.2 Either party may terminate this Contract by giving no less than six months' written notice to the other (or shorter period by written, mutual consent).

Termination by the Council

- 29.3 The Council is entitled to terminate this Contract in its entirety or in part in line with Clause 27 (**Defaults and Suspension**).
- 29.4 The Council is entitled to give written notice terminating this Contract in its entirety or in part with immediate effect and recover from the Provider any loss resulting from such termination where:
- 29.4.1 the Provider is an individual and is declared bankrupt, or a bankruptcy petition is filed against it at court, or it attempts to make or make a composition or arrangement for the benefit of its creditors; or
 - 29.4.2 the Provider is a corporate body, and it has a receiver or liquidator appointed over it; or
 - 29.4.2 the Provider commits or causes the commission of any criminal offence in providing the Service (except for any minor offence or minor traffic offence); or
 - 29.4.3 the Provider or any person employed by or acting on the Provider's behalf (with or without the knowledge of the Provider) shall have given or agreed to give any gift or consideration as an inducement or reward in order to obtain the contract or any other contract with the Council; or

- 29.4.3 in relation to any contract with the Council, the Provider, or any person employed by or acting on the Provider's behalf, commits any offence under the Bribery Act 2010, or any subsequent amendment, or shall have given any fee or reward, the receipt of which is an offence under section 117(2) of the Local Government Act 1972; or
- 29.4.4 collusion has taken place between two (or more) tenderers in fixing or adjusting the bids submitted for the contract concerned.
- 29.5 The Council may terminate this Contract in whole or in part with immediate effect if the Provider fails to comply with the requirements laid out in Clause 15 (**Safeguarding Children and Adults**).
- 29.6 If the Council terminates the whole or any part of this Contract or its application to a particular Service under Clause 27 then:
- 29.6.1 the Provider will continue to provide the Service during the period of notice unless the Council requests otherwise;
- 29.6.2 the Council shall be entitled:
- 29.6.2.1 to retain any monies owed to the Provider by the Council under this Contract until the Provider shall have paid all monies owed to the Council under this Contract; or
- 29.6.2.2 to deduct any such monies owed under this Contract from the monies owed to the Provider under this Contract; and
- 29.6.2.3 to recover any such monies to compensate for the administrative costs incurred as a result of such material default or termination.

in any case without prejudice to the provisions of Clause 37 (**Recovery of Sums Due**).

Termination by the Provider

- 29.7 If:
- 29.7.1 on three separate occasions in any period of 12 months (whether consecutive or not) a Default Notice has been served on the Council for failure to pay Contract Price on time; or
- 29.7.2 the Council has committed a Default which is substantial breach of any material term of this Contract
- then the Provider may terminate this Contract as a whole by giving the Council not less than three months written notice.
- 29.8 If the Provider terminates this Contract or its application to a particular Service under Clauses 29.7 then it will continue to provide the Service during the period of notice unless requested otherwise in writing to which the Council agrees.

30 FORCE MAJEURE

- 30.1 If either party fails to carry out their respective obligations under this Contract as a result of force majeure, then whichever party is affected shall not be liable under this Contract for such failure.
- 30.1.1 this is subject to the proviso that whichever party is affected shall have given the other written notice that such failure is the result of force majeure within 10 Working Days of such failure occurring.
- 30.2 If an event of force majeure occurs then the Council shall meet with the Provider to discuss how best the Provider can continue to provide the Service until the force majeure event ceases, which may include the Council providing assistance, where possible.
- 30.3 In this Clause 'force majeure' means acts of war, acts of God, decrees of Government, riots, civil commotion, and any event or circumstance which is both beyond the control of whichever party is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight.
- 30.4 For the avoidance of doubt 'force majeure' shall not include any labour dispute between the Provider and its staff or the failure to provide the Service by any of the Provider's sub-contractors.

31 DISPUTE RESOLUTION

- 31.1 If there is a dispute between the parties concerning the interpretation or operation of this Contract then either party may notify the other that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Contract Manager to resolve, negotiating on the basis of good faith.
- 31.2 If after 28 Days (or such longer period as both parties may agree) of the date of the notice referred to in Clause 31.1 the dispute has not been resolved then either party may notify the other that it wishes the dispute to be referred to a meeting of a Chief Officer of the Council (or a person appointed by him to act on his behalf) and a senior officer of the Provider, to resolve, negotiating on the basis of good faith.
- 31.3 If after 28 Days (or such longer period as both parties may agree) of the date of the notice referred to in Clause 31.2 the dispute has not been resolved then either party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time.
- 31.4 If the parties do not agree on the identity of the Mediator, then either party may request CEDR to appoint one.
- 31.5 The procedure in the Model Procedure will be amended to take account of:
- 31.5.1 any relevant provisions in this Contract; or
- 31.5.2 any other agreement which the parties may enter into in relation to the conduct of the mediation ("Mediation Contract").

31.6 Both parties must:

31.6.1 use their best endeavours to ensure that the mediation starts within 20 Working Days of service of the notice referred to in Clause 31.3; and

31.6.2 pay the Mediator's fee in equal shares

31.7 Any agreement the Council reaches with the Provider as a result of mediation shall be binding on both parties as set out in the Model Procedure, but if the dispute has not been settled by mediation within 10 Working Days of the mediation starting then either party may commence litigation proceedings (but not before then).

31.8 Neither party shall be precluded by Clause 31.7 from taking such steps in relation to court proceedings as either party may deem necessary or desirable to protect their respective positions. This shall include but is not limited to:

31.8.1 issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; and

31.8.2 applying for interim relief.

31.9 The use of the dispute resolution procedures set out in this Clause 31 (**Dispute Resolution**) shall not delay or take precedence over the provisions for termination set out in Clauses 27 (**Defaults and Suspension**) and 29 (**Termination**).

32 VARIATIONS TO THE CONTRACT

32.1 A variation to this Contract (including to the scope and nature of the Service) shall only be valid if it has been agreed in writing and signed by both parties (such agreement must not be unreasonably withheld or delayed).

32.2 If either party wishes to vary this Contract, then it shall serve on the other a Variation Notice which shall set out the nature of the variation sought and the reasons for it.

32.3 If either party receives a Variation Notice, then within 28 Days of receipt it shall notify the other whether or not it agrees to the variation and if not, the reasons.

33 WAIVER

33.1 If either party fails to exercise or delays in exercising any right or remedy to which it is entitled under this Contract or at law then this shall not constitute a waiver of any such right or remedy.

33.2 If either party waives a Default on the part of the other then this shall not constitute a waiver of any future Default.

33.3 No waiver shall be effective unless it is:

33.3.1 expressly stated to be a waiver;

33.3.2 in writing; and

33.3.3 signed by the Authorised Officer or Contract Manager as appropriate.

34 TUPE

- 34.1 Subject to Clauses 20 (**Data Protection Act**) and 22 (**Confidentiality**) the Provider must provide the Council with such information as it may reasonably require enabling it to comply with its obligations under TUPE when either this Contract comes to an end, or it ceases to apply to a particular Service.
- 34.2 The Provider must supply the Council with the information referred to in Clause 34.1:
- 34.2.1 at the Council's reasonable request made at any time in the 9 months before an Expiry Date; or
- 34.2.2 (if this Contract or its application to a particular Service is terminated on notice) within 20 Working Days of the Providers giving or receiving notice of any such termination; or
- 34.2.3 (if this Contract or its application to a particular Service is terminated immediately) within 20 Working Days of termination.
- 34.3 The Provider must ensure that it complies with the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (including all the amendments made to these Regulations since 2006 which are still in force). The Provider hereby indemnifies the Council and any future employer of staff (accepting a transfer of the Provider's staff as a result of TUPE) from and against all losses, costs, demands, expenses, and damages arising as a result of the Provider's non-compliance with the provisions of this Clause.

35 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

- 35.1 Notwithstanding any other provision of this Contract nothing in this Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

36 NOTICES

- 36.1 Any notice or other communication under this Contract must be in writing and can only be sent by recorded delivery post, personal delivery, Email, or fax to the Authorised Officer (if the notice is being sent by the Provider) or to the Contract Manager (if the notice is being sent by the Council), including any nominated Deputies. Contact details are set out in Schedule II.
- 36.2 If either the Council's or the Provider's address or fax number changes, they must notify the other in accordance with this Clause 36 (**Notices**).
- 36.3 Subject to Clause 36.4, any notice or communication shall be deemed to have been served on the date that it is delivered by hand or sent by fax transmission, or if sent by recorded delivery on the date when it would be delivered in the ordinary course of post (two Working Days after the date when posted).
- 36.4 Notwithstanding Clause 36.3, if by applying its provisions a notice is deemed to have been served on a day which is not a Working Day or it is not received between the

hours of 9am to 5pm on a Working Day, then it shall be deemed to have been served on the next immediately following Working Day.

37 RECOVERY OF SUMS DUE

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

38 LAW AND JURISDICTION

- 38.1 This Contract shall:

39.1.1 be governed by and shall be construed in accordance with English law; and

39.1.2 be subject to the exclusive jurisdiction of the Courts of England and Wales, to which both parties shall submit.

39 SEVERABILITY

- 39.1 If one or more of the provisions of this Contract are or become to any extent invalid or unenforceable under any applicable law then the remainder of this Contract shall continue in full force and effect.
- 39.2 If this happens then both parties shall enter into good faith negotiations to amend the provision concerned in such a way that as amended, it is valid and enforceable and to the maximum extent possible, carries out both parties' original intent.

40 REMEDIES CUMULATIVE

- 40.1 Any remedy or right which either party may exercise in relation to a Default committed by the other shall be in addition to and shall be capable of being exercised without prejudice to, all other rights and remedies available to either party.

41 THE COUNCIL'S FUNCTIONS AS A LOCAL AUTHORITY

- 41.1 Nothing in this Contract shall prejudice or affect the Council's rights, powers, duties, and obligations in relation to the exercise of its functions as a local authority.

42 BEST VALUE

- 42.1 In undertaking the Service the Provider must use reasonable endeavours to secure demonstrable, measurable, and continuous improvement (having regard in particular to economy, effectiveness, and efficiency) in the performance of the Service; the time, cost, quality and health and safety standards within the various processes of the Service and generally to provide best value to the Council and Service Users.

43 NO PARTNERSHIP

- 43.1 Nothing in this Contract shall be deemed to constitute a partnership (as defined by the Partnership Act 1890) between the parties nor constitute any party the agent of the other.

44 GRATUITIES

- 44.1 The Provider and its staff and agents shall not solicit or accept any gratuity tip or any other form of money taking or reward collection or charge for any part of the Service, unless they have an appropriate policy covering gifts of nominal value that has been seen and approved by the Wokingham Borough Council.

45 DECLARATION OF INTERESTS

- 45.1 The Provider shall inform the Council in writing of any elected member of the Council or employee of the Council who is involved in any way with the Provider at any time during the Contract term.

46 OBSERVANCE OF STATUTORY AND OTHER REQUIREMENTS

- 46.1 The Provider shall comply with all statutes, orders, regulations, statutory instruments, codes of practice, byelaws, directives, or the like to be observed and performed in connection with the provision of the Service and shall 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.
- 46.2 Where an alarm service is provided, the Provider must ensure that the alarm service is accredited by the Telecare Services Association (TSA), of 10 Railway Street, Chatham, ME4 4JL, or any successor organisation. The Accreditation must be at the level appropriate to the services that are provided, as defined by the TSA.

47 IMPROVING QUALITY OF SERVICE

- 47.1 The Provider shall maximise every opportunity to consult those who receive the Service with a view to constantly improving the quality of the Service and shall keep records of such consultation which will be provided to the Council upon written request.

48 TRANSPORT

- 48.1 The Provider shall ensure that all vehicles employed in the performance of this Contract are properly licensed, insured, taxed, and tested and that they comply with all regulations and requirements relating to the construction, maintenance, and operation of such vehicles.
- 48.2 All drivers of any vehicles used in the delivery of this service must be suitably qualified, insured, possess the relevant valid driving licence, and adhere to all relevant legislation.

49 OVERVIEW

- 49.1 If requested to do so by the Council from time to time, the Provider shall attend overview and scrutiny meetings and/or Council management team meetings.
- 49.2 In attending the meetings referred to in Clause 49.1 above, the Provider shall co-operate with the Council at each meeting and respond to its requests for information in connection with the provision of the services.

50 CONCLUSION OF CONTRACT

- 50.1 Subject to Clauses 20 (**Data Protection Act**) and 22 (**Confidentiality**), upon the termination or expiry of this Contract, the Provider must erase and/or return to the Council or to any person it may specify, all data, information, files, records, documents and the like (in whatever format they may be held) which the Council supplied to the Provider for the purposes of this Contract or which the Council produced or augmented by the Provider in connection with the carrying out of its obligations under this Contract.
- 50.2 Unless the Council authorises the Provider to do so, or it is required at law to do so, it must not retain any copies of the information etc referred to in Clause 50.1.

IN WITNESS whereof the Council and the Provider have executed this Contract as a Deed the day and year first before written.

the COMMON SEAL of
WOKINGHAM BOROUGH COUNCIL
Was hereunto affixed
in the presence of Solicitor / Authorised Signatory

EXECUTED as a Deed
By affixing the Common Seal of
ABIDING LIMITED

Was hereunto affixed in the presence of:
OR
Signed as a Deed: For and on behalf of
ABIDING LIMITED

By two Directors or a Director and Company Secretary

Signature: Date:
Director

Print Name:

Signature: Date:
Director/ Company Secretary (*please delete as applicable*)

Print Name

OR

Signed as a Deed for and on behalf of:
ABIDING LIMITED

By

Director Signature: Date:

Print Name:

Witness Signature: Date:

Print Name

Address

APPENDIX A Processing, Personal Data and Data Subjects

1. The Provider shall comply with any further written instructions of the Council with respect to Data Processing.
2. Any such further instructions shall be incorporated into this Appendix.

Description	Details
Subject matter of the processing	Provision of social care services. This includes individuals/service users covered by the services and their families / carers.
Duration of the processing	For the period of the contract plus 6 years.
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation, or alternation, 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 of the processing means the statutory obligation in the provision of the service (Article 9(2)(h) of the GDPR (with a similar article in the Data Protection Bill 2018)).</p>
Type of Personal Data	Includes: all personal details, name, address, date of birth, telephone number, images, Social Care ID, medical records, biometric data, including social media data etc. of the service user their families/carers
Categories of Data Subject	Individuals/Service users covered by this service and their families/carers
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>At the end of the contract, depending on the instructions from the Council, the Provider must erase and/or return to the Council or to any person it may specify, all data, information, files, records, documents etc (in whatever format they may be held) which the Council supplied to the Provider for the purposes of this Contract, or which the Council produced or augmented by the Provider in connection with the carrying out of its obligations under this Contract.</p> <p>Unless the Council authorises the Provider to do so, or it is required by law to do so, it must not retain any copies of Personal Data of the individuals /service users covered by the services or their families / carers.</p>