

SCHEDULE 1

SUPPLIER TERMS AND CONDITIONS

for

The Provision of Personal Home Support Services

NOTE TO SUPPLIERS

THE AUTHORITY RESERVES THE RIGHT TO AMEND, ALTER AND SUPPLEMENT THESE SUPPLIER TERMS AND CONDITIONS IN THE LIGHT OF THE METHODS AGREED FOR REVIEWING AND REVISING THE KEY PERFORMANCE INDICATORS AND QUALITY OUTCOME INDICATORS.

THE AUTHORITY MAY AMEND, ALTER OR SUPPLEMENT THESE SUPPLIER TERMS AND CONDITIONS WITH FURTHER SPECIAL CONDITIONS IN RELATION TO ANY PILOT SCHEMES AGREED PURSUANT TO PARAGRAPHS 4.4 AND 4.5 OF THE SPECIFICATION.

THE AUTHORITY ALSO RESERVES THE RIGHT TO AMEND, ALTER AND SUPPLEMENT THESE SUPPLIER TERMS AND CONDITIONS TO REFLECT THE CONTRACT MANAGEMENT FRAMEWORK REFERRED TO IN PARAGRAPH 27 OF THE SPECIFICATION.

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SECTION A – PARTICULARS

1. This Contract

1.1. This Contract comprises of:

- 1.1.1. Core Legal Clauses and General Conditions (Clauses 1 to 61);
- 1.1.2. Special Conditions (Clauses 62 to 80); and
- 1.1.3. Schedules 2 to 7;

as completed and agreed by the Parties and as varied from time to time in accordance with clause 17 of the Core Legal Clauses (the “**Contract**”).

2. Application Procedures

- 2.1. The Supplier acknowledges and accepts that Services shall be procured in accordance with the procedures detailed in the Contract.
- 2.2. The Supplier shall submit all Offers within the Application in accordance with the procedures detailed in the Supplier Agreement.
- 2.3. The Supplier shall submit all Service Receipts within the Application in a timely manner. The Council reserves the right to consolidate each Service Receipt into such frequent Self-Bill Invoices as managed through the Application and paid by the Application Provider.
- 2.4. The Supplier agrees and acknowledges that all transactions relating to the Services between the Supplier and the Council will take place via the Application. The Supplier shall not process any Requirements outside of the Application during this Contract, except where instructed to do so by the Council.
- 2.5. The Supplier shall ensure that any and all Deliverables engaged by the Council under the terms of this Contract are submitted in accordance with these Terms and Conditions, the Requirements and consequent Service Agreement.
- 2.6. The Supplier shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date. For the avoidance of doubt, the Supplier must inform the Council of any changes to such accreditation or enrolment checks and details that occur during the course of this Contract and provide evidence of such changes. The Council reserves the right to terminate this Contract if such changes to the Supplier’s accreditation or enrolment checks and details are to the detriment of the performance of or standards set in these Terms and Conditions.
- 2.7. The Council reserves the right to request re-submission of any accreditation or enrolment details throughout the duration of the Contract, and may perform audit checks of accreditation information.
- 2.8. The Supplier acknowledges that users of the Application may submit a quality review or summary of the Supplier’s performance under this Contract. Such reviews shall comprise the opinion of those submitting such comments only and not those of the Council. The Application shall have a facility to report any abusive or derogatory comments, and the Council shall deal with such instances as the Council deems reasonably necessary.

3. Awards under the DPS

3.1. If the Council decides to source Services through the DPS then it may:-

Bidding for Contracts (E-auction)

- 3.1.1. award its Requirements following a mini-competition where the rankings of the Offers are available to view by Suppliers participating in the E-auction.

Sealed Bids

- 3.1.2. award its Requirements following a mini-competition where the bids are sealed, or

Direct Award

3.1.3. in the case of urgency, award its Requirements in accordance with the terms laid down in these Terms and Conditions without reopening competition, in accordance with Regulation 32 of the PCR.

4. Bidding for Contracts (via E-auction)

- 4.1. When ordering Services via E-auction within the Application, the Council shall:-
 - 4.1.1. identify the relevant Lot or Category which its Requirements fall into;
 - 4.1.2. contact all Suppliers on the Lot or Category to which the requirement applies notifying them of the requirement;
 - 4.1.3. supplement and refine the Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Public Contract Regulations 2015;
 - 4.1.4. invite Offers by conducting an E-auction for its Requirements in accordance with the Regulations and in particular:-
 - 4.1.4.1. inform the Suppliers capable of performing the Service Agreement within that Lot or Category and invite them within a specified time limit ("Open for Offers Period") to submit an Offer via the Application for each specific contract to be awarded;
 - 4.1.4.2. set an Open for Offers Period which takes into account factors such as the complexity of the subject matter of the contract, the time needed to submit Offers and the urgency of the Requirement;
 - 4.1.4.3. allow each Supplier submitting an Offer to see its rank in the list and submit a revised Offer.
 - 4.1.5. award the Requirement to the Supplier who submitted the lowest Offer during the Open for Offers Period.
- 4.2. The Supplier agrees that all Offers submitted by the Supplier in relation to an E-auction held pursuant to this Clause 4 shall remain open for acceptance for the duration of the Open for Offers period plus any further period of time detailed in the Requirement.
- 4.3. Notwithstanding the fact that the Council has followed the procedure set out above in this Clause 4, the Council shall be entitled at all times to decline to make an award for its Requirement. Nothing in these Terms and Conditions shall oblige the Council to award any Requirement to any Supplier.

5. Sealed Bids

- 5.1. When ordering Services using Sealed Bids under the Supplier Agreement the Council shall:-
 - 5.1.1. identify the relevant Lot or Category which its Requirements fall into;
 - 5.1.2. contact all Suppliers on the Lot or Category to which the requirement applies notifying them of the requirement;
 - 5.1.3. supplement and refine the Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Public Contract Regulations 2015;
 - 5.1.4. invite Offers by conducting a mini competition for its Requirements in accordance with the Regulations, the DPS Entry Guide and in particular:
 - 5.1.4.1. inform the Suppliers capable of performing the Call-Off Contract within that Lot or Category and invite them within a specified time limit ("Open for Offers Period") to submit an Offer via the Application for each specific Requirement to be awarded;

- 5.1.4.2. set an Open for Offers Period which takes into account factors such as the complexity of the subject matter of the Requirement, the time needed to submit Offers and the urgency of the Requirement;
 - 5.1.4.3. keep each tender confidential until the expiry of the time limit for the receipt by it of Offers.
 - 5.1.5. award the Requirement to the successful Services Provider who submitted the lowest price during the Open for Offers Period.
- 5.2. The Supplier agrees that all Offers submitted by the Supplier in relation to a mini competition using Sealed Bids held pursuant to this Clause 5 shall remain open for acceptance for the duration of the Open for Offers period plus any further period of time detailed in the Requirement.
- 5.3. Notwithstanding the fact that the Council has followed the procedure set out above in this Clause 5, the Council shall be entitled at all times to decline to make an award for its Requirement. Nothing in these Terms and Conditions shall oblige the Council to award a Requirement to any Supplier.

6. Direct Awards

- 6.1. When ordering Services under these Terms and Conditions without re-opening competition, the Council shall:-
 - 6.1.1. identify the relevant Lot or Category which its Requirements fall into; and
 - 6.1.2. award the Requirement to a Supplier who is able and willing to fulfil the Requirement.

7. Abnormally Low Offers

- 7.1. If an Offer appears to be abnormally low, the Council may reject the Offer but only if it has:
 - 7.1.1. requested in writing from the Supplier details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;
 - 7.1.2. taken account of the evidence supplied by the Supplier; and
 - 7.1.3. verified those constituent elements with the Supplier.and concludes that the Supplier would not be able to carry out the Services to the required standards

8. Representatives

- 8.1. The person whose details are entered on SProc.Net from time to time is the Authority Representative and is authorised to act on behalf of the Authority on all matters relating to the Contract. Contact details are shown in clause 9 (*Notices*).
- 8.2. The person whose details are entered on SProc.Net from time to time is the Supplier Representative and is authorised to act on behalf of the Supplier on all matters relating to the Contract. Contact details are shown in clause 9 (*Notices*).

9. Notices

- 9.1. Any notices given under this Contract shall be in writing and shall be served by hand, post or electronic mail by sending the same to the address for the relevant Party set out in clause 9.3 below.
- 9.2. Notices:
 - 9.2.1. by post shall be effective upon the earlier of actual receipt, or 5 Working Days after mailing;
 - 9.2.2. by hand shall be effective upon delivery;
 - 9.2.3. by e-mail shall be effective when sent in legible form, but only if, following transmission, the sender does not receive a non-delivery message and provided always that in the case of termination notices e-mail delivery shall not be effective and termination notice must be served by post.

9.3. For the purposes of clause 9.2, the address for service of notices on each Party shall be as follows as at the time of entry into the Contract, or such other details as shall be notified by a Party to the other Party for the purposes of this Clause:

9.3.1. For the Authority:

Address: Service Design and Contract Management,
Waltham Borough Council
Town Hall Room,
Forest Road, Walthamstow,
London E17 4JF
For the attention of: Gemma Edwards
Tel: 0208 496 6336
Email: gemma.edwards@walthamforest.gov.uk

9.3.2. For the Supplier:

Address:
For the attention of:
Tel:
Email:

And in case the above sections are not completed by the Supplier prior to signature of this Contract, shall be the details notified by the Supplier to the Authority from time to time during the Contract.

9.4. Either Party may change its address for service by serving a notice in accordance with this clause 9.

10. Entire Agreement

10.1. This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misinterpretation.

10.2. Where there is any conflict or inconsistency between the provisions of this Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

Section A - Particulars (clauses 1 to 10) and Schedule 2 Interpretation
Section C - Special Conditions (clauses 62 to 80)
Section B - General Provisions (clauses 11 to 61)
Specifications of Services and other Schedules (Schedules 3 to 7)

SECTION B – GENERAL PROVISIONS

SUPPLY OF SERVICES

11. The Services

- 11.1 The Supplier shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specifications and the provisions of this Contract in consideration of the payment of the Contract Price. The Specifications are the Specifications agreed for the Services on entry into the Contract and the Parties may agree other Specifications by virtue of the Variation Procedure during the Contract. Reference to Specifications and to any Specification shall be deemed to include all and any of the Specifications in Schedule 3 and any agreed by virtue of the Variations Procedure.
- 11.2 The Authority may inspect and examine the manner in which the Supplier provides the Services at the Premises during normal business hours. If the Authority informs the Supplier in writing that the Authority reasonably believes that any part of the Services does not meet any of the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority:
 - 11.2.1 the Supplier shall at its own expense re-perform and carry out the Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Authority; and/or
 - 11.2.2 the Supplier shall take further action in accordance with clause 52 (*Termination on Default*) or clause 16 (*Remedies in the Event of Inadequate Performance*).

Provision of Equipment

- 11.3 The Supplier shall provide all the Equipment necessary for the supply of the Services.

Manner of Carrying Out the Services and Quality Outcome Indicators

- 11.4 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services may not have been specified or sufficiently specified in this Contract, the Supplier shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Supplier shall perform its obligations under this Contract in accordance with the Law and Good Health and Social Care Practice.
- 11.5 The Provider must carry out the Services in accordance with the Law and Good Health and Social Care Practice and must, unless otherwise agreed (subject to the Law) with the Authority in writing:
 - 11.5.1 comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
 - 11.5.2 respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
 - 11.5.3 consider and respond to the recommendations arising from any audit, death, Serious Incident report or Service User Safety Incident report;
 - 11.5.4 comply with the recommendations issued from time to time by a Competent Body;
 - 11.5.5 comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;

- 11.5.6 respond to any reports and recommendations made by Local HealthWatch; and
- 11.5.7 comply with the Quality Outcomes Indicators set out in the Part 2 of Schedule 3 Specifications (*Quality Outcomes Indicators*) or such other Quality Outcome Indicators as may be agreed between the Authority and the Supplier pursuant to clause 64.

12. Service Review

- 12.1 The Provider must deliver to the Authority a Service Quality Performance Report against the factors set out in the Specification respectively in accordance with the timescales set out in the Specification (*Service Quality Performance Report*).
- 12.2 The Provider must submit each Service Quality Performance Report in the form and manner specified in the Specification and/or reasonably specified by the Authority.

13. Review Meetings

- 13.1 The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in the Specifications and or their Appendices.
- 13.2 Notwithstanding clause 13.1, if either the Authority or the Provider:
 - 13.2.1 reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
 - 13.2.2 considers that a Serious Incident Report or a Service User Safety Incident Report requires consideration sooner than the next scheduled Review Meeting,
that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within five Working Days following that notice.

14. Service User Involvement

- 14.1 The Supplier shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Health and Social Care Practice and their human rights.
- 14.2 As soon as reasonably practicable following any reasonable request from the Authority, the Supplier must provide evidence to the Authority of the involvement of Service Users, Carers and Staff in the development of Services.
- 14.3 The Supplier must carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Authority in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in the Specification (*Service User, Carer and Staff Surveys*) or as otherwise agreed between the Parties in writing from time to time.
- 14.4 The Supplier must review and provide a written report to the Authority on the results of each survey carried out under clause 14.3 and identify any actions reasonably required to be taken by the Supplier in response to the surveys. The Supplier must implement such actions as soon as practicable. If required by the Authority, the Supplier must publish the outcomes and actions taken in relation to such surveys.

15. Service Improvements and Best Value Duty

- 15.1 The Supplier agrees to take reasonable steps to co-operate with and assist the Authority in fulfilling the Best Value Duty. In particular the Supplier will participate in any relevant Best Value Duty reviews and benchmarking exercises (including providing information) conducted by the Authority and assist with the preparation of any performance plans.
- 15.2 During the Contract Period, the Supplier shall demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and where possible without increasing the cost to the Authority, and show the Authority that improvements have taken place, by reference to any measurable criteria notified to the Supplier by the Authority Representative.
- 15.3 Any potential Variations highlighted as a result of the Supplier's demonstration in accordance with clause 15.2 may if the Parties so agree in writing, be addressed by the Parties using the procedure set out in clause 17.
- 15.4 Without prejudice to clause 17, any variation in the Contract Price can only be justified if the Supplier can demonstrate that the proposed Variation requires additional resources and, in any event, any change to the Contract Price resulting from a Variation will be strictly proportionate to the increase in the level of resources required for the provision of the Services as amended by the Variation. Any and all Variations shall be subject to the express written agreement and signature by or on behalf of the Authority.

16. Remedies in the Event of Inadequate Performance

- 16.1 Where a complaint is received by the Authority 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 Supplier's obligations under this Contract, then the Authority shall take all reasonable steps to investigate the complaint and shall discuss the complaint with the Supplier and any relevant Regulatory Body. Without prejudice to its other rights and remedies under this Contract, the Authority may, in its sole discretion, uphold the complaint and take further action in accordance with this clause 16 or clause 52 (*Termination on Default*).
- 16.2 In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Supplier, then the Authority may, without prejudice to its rights and remedies under this Contract including under clause 52 (*Termination on Default*), use reasonable endeavours to consult with the Supplier (where in the Authority's discretion consultation is appropriate) and do any of the following:
 - 16.2.1 require the Supplier to submit a performance improvement plan detailing why the breach has occurred and how it will be remedied within ten (10) Working Days or such other period of time as the Authority may reasonably direct given the nature of the failure or Default ;
 - 16.2.2 without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Services in accordance with this Contract;
 - 16.2.3 without terminating the whole of this Contract, terminate this 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;
 - 16.2.4 terminate, in accordance with clause 52 (*Termination on Default*), the whole of this Contract; or

- 16.2.5 take measures as may be referred to in the Specifications (or elsewhere in the Contract) to enable eligible population (as detailed in the Specifications) who are not receiving the benefit of the Services, to be transferred to another supplier for the purposes of receiving services.
- 16.3 Without prejudice to its rights under clause 24 (*Recovery of Sums Due*), the Authority may charge the Supplier for any costs and expenses reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs and expenses exceed the payment which would otherwise have been payable to the Supplier for such part of the Services (which need to be replaced) and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 16.4 If the Supplier fails to supply any of the Services in accordance with the provisions of this Contract and such failure is capable of remedy, then the Authority shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may reasonably direct given the nature of the failure or Default.
- 16.5 In the event that:
- 16.5.1 the Supplier fails to comply with clause 16.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- 16.5.2 the Supplier persistently fails to comply with clause 16.4 above, the Authority may terminate this Contract with immediate effect by notice in writing.

17. Variation

- 17.1 Either Party may from time to time during the Contract Period, by written notice to the other Party, request a variation to this Contract. Such a change is hereinafter called a **Variation**. Following such notice, the Authority and the Supplier shall enter into good faith negotiations (for a period of not more than thirty (30) Working Days from the date of such notice) to agree the Variation and any variation in the Contract Price that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree such matters within such period, the Parties shall continue to perform their obligations under this Contract without the Variation.
- 17.2 If the Parties agree the Variation and any variation in the Contract Price within the relevant period set out in clause 17.1 (Variation), the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract.
- 17.3 If the Parties, acting reasonably, are unable to agree the variation in the Contract Price referred to in clause 17.2 the matter shall be referred to dispute resolution under clause 59 (*Dispute Resolution*). Pending resolution of the matter the Supplier shall nonetheless implement and comply with the Variation.
- 17.4 Any such Variation shall be communicated in writing by the Authority to the Supplier in accordance with clause 9 (*Notices*).

18. Supplier's Staffing Requirements

- 18.1 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 18.2 Subject to clause 18.3, before the Supplier engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Supplier must without limitation, complete:

- 18.2.1 the Employment Checks; and
- 18.2.2 such other checks as required by the DBS.
- 18.3 Subject to clause 18.4, the Supplier may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.
- 18.4 Where clause 18.3 applies, the Supplier will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
 - 18.4.1 an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - 18.4.2 wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - 18.4.3 the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
 - 18.4.4 any other reasonable requirement of the Authority.
- 18.5 Where the Authority has notified the Supplier that it intends to tender or retender any of the Services, the Supplier must on written request of the Authority and in any event within twenty Working Days of that request (unless otherwise agreed in writing), provide the Authority with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.
- 18.6 The Supplier shall indemnify and keep indemnified the Authority and any Successor Supplier against any Losses incurred by the Authority and/or the Successor Supplier in connection with any claim or demand by any transferring employee under TUPE.
- 18.7 Any TUPE provisions contained in the Special Conditions shall apply.

19. Authority's Obligations

- 19.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority 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 Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Supplier.

20. Conflicts of Interest

- 20.1 If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on another Party's decision (acting reasonably) to determine whether or not to contract or continue to contract with that other Party substantially on the terms of this Contract, the Party aware of the conflict shall immediately declare such an interest to the other and the other Party may take such action under this Contract as it deems necessary without prejudice to any other right it may have under the Law.

21. Mistakes in Information

- 21.1 The Supplier shall be responsible for the accuracy of all and any data, information and documentation supplied by the Supplier in connection with the supply of the

Services (and shall pay the Authority any extra costs occasioned by the Authority by any discrepancies, errors or omissions therein).

22. Prevention of Fraud

- 22.1 The Supplier shall take all reasonable steps, in accordance with Good Health and Social Care Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.
- 22.2 The Supplier and any Sub-contractors are required to:
 - 22.2.1 have an established system that enables Staff to report inappropriate behaviour by colleagues in respect of contract performance claims;
 - 22.2.2 ensure that the Supplier's or Sub-contractor's performance management systems do not encourage any Staff to make false claims regarding achievement of contract performance targets; and
 - 22.2.3 ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of contract performance.
- 22.3 The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 22.4 If the Supplier or its Staff commits Fraud in relation to this or any other contract with the Authority or a Contracting Authority, the Authority may:
 - 22.4.1 terminate this Contract by written notice to the Supplier with immediate effect (and terminate any other contract the Supplier has with the Authority) and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
 - 22.4.2 recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this Clause 22.

PAYMENT AND SERVICE AGREEMENT PRICE

23. Service Agreement Price

- 23.1 In consideration of the Supplier's performance of its obligations under the Service Agreement, the Authority shall pay the Service Agreement Price in accordance with the Self-Bill Agreement.
- 23.2 Where the Supplier enters into a sub-contract with a supplier or Supplier 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 Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 23.3 The Supplier shall add VAT to the Service Agreement Price at the prevailing rate as applicable.

- 23.4 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Service Agreement or the Self-Bill Agreement. Any amounts due under this clause 23.4 shall be paid by the Supplier to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- 23.5 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under clause 52 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced at the Default Interest Rate.

24. Recovery of Sums Due

- 24.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Service Agreement or the Self-Bill Agreement or under any other Service Agreement or Self-Bill Agreement or Supplier Agreement or contract with the Authority.
- 24.2 Any overpayment by either Party, whether of the Service Agreement 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.
- 24.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 24.4 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.

Third Party Revenue

- 24.5 In its performance of this Contract the Supplier shall not provide or offer to a Service User any services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).
- 24.6 The Supplier may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Contract without the express prior written agreement of the Authority.

25. Euro

- 25.1 Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Supplier free of charge to the Council.
- 25.2 The Council shall provide all reasonable assistance to facilitate compliance with clause 25.1 by the Supplier.

26. Bond

- 26.1 On or prior to the Commencement Date the Supplier shall if so requested by the Authority provide a Bond, in substantially the same form as the example in SCHEDULE 6 with a reputable surety within the European Union in the sum of

10% of the aggregate annual Service Agreement Price SUCH Bond to be in place for the Contract Period.

27. Charges in Specification

- 27.1 Charges and payment details referred to in the Specification for the relevant Services shall apply respectively. Unless otherwise specified in this Contract, all payments due shall be made in cleared funds, to such bank or building society account as the recipient Party may from time to time direct in writing.

WARRANTIES AND LIABILITIES

28. Warranties and Representations

- 28.1 The Supplier warrants and represents that:
- 28.1.1 it has full capacity and authority and all necessary Consents to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Supplier;
 - 28.1.2 in entering this Contract it has not committed any Fraud;
 - 28.1.3 as at the Effective Date, all information contained in any quotation or offer documentation submitted by the Supplier remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of this Contract;
 - 28.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Contract;
 - 28.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
 - 28.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier 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 Supplier's assets or revenue;
 - 28.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;
 - 28.1.8 in the three (3) years prior to the date of this Contract:
 - 28.1.8.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - 28.1.8.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - 28.1.8.3 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under this Contract.

29. Supplier's status

- 29.1 At all times during the Contract Period the Supplier shall be an independent contractor and nothing in this 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 provisions of this Contract.

- 29.2 For the avoidance of doubt, the Application is utilised by the Council to procure and manage the Services, and the Application itself is provided by the Application Provider. Under no circumstances shall the Application Provider be liable for any acts or omissions associated with the delivery of the Services and the Supplier is solely responsible for such Services' delivery in accordance with this Contract.

30. Liability, Indemnity and Insurance

- 30.1 Neither Party excludes or limits liability to the other Party for:
- 30.1.1 death or personal injury caused by its negligence;
 - 30.1.2 Fraud;
 - 30.1.3 fraudulent misrepresentation; or
 - 30.1.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 30.2 Subject always to the provisions of clauses 30.3, 30.6, 39.2.17, 44.7 and clause 75 in no event shall either Party be liable to the other for any:
- 30.2.1 loss of profits, business, revenue or goodwill; and/or
 - 30.2.2 loss of savings (whether anticipated or otherwise); and/or
 - 30.2.3 indirect consequential loss or indirect damage
 - 30.2.4 caused by breach of its obligations under this Contract.
- 30.3 Subject to clause 30.4, and 30.1.2, each Party shall indemnify the other Party and keep the other Party indemnified fully in respect of any personal injury or loss of or damage to tangible property incurred by the other Party or its employees and agents to the extent that such personal injury or loss of property is directly caused by any negligence of that Party (or caused by Default in the provisions of the Services in the case of the Supplier), its employees, agents or sub-contractors or by circumstances within its or their control in connection with the performance or purported performance of this Contract.
- 30.4 Subject to clause 30.6, the Supplier shall indemnify the Authority and keep the Authority indemnified fully:
- 30.4.1 against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred by reason of the use of the Services by any Service User; and
 - 30.4.2 against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under this Contract or the presence of the Supplier or any Staff on the Premises, including financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- 30.5 A Party 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 other Party or by breach by the other Party of its obligations under this Contract.
- 30.6 Responsibility for the control, management and supervision of all Service Users shall rest entirely with the Supplier subject to the Service User complying with all reasonable instructions and directions which the Supplier may issue to the Service User from time to time. The Authority shall not be liable for any personal

injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Service User, except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful default of some other person acting as a servant or agent of the Authority.

- 30.7 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under this Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of this Contract. The levels of insurance cover shall as a minimum be those specified in the Special Conditions – (see clause 75)
- 30.8 The Supplier shall hold and maintain employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force and as a minimum shall have the employer liability insurance cover to the level specified in clause 75.2.2. The Supplier shall also hold and maintain, public liability insurance, product liability insurance and professional indemnity insurance as specified in clause 75.2
- 30.9 The Supplier shall give the Authority, 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.
- 30.10 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of this Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 30.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in clause 30.6 (provided however that if following review of insurance arrangements by the Authority's insurance advisers, the Authority so determines, then the Authority may notify the Supplier of the amounts which in the Authority's opinion constitute minimum adequate insurance cover for the purposes of clause 30.6).
- 30.12 The insurance provisions in clause 75 shall apply in addition to and in conjunction with the above requirements and the Supplier undertakes to comply with its obligations as stated herein and in Section C of this Contract.

STATUTORY OBLIGATIONS AND REGULATIONS

31. Data Protection

- 31.1. The Supplier shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA. The Supplier shall process and protect Personal Data used created accessed, processed or involved in the provision of the Services as required under the DPA and shall have the obligations and duties detailed in clause 71.

32. Prevention of Bribery and Corruption

- 32.1. The Supplier shall not, and shall procure that any Staff shall not, commit any Prohibited Act.
- 32.2. The Supplier 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 Authority (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 Authority before execution of this Contract.
- 32.3. The Supplier shall, if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority 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;
- 32.4. The Supplier shall have an anti-bribery policy which prevents any Staff from committing a Prohibited Act. A copy of this anti-bribery policy shall be provided to the Authority upon request.
- 32.5. If any breach of clauses 32.1 or 32.2 is suspected or known, the Supplier shall notify the Authority immediately.
- 32.6. If the Supplier notifies the Authority that it suspects or knows that there may be a breach of clauses 32.1 or 32.2, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation of the Supplier and Staff.
- 32.7. If the Supplier, its Staff or anyone acting on the Supplier's behalf engages in conduct prohibited by clauses 32.1 or 32.2, the Authority may:
- 32.7.1. terminate this Contract and recover from the Supplier the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and
- 32.7.2. recover in full from the Supplier any other Loss sustained by the Authority in consequence of any breach of those clauses.
- 32.8. Notwithstanding clause 59, any dispute relating to:
- 32.8.1. the interpretation of this clause 32; or
- 32.8.2. the amount or value of any gift, consideration or commission,
- 32.8.3. shall be determined by the Authority, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and binding.
- 32.9. Any termination under clause under 32.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.
- 32.10. In exercising its rights or remedies under clause 32.7, the Authority shall:
- 32.10.1. act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the conduct prohibited by clauses 32.1 or 32.2;
- 32.10.2. give all due consideration, where appropriate, to action other than termination of this Contract.

33. Discrimination

- 33.1. The Parties shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Parties shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment.
- 33.2. The Supplier shall take all reasonable steps to secure the observance of this clause 33.1 by all Staff.
- 33.3. In delivering the Services, the Supplier shall operate at all times in accordance with the diversity and equality requirements as notified by the Authority to the Supplier from time to time.
- 33.4. The Supplier, its sub-contractors, agents and employees shall at all times comply with the provisions of the Human Rights Act 1998 in the execution of this Contract. Failure to do so may constitute a material breach of this Contract and the Authority may exercise its rights to terminate under clause 52.1.

34. Health and Safety

- 34.1. The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract.
- 34.2. The Supplier shall comply with the requirements of the Health and Safety at Work Act etc.1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under this Contract.
- 34.3. The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act etc.1974) is made available to the Authority on request.
- 34.4. The Supplier shall use its reasonable endeavours to co-operate with The Secretary of State for Health in the discharge of his duty under section 1(F)(1) of the NHS Act 2006 to secure an effective system for the planning and delivery of education and training to persons who are employed, or considering becoming employed, in an activity which is involved or is connected with the provision of services as part of the health service in England. A non-exhaustive list of education and training requirements may be included in the Specifications.

35. Safeguarding Children and Vulnerable Adults

- 35.1. The Supplier shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment. The Supplier shall comply with any requirements in the Special Conditions in this regard in addition to compliance with the general requirements in this clause 35.
- 35.2. The Supplier shall adopt Safeguarding Policies and such policies shall comply with the Authority's Safeguarding Policy as amended from time to time and as may be appended to the Specifications or notified by the Authority to the Supplier from time to time. The Supplier shall also comply with the principles on Safeguarding and any London-wide guidelines and policies as notified by the Authority from time to time (*Safeguarding Policies*).

- 35.3. At the reasonable written request of the Authority and by no later than ten Working Days following receipt of such request, the Supplier must provide evidence to the Authority that it is addressing any Safeguarding concerns.
- 35.4. If requested by the Authority, the Supplier shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

36. Incidents Requiring Reporting

- 36.1. If the Supplier is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Supplier is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
- 36.2. If the Supplier gives a notification to the CQC or any other Regulatory Body under clause 36.1 which directly or indirectly concerns any Service User, the Supplier must send a copy of it to the Authority within five Working Days or within the timescale set out in the Specifications.
- 36.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Service User Safety Incidents and non-Service User safety incidents that are agreed between the Supplier and the Authority (or as otherwise set out in the Specifications).
- 36.4. Subject to the Law, the Authority shall have complete discretion to use the information provided by the Supplier under this clause 36 and related Specification requirements.

37. Service Users and Health Records

- 37.1. The Supplier must publish, maintain and operate a Service User consent policy which complies with Good Health and Social Care Practice and the Law.
- 37.2. The Supplier must at all times during the term of this Contract have a Caldicott Guardian and shall notify the Authority of their identity and contact details prior to the Service Commencement Date. If the Supplier replaces its Caldicott Guardian at any time during the term of this Contract, it shall promptly notify the Authority of the identity and contact details of such replacements.
- 37.3. The Supplier must at all times comply with the relevant regulations for complaints relating to the provision of the Services.
- 37.4. If a complaint is received about the standard of the provision of the Services or about the manner in which any of the 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 Supplier's obligations under this Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Supplier, CQC or/and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in clause 16 or 52.

38 Service Authority Data

- 38.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the/any Authority Data.
- 38.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 38.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall provide access and/or supply that Authority Data to the Authority as requested by the Authority.

- 38.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 38.5 The Supplier shall ensure that any system or media on which the Supplier holds any Authority Data, including back-up data and Service user health Records, is a secure system that complies with the Security Policy.
- 38.6 If the Authority Data or Personal Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 38.6.1 require the Supplier (at the Supplier's cost and expense) to restore or procure the restoration of the Authority Data or Personal Data and the Supplier shall do so as soon as practicable but not later than five Working Days from the corruption, loss or degradation; and/or;
 - 38.6.2 itself restore or procure the restoration of the Authority Data or Personal Data, and shall be repaid by the Supplier any reasonable costs and expenses incurred in doing so.
- 38.7 If at any time the Supplier suspects or has reason to believe that the Authority Data or Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

39 Protection of Personal Data

- 39.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that they shall each comply with their respective obligations under the DPA. With regard to Authority Data, the Authority is the Data Controller that the Supplier is the Data Processor. With respect to Personal Data the Supplier is the Data Controller and the Data Processor and has additional duties and obligations in Law to keep and maintain Service User Health records.
- 39.2 The Supplier shall:
- 39.2.1 process the Authority Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract as otherwise notified by the Authority to the Supplier during the Contract Period);
 - 39.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or the appropriate Regulatory Body governing the conduct and practices of GPs in England;
 - 39.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 39.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
 - 39.2.5 obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or agents for the provision of the Services;
 - 39.2.6 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
 - 39.2.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
 - 39.2.8 notify the Authority (within five (5) Working Days) if it receives a complaint or request relating to the Authority's obligations or duties under the DPA or a subject access request relating to the Service provided under this Contract;

- 39.2.9 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
- 39.2.10 providing the Authority with full details of the complaint or request;
- 39.2.11 complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
- 39.2.12 providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority);
- 39.2.13 providing the Authority with any information requested by the Authority;
- 39.2.14 permit the Authority or the Authority's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's Data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;
- 39.2.15 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Authority);
- 39.2.16 not process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
 - 39.2.16.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - 39.2.16.2 any reasonable instructions notified to it by the Authority; and
- 39.2.17 Allow for any necessary permissions for any Personal Data associated with the provision of the Services to be reproduced within the Application, as reasonably necessary
- 39.3 The Supplier shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Supplier (or any Sub-contractor) of this clause 39.

40 Confidential Information

- 40.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall: -
 - 40.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 40.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 40.2 This clause 40 shall not apply to the extent that;
 - 40.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA pursuant to clause 41(*Freedom of Information*);
 - 40.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 40.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 40.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 40.2.5 it is independently developed without access to the other Party's Confidential Information; or.

- 40.2.6 it does not allow for any necessary permissions for any Confidential Information associated with the provision of the Services to be reproduced within the Application, as reasonably necessary
- 40.3 The receiving Party may only disclose the disclosing Party's Confidential Information to its staff on a need to know basis and shall ensure that such staff are under a duty no less onerous than the receiving Party's duty set out in this clause 40.
- 40.4 Nothing in this Contract shall prevent the Authority from disclosing the Supplier's Confidential Information:
- 40.4.1 to any government department or any other Contracting Authority. All government departments or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
 - 40.4.2 to any consultant, contractor or other person engaged by the Authority;
 - 40.4.3 for the purpose of the examination and certification of the Authority's accounts; or
 - 40.4.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 40.5 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 40.4 is made aware of the Authority's obligations of confidentiality.
- 40.6 Nothing in this clause 40 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this 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.
- 40.7 In the event that the Supplier fails to comply with clauses 40.1 and 40.2.5, the Authority reserves the right to terminate this Contract with immediate effect by notice in writing.
- 40.8 This clause 40 is without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- 40.9 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 40.10 The exclusions from the definition of Confidential Information (as detailed in Schedule 2) shall not prejudice the contractual requirement on the Supplier to maintain confidentiality of patient records and patient information and to protect and take care of the same in accordance with the Law and requirements or Guidance of Regulatory Bodies.
- 40.11 The Supplier acknowledges that the Application allows the reproduction of certain information publicly via the internet, and the Supplier accepts the risks associated with such publication and shall take precautions to ensure that any such information is permitted to be reproduced.

41 Freedom of Information

- 41.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 41.2 The Supplier shall and shall procure that its Sub-contractors shall;

- 41.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within three (3) Working Days of receiving a Request for Information;
 - 41.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - 41.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority 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.
- 41.3 The Authority 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.
- 41.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 41.5 The Supplier acknowledges that (notwithstanding the provisions of this clause 41, and clauses 40 and 42) the Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services;
- 41.5.1 in certain circumstances without consulting the Supplier; or
 - 41.5.2 following consultation with the Supplier and having taken their views into account;
- provided always that where clause 41.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 41.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 41.7 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.
- 41.8 Notwithstanding any other term of this Contract, the Supplier hereby gives consent for the Authority to publish this Contract in its entirety including from time to time agreed changes to the Contract to the general public (subject to the redaction of information that is exempt from disclosure) in accordance with the provisions of the FOIA and it is agreed that the Authority shall have absolute discretion with regard to disclosure and redaction under the FOIA.
- 41.9 In preparing a copy of this Contract for publication pursuant to above clause the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.
- 41.10 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

42 Publicity, Media and Official Enquiries

- 42.1 Subject to clause 41.8, neither Party shall:
- 42.1.1 make any press announcements or publicise this Contract or its contents in any way; nor
 - 42.1.2 use the other Party's name or brand in any promotion or marketing or announcement of orders;
- without the written consent of the other Party, which shall not be unreasonably withheld or delayed.

- 42.2 Each Party shall ensure that its servants, employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause 42.1.
- 42.3 If so requested by the Authority the notepaper and other written material of the Supplier relating to the delivery of the Services(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Service(s) from time to time. All publicity and marketing material produced by the Supplier (or its Sub-contractors) in relation to this Contract shall be submitted to the Authority for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.

43 Security

- 43.1 The Supplier shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Supplier in the performance of the Services.
- 43.2 The Supplier shall comply with any security requirements detailed in the Specifications or any of them and with any security requirements notified by the Authority (acting reasonably) in relation to the Services or the performance of the Contract.
- 43.3 The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy from time to time during the Contract.

44 Intellectual Property Rights

- 44.1 Save as granted under this Contract, neither the Authority nor the Supplier shall acquire any right, title or interest in the other's pre-existing Intellectual Property Rights. The Supplier acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority Data.
- 44.2 The Intellectual Property Rights vested in the Application shall remain the property of the Application Provider and its licensors. The Supplier shall comply with the terms of use of the Application and shall not infringe any Intellectual Property Rights associated with the Application.
- 44.3 The Authority shall grant the Supplier a non-exclusive, revocable, no-cost licence for the Contract Period to use the Authority's Intellectual Property Rights where it is necessary for the Supplier to supply the Services. The Supplier shall have the right to sub license to any Sub-contractors use of the Authority's Intellectual Property Rights (subject to the Authority's approval). At the end of the Contract Period the Supplier shall cease use, and shall procure that any Sub-contractor ceases use, of the Authority's Intellectual Property Rights.
- 44.4 The Supplier shall grant the Authority a non-exclusive, revocable, no-cost licence for the Contract Period to use the Supplier's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Supplier's Intellectual Property Rights.
- 44.5 All Intellectual Property Rights in any guidance, Specifications, instructions, toolkits, plans, data, information, drawings, databases, patents, patterns, models, designs or other material:
- 44.5.1 furnished to or made available to the Supplier by or on behalf of the Authority shall remain the property of the Authority; or
 - 44.5.2 prepared by or for the Supplier on behalf of the Authority for use, or intended use, in relation to the performance by the Supplier of its obligations under this Contract shall belong to the Authority;
- and the Supplier shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of this Contract) without prior approval, use or disclose any such Intellectual Property Rights.

- 44.6 The Supplier shall obtain prior written approval before using any material, in relation to the performance of its obligations under this Contract which is or may be subject to any third party Intellectual Property Rights. The Supplier shall ensure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Bodies, the Replacement Supplier or to any other third party supplying services to the Authority.
- 44.7 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority [and the Contracting Authorities] harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- 44.7.1 items or materials based upon designs supplied by the Authority; or
 - 44.7.2 the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of this Contract.
- 44.8 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier. The Supplier 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 Supplier, provided always that the Supplier:
- 44.8.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 44.8.2 shall take due and proper account of the interests of the Authority; and
 - 44.8.3 shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 44.9 The Authority shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Supplier for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Supplier's obligations under this Contract and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause 44.7.1 or 44.7.2.
- 44.10 The Authority 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 Authority or the Supplier in connection with the performance of its obligations under this Contract.
- 44.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and, at its own cost and expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- 44.11.1 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

- 44.11.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority;
and in the event that the Supplier is unable to comply with clauses 44.11.1 or 44.11.2 within twenty (20) Working Days of receipt of the Supplier's notification the Authority may terminate this Contract with immediate effect by notice in writing.

45 Audit and the National Audit Office

- 45.1 The Supplier shall keep and maintain until six (6) years after the end of the Contract Period, or for as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Supplier shall on request afford the Authority or the Authority's representatives (including the Authority's external auditors) such access to those records as may be requested by the Authority in connection with this Contract. The Supplier shall also comply with any additional records retention requirements in the Specification.

46 Transfer and Sub-Contracting

- 46.1 Except where clauses 46.4 and 46.5 apply, the Supplier shall not assign, sub-contract or in any other way dispose of this Contract or any part of it without prior written approval of the Authority in its absolute discretion. Sub-contracting any part of this Contract shall not relieve the Supplier of any of its obligations or duties under this Contract.
- 46.2 The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- 46.3 If the Authority has consented to the placing of sub-contracts, it shall be entitled to request and have a copy (if it so requires) of the sub-contract and the Supplier shall provide a copy to the Authority as soon as reasonably practicable.
- 46.4 Subject to clause 46.6, the Authority may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part of this Contract to:
- 46.4.1 any Contracting Authority;
 - 46.4.2 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 Authority;
or
 - 46.4.3 any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Contract.
- 46.5 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 46.4, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Authority.
- 46.6 If the rights and obligations under this Contract are assigned, novated or otherwise disposed of pursuant to clause 46.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **Transferee**):
- 46.6.1 the rights of termination of the Authority in clauses 51 (*Termination on Insolvency and Change of Control*) and 52 (*Termination on Default*) shall be available to the Supplier in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - 46.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part of this Contract with the prior consent in writing of the Supplier.
- 46.7 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this

Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this 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.

- 46.8 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 this Contract.

47 Waiver

- 47.1.1 The failure of either Party to insist upon strict performance of any provision of this 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 this Contract.
- 47.1.2 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 9 of the Particulars (*Notices*).
- 47.1.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

48 Severability

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

49 Remedies Cumulative

- 49.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this 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.

50 Monitoring of Contract Performance and Information Provision

- 50.1 The Supplier shall comply with the monitoring arrangements referred to in the Specifications including, but not limited to, providing such data, information and reports as the Supplier may be required to produce and provide as referred to in the Specifications or information as required elsewhere in the Contract.
- 50.2 The Supplier must provide the Authority with the information specified in the Specification to enable the Authority to measure the quality, quantity or otherwise of the Services. The Supplier must deliver the information required under this clause in the format, manner, frequency and timescales specified in any Appendix to and or in the body of relevant Specifications (*Information Provision*) and the Supplier must ensure that the information is accurate and complete.

50.3 If the Supplier fails to comply with any of the obligations in this clause and/or the Specifications (*Information Provision*), the Authority may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant reporting obligation or elsewhere in the Contract and such failure can be considered a Default. In addition to the information required under this clause the Authority may request from the Supplier any other information it reasonably requires in relation to this Contract and the Supplier agrees to deliver such requested information in a timely manner and in any case in reasonable timescales notified by the Authority.

51 Termination on Insolvency and Change of Control

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

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 fourteen (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 section 382(3) 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. to 51.1.7 (above) occurs under the law of any other jurisdiction.

51.2 The Authority may terminate this Contract with immediate effect by notice in writing where the Supplier is an individual or a sole trader or unincorporated entity 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 Supplier's creditors; or

51.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy; or

51.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier'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 Supplier is unable to pay his/her 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 Supplier's assets and such attachment or process is not discharged within fourteen (14) days; or

51.2.6 he/she dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

- 51.2.7 he/she suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the business.
- 51.3 The Supplier shall notify the Authority immediately if the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Authority may terminate this Contract by notice in writing with immediate effect within six (6) Months of:
- 51.3.1 being notified that a Change of Control has occurred; or
- 51.3.2 where no notification has been made, the date that the Authority becomes aware of a Change of Control;
- but shall not be permitted to terminate where a relevant written approval was granted by the Authority prior to the Change of Control.

52 Termination on Default

- 52.1 The Authority may terminate this Contract by written notice to the Supplier with immediate effect if the Supplier commits a Default and if:
- 52.1.1 If the Default is capable of remedy the Supplier has not remedied the Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, 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 Authority, capable of remedy; or
- 52.1.3 the Default is a material breach of this Contract.
- 52.2 Without prejudice to the provisions of clause 51 (*Termination on Insolvency and Change of Control*) or 52.1, where the Authority considers that the Supplier has committed a breach in relation to this Contract or any part of this Contract (including any part of the Services), the Authority shall be entitled to serve a written notice (a **Formal Warning Notice**) on the Supplier:
- 52.2.1 specifying that it is a Formal Warning Notice;
- 52.2.2 giving reasonable details of the breach; and
- 52.2.3 stating that if the breach recurs after the date of service of the Formal Warning Notice, this may result in a termination of this Contract or that part of the Services affected by such breach.
- 52.3 If:
- 52.3.1 ten (10) Working Days after service of a Formal Warning Notice, the Supplier has failed to demonstrate to the satisfaction of the Authority that the breach specified has not continued and that the Supplier has put in place measures to ensure that such breach does not recur; and/or
- 52.3.2 within a two (2) month period after the date of service of the Formal Warning Notice, the Supplier has failed to demonstrate to the satisfaction of the Authority that the breach specified has not re-occurred within such two (2) month period and that the Supplier has put in place measures to ensure that such breach does not recur; and/or
- 52.3.3 if the breach concerns the failure to achieve minimum targets as referred to in the Specifications
then the Authority may deem such failure shall be a Default which is a material breach of this Contract not capable of remedy for the purposes of clause 52.1.2.
- 52.4 In the event that through any Default of the Supplier, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 52.5 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written

notice, the Supplier may terminate this Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 24.1 (*Recovery of Sums Due*).

52.6 The Authority shall be entitled to require the remedial action or measures detailed in the Specifications as an alternative (or in addition to the exercise of the right to termination) to facilitate eligible population being able to receive service from other Suppliers in cases where the Supplier has not been able to perform the Services to the target requirements or is in breach or Default under the Contract.

52.7 It is acknowledged and agreed that the termination rights of the Authority may be exercised in relation to each of the Services (detailed in the Specifications) as well as in relation to the Contract as a whole. The Authority may exercise any of the termination rights mentioned in the Contract as a right to terminate that part of the Contract requirements relating to one or more of the Services only and following such termination the Contract will remain effective and valid for to cover the continued provision of the other Services. Any action taken by the Authority with regard to one of the Services shall not prejudice or affect the Authority's requirements with regard to the other Services and in this regard the Authority's requirements for the Services shall be regarded as parallel and separate requirements, independent of one another.

53 Consequences of Expiry or Termination

53.1 Where the Authority terminates this Contract under clause 16 (*Remedies in the Event of Inadequate Performance*) or clause 52 (*Termination on Default*) and makes other arrangements for the supply of Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where this Contract is terminated under clause 16.5 (*Remedies in the Event of Inadequate Performance*) or clause 52 (*Termination on Default*), no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

53.2 On the expiry or termination of this Contract or any part of this Contract:

53.2.1 the Supplier shall repay forthwith to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part of the Services properly performed in accordance with this Contract;

53.2.2 the Supplier shall cease all use of all the Authority's Intellectual Property Rights, generated Intellectual Property Rights, and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same.

53.3 Save as otherwise expressly provided in this Contract:

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

53.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses 38 (*Authority Data*), 32 (*Prevention of Bribery and Corruption*), 39(*Protection of Personal Data*), 40(*Confidential Information*), 41 (*Freedom of Information*), 44(*Intellectual Property Rights*), 45(*Audit and National Audit Office*), 49 (*Remedies Cumulative*), 23 (*Service Agreement Price*), 24 (*Recovery of Sums Due*), 30(*Liability, Indemnity and Insurance*), 53 (*Consequences of Expiry or Termination*), 55 (*Handover*), and 75 (*Professional Indemnity*).

54 Break Rights

54.1 The Parties acknowledge and agree that the Special Conditions contained in clauses 62 to 80 may contain break rights or special rights to terminate the Contract, which rights shall apply in addition to the rights detailed in the termination provisions above. Further the above provisions in clause 53 relating to consequences of termination and expiry and the handover provision in clause 55 shall also apply in the case of exercise of any termination or break rights contained in Section C Special Conditions.

55 Handover

55.1 At the end of the Contract Period (howsoever arising), the Supplier, at its own cost and expense, shall:

55.1.1 promptly upon the request of the Authority return to or comply with the Authority's directions for the return or handover to the Authority or its nominee all Authority's Confidential Information, Authority Data in its possession or in the possession or under the control of any permitted suppliers or Sub-contractors, which was obtained or produced in the course of providing the Services;

55.1.2 promptly upon the request of the Authority deliver or handover to the Authority or its nominee any property (including materials, documents, information and access keys, system codes if applicable) provided to the Contractor by the Authority or provided by others at the direction of the Authority and such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

55.1.3 assist and co-operate with the Client to ensure an orderly transition of the provision of the Services to the Successor Provider and/or the completion of any work in progress; and

55.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority or its nominee for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Successor Provider to conduct due diligence.

55.2 After the Contract Period the Supplier shall co-operate free of charge with the Authority and any new provider appointed by the Authority to continue or take over the performance of this Contract in order to ensure an effective handover of all work then in progress.

55.3 The provisions of this Clause 55 shall survive the termination or expiry of this Contract indefinitely after its termination.

56 Force Majeure

56.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this 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 this Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Contract for a period in excess of six (6) Months, either Party may terminate this Contract with immediate effect by notice in writing.

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

56.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 56.1 it shall immediately

notify the other Party by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

57 Disruption

- 57.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 57.2 The Supplier shall immediately inform the Authority 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 this Contract.
- 57.3 In the event of industrial action by the Staff, the Supplier shall seek prior written approval from the Authority to its proposals to continue to perform its obligations under this Contract.
- 57.4 If the Supplier's proposals referred to in clause 57.3 are considered insufficient or unacceptable by the Authority acting reasonably, then this Contract may be terminated with immediate effect by the Authority by notice in writing.

DISPUTES AND LAW

58 Governing Law and Jurisdiction

- 58.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

59 Dispute Resolution

- 59.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the Authority Representative and the Supplier Representative endeavouring in good faith to resolve the dispute escalation within twenty (20) Working Days of first notice being received. If the Representatives cannot resolve the dispute it shall be referred to a more senior level of management in the Authority and Supplier. If the said senior level representatives are unable to satisfactorily resolve the dispute within thirty Working Days of first notice being received, then the dispute shall ultimately be referred to the executive or highest level within the Authority and Supplier body. If the dispute is not resolved at that level within fifty Working Days (from first notice of the dispute being received) clause 59.3 shall apply.
- 59.2 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.
- 59.3 If the dispute cannot be resolved by the Parties pursuant to clause 59.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 59.5 unless the Authority considers that the dispute is not suitable for resolution by mediation.
- 59.4 The obligations of the Parties under this Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Supplier and its Staff shall comply fully with the requirements of this Contract at all times.
- 59.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 59.5.1 A neutral adviser or mediator (the **Mediator**) shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten (10) Working Days either Party may apply to the Centre for Effective Dispute Resolution (CEDR) for the appointment of a Mediator.

- 59.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held.
- 59.5.3 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.
- 59.5.4 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.
- 59.5.5 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 this Contract without the prior written consent of both Parties.
- 59.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (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.

60 The Contracts (Rights of Third Parties) Act 1999

- 60.1 A person who is not a Party to this 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.

61 Co-operation

- 61.1 The Parties must at all times act in good faith towards each other.
- 61.2 The Supplier must co-operate fully and liaise appropriately with:
 - 61.2.1 the Authority;
 - 61.2.2 any third party provider who the Service User may be transferred to or from the Supplier and any Successor Provider;
 - 61.2.3 any third party provider which may be providing care to the Service User at the same time as the Supplier's provision of the relevant Services to the Service User; and
 - 61.2.4 primary, secondary and social care services or any associated parties, bodies, or members of the healthcare schemes referred to in the Specifications;in order to:
 - 61.2.5 ensure that a consistently high standard of care for the Service User is at all times maintained;
 - 61.2.6 ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
 - 61.2.7 achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Authority's or members of the public.

SECTION C - SPECIAL CONDITIONS

62 Additional documents

62.1 The following additional documents shall be deemed to be incorporated into this Contract:

Document	Dated
Specification and all other documents contained or annexed in the Schedules	The date of the Contract of the Effective Date if sooner
Suppliers Tender or Quote (if applicable)	
Supplier's Safeguarding Policy	
Delivery Plan	
Documents required in order for the Supplier's Accreditation and Enrolment on the Application	
Documents or entries posted or uploaded to the Application in connection with a Requirement or Service Agreement	

Plan To Set Up and Mobilise Operations

62.2 In order to commence full operations the Supplier must complete the following activities by the required dates:

Activity	Date
Readiness to commence Services in compliance with the Specification	15 October 2015

63 Performance Review and Contract Monitoring

63.1 The Authority will monitor the Supplier's provision of the Services monthly and conduct an annual review of the performance of this Contract as detailed in the Specification during the Contract Period.

63.2 The Supplier will provide such monitoring data and information as the Authority may reasonably require in order to enable the contract monitoring and performance review to be carried out in accordance with clause 63.1

64 Performance Requirements

64.2 In delivering the Services the Supplier acknowledges that it shall be under an obligation to meet the performance targets Key Performance Indicators (KPIs) and Quality Outcome Indicators (QOIs) referred to in the Specification. Failure to meet all or any of such targets, KPIs or QOIs shall entitle the Authority to claim liquidated damages and to serve notice to terminate on the Supplier.

64.3 The Supplier acknowledges that the Specification will be subject to continuous review during the Contract Period with a view to achieving efficiencies and savings.

64.4 In order to improve the Services and to deliver better outcomes for Service Users the Authority and the Supplier shall agree the performance targets KPIs and QOIs which will apply during a forthcoming Contract Year no later than 15 July immediately preceding the start of the Contract Year.

64.5 The revised performance targets KPIs and QOIs will be recorded in writing in the format set out at Part 3 of Schedule 3 to this Contract and will be signed on behalf by the Authority Representative and the Supplier Representative.

64.6 The Authority intends to pilot Payment Incentive Schemes during the Contract Period. Such Payment Incentive Schemes will be developed following consultation with the

Supplier and Service Users and will be documented in writing using the format set out at Part 4 of Schedule 3 to this Contract or such other format as may be agreed in writing by the Authority and the Supplier

- 64.7 For the avoidance of doubt, the Key Performance Indicators and Quality Outcome Indicators shall apply in addition to and not in substitution of the Quality Requirements.

65 Working Hours

- 65.1 The Services shall be carried out at the times set out in the Specification and the Requirements:

66 Volumes

- 66.1 The Supplier acknowledges that no guarantee is given by the Authority in respect of levels or values of Requirements to be purchased via the Application pursuant to the Contract which are indicative only and shall not be binding on the Authority.

67 Equipment & Premises

- 67.1 All Equipment used shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to any Equipment.
- 67.2 The Supplier shall maintain all items of Equipment in a safe, serviceable and clean condition and in compliance with all Guidance applicable in relation to the Supplier's Equipment and usage.
- 67.3 The Authority may at its option purchase any item of Equipment from the Supplier at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of this Contract. The purchase price to be paid by the Authority shall be the fair market value of such item.

68 Supplier's Staff

- 68.1 The Supplier shall further use all reasonable endeavours to ensure that its staff who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Supplier shall promptly take all reasonable steps to ensure compliance with this clause.
- 68.2 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.

69 Disclosure and Barring Scheme

- 69.1 In this Contract:-
- 69.1.1 "ABL" means the Adults' Barred List which is a list of individuals barred from engaging in Regulated Activity with Vulnerable Adults.
- 69.1.2 "CA 2004" means the Children Act 2004.
- 69.1.3 "CBL" means the Children's Barred List which is a list of individuals barred from engaging in Regulated Activity with Children.
- 69.1.4 "Children" means all persons younger than the age of majority.
- 69.1.5 "DBS" means the Disclosure and Barring Service.
- 69.1.6 "DPA 1998" means the Data Protection Act 1998.
- 69.1.7 "POFA" means the Protection of Freedoms Act 2012
- 69.1.8 "Regulated Activity" shall be construed in accordance with Schedule 4 Part 1 and Schedule 4 Part 2 of the SVGA, as amended by POFA.

- 69.1.9 “Staff” means persons engaged by the Supplier to perform the Services whether paid or unpaid or otherwise voluntary.
- 69.1.10 “SVGA” means the Safeguarding Vulnerable Groups Act 2006.
- 69.1.11 “Vulnerable Adult” shall have the same definition as that contained in section 60 (1) of the SVGA.

69.2 Safeguarding Children

- 69.2.1 The Supplier acknowledges that the Council has legal responsibilities under section 11 of the CA 2004 and in providing the Services under this Contract the Supplier shall and shall ensure that Staff shall cooperate with and give reasonable assistance to the Council to enable the Council to comply with CA 2004 in order to safeguard and promote the welfare of Children.
- 69.2.2 The Supplier shall make arrangements during the provision of the Services to ensure that it complies with the CA 2004 and accordingly the Supplier shall:-
- 69.2.2.1 have a policy and procedures in place outlining the Supplier’s responsibilities towards any Children affected by the provision of the Services and the relevant lines of accountability for each member of Staff; the Supplier’s policies and procedures must be compliant with the Authority’s own policy and procedures and the principles of the London-wide safeguarding policies as referred to in Schedule 4;
- 69.2.2.2 consider how the delivery of the Services will take account of the need to safeguard and promote the welfare of Children by carrying out an assessment of the needs of any Children affected by the provision of the Services; and
- 69.2.2.3 the Supplier shall ensure that any Children affected by the provision of the Services understand that whilst in general their confidentiality shall be upheld any potential child protection concerns shall be reported to the Authorised Officer and the DBS in the first instance.
- 69.2.3 The Supplier shall bring to the attention of the Authorised Officer all child protection matters which arise in relation to this Contract in the first instance in order to prevent Children from suffering harm or being at risk of suffering harm.

69.3 Protection of Vulnerable Adults

- 69.3.1 The Supplier shall and shall ensure that Staff shall cooperate with and give reasonable assistance to the Council to enable the Council to safeguard and promote the welfare of Vulnerable Adults.
- 69.3.2 The Supplier shall:-
- 69.3.2.1 have a policy and procedures in place outlining the Supplier’s responsibilities towards any Vulnerable Adults affected by the provision of the Services and the relevant lines of accountability for each member of Staff;
- 69.3.2.2 consider how the delivery of the Services will take account of the need to safeguard and promote the welfare of Vulnerable Adults by carrying out an assessment of the needs of any Vulnerable Adults affected by the provision of the Services; and
- 69.3.2.3 The Supplier shall ensure that any Vulnerable Adults affected by the provision of the Services understand that whilst in general their confidentiality shall be upheld any potential concerns shall be reported to the Authorised Officer and the DBS in the first instance.
- 69.3.3 The Supplier shall bring to the attention of the Authorised Officer all concerns with regard to the protection of Vulnerable Adults which arise in relation to this Contract in the first instance in order to prevent Vulnerable Adults from suffering harm or being at risk of suffering harm.

69.4 Staff Recruitment and Vetting

- 69.4.1 The Supplier must have a well-defined and robust selection and recruitment policy

and Supplier's staff vetting procedures shall as a minimum be compliant with the Authority's Staff Vetting Procedures.

- 69.4.2 Before the Supplier engages Staff to provide the Services it shall:-ensure that all Staff have undergone any required DBS check and Enhanced DBS Check provide written confirmation to the Authorised Officer that all Staff have undergone any required DBS check and Enhanced DBS Check required (including in relation to Staff involved in a Regulated Activity an ABL and/or CBL check as appropriate).
- 69.4.3 The Supplier must ensure that all Staff are suitable to provide the Services before they commence the provision of the Services having regard to the above provisions in 69.4.
- 69.4.4 Where the Services include a Regulated Activity the Supplier shall comply with any relevant statutory requirements, DBS Guidance and procedure and any government recommendations.

69.5 Barred Persons

- 69.5.1 Where the Services include a Regulated Activity the Supplier shall throughout the provision of the Services comply with the SVGA and POFA and any other relevant statutory requirements and Guidance relating to the use of barred persons to provide the Services.

69.6 Training

- 69.6.1 The Supplier shall familiarise itself with all relevant legislation and the DBS and shall ensure that managers in charge of recruitment, vetting and monitoring Staff are adequately trained.
- 69.6.2 In all instances where the provision of the Services brings any member of Staff into contact with Children and/or Vulnerable Adults the Supplier shall ensure that Staff are appropriately trained and up to date with current practice and perform their duties in accordance with the requirements of the Children Act 1989, the Protection of Children Act 1999, CA 2004, the SVGA, POFA and any child protection procedures laid down by the Waltham Forest Local Safeguarding Children Board and any other relevant statutory requirements and government guidance relating to safeguarding Children and/or Vulnerable Adults and have an understanding of their roles and responsibilities with regard to safeguarding and promoting the welfare of Children and/or Vulnerable Adults as appropriate. Supplier shall also comply with the requirements of the London wide safeguarding policies and guidance.
- 69.6.3 The Council reserves the right to visit the Supplier's organisation to audit, inspect and monitor the Supplier's compliance with this clause.

70 Property

- 70.1 If or where the Authority provides Property free of charge to the Supplier for the purposes of the Services or otherwise, the Property shall be and remain the property of the Authority; and the Supplier irrevocably licences the Authority and its agents to enter upon any Premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 70.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within five (5) Working Days of receipt.

- 70.3 The Supplier shall maintain the/any Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with this Contract and for no other purpose without prior Approval.
- 70.4 The Supplier shall ensure all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, is secured in accordance with the Authority's reasonable security requirements as published from time to time.
- 70.5 The Supplier 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 Authority's Default. The Supplier shall inform the Authority within three Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, any Property of the Authority.

71 Protection of Information

- 71.1 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Supplier's Business Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than Monthly intervals.
- 71.2 Any breach by the Supplier of the Protection of Information provisions in this Schedule and the Contract shall be a material breach for the purposes of clause 52(Termination on Default) and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause 53.

72. Authority Inspections

- 72.1. Where applicable, the Authority shall give the Supplier advance notice of proposed visits to the Supplier's Premises or any premises of its Sub-contractors to observe the delivery of the Service(s) by the Supplier or its Sub-contractors.

73. Malicious Software

- 73.1. The Supplier shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 73.2. Notwithstanding clause 73.1 (Malicious Software), if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency. Any cost arising shall be borne by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Supplier).

74. Transfer and Sub-contracting – supplemental provisions

- 74.1. Notwithstanding clause 46.1 (Transfer and Sub-Contracting), the Supplier may assign to a third party (the **Assignee**) the right to receive payment of the Contract Price or any part of the Contract Price due to the Supplier under this Contract (including any interest which the Authority incurs under clause 23 (Service Agreement Price)). Any assignment under this clause 74 (Transfer and Sub-Contracting) shall be subject to:
- 74.1.1. reduction of any sums in respect of which the Authority exercises its right of recovery under clause **Error! Reference source not found.** (Recovery of Sums Due);
- 74.1.2. all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and

- 74.1.3. the Authority receiving notification under both clauses 74.2 and 74.3 (Transfer and Sub-Contracting- Supplemental provisions).
- 74.2. In the event that the Supplier assigns the right to receive the Contract Price, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 74.3. The Supplier shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- 74.4. The payment provisions shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.

75. Professional Indemnity and Insurance requirements

- 75.1 The Supplier shall effect and 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 Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, Sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than one million pounds (£1,000,000) for each individual claim (or such higher limit as the Authority may reasonably require, and as required by law, from time to time). Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of this Contract.
- 75.2 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the following minimum levels of cover:
- 75.2.1 public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- 75.2.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000;
- 75.2.3 professional indemnity insurance with a limit of indemnity of not less than £1,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover;
- 75.2.4 product liability insurance with a limit of indemnity of not less than £20,000,000 in relation to any one claim or series of claims, (together the "Required Insurances").
- 75.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

76. Break clause

- 76.1. The Authority shall have the right to terminate this Contract at any time by giving three (3) months' written notice to the Supplier. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Supplier during the period of extension.
- 76.2. Where the Authority terminates this Contract under this clause (*Break*), the Authority shall pay the Supplier for any Services provided up to the time of termination at the Contract rates and provided the Supplier is in compliance with the Contract requirements. No other rights and remedies shall apply respect of any such termination.

77. Environmental Requirements

- 77.1. The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental principles, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances, minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 77.2. As far as possible, the Supplier shall (without reducing the quality and standards of the Services):
- 77.2.1. minimise the use of materials and consumables; and/or;
 - 77.2.2. re-use equipment where economically possible;
 - 77.2.3. dispose of redundant materials in a safe manner and with due regard to environmental protection legislation.

78. Damages for Performance Failure

- 78.1 The Supplier is obliged to provide the Services to the requirements contained in the Contract and in particular (but without prejudice to the generality of the foregoing) agrees to achieve the performance indicators, targets and performance levels referenced in the Specification and Schedule 3 or as agreed pursuant to clause 64. It is agreed that failure to achieve the relevant indicators, targets and performance levels shall result in compensation being payable to the Authority as detailed in the Specification and the KPI/Quality Outcome Indicator Schedule (in Schedule 3) and referred to in the Contract.

79. Business Continuity

- 79.1. The Supplier must comply with the Civil Contingencies Act 2004 and with any application national and local civil contingency plans.
- 79.2. The Supplier must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify the Authority as soon as reasonably practicable of its activation and in any event no later than five (5) Working Days from the date of such activation.

80. Individual Service Funds

- 80.1. Where an individual Service User chooses to use his/her individual budget, funded by the Authority, for the direct commission of the Service User's support and care from the Supplier and other service providers, the Authority may in its absolute discretion and subject to the provisions of this clause 80 pay monies ("the ISF") to the Supplier to enable the Supplier to provide the Services under a Service Agreement to the Service User and to commission such other services ("the Additional Services") as the Service User may require to be provided from the ISF from other service providers ("the Additional Service Providers") with whom the Authority may have entered into a contract or contracts for the provision of such Additional Services. For the avoidance of doubt it is recognised by the Authority and the Supplier that the Service User may choose to commission additional services from service providers with whom the Authority does not have a contractual relationship.

80.2. Purpose

- 80.2.1. The Supplier shall hold the ISF for the sole use and benefit of the Service User. The Supplier shall only use the ISF for the purpose of commissioning the Services and any Additional Services from Additional Service Providers in accordance with the terms and conditions set out in this clause 80 and the written notification provided by the Authority to the Supplier and the Additional Service Provider. The ISF shall not be used for any other purpose without the

prior written agreement of the Authority and, where appropriate, the Service User; such agreement the Authority shall be entitled to withhold absolutely.

80.2.2. The Authority shall provide written information to the Service User and the Supplier about the agreements with Additional Service Providers under which Additional Services may be provided under call-off contracts and shall provide details of the prices payable for such Additional Services and the specification, key performance indicators and quality outcome indicators which apply in relation to such Additional Services.

80.3. Payment

80.3.1. Subject to the provisions of this clause 80, the Authority shall pay the ISF to the Supplier in monthly instalments in advance, subject to the necessary funds being available when payment falls due. The Supplier agrees and accepts that payments of the Individual Service Funds can only be made to the extent that the Authority has available funds.

80.3.2. No ISF shall be paid to the Supplier unless and until the Authority is satisfied that: -

80.3.2.1. Appropriate arrangements for the receipt monitoring and auditing of the ISF have been established in respect of the ISF under this clause 80; and

80.3.2.2. Such payment will be used for proper expenditure in the delivery of the Services and any Additional Services.

80.3.3. The amount of the ISF shall not be increased by the Authority in the event of any overspend by the Supplier in its delivery of the Services or in the delivery of Additional Services by Additional Service Providers.

80.3.4. The Authority shall pay the ISF into a bank account ("the ISF Bank Account") in the name of the Supplier which must be an ordinary business bank account which shall be separate from any of the bank accounts the Supplier holds. All cheques from the ISF Bank Account must be signed by at least two individual representatives of the Supplier and all payments from the ISF Bank Account must be authorised by at least two individual representatives of the Supplier.

80.3.5. The Supplier shall not transfer any part of the ISF to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Authority.

80.3.6. The Supplier shall promptly repay to the Authority any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where ISF monies have been paid in error before all conditions attaching to the ISF have been complied with by the Supplier.

80.4. Use of ISFs

80.4.1. The ISF shall be only used by the Supplier for payment for the Services and the commissioning and purchase of Additional Services for Service Users in accordance with the budget agreed with the Authority. For the avoidance of doubt, the amount of the ISF that the Supplier may spend on any Additional Services shall not exceed the price of the Additional Services specified in any contract or agreement between the Authority and the Additional Service Provider without the prior written agreement of the Authority.

80.4.2. The Authority must be satisfied that the ISF is being effectively managed and used by the Supplier to meet the Service User's support and care needs as assessed by the Authority under the Care Act 2014 and other relevant legislation.

80.4.3. The Authority reserves the right in its absolute discretion to alter and amend arrangements agreed by the Service User and the Supplier for the provision of the

Services and any Additional Services under an ISF where the Authority, having reviewed the arrangements or any proposed arrangements, determines that the proposed arrangements will not meet the Service User's assessed support and care needs.

80.4.4. Where any ISF is used to purchase the Services under the DPS, the terms and conditions of the Supplier Agreement, these Supplier Terms and Conditions and the terms and conditions of any Service Agreement concluded under the DPS shall apply to the Services to be provided under the ISF.

80.4.5. The Supplier shall pay any Additional Service Provider the agreed price for the Additional Services promptly on receipt of an invoice from the Additional Service Provider.

80.4.6. The Supplier shall not use the ISF to:

80.4.6.1. make any payment to members of its Governing Body;

80.4.6.2. purchase buildings or land; or

80.4.6.3. pay for any expenditure commitments of the Supplier entered into before the Commencement Date.

80.4.7. The Supplier shall not spend any part of the ISF on the Services or Additional Services after the Contract Period.

80.4.8. Should any part of the ISF remain unspent at the end of the Contract Period, the Supplier shall ensure that any unspent monies are returned to the Authority.

80.5. SF Accounts and records

80.5.1. The ISF monies shall be shown in the Supplier's accounts as a restricted fund and shall not be included under general funds.

80.5.2. The Supplier shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the ISF monies received by it.

80.5.3. The Supplier shall at all times ensure that it keeps separate accounting records in respect of each ISF and each Service User in respect of whom it receives ISF monies

80.5.4. The Supplier shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the ISF for a period of at least six years following receipt of any ISF to which they relate. The Authority shall have the right to review, at the Authority's reasonable request, the Supplier's accounts and records that relate to the expenditure of the ISF and shall have the right to take copies of such accounts and records.

80.5.5. The Supplier shall provide the Authority with a copy of its annual accounts within six months (or such lesser period as the Authority may reasonably require) of the end of the relevant financial year in respect of each year in which ISFs are paid.

80.5.6. The Supplier shall comply and facilitate the Authority's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.

80.5.7. The Authority may alter and amend arrangements agreed between a Service User and the Supplier for the provision of the Services and any Additional Services under an ISF where the Supplier's accounting auditing and management arrangements for an ISF do not meet the requirements of this clause auditing and management arrangements for an ISF do not meet the requirements of this clause 80.5 or the Authority's auditing and accounting standards and requirements are in any way compromised by the Supplier's proposals under this clause 80.5.

80.6 Monitoring and reporting

80.6.1 The Supplier shall monitor the delivery and success of the Services and any Additional Services throughout the Contract Period to ensure that the aims and objectives of the Services and the Additional Services are being met.

- 80.6.2 The Supplier shall provide the Authority with a financial report and an operational report on its use of the ISF and delivery of the Services and any Additional Services every quarter and in such formats as the Authority may reasonably require. The Supplier shall provide the Authority with each report within one month of the last day of the quarter to which it relates.
- 80.6.3 The Supplier shall on request provide the Authority with such further information, explanations and documents as the Authority may reasonably require in order for it to establish that the ISF has been used properly in accordance with this clause 80.
- 80.7 For the avoidance of doubt, the Authority shall not be liable to make any payment to an Additional Service Provider in respect of Additional Services provided under contracts entered into by the Supplier under this clause 80.

SCHEDULE 2

DEFINITIONS AND INTERPRETATION

1. Definitions

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

ABL means the Adults' Barred List which is a list of individuals barred from engaging in Regulated Activity with Vulnerable Adults.
Accreditation and Enrolment: the evaluation of indicative tenders received from suppliers and the admittance to the DPS of suppliers that fulfil the Council's Selection Criteria.
Application: the proprietary web-based software owned and operated by the Application Provider, currently called SProc.Net or such other technology as agreed between the Parties.
Application Provider: the owner and provider of the Application, who shall also act as the Council's payment agent.
Approval: the written consent of the Council.
Authorised Officer: the representative of the Council (or any duly appointed deputy) as the same may be replaced from time to time.
Authority Data means: the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which: <ol style="list-style-type: none">1. are supplied to the Supplier by or on behalf of the Authority; or2. the Supplier is required to generate, process, store or transmit pursuant to this Contract; or3. any Personal Data for which the Authority is the Data Controller (but not the Service User Health Records).
Authority Representative means the person set out in clause 8.1 of the Particulars.
Best Value Duty means the duty imposed by Part 1 of the Local Government Act 1999 (the LGA 1999) as amended and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, the LGA 1999.
Bribery Act 2010 means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the Department of Health or the Department for Communities and Local Government concerning the legislation.
Business Continuity Plan means any plan prepared pursuant to clause 57 (Disruption) and clause 79 (Business Continuity), as may be amended from time to time.
Caldicott Guardian means the senior manager responsible for safeguarding the

confidentiality of Service User information.
Carer means a family member or friend of the Service User who provides day to day support to the Service User without which the Service User could not manage.
Care Quality Commission or CQC means the care quality commission established under the Health and Social Care Act 2008 (as amended from time to time).
CEDR means the Centre for Effective Dispute Resolution.
Change: any change to this Supplier Agreement Terms and Conditions including to any of the Services.
Commencement Date: 15 October 2015 or the date of the Supplier Agreement if later.
Commercially Sensitive Information: the information listed in the Commercially Sensitive Information Schedule comprised of information: <ul style="list-style-type: none"> (a) which is provided by the Supplier to the Council in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret.
Competent Body means anybody that has authority to issue standards or recommendations with which either Party must comply.
Confidential Information: any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which: <ul style="list-style-type: none"> (i) was public knowledge at the time of disclosure (otherwise than by breach of clause 40 (Confidential Information)); (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) is independently developed without access to the Confidential Information.
Consents means any consents, approval, licences or authorisations required from Regulatory Bodies in relation to the Services provision or the Services Provider.
Contract: the agreement in respect of the provision of the Services consisting of the following listed documents which shall be interpreted as a single contractual arrangement:- <ul style="list-style-type: none"> 1 The Supplier Agreement and the Supplier Agreement Terms and Conditions; 2 The Self-Bill Agreement; 3 The Service Agreement(s); and 4 The DPS Supplier Entry Guide. Collectively called the "Contract Documents".
Contract Period: the Period set out in clause 2 of the Supplier Agreement.
Contracting Authority: any Contracting Authority as defined in Regulation 2 of the Public Contracts Regulations 2015.
CQC Regulations means the Care Quality Commission (Registration) Regulation 2009.
Crown means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including, but not limited to, government ministers, government departments, government

and particular bodies, and government agencies.
Data Controller shall have the same meaning as set out in the DPA.
Data Processor has the meaning set out in the DPA.
Data Processing shall have the same meaning as set out in the DPA.
Data Subject shall have the same meaning as set out in the DPA.
DBS means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.
Default: 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 Supplier Agreement Terms and Conditions and in respect of which such Party is liable to the other.
Default Interest Rate means LIBOR plus 2% per annum.
Disclosing Party means the Party disclosing Confidential Information.
Dispute means a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Contract.
Dispute Resolution Procedure means the procedure set out in clause 59.
DPA: the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Dynamic Purchasing System or “DPS”: the dynamic purchasing system operated via the Application, which applies the procurement methodology provided for by Regulation 34 PCR, as amended from time to time. For the avoidance of doubt, the Services to be provided under this Contract are classified as ‘Social and Other Specific Services’ under the PCR, and so the DPS performed under this Contract need not operate verbatim with the provisions, but shall operate in accordance with the key principles of EU treaties and procurement law as appropriate.
E-Auction: the electronic, reverse-auction operated within the Application for the purpose of awarding a Requirement.
Effective Date has the meaning given to it in the Particulars.
Employment Checks means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.
Enhanced DBS & Barred List Check means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate).
Enhanced DBS Check means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for.
Enhanced DBS & Barred List Check (adult) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult's barred list.
Enhanced DBS & Barred List Check (child) means a disclosure of information comprised

in an Enhanced DBS Check together with information from the DBS children's barred list.
Enhanced DBS & Barred List Check (child & adult) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's and adult's barred list.
Enhanced DBS Position means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted.
Environmental Information Regulations: the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
Equipment: the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.
Expert Determination Notice means a notice in writing showing an intention to refer Dispute for expert determination.
FOIA: the Freedom of Information Act 2000 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 or relevant government department in relation to such legislation.
Force Majeure: 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, but excluding: <ul style="list-style-type: none"> (a) any industrial action occurring within the Supplier's or any Sub-Supplier's organisation; or (b) the failure by any Sub-Supplier to perform its obligations under any Sub-Supplier Agreement; or (c) any failure of the Supplier to follow Good Health and Social Care Practice.
Fraud: any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Council, including any offence under the Bribery Act 2010.
Good Health and Social Care Practice means using standards, practices, methods and procedures conforming to the Law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced professional and provider of health care and or social care services or a person providing services the same as or similar to the Services (or the relevant Service detailed in each Specification as applicable) the at the time the Services are provided and taking into account Guidance and best practice as recommended or advised by relevant Regulatory Bodies.
Guidance means any applicable local authority, health or social care guidance, direction or determination which the Authority and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006.
Indirect Losses means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis.

Individual Service Funds or ISF means such sum or sums of money forming part of a Service User's individual budget, funded by the authority, which a Service User using personal home support and other support and care services chooses to use to directly commission their support and care from the Supplier.
Information: has the meaning given under section 84 of the FOIA.
IPR and Intellectual Property Rights: patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
Key Personnel: those persons named in the Specification and/or the Supplier Agreement Terms and Conditions management schedule as being key personnel.
Law: any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, National Standards, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply.
Legal Guardian means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs.
Lessons Learned means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider's provision of the Services.
LIBOR means the London Interbank Offered Rate for 6 months sterling deposits in the London market.
Local HealthWatch means the local independent consumer champion for health and social care in England.
Loss means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses[provided in each case that such losses are reasonable, direct, proper and mitigated].
Malicious Software means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
Month: means calendar month.
National Institute for Health and Clinical Excellence or NICE means the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body).
National Standards means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time.
New Supplier: any person contracted to provide services to the Council the same as or similar to the Services at any time in substitution of the Supplier (in whole or in part).
NHS Act 2006 means the National Health Service Act 2006.
Offer: the Supplier's tender for the desired Services in response to the Council's Requirement.
Open for Offers: the period during which time the Supplier can create and submit their Offer

within the Application.
Party: a party to the Contract and Parties refers to both the Authority and the Supplier.
Payment Incentive Scheme means the scheme agreed by the Authority and the Supplier pursuant to clause 64.6.
PCR: the Public Contract Regulations 2015, as amended from time to time.
Personal Data shall have the same meaning as set out in the DPA.
POFA means the Protection of Freedoms Act 2012.
Premises: the location where the Services are to be supplied, as set out or implied in the Specification and the business location of the Supplier.
Pricing Schedule: the Schedule containing details of the Service Agreement Price.
Prohibited Act means the Supplier or any Staff: <ul style="list-style-type: none"> a) directly or indirectly offering, promising or giving any person working for or engaged by the Authority 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 activity; b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contact; c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010; (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 Authority; or (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.
Property: the property, other than real property, issued or made available to the Supplier by the Council in connection with the Supplier Agreement Terms and Conditions.
Public Authority means as defined in section 3 of the FOIA.
Quality Management Systems: the quality management system or systems operated by the Supplier details of which were provided by the Supplier as part of the Accreditation and Enrolment to the DPS or as subsequently notified on the DPS.
Quality Outcomes Indicators means the agreed key performance indicators and outcomes to be achieved as set out in Part 2 of Schedule 3 (<i>Quality Outcomes Indicators</i>).
Quality Standards: the quality standards published by NICE, BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
Receipt: the physical or electronic arrival of the Self-Bill Invoice at the address of the Council detailed at clause 9.3.1 or at any other address given by the Council to the Supplier for the submission of Self-Bill invoices.
Receiving Party means the Party which has received a Contract Query Notice or Confidential Information as applicable.
Regulated Activity shall be construed in accordance with Schedule 4 Part 1 and Schedule 4 Part 2 of the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection Of Freedoms Act 2012.
Regulatory Bodies: 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. – change instances of regulatory Authorities to Bodies.
Relevant Transfer: a transfer to the Council or a new Supplier of the Services or any part of the Services at any time during the Term or at the end of the Term or on the date of early termination of the Contract Period.
Relevant Transfer Date; any date upon which a Relevant Transfer takes effect.
Remedial Action Plan means a plan to rectify a breach of or performance failure under this Contract specifying targets and timescales within which those targets must be achieved.
Replacement Services: services that are identical or substantially similar to any of the Services to be provided the Supplier, which the Council receives in substitution by a Replacement Supplier who has already been admitted to the DPS, following the termination or expiry of a Service Agreement with the Supplier.
Replacement Supplier: a third party supplier of Replacement Services admitted to the DPS and appointed by the Council from time to time.
Required Insurances means the types of policy or policies providing levels of cover as specified in the Contract.
Requirement: a detailed specification and request for Services made by the Council via the Application.
Request for Information: shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).
Review Meeting means a meeting to be held in accordance with clause 13 (<i>Review Meetings</i>) or as otherwise requested in accordance with clause 13.2(<i>Review Meetings</i>).
Safeguarding Policies means the Supplier’s written policies for safeguarding children and adults, as amended from time to time, which must be compliant with the requirements of the contract and the Authority’s policies on Safeguarding.
Schedule: a schedule attached to, and forming part of, these Terms and Conditions.
Section means a section forming part of this Contract.
Security Policy means any written instructions relating to security provided to the Supplier by the Authority which apply to the Supplier in the performance of the Services.
Selection Criteria: the requisite criteria that a supplier must meet and maintain throughout the term of the DPS in order to successfully complete their Accreditation and Enrolment into the DPS.
Self-Bill Agreement: the separate agreement between the Supplier and the Council, whereby the Supplier agrees to receive pre-populated Self-Bill Invoices generated through the Application for the billing of the appropriate price and payment.
Self-Bill Invoice: the invoice produced via the Application on the Supplier’s behalf, through which the Application Provider shall process payment.
Serious Incident means an incident or accident or near-miss where a person (whether or not a Service User), member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Premises or where the actions of the Supplier, the Staff or the Authority are likely to be of significant public concern.
Service Agreement: the Parties’ acceptance of the Supplier’s final Offer in response to the Council’s corresponding Requirement incorporating any attached Schedules and the terms of the Supplier Agreement.
Service Agreement Period: the period set out in the Service Agreement.
Service Agreement Price: the price (exclusive of any applicable VAT), payable to the Supplier by the Council under the DPS.
Service Quality Performance Report means a report as described in the Specification (<i>Service Quality Performance Report</i>) or service quality performance report as referenced in any Requirement.
Service Receipt: the agreed record within the Application of the completed delivery of Services as quantified and agreed between the Parties.

Service Specification means any and all of the Specifications.
Service User means the person directly receiving the Services provided by the Service Provider as specified in the Specifications or any of them and includes the person's Carer and Legal Guardian where appropriate.
Service User Safety Incident means any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to, harm to that Service User.
Services: the provision of personal home support services under the following Lots or Categories: Lot or Category 1 – Carer's Respite; a) Children's Carer's Respite 0-18 b) Adult's Carer's Respite 18+ Lot or Category 2 - Children's Personal Home Support 0-18 a) Children's On-going Personal Care Support 0-18 b) Children's Early Intervention / Short Term Care and Support 0-18 Lot or Category 3 – Adult's Personal Home Support 18+; Lot or Category 4 – Adult's Learning Disability 18+; Lot or Category 5 – Adult's Mental Health 18+ Lot or Category 6 – Adult's Physical Sensory Impairment (PSI) 18+ Lot or Category 7 – Adult's Dementia Care 18+ Lot or Category 8 – Adult's Substance Misuse 18+ such services to be supplied as specified in the Specification.
Special Conditions has the meaning given to it in clause 1.1.2 (<i>Contract</i>).
Specification: the description of the Services to be supplied under the Supplier Agreement Terms and Conditions as set out in the Schedule 1 including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
Staff: all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's servants, agents, suppliers and Sub-Suppliers used in the performance of its obligations under the Contract.
Staff Vetting Procedures means the procedures and checks for vetting of Staff as referred to in this Contract to be followed by the Supplier including but not limited to Standard DBS Checks and Enhanced DBS Checks.
Standard DBS Check means a disclosure of information which contains certain details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions.
Standard DBS Position means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted.
Sub-contract means a contract approved by the Authority between the Provider and a third party for the provision of part of the Services.
Sub-contractor means any third party appointed by the Supplier and approved by the Authority under clause 46.1 (Transfer and Sub-Contracting) which through its employees or agents directly delivers the Services.
Succession Plan means a plan agreed by the Parties to deal with transfer of the Services to an alternative provider or Successor Provider prior to and following expiry or termination of this Contract.
Supplier means the person, firm or company with whom the Authority enters into this Contract.

Supplier Agreement: the terms and conditions set out in the Supplier Agreement entered into by the Council and the Supplier.
DPS Supplier Entry Guide: the entry guide issued by the Council detailing the operation of the DPS.
Supplier's Manager: the representative of the Supplier as the same may be replaced from time to time.
Supplier Representative means the person set out in clause 8.2 of the Particulars (Representatives).
Supplier Software means software which is proprietary to the Supplier, including software which is or will be used by the Supplier for the purposes of providing the Services.
SVGA means the Safeguarding Vulnerable Groups Act 2006.
Terms and Conditions: the terms and conditions set out in this document are varied and amended from time to time, in accordance with the provisions of the Contract.
Third Party Software means software which is proprietary to any third party (other than an Affiliate of the Supplier) including Public Health England or NHS related bodies which is or will be used by the Supplier for the purposes of providing the Services.
Transferring Employees: employees of the Outgoing Supplier who were engaged wholly or mainly in connection and who are assigned to the provision of Services the same as or similar to the Services (in whole or in part) on or immediately before the Commencement Date and who are listed in the ITT.
TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
TUPE Information: the details of : <ul style="list-style-type: none"> a) the total number of staff; b) in relation to each member of staff, his employment status and what role he performs; c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of all Assigned Employees d) in relation to each Assigned Employee: <ul style="list-style-type: none"> (i) his identity, age and gender; (ii) the terms and conditions of his employment including but not limited to length of continuous employment, any contractual notice period, any contractual redundancy entitlement, remuneration, overtime and premium rates, benefits, customary practices, sick leave provisions, holiday entitlement, any agreed pay rises and when they are to take effect; (iii) any outstanding or potential liability for past breaches of contracts of employment; (iv) any outstanding or potential statutory liability (v) information of any court or tribunal case, claim or action brought against the Supplier within the previous 2 years, or that the Supplier has reasonable grounds to believe that it may bring against the Council and/ or the New Supplier arising out his employment with the Supplier, together with any outstanding disputes of a material nature; (vi) information of any disciplinary or grievance procedures taken against or by him (as appropriate) within the previous 2 years in circumstances where the Employment Act 2002 (Dispute Resolution) Regulations 2004 apply; (vii) information of any collective contract which applies to him; and (viii) any other information relating to the Assigned Employees as may reasonably be required by the Council and/ or a New Supplier for the purposes of the application of the TUPE regulations.
TUPE Regulations: the Transfer of Undertaking (Protection of Employment) Regulations 2006.
Variation: has the meaning given to it in clause 17 (Variation).

VAT: value added tax in accordance with the provisions of the Value Added Tax Act 1994.
Vulnerable Adult shall have the same definition as that contained in section 60(1) of the SVGA.
Working Day: a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

2. Interpretation

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

- a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) Words importing any gender include every gender;
- c) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- d) 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 and includes any subordinate legislation made under it and shall also include a reference to any relevant guidance or code of practice issued by a competent authority;
- e) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and wherever and however constituted and their successors and permitted assigns or transferees;
- f) The words include, includes and including are to be construed as if they were immediately followed by the words "without limitation";
- g) Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- h) The Sections and Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the Sections and Schedules;
- i) Any references to this Contract or any documents referred to in this Contract includes reference to this Contract or such other documents as varied, amended, extended or replaced from time to time;
- j) any obligation in this Contract on a Party not to do any act or thing or not to omit to do any act or thing shall include an obligation not to allow such act or thing to be done and not to allow such act or thing to be omitted to be done; and
- k) a reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Contract) from time to time.

SCHEDULE 3

PART 1 - PERSONAL HOME SUPPORT SPECIFICATION

1. Introduction

- 1.1 This document sets out a service specification relating to personal home support services to Adults and Children within the London Borough of Waltham Forest.
- 1.2 This schedule specifies the Council's requirements for personal home support services and duties detailed within shall be performed in conjunction with the Service User's Care Plan. The London Borough of Waltham Forest is committed to ensuring that Service Users needs are met throughout the life of this agreement. Therefore, the specification is separated into two sections as detailed below.
- 1.3 This specification defines the values in accordance with which home support provided on behalf of the Council will be delivered. Providers must hold these values central to their delivery of this service. Services will be monitored in respect of their achievement against these values.
- 1.4 The Council will commission services that promote independent living, which is the concept of empowering disabled and vulnerable people to control their own lives as far as possible, and to have the freedom to participate fully in the community.
- 1.5 The specification provides the framework for the delivery of service within the Council's Assessment of Need and the subsequent Commissioning of Service/s. The Service Users Care Plan will contain a more detailed description of the individual services to be delivered.
- 1.6 The service will be accessed by the Council on behalf of Service Users. The Service Users inability to manage may be due to the long term or short term illness, frailty, advancing age, permanent or temporary physical or sensory impairment, mental health problems, learning disability or substance misuse.
- 1.7 Services will be commissioned to provide personalised support and care for people living in their own homes, including home owners and tenants living in both social housing and private tenancies. In addition, services may be commissioned to provide support and care to people living in a variety of specialist settings including but not limited to:
 - Sheltered and extra care sheltered housing
 - Supported living services
 - Housing related support services
 - Specialist hostels designed to support recovery from substance misuse

Within this context, services may be commissioned for a single person or for a number of people who either require more specialist support and care, or where the Council determines that their outcomes and best value are better achieved through commissioning services for a number of people under a single service provision. Where the Council commissions services in this way and to ensure the seamless, coordinated, safe and effective delivery of support and care services, Providers will be required to develop joint systems, protocols, procedures, training and working arrangements with other Providers commissioned by the Council. Providers will need to satisfy the Council of the robustness and effectiveness of the joint arrangements

they agree with other Providers and these arrangements will be monitored as part of the Council's quality assurance and performance management review process.

- 1.8 All the requirements and conditions set out in this specification and its appendices, as well as the requirements set out in the terms and conditions and accreditation document and which form part of the Council's dynamic purchasing system for person home support, will equally apply to services commissioned for specific individuals with care needs as well as services commissioned for a number of individuals as set out under condition 1.7 of this specification.
- 1.9 It is expected that this Service Specification will be developed throughout the lifetime of the agreement to capture the Council's desire to become outcome-focused.

2. Values

- 2.1 The Services must be delivered in accordance with the following values:

Fulfilment: the realisation of personal aspirations and abilities in all aspects of daily life

All Service Users have their own interests, tastes, abilities and aspirations and should be actively enabled to realise them. Through their everyday attitudes and behaviour, the Provider and their staff will display a belief that life is about moving forward through different experiences, always reaching full potential regardless of age or impairment.

The service must be delivered in a way that places the Service Users holistic needs – e.g. physical, social, emotion and spiritual – first and foremost on all occasions and in whatever circumstances.

The safety and welfare of the Service Users and their Carer must be central to service delivery.

The service needs to adopt a person-centred approach to the delivery of care, focusing on an asset-based approach, always promoting independence and enabling people to reach their full potential.

The needs of Service Users are of paramount importance and must be placed before those of Carers, staff or relatives. However, the views of carers, staff and relatives may need to be sought and considered when arranging services, as each end service will impact on the Service User and all parties.

Outcome

The Service User will feel that the Provider holds their interest and welfare of paramount importance and is trustworthy and reliable.

Examples of how this value must be demonstrated in practice are:

- The service will be delivered in a courteous and honest manner at all times
- Staff will be punctual and reliable
- The Provider will strive to ensure continuity of personnel
- The Provider will work in collaboration and co-operation with other agencies for the benefit of Service Users
- Service Users will feel safe, protected and safeguarded at all times

- Service Users will feel enabled and empowered to cope with activities of daily living
- Staff will be competent and will be trained for tasks before undertaking them
- Staff will receive good quality supervision and support (including out-of-normal office hours)
- Staff will undertake factual recording in daily care records at the end of each visit
- Any disputes, difficulties or differences will be addressed, if likely to interfere with the quality of service delivered
- Families and friends will be treated with respect and their views considered
- There is a means to establish the satisfaction of the Service User and Carer and a system to monitor compliments and complaints

Service Users will always be encouraged to live independently as far as they are able within a supportive service delivered by the Provider and their staff, which supports this value.

All staff supporting the Service User and Carer will be aware of any special requirements associated with personal care, hair care, dress, custom, significant calendar dates relevant to multi-cultural needs, and dates with personal significance to the person they are caring for. Requirements in respect of an individual's cultural needs shall be recognised as identified in the care plan, and clarified with the Service User and Carer.

Services will be delivered in a way that does not leave the Service User or Carer feeling rushed or unsettled.

The Provider and their staff will always work together in partnership and co-operation with other organisations for the benefit of the Service User.

Staff will have a keen awareness of the importance of preserving an individual's dignity and striving wherever possible to improve their quality of life.

Dignity: recognition of the intrinsic value of people, regardless of circumstances, by respecting their uniqueness and their personal needs, and treating them with respect

Dignity derives through a personal sense of identity, and every Service User and Carer, regardless of their circumstances, is unique and intrinsically valued. In order to treat people equitably, individuality must be understood and always respected.

The service must be delivered in a way that respects and safeguards an individual's dignity at all times.

Service Users and Carers must be listened to. Their feelings must be accepted and not denied or interpreted.

Outcome

Service Users will feel that the Provider and their staff make every effort to understand their individuality and act upon this.

Examples of how this value must be demonstrated in practice are:

- Staff will not impose their personal standards on the Service User – a person-centred approach will always be at the heart of service delivery
- Providers will advise the Assessment Team of circumstances that arise, which could be a cause of conflict between staff, Carers and the Service User in relation to

personal standard – this discussion will inform the ongoing care plan

- Service Users and Carers will be treated with care and respect
- Assumptions will not be made about an individual's needs according to their race, culture, religion, sexual orientation or gender
- Providers will show genuine interest in a Service User's history, lifestyle and culture in an effort to better understand them and the subsequent implications for practice, although this should not be intrusive – any information gained will be treated in confidence
- Religious or multi-cultural needs and requirements will be adhered to at all times, with personal care tailored to the individual's requirements in respect of this
- The Provider will make sure all staff are provided with appropriate training regarding equality & diversity and issues around discrimination
- The Provider and their staff will understand the emotional and physical changes caused through illness, impairment and/or frailty and the effect on a person's identity, dignity and self-esteem
- Staff will address Service Users and Carers in the way each individual prefers, and Service Users personal first name will only be used upon freely given consent
- When working together, care staff will not hold any conversation that might exclude the Service User
- Every effort will be made to enable Service Users to communicate effectively, and where necessary, this may be with the assistance of interpreters, advocates, family or friends

Self-Determination: the maintenance of all entitlements associated with the rights of individuals

The service must be delivered in accordance with the expressed wishes and preferences of the Service Users, even if this involves them taking risks with their own health, safety and wellbeing, so long as those choices are not damaging to others or involve significant harm to themselves (in accordance with Health & Safety legislation).

The service must be delivered in such a way that enables Service Users to manage their own life and circumstances.

The Provider does not have the right to determine what is in the best interests of an individual in the delivery of the service.

The Provider must deliver a service which is flexible and responsive to accommodate Service Users expressed wishes and preferences.

Service Users have the right to retain their chosen lifestyle.

Outcome

Service Users will feel that they have control over the way in which the Service is delivered.

Examples of how this value must be demonstrated in practice are:

- Providers' staff will genuinely and frequently 'check out' the Service Users wishes and preferences during the delivery of the service, to ensure that the care plan is still appropriate for their needs (e.g. time of service delivery, personnel involved in service delivery etc.)

- Any change to the manner in which the Service is delivered requested by a Service User, will be respected and acted upon. Where a significant change is requested the Provider will notify the Assessment Team
- Where it is not possible to provide services in accordance with the Service Users wishes an adequate explanation must be given to them
- Tasks including payment of Service Users bills will be undertaken in accordance with the priority determined by the Service User

Independence: opportunities to act and think without reference to another person, including a willingness to incur a degree of calculated risk

Every individual should have the opportunity to think and act without reference to another person, and also the opportunity to assume responsibility for incurring their own chosen risk.

The Service must be delivered in a way that supports, sustains and where possible enhances, the Service User's independence. The Service must aim to reduce any social or emotional isolation of the Service User, in line with their wishes. Service Users and Carers have the right to personal independence.

Service Users must be allowed to take personal responsibility for their actions, which includes taking informed risks.

The Provider needs to support to the Service User to live as independent a life as possible. In some cases, this will involve supporting Service Users with reablement to reduce the need for care.

The Provider must avoid creating inappropriate dependency in the delivery of care. This will include working in partnership with Carers to increase their understanding of the need to promote the Service User's independence.

Outcome

The Service User should feel that every effort is being made to encourage and maintain their independence.

Examples of how this value must be demonstrated in practise are:

- Staff will work in close collaboration with all other local agencies to strive to maintain people in their own homes if they so wish
- Service Users will be encouraged to undertake or share in their own personal care, regardless of the standard
- Service Users will be encouraged to involve themselves in undertaking domestic tasks, regardless of the efficiency
- Staff will assist Service Users in learning or relearning skills
- Staff will enable Service Users to maintain their links with families, friends and communities
- All staff will be aware that Service Users must be allowed to take personal responsibility for their actions, which includes the freedom to take their own chosen risks
- The Provider and their staff will ensure that unnecessary dependency is not created within the delivery of service

Privacy: the right of individuals to be left alone or undisturbed, and free from intrusion or public attention into their affairs

Every individual has the right to their own space, to freedom from unwarranted intrusion, and to their personal life remaining personal and not the subject of public speculation or gossip.

The Service must be delivered in a way that respects the privacy of an individual, their affairs and their belongings at all times.

Confidentiality must be central to service delivery. However, there may be certain circumstances when this cannot be respected. The Provider must make their staff aware of these circumstances and provide clear procedures for staff to follow. Where confidentiality has been breached, the Provider must notify the Assessment Team.

The parameters within which confidentiality operates, must be explained by the Provider to the Service User and Carer. Sufficient data protection training must be available so as to ensure that staff understand and protect information appropriately.

Outcome

Service Users and Carers will be confident that they can trust the Provider and their staff, to respect and maintain their personal privacy at all times.

Examples of how this value must be demonstrated in practise are:

- Staff will not share information about Service Users or Carers outside of the workplace
- Staff will not share information with the Service User's family or friends, other than that which is relevant and with the consent of the Service User
- Records will be carefully and accurately kept and Service Users will have access to information held about them
- Personal care tasks will be carried out in complete privacy
- All personal care will be delivered in the least intrusive manner possible, and staff will not remain with Service Users when elements of personal care tasks can be safely undertaken by the Service User in complete privacy
- All staff will be mindful that they are guests in the Service User's home. Only the Service User has the right to invite callers into their home – staff will not invite visitors into the home without the Service User's consent
- The Provider and their staff will ensure that the manner in which the Service is delivered respects the fact that personal possessions will not be moved or handled unnecessarily. Any items that have been moved will be returned to their original position, other than large items of furniture that have been moved to allow compliance with Health & Safety requirements
- Providers will ensure that all personal information is held confidentially and not exposed to theft or removal by any third party through the actions of any member of staff

Choice: opportunity to independently select from a range of options, taking into account the need to safeguard their welfare.

Every person has a right to make their own choices in the way their service is delivered, and to have access to the information they require in order to exercise their choice.

Service Users and Carers have the right to be fully involved and informed about the service

provided, and about decisions which affect their well-being.

Outcome

Service Users and Carers will feel that they have been given full information to help them make choices about how they choose to live their lives and the way their service is delivered.

Examples of how this value must be demonstrated in practise are:

- Where there is a choice to be made the Service User will always be given the opportunity to make it. Where the Provider has reason to consider that the Service User does not have the capacity to make an informed choice, the Provider shall inform the Assessment Team who will investigate the matter and where appropriate arrange for a case conference, involving the Service User, their family and/or Carer, specialist professional advisor and the Provider, as appropriate, so that a decision may be taken, as how best to proceed
- Information will be available to Service Users that is in a style, pace and language that is appropriate to each individual, and with which they feel confident and comfortable
- The Provider and their staff will have absolute respect for the Service User's right to say 'No' – the Service User should not be coerced into any activity or situation against their will
- Service Users will always be encouraged and assisted to exercise choice over all day-to-day decisions (e.g. on personal appearance, activities and personal priorities)
- Providers should assist Service Users and Carers to be represented by an advocate, if they so wish
- Where it is necessary for a Provider to infringe a Service User's choice, the reasons and circumstances for this will be recorded and passed onto the Assessment Team

3. Key Drivers

3.1 By way of information and context, the following legislation and guidance drives the specification (please note, this list is not exhaustive):

- **The Care Act:** to promote people's **wellbeing** and enable people to **prevent and postpone** the need for care and support. Put **people in control** of their lives so they can pursue opportunities to realise their potential. To ensure people have high quality services and have a variety of Providers to choose from who (taken together) provide a variety of services.
- **Better Care Fund programme (BCF):** including early intervention and prevention.
- **Redefining Waltham Forest:** the Council's transformation programme to ensure efficiencies, value for money, commissioning for outcomes and doing things differently. The Council has a target to achieve £45m efficiency savings by 2016.
- **London Borough of Waltham Forest Priorities for 2015-2018:** including helping all our residents enjoy a good quality of life. To keep adults and children safe and healthy ensuring they have dignity and choice on their lives.

- **London Borough Waltham Forest Families Directorate priorities 2015-2018:** to ensure all families can access information and support to lead healthy lives. Are able to enjoy independence and choice and have control over their own lives have ambition to reach their full potential.
- **The Waltham Forest Safeguarding Children Board (WFSCB):** working to ensure that all local children's agencies within Waltham Forest work together for the safety and well-being of children and young people.
- **Adult Social Care Priorities:** enhancing the quality of life through person-centred care and promoting independence, delaying and reducing the need for long-term or complex care and support, ensuring people have a positive experience of care, safeguarding adults at risk, delivering affordable services.
- **Ethical Charter and Practices:** Item 29
- **Safeguarding and Protection of Vulnerable Adults Frameworks:** ADASS National Guidance
- **London Safeguarding Children Board Child Protection Procedure:** Edition 5

4. Outcome-Driven Support and Care

- 4.1 The way in which personal home support is being purchased nationally is changing. There is a deliberate move away from a “time and task” approach to developing services that deliver positive outcomes whilst re-enabling Service User’s.
- 4.2 Providers must be able to respond and engage with a more flexible and outcome-focussed way of working. The authority is committed to developing and incentivising the support and care services it commissions through the DPS to deliver improved wellbeing, through achieving the personal outcomes the authority agrees with people receiving support. This commitment is in line with the statutory guidance issued by the Secretary of State to support the delivery of the Care Act 2014. The authority’s commitment also seeks to take forward emerging guidance from social care institutions such as SCIE and Oxford Brookes University’s Institute of Personal Care (IPC), which strongly support the move towards outcome-driven commissioning and service delivery.
- 4.3 Within the context of this commitment, the authority will over the lifetime of the DPS, develop an outcome-driven approach to purchasing support and care. This will include paying Providers based on the personal outcomes they achieve for each person whose services are commissioned through the DPS.
- 4.4 The authority will engage with Providers in developing its approach, and will seek to fully utilise the experience and knowledge Providers have in delivering their services to achieve outcomes. However, all Providers who enrol on the DPS will be required to cooperate and work with the authority in developing and implementing whatever outcome-driven and payment by results approach the authority determines appropriate, including working with pilot projects. Provider’s service delivery and staffing arrangements will need to be sufficiently flexible to respond to any future outcome-driven approach developed by the authority.

- 4.5 The Authority anticipates that a selection of pilot schemes will run concurrently with the current “time and task” approach at the very start of the contract. However, if these pilots are successful, it is our intention to commission all new packages via this process. Providers who enrol on the DPS will be expected to participate in the pilots.
- 4.6 The balance of the relationship between the Parties involved, will change to one where commissioners assess the need and identify areas where the Service User can develop and maintain skills. Providers will deliver a range of agreed provisions that will achieve the desired outcome, without having to constantly revisit the assessment.
- 4.7 The schemes will ensure Service Users have greater control and flexibility over how and when services are delivered whilst developing their independence in the longer term.

5. Individual Service Funds (ISFs)

- 5.1 An Individual Service Fund (ISF) is when a person who uses support and care services chooses to use their individual budget, funded by the authority, to directly commission their support and care from Providers.
- 5.2 The following requirements will apply where an ISF arrangement is commissioned through the DPS:
- The person’s individual budget managed via an ISF will be held by the Provider on the individual’s behalf
 - The person will decide how their individual budget or ISF is spent by their chosen Provider
 - The Provider will be directly accountable to that person, in terms of how their individual budget or ISF is used and spent
 - The Provider will spend the whole of the person’s individual budget or ISF on that individual’s service and the management and support necessary to provide that service
 - The Provider cannot use that person’s individual budget or ISF as part of the Provider’s general pooled budgets, and the Provider should maintain separate accounting arrangements with regard to that person’s ISF that meets the authority’s requirements and standards
- 5.3 Where a person who is eligible for social care funding, funded by the authority, chooses to use an ISF to directly commission their support and care from a Provider who is enrolled on the DPS, the authority shall pay that person’s individual budget directly to the Provider on a monthly basis. However, the authority will be the contracting party with the Provider with regard to all such ISF arrangements and all the provisions of DPS and including this specification will apply.
- 5.4 Where decisions relating to how an individual’s ISF is spent are between the Provider and the person receiving support and care commissioned through the DPS, the authority will need to be fully satisfied that the ISF is being effectively and appropriately used by the Provider to meet that person’s support and care needs as assessed by the authority. The authority reserves the right to alter and amend whatever arrangements are agreed by the Provider and the person who’s ISF they manage, where either the authority determines that the person’s assessed needs will

not be met, or where the authority's auditing and accounting standards and requirements are compromised.

- 5.5 Providers enrolled on this DPS who want to respond to service requests that are funded through ISFs, will be required to have accounting, auditing and administrative arrangements in place to manage Individual Service Funds, which are agreed with the authority prior to Providers accepting ISF funded service requests.

6. Business Development

- 6.1 In addition to the Pilot Schemes, business and service development will be required throughout the life of the contract. This is to support innovation and continuous improvement in service delivery. It is expected that Providers will incorporate innovation and continuous improvement into all aspects of the services they deliver through the DPS to maximise savings and efficiencies.
- 6.2 The Authority encourages Providers to develop innovation in service delivery and design, and will work with Providers to understand the shared risks, implications and potential rewards of each service development and redesign proposal, which Providers may wish to take forward at any point during the life of the DPS. However, the Council will need to be satisfied that each service redesign proposal developed by Providers will achieve the Council's aims, objectives and purposes, particularly in achieving more personalised outcome driven support, improved efficiencies and value for money. Within this context, it is at the sole discretion of the Council to determine whatever amendments are required to this specification and related appendices and documents, as well as its purchasing and performance management arrangements in order to achieve each Provider's proposal(s).
- 6.3 The primary objective of the services commissioned and purchased through the DPS is to deliver personalised support and care in line with the Care Act 2014. However, the Council reserves the right to commission services through the DPS in such arrangements as it determines will meet local priorities and changing needs and requirements. Below are some examples of alternative service delivery arrangements:
- Drop-in and resource centres offering shared support across a number of people with either a specific disability or condition or people with a variety of needs
 - Shared support for a number of people enabling them to attend specific events and programmes

Providers will be required to work with the authority to develop and achieve new service delivery arrangements based on having flexible management and staffing structures able to quickly respond to the authority's requirements.

7. Personalisation

- 7.1 With the freedom of personal budgets, Service Users will be empowered to make their own care arrangements, such as employing their own personal care assistants, joining local clubs rather than attending day centres and choosing to go to hotels or on package breaks, as opposed to respite care in a residential home.

- 7.2 Service Users in receipt of personal home support, either via a personally managed budget or a LBWF managed budget, have a range of needs dependant on the level of either their vulnerability or disability.
- 7.3 The Authority will encourage Service Users to take control of their care packages via a Personal Budget or an Individual Budget. Therefore, over the duration of the contract, the impact of Personalisation is set to reduce the volume of service commissioned directly by the Authority.
- 7.4 Providers will be expected to work to the following outcomes:
- Adopt outcome based service plans
 - Identify how to measure performance based on customer satisfaction.
 - Identify the Service to deliver in order to achieve the outcome
 - Build in flexibility
 - Risk Management
 - A method for managing small changes
 - Reduce duplication of service planning

8. Care Quality Commission (CQC)

- 8.1 The Provider shall demonstrate commitment to delivering services in a manner that achieves the following outcomes, as reflected in the Essential Standards of Quality and Safety Outcome summaries issued by the Care Quality Commission (CQC). Please note, this following list is not exhaustive:
- (Outcome 1) Respecting and involving people who use services
 - (Outcome 2) Consent to your care and treatment
 - (Outcome 3) Care and welfare of people who use services
 - (Outcome 4) Meeting nutritional needs
 - (Outcome 5) Cooperating with other Providers
 - (Outcome 6) Safeguarding people who use Services from abuse
 - (Outcome 7) Cleanliness and infection control
 - (Outcome 8) Management of medicines
 - (Outcome 9) Safety and suitability of premises
 - (Outcome 10) Safety, availability and suitability of equipment
 - (Outcome 11) Requirements relating to workers
 - (Outcome 12) Staffing
 - (Outcome 13) Supporting workers
 - (Outcome 14) Assessing and monitoring the quality of service provision
 - (Outcome 15) Complaints
 - (Outcome 16) Records
- 8.2 The Provider must notify the Authority if they are issued with an enforcement notice, or notification of intention to refuse or cancel registration by the Care Quality Commission, as soon as this occurs.
- 8.3 The Provider will work to maintain the standards required by the Care Quality Commission and the Authority for the period covered by this contract. Where conflict between the two arises, the mandatory requirements of the Care Quality Commission

take precedence, where these are higher than those of the Council. The Provider must notify the Authorities Contract Manager of the occurrence of such conflict.

- 8.4 If the Provider fails to maintain registration with the Care Quality Commission, the Authority may terminate this Contract at any time during such period of non-maintenance and such termination may be with immediate effect.
- 8.5 If the Provider changes their Statement of Purpose, they must immediately update the DPS outlining the changes that have been made and the reasons why.

9. Core Principles

- 9.1 To promote the quality of life of Service Users, the following core principles should underpin the delivery of the Services:
- 9.2 In delivering the Services, the Provider must adhere to the following principles:
- To enable Service Users to live as independently as possible in comfort
 - To have respect for Service Users and their way of life, paying particular regard to ethnic, religious and cultural issues
 - To involve Service Users in all decisions which affect the delivery of the Services, addressing their specific communication needs and being responsive to their informed choices and wishes
 - To maintain the self-respect of Service Users in all situations
 - To always give assistance in a safe, practical, reliable manner and in ways acceptable to Service Users
 - To maintain the Service User's current support networks
 - To maintain the confidentiality of Service Users unless a disclosure is necessary to protect the health, safety or welfare of the Service User or other Service Users
 - To avoid any discriminatory practices
 - To ensure that people who may not have capacity in relation to part(s) of their support plan are involved in decision making, and that decisions made are in the person's best interests and are the least restrictive option available
 - Service Users should be enabled to make their own decisions for as long as they are capable of doing so. A Service User's capacity to make a decision will be established at the time that a decision needs to be made. A lack of capacity could be as a result of a severe learning disability, dementia, mental health problems, a brain injury, a stroke or unconsciousness as a result of anaesthetic or sudden accident. In this instance a mental capacity assessment will need to be undertaken and if necessary a deprivation of liberties assessment

Credibility

The Provider and Staff shall adhere to any relevant codes of conduct for their profession.

The Provider shall ensure Staff have knowledge of the requirements of their job, and in particular the Services to be provided, the policies and procedures under which the Services will operate, and provides training to the national standard as a minimum.

The Provider must have ways of finding out whether the Service User is satisfied with the Services they receive from time to time and throughout the Contract Period.

Competency

The Provider must ensure that its organisation is run by people who are competent to do so, recruit and employ staff competent to do the job, with legal requirements and who operate safe working practices, is properly insured and financially sound.

Pursuant the Council's policy for dealing with complaints, the Council has a statutory duty to ensure complaints about social care are handles appropriately.

The Provider must have arrangements in place for the handling and consideration of complaints about any matter connected with its provision of services commissioned by the Council. These arrangements must comply with statutory regulations and the Provider must ensure that the complainant is fully advised of their right to request that the Local Government Ombudsman review the handling of their complaint, if they remain dissatisfied. The response to the complainant and details of the investigation must be made available to the Council on request, for the purposes of supporting resolution and for quality assurance purposes.

Responsiveness

The Provider must respond to the Service Users' individual needs; providing choice the Service Users and their carers about when and how the Services are provided. The Provider shall ensure that the Service responds appropriately to the specific needs of race, gender and disability as appropriate.

The Provider must have a process by which Service Users, Carers, the Council or any other interested party may make comments, suggestions, complaints, and compliments, and a system in place which will ensure that such comments, suggestions, complaints and compliments may be considered fairly and acted upon if appropriate from time to time.

The Council has a statutory duty to ensure all complaints about social care are handled appropriately. Where the Council commissions Services with an independent Provider that Provider must have arrangements in place for the handling and consideration of complaints about any matter connected with its provision of services commissioned by the Council. These arrangements must comply with statutory complaint regulations and Provider should ensure that the complainant is fully advised of their right to request that the Local Government Ombudsman review the handling of their complaint, if they remain dissatisfied. The response to a customer and details of the investigation must be made available to the Council on request, for the purposes of supporting resolution and for quality assurance purposes.

Reliability

The Provider shall deliver provide the Service Users and Carers with information about the individual Services to be provided to them and have policies to keep Service Users, Carers & the Council informed of any significant changes in services.

Service Users and their carers may approach the Council if they wish to lodge a complaint against the Provider. The Council will investigate complaints in accordance with the Council's complaints policy where appropriate. However, it will usually be appropriate for the Provider to undertake the initial investigation.

Understanding, Dignity & Respect

The Provider shall ensure that the Staff providing the Services are properly briefed as to the Service User's needs and respect the Service User's wishes, independence, race and gender.

Many Service Users have a disability and the Provider and its Staff must respect the Service User's independence and consult with them as necessary. Staff must always work with Service Users in an enabling manner.

The Provider shall ensure that Service Users and Carers are treated with respect and must have a policy on how Staff should conduct themselves with Service Users.

Staff must be aware of and respect the Service User's cultural and religious needs and understand the influence this may have on their behaviour.

Staff should demonstrate respect for the Service User's privacy and dignity.

Security

The Provider shall employ Staff who respect the Service User and their property, and who keep information about them confidential.

The Provider shall only recruit staff who have satisfied all necessary recruitment checks. Staff will be trained in Safeguarding of Vulnerable Adults (SOVA) guidelines and actively support the SOVA guidelines.

The Provider will maintain the security of the Service User's residence to ensure safety at all times. Data Protection and Information Safety Policies and Procedures must be in place that is as robust as the Council's policy.

The Council will regularly review the policy and procedures and may audit the organisation to confirm compliance.

Accessibility

The Provider shall have a written statement of purpose.

The Provider shall access where required interpreting and translation services for minority ethnic Service Users as well as Braille and signing services for Service Users with sensory impairment. The Provider shall be sensitive to Service User need and willing to facilitate access to these services.

The Provider shall ensure that the Staff providing the Service are properly briefed as to the Service User's needs and respect the Service User's wishes, independence, race and gender. Many Service Users have a disability and the Provider must respect their need for independence and to be consulted and must always work with them in an enabling manner.

Equality

The Provider will ensure that it and its staff do not discriminate against people because of their race, gender, disability, age or sexual orientation, and appropriate training is provided to all staff working with LBWF residents.

The Provider's policies will promote respect for Staff and Service Users irrespective of race,

gender, disability, age or sexual orientation.

The Provider shall take all reasonable steps to prevent unlawful discrimination and promote equal opportunities and good community relations between people from different racial groups.

Staff must be aware of and respect the Service User's cultural and religious needs and understand the influence this may have on their behaviour or their decisions.

The Provider must adhere to the following principles:

- a) Enable Service Users to live as independently as possible in comfort
- b) Have respect for Service Users and their way of life, paying particular regard to ethnic, religious and cultural issues
- c) Involve Service Users in all decisions which affect the delivery of the Services, addressing their specific communication needs and being responsive to their informed choices and wishes
- d) Maintain the self-respect of Service Users in all situations
- e) Always give assistance in a safe, practical, reliable manner and in ways acceptable to Service Users
- f) Maintain the Service User's current support networks
- g) Maintain the confidentiality of Service Users unless a disclosure is necessary to protect the health, safety or welfare of the Service User or other Service Users
- h) Avoid any discriminatory practices
- i) Ensure that people who may not have capacity in relation to part(s) of their support plan are involved in decision making and that decisions made are in the person's best interests and are the least restrictive option available

10. Arranging for Delivery of Personal Home Support

- 10.1 In arranging the service delivery the Authority will follow the policies and processes used within the Dynamic Purchasing System (DPS). We will provide the relevant information about the needs of the Service User and of the outcomes required. This will also indicate the length of service delivery and specify a review or expiry date along with any other relevant information such as aggressive or difficult behaviour.
- 10.2 The Provider must issue each Service User with a standard format letter which outlines the following information:
 - Name, address & telephone number of the agency
 - Contact number for out of hours
 - Contact number for the office of regular care workers and their Manager
 - Requirements if the Service User wishes to cancel the service temporarily
 - Process for assuring the quality of the service, monitoring and supervision of staff
 - Respective responsibilities of the Service User and of the agency in relation to Health & Safety matters
 - Arrangements to cover holidays and sickness.
- 10.3 A copy of the letter sent to each Service User must be retained on their personal file held in the Provider's office.

- 10.4 In certain circumstances, where the degree of a Service User's impairment varies considerably from week to week, flexibility in the frequency and nature of service delivery will be specified on the Care plan within broad limits. In these instances, Providers must deliver this flexible service in strict accordance with the expressed wishes of the Service User.
- 10.5 Prior to commencement of the care package delivery, the Provider must arrange for a nominated senior member of their staff to visit the Service User, this may include the individual's home or a hospital. During this visit, they will confirm the care plan to be delivered. They will also provide the Service User with:
- A copy of their care plan
 - Service User Information Letter
 - A copy of the Providers complaints procedure
- 10.6 In all situations, this visit will take place before commencement of the care package or up to 48 hours of delivery the service.
- 10.7 Some Service Users will be supported by a care network, involving friends, family, volunteers, health care workers, social services staff, sheltered housing wardens and Authority staff. The Provider must co-operate with the other organisations in order to provide a streamlined service.
- 10.8 The relevant team within the Authority is responsible for ensuring that the Service provided continues to meet the needs of the Service User. The Assessment Team for the individual Service User will therefore review the needs and plan their care at a frequency determined by the individual circumstances. The care plan can only be altered by the Assessment Team after a review or re-assessment of need in consultation with the Service User and their Carer's.
- 10.9 Where the Service User is absent because of admission to hospital, respite care etc., the individual arrangement shall be suspended. It is the Provider's responsibility to notify the Assessment Team of the absence of a Service User. However, if the Assessment Team becomes aware of the absence in the first instance, they will inform the Provider immediately.
- 10.10 Individual arrangements shall be reviewed by the Assessment Team within four weeks of the commencement of provision. The Provider will be expected to contribute to all reviews as appropriate. The Providers contribution will be written or by personal attendance at a review. This process only applies where an increase or decrease in user need is apparent.
- 10.11 If the Provider feels that a review or re-assessment should be carried out at any point, the Provider should contact the Assessment Team indicating the reason for the recommendation and the degree of urgency. This process only applies where an increase or decrease in user need is apparent. Any concerns for the well-being of the Service User must be reported without delay.
- 10.12 The Assessment Team will identify general risks, including moving and handling, and specify on the Care Plan such hazards and risks which become evident during the assessment period. The Authority is not responsible for hazards and risks which occur during the provision of personal home support and which were not evident at the time of the care assessment. The Provider shall therefore carry out regular risk assessments, including moving and handling.

- 10.13 The Provider is responsible for consistently monitoring compliance with the Service Users care plan on a quarterly basis.

11. Service Provision Flexibility/Emergency

- 11.1. In exceptional circumstances as identified below, where the needs of the Service User change on a temporary basis, the Provider is authorised to provide all necessary care until the condition is contained or up to 2 hours whichever is the sooner. The Provider then need to seek authorisation from the relevant ASC managers within 24 hours of the service starting, if this is in the weekends, maximum time to seek authorisation should not exceed 72 hours.
- 11.2 Should the situation demand in excess of 2 hours, approval to continue must be sought from the Emergency Team. On the next working day, an assessment or review shall be initiated and the emergency care reviewed. The carer shall provide the support with additional time for that particular visit. In case where:
- It is a one off situation, the Provider must fill in the '**One-off request form**'
 - It is a recurring situation, the Provider must fill in the '**Brokerage referral form**' – the form is then passed to First Response Team to make arrangements for an unscheduled review
- 11.3 These exceptional circumstances only apply in an emergency/crisis situation or out of office hours and for the following reasons:
- Where there is a significant and real threat to the physical or emotional well-being of a Service User
or
 - Where otherwise a Service User would suffer significant harm
- 11.4 In such cases the Provider shall record details of services provided under the emergency, details to include:
- The reason why the additional time/service was required
 - The time needed, and if over two hours, the name of the duty Social Worker who agreed the extended visit
 - The availability of relatives or friends
- 11.5 If such emergencies occur during office hours, the Authority must be contacted immediately to agree the extra time.
- 11.6 The Provider must ensure that all staff are aware of procedures for summoning help in an emergency, including when to contact Emergency Services and, in particular, what constitutes a medical emergency.

12. Service Delivery

- 12.1 Providers must be able to demonstrate that the needs of the Service User are the first concern and that they are at the centre of service planning and delivery. Service Users must have the right representation and opportunity to comment about the Service at any time.

- 12.2 Providers must provide the Service as specified in the Care Plan, in accordance with the values and principles set out in this specification. Where changing circumstances or lack of appropriate materials make it difficult to provide the specified services, this must be raised immediately with the Authority.
- 12.3 Translation of the specific requests quoted in the Care Plan into a written work programme for their staff to enable them to provide a quality service is imperative. Ensuring the correct level of service at the required time, day/s and duration is quoted. The care plan and relevant information must be distributed to the relevant staff and in particular the Service User prior to the start of the Service delivery.
- 12.4 Regular monitoring of the Providers effectiveness in meeting the requirements and level of service as indicated in the Care Plan must be undertaken.
- 12.5 The Provider must demonstrate they understand the nature and the purpose of the Service it is providing and ensure this has been understood by its employees.
- 12.6 Where a Service User is found or would need to be left in a vulnerable or unhealthy situation, and where the Providers staff cannot meet those needs, they must immediately seek help from management, or the Authority or other responsible officer of the Council as a matter of Emergency.
- 12.7 The Provider shall make every effort to maintain continuity of worker with each Service User and their Carer (if any), this will be monitored closely by the Authority to ensure consistency. This will:
- Minimise the number of people holding confidential information
 - Improve the safety factor
 - Reduce the number of additional staff in attendance particularly in relation to personal care and the dignity of the Service User
 - Minimise the risk of confusion and mistrust
- 12.8 The Provider must ensure that under this specification they match the skills of the staff providing the Service to each Service User, due to the sensitive nature of the Services being delivered. Where this is not the case, the Provider will be expected to provide a suitable replacement staff as requested by the Authority.
- 12.9 The Provider is accountable for managing and supervise their Staff, and in particular ensuring their Staff have access to management advice and support both in and out of normal office hours.
- 12.10 A robust quality assurance system and quality control system must be in place to maintain and measure performance of service. This will form part of a regular contract monitoring programme.
- 12.11 Private arrangements with a Service User for the provision of services without the knowledge and approval of the Council are strictly prohibited. Do not promote any other individual service interests or products, other than the Services provided by them on behalf of the Authority.
- 12.12 The Provider will ensure that the Service to individual Service Users is on a strict confidential basis, and in particular ensure that employees providing the Service do not discuss individual Service Users and Carers outside the confines of the

professional task. Including confidentiality of Service Users financial or personal details, even when this may conflict with relatives expressed wishes or instructions.

12.13 The Provider must notify the Authority by telephone immediately, followed by confirmation in writing if any of the following occurs:

- there is a sudden deterioration in the condition of the Service User that gives immediate cause for concern
- The Service User has an accident or becomes ill (this may necessitate calling out relevant emergency services)
- When/if the Service User is showing unusual behaviour that causes concern to the support worker
- If/when Service User discloses information that could trigger a safeguarding referral, or situation that may put the Service User or others at risk or potential risk

12.14 Where the Service User is admitted to hospital and the Carer is the first to discover this, the Authority must be informed immediately. The Provider will reimburse for the full aborted visit upon receipt of the following information:

- When it occurred
- Where the family contacted the Provider in the first instance
- Where it occurred and was discovered by the care worker on arrival to the Service User's home
- Current condition and location of the Service User

12.15 The Provider must notify the Authority in any of the following situations:

- Any occasion when the Provider is unable to gain access or is refused entry to the Service Users home, or where the Service User is refusing provision of service – unless flexibility in accordance with the Service Users wishes is specified in the Care Plan
- If a notifiable infectious disease occurs in the home of the Service User, or if the Providers staff comes into contact with any such disease
- Where the Provider is unable for any reason to cover the provision of the specified service.
- Where there is evidence of abuse, or abuse of a vulnerable person is suspected
- The death of a Service User is discovered by a care worker, or occurs whilst a care worker is in the home.
- If it is necessary to involve an Environmental Health Officer for any reason e.g. in the case of infestation of the property

12.16 In the event of an emergency situation the Provider shall contact 0208 496 3000 or email BrokerageTeam@walthamforest.gov.uk.

12.17 All staff must understand they are a guest in the Service User's home and refrain from smoking and drinking alcohol. No personnel, other than staff going in to perform the Service, including children and animals are introduced to, or taken into the home of the Service User. Staff must ensure are courteous and respectful at all times.

12.18 All staff must be provided with an appropriate form of identification and that the Service Users are provided with the name of a 'contact person' within the Provider's organisation. Staff must introduce themselves when entering the Service Users home. The identification should include:

- The name of the Providers company
 - The name of the employee
 - A photograph of the employee
 - An expiry date (being either the duration of this Contract or 12 months period with a plan to renewal all identifications)
- 12.19 Carers or staff must not act as either a witness to a will, or executor of a will of a Service User.
- 12.20 Providers must ensure that their staff are aware that they may not borrow money, possessions or property from the Service User, their Carer, family or friends. Staff must be made aware that they may not buy possessions from the Service User, their Carer, family or friends. When they are offered presents his should be reported to the employer and appropriate procedures put in place
- 12.21 All Carers and staff must have access to the necessary protective clothing to ensure adequate Health & Safety cover e.g. rubber gloves, disposable gloves, aprons etc.
- 12.22 The Provider must agree with staff a method of contact, so staff may notify the Provider of any changes that arise to the timing of their programme. Service Users must be informed in advance at least 30 minutes prior to the agreed time of arrival, of any changes to the usual delivery of care. This includes changes to the agreed time of arrival, e.g. if they are going to be over 30 minutes late for their next visit. Visits either to them or other Service Users on this day should not be curtailed in order to make up lost time.
- 12.23 Carers and staff must not make or receive personal telephone calls on the Service User's telephone. Mobile phones must not be used to receive or send personal text messages or calls whilst delivering a service.
- 12.24 The Provider must ensure staff do not retain keys, benefit books, loyalty cards, credit cards, cash or cheque books beyond the duration of the visit. All financial transactions must be adequately recorded and signed for by both Service User and Provider. Where a Service User is unable to sign this will be specified in the Care Plan and will be acceptable. Receipts must be provided for shopping, pension collection and any payment of household bills and may be audited by the Authority at any point.
- 12.25 The Service Users allocated time does not include travel time of the Carer. It is therefore the Providers responsibility to plan staff routes appropriately to avoid unnecessary travel.
- 12.26 The Provider must ensure that Carers make best endeavours to locate a Service User when they are found to be absent without notifying the Provider and resulting in a frustrated visit. The member of staff must inform their line manager or management of the situation immediately. The Authority must be notified where it is a common occurrence.
- 12.27 Where the Provider is unable to sustain a good working relationship with a Service User or guardian/next of kin they must provide the Authority with 28 days written notice unless otherwise agreed with the Authority, advising they wish to terminate the

agreement with the individual. The Provider must be able to prove they have followed a clear and robust procedure and made all efforts to salvage the relationship.

13. Medication

- 13.1 The Council believes that Service Users should be given every opportunity to manage and administer their own medication wherever possible; carers should support Service Users to do this.
- 13.2 Service Users shall retain responsibility for taking their own medication unless specified otherwise in the Care Plan. The Provider shall ensure that all members of staff undertaking such duties are suitably trained.
- 13.3 Medications should be managed in line with the LBWF Medication Policy v10 – June 2013. The Authority is currently reviewing this policy and it should be used as a guide only. An updated version will be made available before contract implementation detailing the level of care required.

14. Availability

- 14.1 The Services described in this specification will be available as required, 24 hours per day, 365 days per year.
- 14.2 The Provider will ensure that a contact point is available at all times between 9.00 am and 5.00 pm Monday to Friday. An out-of-hours contact must be available at all other times when staff are commissioned to work. This telephone number will be made available to the Service User in writing, and should be operational at all times, i.e. not an answer phone.

15. Complaints Procedure

- 15.1 The Provider shall have in place a complaints policy and procedure, which sets out clear instructions for dealing with complaints, and which reflects the Authority's Complaints Procedure.
- 15.2 Where the complaint has been received by the Authority, the Authority's complaints procedure shall be instigated where necessary.
- 15.3 Any person who qualifies under the relevant complaints legislation to make a complaint, shall not be denied the right to make a complaint through either procedure.
- 15.4 The Provider shall maintain a written record of all complaints received, including numbers and types received and their outcomes, in a format agreed with the Authority. The level and outcome of each complaint shall be monitored regularly by the Authority.
- 15.5 The record of complaints received must be available to the Authority on request. The record shall be used by the Authority when monitoring service quality and Contract compliance in tandem with other sources of feedback.
- 15.6 Where complaints are received by the Authority, and the Authority requires information from the Provider in order to address the complaint, the Provider shall

respond with all information required within a maximum of five (5) working days of the request.

15.7 The Authority must be made immediately aware of any serious complaint.

16. Safeguarding

16.1 Providers must have systems and procedures in place to safeguard adults, children and vulnerable groups from abuse, exploitation and neglect in line with the Authority's multi-agency procedures.

16.2 The Provider's measures to safeguard Service Users shall include, but not be limited to:

- Robust recruitment procedures including references of staff
- Checks with DBS, registration with regulatory bodies, for example HCPC
- Checks of applicants' employment status
- Safeguarding children and adults procedures compatible with the Authority's multi-agency procedures
- Clear statement of rights and zero tolerance of abuse
- Clear and well publicised whistle blowing policy and procedure
- Code of Conduct for staff
- Procedures that clearly state the response to any act of abuse, exploitation or neglect
- Protocol and systems for referral of staff/ volunteers to regulatory bodies when there is evidence of misconduct that has harmed, or is likely to harm, Service Users
- Robust procedures and guidelines for the management of activities that can present risks of abuse
- On-going Safeguarding Adults and Children training that promote awareness of abuse and how to respond and report concerns
- Training for staff that supports good practice in all areas described under policies and procedures
- Training for staff with responsibility to investigate complaints and safeguarding concerns
- Clear and accessible information describing the service standards, how to complain and how to report abuse
- Ensuring that leaflets about abuse and how to report them are clearly displayed

16.3 Safeguarding Children

16.3.1 The Provider shall:

- Have a Designated Safeguarding Children Advisor. The Advisor shall understand and received training on the London Safeguarding Children Board Child Protection Procedure: Edition 5 and shall be the single point of contact between the Provider and Waltham Forest when any actual/suspected abuse is reported/investigated (http://www.londoncp.co.uk/chapters/A_contents.html)
- Ensure that the Designated Safeguarding Children Advisor has full knowledge of Waltham Forest's referral pathways

- Ensure that the Designated Safeguarding Children Advisor is covered when they are away on annual leave or sick
- Ensure that the Designated Safeguarding Children Advisor has regular and recorded supervision by an HCPC registered social worker
- Comply with the London Child Protection Procedure: Edition 5, Working Together to Safeguard Children March 2015 and Waltham Forest's Safeguarding Children's Board Policies & Procedures (www.walthamforest.gov.uk/lscb)
- At the commencement of the contract the Provider will provide the Authorised Officer in Waltham Forest with a copy of their Child Protection Procedures and ensure that the Authorised Officer is advised of any amendments or revisions
- Ensure that all care workers receive the appropriate training in relation to child protection, referral pathways and the Providers Child Protection and Whistleblowing procedures
- Ensure that all care workers are made aware that there can be no justification for failing to share information that will allow action to be taken to protect children/young people
- To ensure that all cases of abuse or neglect (actual or suspected) are reported to the Waltham Forest Child Protection Team via the Multi Agency safeguarding Hub (MASH) - **020 8496 2310; cscreferrals@walthamforest.gov.uk**
- Record, report and evidence to the Authorised Officer the volume of child protection incidents in relation to the service (including themes identified and action taken).
- Ensure that all staff are trained in Child Protection (Level 1 & 2), Child Sexual Exploitation (CSE) and Female Genital Mutilation (FGM)

16.3.2 The Provider shall promptly inform the Authorised Officer (who shall in turn inform the Authority's Local Authority Designated Officer - LADO) of any cases of abuse or neglect (actual or suspected) in relation to its staff and / or the service.

16.3.3 All safeguarding referrals received by the Authority about the Provider, its staff and / or the service shall be logged and investigated under the Authority's Child Protection Procedure. To assist the investigation, the Provider shall provide the Authorised Officer with all required information within the requested timescales.

16.3.4 If a Service User is placed on the local Child Protection Register, the Provider shall not for reasons of confidentiality be told of the Service User's registration unless the Authorised Officer believes disclosure of such information to be in the best interests of the Service User and / or other children / young people in the Service User's home. However, if the Authorised Officer tells the Provider to report any particular type of concern, such as evidence of neglect, to the Authorised Officer, the Provider shall monitor the Service User and report any concern to the Authorised Officer.

16.3.5 The Provider and its staff shall attend any child care proceedings such as Court Proceedings, and Child Protection related meeting such as Case Conferences, if required by the Authority.

16.3.6 Providers must ensure in addition to the above, they read Schedule 4 Part 2 – Children's Safeguarding.

16.4 Safeguarding Adults

16.4.1 The Provider shall:

- Have a Designated Adults Safeguarding Manager as defined within The Care Act, who will be central for safeguarding issues for the Provider. The individual shall be the single point of contact between the Provider and Waltham Forest when any actual/suspected safeguarding is reported and/or investigated.
- Comply with the Authorities policy and procedures (<http://www.walthamforest.gov.uk/Pages/Services/asc-conc-rep.aspx>)
- Ensure that the Designated Adults Safeguarding Manager has full knowledge of Waltham Forest's referral pathways
- Ensure that the Designated Adults Safeguarding Manager is covered when they are away on annual leave or sick
- Ensure that the Designated Adults Safeguarding Manager has regular and recorded supervision
- Ensure that all Carers receive the appropriate training in relation to safeguarding adults
- Ensure that all Carers are made aware that there can be no justification for failing to share information that will allow action to be taken to protect adults
- To ensure that all cases of abuse or neglect (actual or suspected) are reported to the Waltham Forest Safeguarding Adults Manager – John Binding, john.binding@walthamforest.gov.uk, 0208 496 3497
- Record, report and evidence to the Authorised Officer the volume of adult safeguarding incidents in relation to the service (including themes identified and action taken)

16.4.2 The Provider shall promptly inform the Authorities Safeguarding Adults Manager of all safeguarding issues in order to devise a proportionate approach to the concerns, as defined within The Care Act.

16.4.3 All safeguarding referrals received by the Authority about the Provider, its staff and / or the service shall be logged and investigated under the Authority's Procedure. To assist the investigation, the Provider shall provide the Authority with all required information within the requested timescales.

16.4.4 In cases where a member of staff is subject to safeguarding procedures and the allegations of harm are substantiated, the Provider must progress this matter as defined within the safeguarding procedures, i.e. completion of disciplinary process and subsequent referral to the DBS. Should the member of staff resign prior to the disciplinary process commencing or concluding, then this should be completed in their absence and the recommended referral to the DBS completed, with an acknowledgement being sent to the Safeguarding Adults Manager who chaired the adult safeguarding proceedings.

16.4.5 The Provider and its staff shall attend any safeguarding proceedings such as Court Proceedings, and related meeting such as Case Conferences, if required by the Authority.

17. Retention and Destruction of Documentation

17.1 The Provider shall be responsible for the retention of documents relating to its Service Users. This includes documentation held in the Provider's office and in the Service User's home.

- 17.2 The Provider shall retain all Service User records for seven (7) years from the date of the last file entry (usually at closure). All records shall be made available to the Authority on request.

18. Business Contingency

- 18.1 Providers must have an up to date business contingency plan that shall demonstrate how they would continue to provide, prioritise and plan services in the case of events that have a major impact on access or staff availability.
- 18.2 These shall include extreme weather, major disasters, severe snow/ weather, unprecedented levels of staff absence/sickness, loss of ICT or telephone lines or any other exceptional circumstances.
- 18.3 Providers may be asked to take part in Authority emergency planning and provision of services in the event of an emergency in the borough.

19. Refusal of Service by Service User

- 19.1 If a Service User refuses a planned services the Carer shall:
- 1) Sensitively ask reasons for refusal if appropriate to do so
 - 2) Document the refusal in the File
 - 3) Report the refusal to the Providers office who will notify the Authority
- 19.2 The Carer shall attend subsequent scheduled appointments until instructed otherwise by the Authority.
- 19.3 On receipt of information from the Carer the Provider shall:
- 1) Ensure proof of attendance has been obtained, where use of the Service User's telephone or alternative attendance recording device has been refused
 - 2) Obtain written account of events from the Carer and forward to the Authority within two (2) working days
 - 3) Follow the Authorities instructions regarding return visits
 - 4) Log each visit as a 'Frustrated Visit' claiming payment for each occurrence
 - 5) Request a review of the services if appropriate particularly in circumstances where a trend of refusing a visit has been identified
 - 6) Where the Service User has been admitted to Hospital, the Provider must inform the Brokerage team who will suspend the care package until the Service User is discharged

19.4 The Authority will:

- 1) Investigate all refusals as appropriate;
- 2) Prepare reports and forward to the Provider for inclusion
- 3) Organise a review of services if appropriate.

19.5 However, where the Care Plan clearly states a preference of staff gender or language required etc., and this is the reason for refusal of Service by a Service User, then the Authority will not be liable for any reimbursement.

20. Staffing

20.1 The Provider must ensure that all employment practices conform to the most recent Law and follow good employment practices at all times. Staff must be recruited and selected in accordance with procedures in line with the Authority's Equalities Policy.

20.2 As a minimum, the Provider shall ensure that Carers acquire the knowledge and skills commensurate with the Qualification and Credit Framework (QCF) Level 2.

20.3 The Provider shall ensure at all times:

- There are sufficient numbers of staff appropriate to meet individual Service Users needs and align to the Care Plan; and Staff numbers are compliant with National Minimum Standards. These should be taken as the minimum number of staff required to efficiently operate the service
- All Staff have received comprehensive induction to the home
- All Staff have received on-going mandatory training
- All Staff receive appropriate levels of supervision and their performance evaluated by regular appraisals
- Ensure clinical staff hold recognised qualifications as specified by the registered bodies and are professionally updated in line with the requirements of their registering body
- Ensure the registration status of staff required to hold a registration certificate (e.g. registered nurse or therapist) is current and appropriate for the service provided, and that the staff abide by their code of conduct at all times. Unregistered staff should abide by the code of conduct of the General Social Care Council
- Ensure all non-registered staff practice under the supervision of, and have access to, a registered nurse on a 24 hour basis
- Operate a flexible system whereby extra staff can be deployed at times of increased need and cover can swiftly be arranged for staff that are absent
- Optimise the continuity of staff to ensure Service Users receive care from a consistent member of staff and minimise/reduce the use of temporary staff. Ensuring Carers are able to understand the Service User and build trust and rapport
- Identify, through an Assessment, the need to make required changes to staffing levels to meet the Service User's assessed need
- Systematically assess and monitor workloads against the skills mix/grading of staff to ensure Service User's needs are met
- Accurate records of staff attendance and duties are maintained
- Ensure staff are suitably reimbursed for incurred expenses

- Ensure staff are provided with suitable support networks, such as regular team meetings

21. Staff Files and Training

21.1 The Provider must maintain and keep information of individual staff, this includes permanent or casual. Records should include as a minimum:

- Personal details
- Appropriate registration details
- Disclosure and Barring Certificate and date of expiry
- Recruitment interview and induction details
- Training details with frequency
- Supervision and appraisal details
- Areas for further development

21.2 All staff must be suitably trained for each specialism covered by the Contract. On-going training must be provided as required by the Care Quality Commission and must include as a minimum:

- Induction and on-going training including a Code of Conduct
- Induction to the policies and practices operated by the Provider
- Safe moving and handling techniques including Risk Assessment
- Health and Safety Regulations including Risk Assessment and COSHH
- Assisting with all aspects of personal home support services
- Management and administration of medication and record keeping
- Incidents procedure such as violence, sexual and racial harassment and challenging behaviour
- Complaints and grievance procedures
- Values and approach
- Anti-discriminatory practice
- Safeguarding procedure
- Whistleblowing procedure
- Confidentiality
- Data Protection Act
- Emergency situation procedure
- Security including identity cards, passwords and key holding
- Personal Safety
- Service User Choice, including positive risk taking

21.3 As well as the above the Provider must ensure that all staff are provided with on-going training relating to the different specialisms such as:

- A knowledge and understanding of the different specialisms ensuring needs of the Service Users are met and are able to communicate effectively
- Awareness of multicultural diversity
- Child Protection Procedures
- Management of continence
- Bereavement and Loss
- Precautions to be observed and the use of protective clothing in dealing with body fluids and in relation to hepatitis B and HIV/AIDS

- The process of ageing
- Depression in older people
- Dementia including Alzheimer's Disease, vascular dementia, Pick's disease (frontotemporal), Dementia with Lewy bodies, decline in memory, reasoning or communication and changes in behaviour
- Promotion of Disabled Person's Independence
- Transmittable diseases
- Challenging Behaviour
- Autism awareness, pica and other disorders that affect behaviour
- Epilepsy awareness and Buccal Midazolam (Epi Pen use)
- Communication needs of Service Users with non-verbal communication;
- Sensory loss
- Downs Syndrome
- Mental health including schizophrenia, bipolar affective disorder, stress, anxiety, phobias, depression and personality disorders
- Disabilities Awareness
- Diabetes, epilepsy and other specific health needs
- Personalisation including personalised budgets
- Social inclusion
- Advocacy
- Voluntary organisations

21.4 Details of all training must be recorded on the Staff's personal file and updated at least annually. This record must be available for inspection by the Authority.

22. Aggressive and Violent Behaviour

22.1 The Provider must have a clear written policy on the management of aggressive and violent behaviour that is available to all staff and the Authority when requested.

22.2 Staff must be trained to understand why people sometimes react violently, the measures which can be taken to prevent this, how to deal with violent behaviour if it occurs and reporting procedures.

22.3 Where in the opinion of the Assessment Team and recorded on the Care Plan, there is a clear risk of violence from a Service User, the Provider must ensure that Staff are accompanied throughout the service delivery by another member of staff.

23. Key Holding

23.1 Access to the Service Users property will be identified as part of the assessment process and the Assessment Team will advise the Provider of the access arrangements via the Care Plan. Where a Service User is not able to grant personal access to their home keys will be kept in a key safe at the property.

23.2 Services for children and young people (under the age of 18), the Carer will not have access to keys however the Parent or Guardian must be on the premises at all times.

23.3 The Provider's Support Worker shall carry a photographic Identification Badge at all times and show this on arrival at a Service User's home.

- 23.4 The Provider and Carer shall allow the Service User the opportunity to validate the identity of the visitor with the Provider and/or Authority.
- 23.5 Support Workers shall access a Service User's home in a courteous and polite manner, addressing the Service User by their preferred name.
- 23.6 The Provider shall replace any lost, mislaid or damaged keys where a Key safe is their responsibility and pay for any damage resulting upon having to gain access without the keys.
- 23.7 Where a Key safe is used the Provider shall ensure that the access number cannot be traced other than by relevant employees and the Authority.
- 23.8 The Provider shall ensure that when a Carer ceases to be employed any Key safe numbers known to him/her are changed immediately and the Authority is notified.
- 23.9 The Provider or Carer shall not access the Service User's home if the Service User is not present without the prior agreement of the Authority, who may elect to accompany the visitor. Where the Authority grants permission, the Provider or Carer shall be accompanied by a person nominated by the Service User or their representative as instructed by the Authority.
- 23.10 The Carer must ensure that the Key safe is secure when entering and leaving the Service Users home.

24. Advocacy

- 24.1 The Provider will take a positive and co-operative approach and organise advocates to come in when this is desirable for the Service User.
- 24.2 The Provider should have awareness and understanding of the procedure for undertaking Mental Capacity assessments Levels 1 and 2, and also situations where Independent Mental Capacity Advocacy (IMCA) are appropriate and an understanding of how to access the service.
- 24.3 The Provider should understand and be able to apply the regulations in relation to Deprivation of Liberty as covered by the 2005 Mental Capacity Act.

25. Call Monitoring System

- 25.1 The Authority will use a Call Monitoring System called "CM2000 – Care Management". All Providers who enrol on the DPS will be required to fully implement, operate and submit information as requested via this system.
- 25.2 The Authority will review its system requirements again as part of the implementation to an outcomes based commissioning model.
- 25.3 The Authority expects the Provider to meet any costs associated with implementing and obtaining licences for either system.

26. Information Governance

- 26.1 The Provider must work in partnership with the Authority to produced and agreed Service Specific Protocol (SSP) Tier 2 on agreement of any data sets to be shared; any information shared between the LA and the Provider must not be shared with any other parties.
- 26.2 Data related to LBWF residents which is captured and recorded by the Provider, will remain the property of LBWF as the Data owners.

27. Contract Management

- 27.1 The purpose of contract management adopts a collaborative approach to working in partnership with service Providers. The Authorities aim is to deliver the best possible service to residents and Service Users, ensuring that results are outcome-focused and deliver value for money. The Contract Management Framework (CMF) sets out the principles that guide our approach to contract management from both performance and quality perspectives. It ensures a consistent, structured and proactive approach to managing contracts.
- 27.2 Each contract will have a defined set of Key Performance Indicators (KPIs) that will be generated from the Service Specification for the contract. The KPIs will include measures for both the performance and quality of a contract. The KPIs for performance will be combined to define a Performance Rating metric for the contract; similarly the quality KPIs will be combined to define Quality Rating for the contract. The combination of the Performance and Quality Ratings will set a Contract Rating which can be used the effectively assess how well a contract is being delivered.
- 27.3 A four-tiered benchmarking system will be used to assess performance against the Performance, Quality and Contract ratings for the contract. The system is known as the RAGG system and has four tiers which are Red, Amber, Green and Gold. Each of these measure the success of contract delivery in percentage terms.
- 27.4 The CMF ensures that the reporting templates used by Providers are informed by the Service Specification and the KPIs for the contract. Providers will be expected to report to the Authority on a quarterly basis. Contract Monitoring will vary by contract type but will be governed by two principals:
- i) Monitoring will be outcome-led and quality focused
 - ii) The frequency of monitoring will be dependent on the RAGG rating of the contract

PERSONAL HOME SUPPORT SPECIALISMS

In addition to all the above, care plans will be commissioned through the DPS under the following specialisms:

1. Carers Respite

- 1.1 A Carer will provide care or assistance to someone who has a physical disability, sensory impairment, learning difficulty, mental health support needs, problems with drug or alcohol misuse, long term or chronic illness, physically or is mentally frail.
- 1.2 This service will provide home or community based respite care for Carers who look after a person with disabilities, to alleviate the possibility of a breakdown in the current household arrangements, or alleviate stress under which the families find themselves.
- 1.3 The Provider shall provide support to Carers wherever it is felt to be appropriate to allow the Carer to have a break from caring, but also to ensure the Service User is provided with activities that are appropriate to their needs and give added value to their life.
- 1.4 The service shall help Children, Adults and their Carers maintain their health and wellbeing both mental and physical.
- 1.5 The service shall be based in the home or community, and shall be provided by trained members of staff, depending on the service being provided and the needs of the individual.
- 1.6 The service shall have a rehabilitation focus in order to prolong the ability of the Service User to remain in their home for as long as possible with the assistance of the Carer.
- 1.7 The service shall signpost Carers to other services that may assist them in the future.
- 1.8 At all times, the Provider shall ensure that Service Users are assisted in a manner that avoids and/or minimises distress or discomfort, whilst having regard to their ability, understanding, health, safety, independence and dignity.
- 1.9 This service will be available to both Children and Adults, therefore Providers will have the option to select either or both of the following:
 - **Children's Carers Respite 0-18**
 - **Adult's Carers Respite 18+**

2. Children's Personal Home Support 0-18

- 2.1 This service is available to Children and young people under the age of 18 who have been assessed by the Authority or NHS as being eligible to receive a personal home support service.
- 2.2 The Service Users who require this service have a variety of needs such as Cerebral Palsy, Quadriplegia, global developmental delay, autism to name a few. The purpose

of the service is to assist the parent/guardian with a range of personal/health care and support services.

- 2.3 All referrals for this service will be agreed by the Council, and will be accompanied by a care plan stating the service/tasks that are required of the Provider and the agreed dates and times when the service is to be provided. The care plan will have been agreed in advance with the Service User (where possible) and their parents/guardian.
- 2.4 The service will be delivered in the Service Users own home with the presence of the Parent/Guardian at all times.
- 2.5 The Provider will carry out the tasks specified in the care plan and will not make any changes to the care plan without agreement from the Council.
- 2.6 If the child/young person (where possible) or their parents/guardians request any changes to the care plan the Provider will inform the relevant party within the Council. If the relevant changes are agreed the Council will inform the Provider via the Dynamic Purchasing System.
- 2.7 The support service will be split into two elements as follows:

a. Children's On-going Personal Care Support 0-18

This service will be an on-going support service and the details of the time and types of support to be provided will be laid out in the child/young person's Care Plan. This type of service will last a number of years.

b. Children's Early Intervention/Short-term Care and Support 0-18

This will be a short term service that is designed to support a child/young person should there be an emergency or change of circumstances that affect their quality of life. This service will be delivered for a period that will be defined by the Council and advised in the Care Plan.

- 2.8 The support service in both elements will be specifically set to provide personal care support to the child/young person **and will not include** any domestic tasks that the parents would be expected to deliver themselves. For example, the Carer will not be authorised to assist with the following:
- Cleaning of baths, sinks, work surfaces, toilets and ovens
 - Dusting, vacuum cleaning, washing floors, washing crockery and cutlery, polishing large items of furniture and ironing
 - Changing bed linen, as required
 - Laundering sheets, towels, personal clothing (including nappies)
 - Preparing and cooking food
 - Shopping
 - Assisting with the care of pets
 - Handling any money
- 2.9 Personal care tasks are those which are concerned with assisting the child/young person getting ready for the day ahead or preparing for bed in the evening may include the following:

- Assisting the Child/young person with dressing/undressing; getting up from bed, and returning to bed; using a mechanical hoist or assisted movement techniques where the Child/young person is unable to transfer from or to bed, chair, toilet, commode or other without assistance
 - Assisting with feeding; (especially PEG feeding)
 - Assisting with bathing and washing, shaving, hair care, skin care, denture and mouth care, application of prescribed creams, fingernail care and foot care (but not including the cutting of toe nails)
 - Assisting the Child/young person with dressing and/or toileting - toileting may also include emptying and changing catheter and colostomy bags. To assist the Child/young person with managing continence, including changing continence pads and soiled bed linen as required. To assist with menstrual care where required
- 2.10 The availability of equipment may vary. If the Service User does not supply equipment, or the Provider risk assessment indicates that a Service User may benefit from equipment in their home, the Provider shall immediately inform the Authority of this situation to facilitate appropriate action being taken.
- 2.11 The service Provider will be aware that the inclusion of the Personal Support service is a key aspect of the Child/young person's development, in particular those over 14 years of age, as they approach transition to adulthood and aim to achieve maximum independence as Adults.
- 2.12 The Carer will not have keys to the child/young person's home and the parents must be present in the house when the service is being delivered at all times.
- 2.13 This is not a Short Break service. The Provider will not take the child/young person out on recreational activities, however, the Carer will be expected to engage with the child/young person and will be trained in appropriate communication techniques (e.g. Makaton, PECS, etc.) and will speak to the child/young person in a clear and age/ability appropriate manner.
- 2.14 All Carers must be trained in all elements required to support the child/young person especially PEG feeding and epilepsy as a minimum.

3. Adults' Personal Home Support 18+

- 3.1 Adults are individuals over the age of 18 who have been assessed by the Authority or NHS as being eligible to receive a personal home support service.
- 3.2 These Service Users have a range of needs, dependant on the level of either their vulnerability or disability.
- 3.3 The purpose of personal home support is to enable Service Users to remain in their own homes, living as independently as possible. Service Users should be able to remain in their own home for as long as possible and to achieve and maintain their potential in relation to physical, intellectual, emotional and social capacity.
- 3.4 The needs of Service Users are sometimes simple in terms of needing assistance with daily living activities. For others, their needs may be very much more complex and requiring a range of personal/health care and support services.

- 3.5 This service should contribute to outcomes such as exercising Choice and Control, improved Health and Emotional Wellbeing and improved quality of life.
- 3.6 The following list of personal care assistance is not exhaustive, but is provided as an indication of the type of service the Provider may be required to provide:
- Assisting the Service User with dressing/undressing; getting up from bed, and returning to bed; using a mechanical hoist or assisted movement techniques, where the Service User is unable to transfer from or to bed, chair, toilet, commode or other, without assistance
 - Assisting with feeding
 - Assisting with bathing and washing, shaving, hair care, skin care, denture and mouth care, application of prescribed creams, fingernail care and foot care (but not including the cutting of toe nails)
 - Assisting the Service User with dressing and/or toileting - toileting may also include emptying and changing catheter and colostomy bags. To assist the Service User with managing continence, including changing continence pads and soiled bed linen as required. To assist with menstrual care where required
 - The safe disposal of waste
 - Reporting any changes in the Service User's urinary and faecal continence
 - Reporting on any risks aligned to potential or actual falls (i.e. dehydration, urinary tract infections and/or potential hazards in the home) in line with the LBWF Adult Social Care Falls Prevention Strategy
 - Obtaining prescriptions
 - Checking that items such as hearing aids, emergency alarms, TV controllers, telephones, walking aids and doorbells are working correctly and ensuring these items are accessible
 - To be aware of any nutritional or dietary requirements in line with specified guidelines, working with other professionals in the maintenance of diets
 - Preparing meals, light snacks and drinks as specified, and assisting the Service User to consume where necessary
 - Assisting and encouraging the Service User to eat and drink
 - Ensuring the Service User's home is safe, comfortable and at appropriate temperatures, as agreed with the Service User
 - Escorting a Service User to shops, hospital appointments or recreational activity
 - To ensure sufficient fluids are available and accessible and monitor fluid intake
- 3.7 Assistance with cleaning shall cover a wide range of activities within the home environment, some of which will need to be performed regularly in order to maintain basic hygiene, whilst others shall be performed only occasionally. Service Users standards of cleanliness may vary and it is important that the Service User's choice is respected and adhered to within the parameters of the Care Plan.
- 3.8 The availability of equipment may vary. If the Service User does not supply equipment, or the Provider risk assessment indicates that a Service User may benefit from equipment in their home, the Provider shall immediately inform the Authority of this situation to facilitate appropriate action being taken.
- 3.9 Service Users are to be encouraged to undertake their own cleaning functions where possible in order to regain a level of independence.

- 3.10 The Provider shall ensure that Carers shall only clean rooms used by the Service User. Where multi-occupancy exists, Carers shall only clean to meet the needs of the Service User.
- 3.11 The following list of assistance tasks is neither exclusive nor exhaustive but is rather an indication of the types of service the Provider shall be required to provide. The Provider shall ensure that Service Users are encouraged and assisted wherever possible to:
- Clean the bath, basin and toilet. Where there are raised toilet seats or bath aids these shall also be cleaned. Commodes etc. shall also be cleaned, including the undersides. Bathroom and toilet floors shall be washed taking care that they are not left wet, as this can be dangerous to the Service User
 - Clean kitchen floors on a regular basis taking into consideration the above and paying particular attention to the cooker and fridge areas. Compliance will be monitored by the Quality Assurance Team and others
 - Clean in and around fridge area and making an assessment that the quantity and quality of food available to the Service User appears appropriate to include the checking of food “use-by” and “best-before” dates. In agreement with the Service User out of date food is to be disposed of. Where the Service User disagrees with disposal the Authorised Officer) is to be informed
 - Wash down work surfaces and sinks after use
 - Empty rubbish bins and maintain at hygienic standard
 - Vacuum floors where able. If no vacuum available, then a broom shall be used
 - Clean pet bowls, litter trays and cages
 - Wash cutlery and crockery
 - Clean equipment including walking frames and mattress elevators
 - All cleaning equipment shall be put away after use in a place agreed by the Service User. Cloths and mops shall be rinsed and left to dry to avoid unpleasant smells
 - Where the Service User has limited sight it is imperative that furniture and equipment is put back in its original place
- 3.12 Carers shall assist Service Users where necessary with personal laundry however shall normally be expected to only undertake laundry to meet the needs of the Service User, unless otherwise instructed. Where multi-occupancy exists, Carers shall only clean according to the stated Care Plan to meet the needs of the Service User only.
- 3.13 The following list of assistance tasks is neither exhaustive nor exclusive, but is rather an indication of the types of service the Provider shall be required to provide:
- Preparing laundry for continence collection by the Authority’s laundry Provider and with sorting the returned clean laundry
 - Washing by hand and hanging up to dry, or using a washing machine or a launderette as specified in the Support Care Plan
 - Recording any monies spent and giving the Service User a receipt, where possible
 - Ensuring the laundry where required is carried out in accordance with the Support Care Plan

- Ensuring that no washing is left in the Service User's washing machine for more than 24 hours
- 3.14 Personal Care may include a number of tasks, predominantly those associated with assisting the Service User with carrying out day to day activities such as making telephone calls, reading to, or writing on behalf of the Service User, walking and exercising pets and encouraging the Service User to maintain his or her network of friends and relatives.
- 3.15 Providers will need to provide support to the healthcare of the Service User under the direction of their General Practitioner, District Nurse, Community Matron or NHS Waltham Forest.

4. Adults' Learning Disability 18+

- 4.1 This service is for Service Users within the Borough who have been assessed with organic and/or functional learning disabilities who are not permanently a resident in a Residential or Nursing Home or are socially excluded.
- 4.2 The aim of the service is to provide people with learning disabilities a flexible service providing practical help, personal care and emotional support.
- 4.3 Carers will provide support, as outlined in the Care Plan, to enable Service Users to retain and/or regain maximum possible skills and confidence needed to care for themselves in their own home.
- 4.4 Working alongside people with learning disabilities will enable them to gain more independent skills and to play an active part in managing their home life and to be part of the local community.
- 4.5 In the provision of the Service, the Provider shall demonstrate an awareness of, and comply with, the principles such as: community presence, choice, competence, community participation and respect.
- 4.6 The service shall develop a lifestyle that is determined by the individual's capability. Service Users shall be supported to develop/maintain their daily living skills. This shall involve prompting, encouraging, developing and assisting Service Users in areas including:
- Personal care, support with household tasks, food preparation
 - Managing income, living expenses (food, bills, etc.) and personal priorities (clothing, holidays, etc.). Facilitating Service Users to maintain their own bank account and supporting Service Users to handle their own money
 - Developing travel skills and promoting independence within a justified and assessed framework of risk
 - Developing social skills and managing behaviour that challenges
 - Supporting Service Users' method of communication and understanding, e.g. communication in the Service User's preferred language
 - Supporting Service Users to maintain their tenancy and remain within their own homes

- 4.7 In addition to the above, personal home support services may be required with regards to the provision of personal care, practical support which shall include specialist knowledge and skills in working supportively with Service Users with learning disabilities.
- 4.8 Choice and promotion of independence will allow Service Users to exercise choice in all aspects of their daily lives including, social and leisure activities in the community, ensuring equal access to shared facilities and universal services and choice in communal matters. Encouraging Service Users to access independent advocacy, and facilitate equality of representation through regular Service Users' meetings. Assisting Service Users to gain employment through support with organisational skills.
- 4.9 A healthy lifestyle should be achieved through a balanced diet (e.g. nourishing, appetising and of an adequate portions), exercise, guidance in sexual health, regular medical and dental checks and access to other health services, proper management of medication, observation of clinical guidelines; and promotion of self-awareness of medical conditions and the relevance of medication and adherence to clinical guidance.
- 4.10 Support for relationships should be achieved by encouraging and assisting the development/maintenance of friendships and relationships that are independent of the home and formal activity settings, helping to build support networks for the individual so that their reliance on funded or formal services can decrease, supporting and encouraging the maintenance of family relationships; and facilitating knowledge and understanding about sexual health, orientation, and relationships.
- 4.11 Promotion of social inclusion should be achieved through, support to participate in non-segregated activities of leisure, social, education, and of a health nature, support to participate in community affairs and to ensure inclusion on the Electoral Register, help to maintain a secure place to live; and, encourage engagement, where appropriate, in ordinary life experiences, such as employment, community/voluntary service, training and education, and the assumption of roles that are valued.

5. Adults' Mental Health 18+

- 5.1 This service is for Service Users within the Borough who have been assessed with organic and/or functional mental health problems who are: not permanently a resident in a Residential or Nursing Home or who are socially excluded.
- 5.2 Service Users defined with Mental Health problem have met the Authority's eligibility criteria for such services, following social care assessment by the Adult Assessment and Care Management Teams or by Assessment via the Community Mental Health Team (CMHT).
- 5.3 The service must provide people with mental health problems a flexible service providing practical help, personal care and emotional support, so as to promote independent living, re-enablement and reduce the risks associated with living in their own homes.
- 5.4 Maximum independence for Service Users will focus on care and support that enables where possible, rehabilitation, recuperation/recovery and social inclusion.

- 5.5 Carers will provide support, as outlined in the Care plan, to enable Service Users to retain and/or regain their optimum levels of skills and confidence needed to care for themselves in their own home.
- 5.6 The Service shall focus on recovery and social inclusion and have work with Service Users who may be reluctant to engage.
- 5.7 The Provider shall observe values and principles such as promoting independence, recovery, sense of belonging, self-worth, value and social inclusion, ;
- 5.8 In addition to the above, personal home support services may be required with regards to the provision of personal care, practical support which shall include specialist knowledge and skills in working supportively with Service Users with mental health problems.
- 5.9 These services include, but are not limited to:
- Encouragement to eat and drink
 - Social and emotional care
 - Emotional support to minimise periods of distress, challenging behaviour or low mood and promote well-being
 - Accessing and accompanying to specialist drug and counselling, recreational, educational facilities
 - Identify employment opportunities
 - Accessing welfare benefits & forms filling/correspondence
 - Ensuring rent and other bills/debts are paid so tenancy is maintained
 - Arranging and attending medical appointments
 - Monitoring and supervising compliance to medication
 - Organise social events
 - Befriending to reduce social isolation
 - Monitoring general well-being and alerting the Authority to any risks/threats or significant changes in mood.
- 5.10 The Service shall provide input in a way that works with, rather than for, the Service User, so as to promote the service philosophy of empowerment and the maintenance/development of self-help skills.
- 5.11 The Provider shall work with the Service User, and others involved in their care and support, to minimise unacceptable risks and agree how risk may be monitored and reviewed.
- 5.12 Support Workers shall be trained by the Provider to report back relevant changes in the Service User's presentation. This may include unusual changes in appearance, behaviour and routine. The Provider is required to ensure that the Service demonstrates appropriate understanding of disclosure issues versus rights to privacy.

6. Adults' Physical Sensory Impairment (PSI) 18+

- 6.1 With the right information, advice, practical and emotional support people with sensory impairments can lead fulfilling lives but if support is not available at the right time or in the right format people can become isolated, and lose skills and

independence. We need to ensure that everyone can access the information, advice and/ or support that they require and that this promotes resilience and independence.

- 6.2 Providers must ensure that there is universal access to information, advice and guidance around identifying hearing and visual impairments which includes where and how to get appropriate testing and support. In addition good signposting to health services providing sight and hearing tests is vital.
- 6.3 Information about these sources of support must be kept current and consistent with signposts to this provision at key sites such as GP surgeries, hospital clinics and generally within the wider community.
- 6.4 The Provider must refer people to health for sight or hearing tests if they have no formal diagnosis so that they can access medical treatment, support and equipment quickly.
- 6.5 Links must be made with other initiatives across health and social care, such as with 'falls prevention' services, diabetes clinics and stroke clinics, to maximise the preventative nature of the intervention; with close links between/understanding of health provision, social care provision and community based support.
- 6.6 The Provider must ensure that people with sensory impairments are provided with the equipment, training and skills they need in order to maintain or develop their independence.
- 6.7 Information, Advice and Guidance is an important part of what is needed to support people with sensory impairments with the IAG offer supported by people with the right level of communication skills. Through all the routes that best support communication, and available in the required format for the individual.
- 6.8 The ten Principles of IAG are:
 - Accessible and Visible
 - Professional and Knowledgeable
 - Effective Connections
 - Availability, Quality and Delivery of Services
 - Diversity
 - Impartial
 - Responsive
 - Friendly and Welcoming
 - Enabling
 - Awareness
- 6.10 In addition to the above, general personal home support services may be required with regards to the provision of personal care, practical support which shall include specialist knowledge and skills in working supportively with Service Users with physical, sensory impairment.

7. Adults' Dementia Care 18+

- 7.1 Service Users with more advanced forms of dementia need additional support in order to manage their Care Plan. The Provider must ensure that Staff understands

behavioural changes and cognitive impairment that is associated with dementia in more advanced stages. This is often also associated with a physical deterioration in health. Therefore staff must have an understanding of dementia and how to support Service Users in order to maintain their choice, control and dignity.

- 7.2 This Service will require flexibility in the way it is delivered and the way that outcomes are achieved for the Service User and their carer. An understanding of the impact of cognitive impairment is paramount.
- 7.3 The Provider must be familiar with national thinking on dementia care and ensure that all Staff are kept abreast of the national development in dementia care and receive appropriate training and support.
- 7.4 The service must provide practical help, personal care and emotional support, so as to promote independent living, re-enablement and reduce the risks associated with living in their own homes.
- 7.5 Carers will provide support, as outlined in the Care plan, to enable Service Users to retain their levels of skills and confidence needed to care for themselves in their own home.
- 7.6 In addition to the above general personal home support services will be required with regards to the provision of personal care, practical support which shall include specialist knowledge and skills in working supportively with Service Users with dementia.
- 7.7 The Provider shall work with the Service User, and others involved in their care and support, to minimise unacceptable risks and agree how risk may be monitored and reviewed.

8. Adults' Substance Misuse 18+

- 8.1 Service Users with substance misuse problems need additional support in order to manage their Care Plan. The Provider must ensure that Staff understands behavioural changes and needs that are associated with substance misuse. Therefore staff must have an understanding of substance misuse related issues and how to support these Service Users relevant pathways.
- 8.2 This Service will require flexibility in the way it is delivered and the way that outcomes are achieved for the Service User.
- 8.3 The Provider must be familiar with national thinking on substance misuse and ensure that all Staff are kept abreast of the national developments and receive appropriate training and support.
- 8.4 The Provider must make links and work in partnership with local substance misuse agencies.
- 8.5 The service must provide practical help, personal care and emotional support, so as to promote independent living, re-enablement and reduce the risks associated with living in their own homes. The Provider shall work with the Service User, and others involved in their care and support, to minimise unacceptable risks and agree how risk may be monitored and reviewed.

- 8.6 Carers will provide support, as outlined in the Care plan, to enable Service Users to retain their levels of skills and confidence needed to care for themselves in their own home.
- 8.7 In addition to the above, general personal home support services will be required with regards to the provision of personal care, practical support which shall include specialist knowledge and skills in working supportively with Service Users with substance misuse.

SCHEDULE 3**PART 2 - KEY PERFORMANCE INDICATORS AND QUALITY OUTCOME INDICATORS****Key Performance Indicators****Example**

Description	Latest Period (Q1 2014-2015)	Target	Based on

Key Performance Indicators and Quality Outcome Indicators will generally be based on the Values and Outcomes listed at paragraph 2 of the Specification, the CQC Outcomes indicated at paragraph 8 of the Specification and the Core Principles set out at paragraph 9 of the Specification.

These may be supplemented and developed in the Pilots Schemes referred to in paragraph 4.4 and 4.5 of the Specification

SCHEDULE 3

PART 3 - PAYMENT INCENTIVE MEASURES AND INDICATORS

Payment Incentive Measures and Indicators may be developed as part of the Pilot Schemes referred to in paragraphs 4.4 and 4.5 of the Specification and may include milestones for the achievement of particular targets and an indication of the percentage of the payment which may be made if a target is only partially achieved. The following tables are indicative only and the final version may differ from the tables as a result of the outcome of the Pilot Schemes

Indicative only

Indicator	
Indicator number	
Indicator name	
Indicator weighting % of payment incentive scheme available	
Description of indicator	
Numerator	
Denominator	
Rationale for inclusion	
Data source	
Organisation responsible for data collection	
Frequency of reporting to the Authority	
Baseline period / date	
Baseline value	
Final indicator period/date (on which payment is based)	
Final indicator value (payment threshold)	
Final indicator reporting date	
Are there rules for any agreed in-year milestones that result in payment?	
Are there any rules for partial achievement of the indicator at the final indicator period/date	

Milestones

Indicative

Date / period milestone relates to	Rules for achievement of milestones (including evidence to be supplied to the Authority)	Date milestone to be reported	Milestone weighting (% of payment incentive scheme available)
Quarter 1			
Quarter 2			
Quarter 3			
Quarter 4			

Rules for partial achievement at final indicator period / date

Indicative

Final indicator value for the partial achievement threshold	% of payment incentive scheme available for meeting final indicator value
49.9% or less	No payment
50.0% to 69.9%	25% payment
70.0% to 79.9%	50% payment
80.0% to 89.9%	75% payment
90.0% or above	100% payment

SCHEDULE 4

PART 1 SAFEGUARDING POLICIES & PROCEDURE REQUIREMENTS

1 OVERVIEW

1.1 In this document the term “London-wide Safeguarding Procedures” may be construed as referring to the London multi-agency policy and procedures to safeguard adults from abuse and/or the London Child Protection Procedures 4th Edition, depending on the age of the people who use or come into contact with the Supplier’s staff and any other part of the organisation.

1.2 In this appendix the term Service User(s)”may be construed as referring to children and/or young people and/or Vulnerable Adults, as appropriate to the Services to be supplied.

1.3 In this appendix the term Staff may be construed as referring to Staff members, volunteers, executive and non-executive members and any other person, including Sub-contractors who have access to or contact with Service Users or any Personal Identifiable Information or who are otherwise involved in the provision of the Services.

1.4 The primary aim of the Supplier should be to prevent abuse. To this end, the Supplier has a duty to ensure that organisational practice is informed by preventative strategies and implemented in accordance with London wide Safeguarding procedures.

1.5 The Supplier must ensure that management within its organisation are committed and responsible for monitoring the actions of their employees to safeguard and promote the welfare of Service Users.

1.6 The Supplier must identify the manager with overall responsibility and ultimate accountability for the Supplier’s contribution to Safeguarding and promoting the welfare of Service Users and for determining / implementing the lines of accountability in this regard for all Staff members of the Supplier.

1.7 Within 10 Working Days of the Authority’s request, the Supplier must send the Authority evidence of compliance with relevant London wide Safeguarding Procedures.

2. PROCESSES & PROCEDURES

2.1 The Supplier must implement robust recruitment and vetting procedures to help prevent unsuitable Staff from working with Service Users. The Supplier shall ensure as a minimum that its safeguarding policy and procedures reflect the requirements in the Authority’s own policy and procedure on safeguarding or shall exceed these. The Supplier shall provide a copy of the Supplier’s safeguarding policy and procedures to the Authority within five Working Days following the Authority’s request for the same.

2.2 The Supplier must implement robust procedures to ensure Safeguarding allegations against a member of Staff are managed in accordance with relevant London wide safeguarding procedures.

2.3 The Supplier must ensure that Staff understand their duty to record and report Safeguarding concerns to their line manager as well as knowing about the protocol for sharing of information and referral to Local Authority designated Safeguarding lead.

2.4 The Supplier must have a clear statement, policy and procedure in place detailing its responsibilities towards Service Users, ensuring that the same is made available to and understood by all Staff.

2.5 The Supplier must ensure that Staff are adequately trained, supervised and monitored on Safeguarding and promoting the welfare of Service Users.

2.6 The Supplier must make available accessible information for Service Users, carers and the general public on raising concerns and making complaints in order to help prevent abuse.

2.7 The Supplier must ensure that Staff contact with Service Users does not directly or indirectly allow access by another person who is not subject to the provisions of the London wide safeguarding procedures.

2.8 The Supplier must have Codes of Conduct in place for all Staff that set out standards of conduct especially in relation to personal and sexual relationships between people in a position of trust and dealing with Service Users.

2.9 The Supplier must ensure procedures are in place to deal with any disclosure of abuse (from any source) and these procedures should comply with the London multi-agency policy and procedures to safeguard adults from abuse and where necessary comply with the London Child Protection Procedures 4th Edition.

2.10 The Supplier must ensure that its Staff know about the requirements to make accurate, factual records at the time of the concern. Staff should be given appropriate training and support to be able to record any concerns or events brought to their attention appropriately.

3 TRAINING

3.1 The Supplier must ensure that safeguarding is included in induction and training at a level that is commensurate with Staff members' roles in the safeguarding process. On-going support and awareness of, and other issues about, safeguarding should be addressed in regular, recorded supervision

3.2 The Supplier must ensure that all Staff receive awareness training in order that abuse can be prevented. The Supplier must ensure that the identification of vulnerability and an assessment of risk of abuse are integrated into assessment practice and in risk assessment protocols.

3.3 The Supplier must ensure that Staff are suitably trained and that the Supplier and its staff have in place and follow safeguarding procedures and policies within the Suppliers' organisation, that enable Staff to:

- identify people who are particularly at risk from abuse.
- recognise risks from different sources and in different situations.
- recognise abusive behaviour in other Service Users, colleagues and family members.

- know about the routes for making a referral and channels of communication within and beyond the agency.
- be assured about the protection for whistle blowers.
- work in accordance with best practice as specified by the Authority, relevant Regulatory Bodies and/or in Guidance.
- work within and co-operate with regulatory mechanisms.
- work within agreed operational guidelines to maintain best practice in relation to:
 - challenging behaviour
 - personal and intimate care
 - physical interventions (formerly control and restraint) in line with new codes of practice
 - sexuality and relationships
 - medication
 - handling Service Users' money
 - risk assessment and management
 - racial harassment

SCHEDULE 4

PART 2 CHILDREN'S SAFEGUARDING

1 Child Sexual Exploitation (CSE)

- 1.1 The Provider shall be aware that CSE is a form of sexual abuse in which a child is manipulated or forced into taking part in a sexual act.
- 1.2 The Official definition of child sexual exploitation is: *"sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive 'something' (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities. Child sexual exploitation can occur through the use of technology without the child's immediate recognition; for example being persuaded to post sexual images on the Internet/mobile phones without immediate payment or gain. In all cases, those exploiting the child/young person have power over them by virtue of their age, gender, intellect, physical strength and/or economic or other resources. Violence, coercion and intimidation are common, involvement in exploitative relationships being characterised in the main by the child or young person's limited availability of choice resulting from their social/economic and/or emotional vulnerability"* (DCSF) and Home Office (2009).
- 1.3 The provider shall be aware that there are a number of indicators that a child is the subject of CSE or in the process of being prepared or "groomed". These include, but are not limited to the following:

Identified vulnerability factors related to child sexual exploitation include:

- Abuse or neglect by parent/carer/family member;
- History of local authority care;
- Family history of domestic abuse;
- Family history of substance misuse;
- Family history of mental health difficulties;
- Breakdown of family relationships;
- Low self-esteem.

General risk indicators include:

- Staying out late/going missing;
- Multiple calls or text to mobile by unknown adults/older young people;
- Other use of a mobile phone that causes concern;
- Expressions of despair including self-harm, overdose, eating disorder, challenging behaviour, aggression etc.
- Disclosure of sexual/physical assault followed by withdrawal of allegation;
- Sexually transmitted infections or unplanned pregnancy;

- Peers involved in sexual exploitation and/or 'clipping' (receiving payment in exchange for agreement to undertake but not performing sexual acts);
- Drugs misuse;
- Alcohol misuse;
- Use of the internet that causes concern;
- Unsuitable/inappropriate accommodation (including street homelessness);
- Isolated from peers/social networks;
- Lack of positive relationship with a protective/nurturing adult;
- Exclusion from school or unexplained absences from or not engaged in school/college/training;
- Living independently and failing to respond to attempts by worker to keep in touch.

Please note: This list is by no means exhaustive, and other indicators may be present.

Significant risk indicators include:

- Periods of going missing overnight or longer;
- Older 'boyfriend'/ relationship with controlling adult;
- Physical/emotional abuse by that 'boyfriend'/controlling adult;
- Entering/leaving vehicles driven by unknown adults;
- Unexplained amounts of money, expensive clothing or other items;
- Frequenting areas known for sex work;
- Physical injury without plausible explanation

http://northumberlandscb.proceduresonline.com/chapters/p_safeguarding_ex.html#definition

1.4 The provider shall be aware that all children and young people are at potential risk of CSE; however some groups are more vulnerable than others. The provider shall:

- Have in place and comply with the Pan-London Child Sexual Exploitation Operating Protocol (February 2014)
(<http://www.walthamforest.gov.uk/Documents/Police%20protocol.pdf>)
- Ensure all care workers are made aware, understand and receive the appropriate training in relation to CSE
- Ensure that all cases of abuse or neglect (actual or suspected) are reported to the Waltham Forest Child Protection Team – via the Multi Agency safeguarding Hub (MASH) – **020 8496 2310; cscreferrals@walthamforest.gov.uk**
- Ensure that all staff are trained in Child Protection (Level 1 & 2), Child Sexual Exploitation (CSE) and Female Genital Mutilation (FGM)

2 Female Genital Mutilation (FGM)

- 2.1 The Provider shall be aware that FGM is child abuse and a form of violence against women and girls, and therefore should be dealt with as part of existing child and adult safeguarding/protection structures, policies and procedures.
- 2.2 The Official definition of FGM comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. It has no health benefits and harms girls and women in many ways. It involves removing and damaging healthy and normal female genital tissue, and hence interferes with the natural function of girls' and women's bodies. The practice causes severe pain and has several immediate and long-term health consequences, including difficulties in childbirth also causing dangers to the child
- 2.3 The provider shall be aware that there are a number of indicators that a child or young person is the subject of FGM. These include, but are not limited to the following:

Specific Factors That May Heighten a Girl's or Woman's Risk of Being Affected by FGM

- The position of the family and the level of integration within UK society – it is believed that communities less integrated into British society are more likely to carry out FGM;
- Any girl born to a woman who has been subjected to FGM must be considered to be at risk of FGM, as must other female children in the extended family;
- Any girl who has a sister who has already undergone FGM must be considered to be at risk of FGM, as must other female children in the extended family;
- Any girl withdrawn from Personal, Social and Health Education or Personal and Social Education may be at risk as a result of her parents wishing to keep her uninformed about her body and rights

Indications that FGM may be about to take place soon

- It may be possible that families will practise FGM in the UK when a female family elder is around, particularly when she is visiting from a country of origin
- A professional may hear reference to FGM in conversation, for example a girl may tell other children about it
- A girl may confide that she is to have a 'special procedure' or to attend a special occasion to 'become a woman'
- A girl may request help from a teacher or another adult if she is aware or suspects that she is at immediate risk
- Parents state that they or a relative will take the child out of the country for a prolonged period
- A girl may talk about a long holiday to her country of origin or another country where the practice is prevalent
- Parents seeking to withdraw their children from learning about FGM

Indications That FGM May Have Already Taken Place

- A girl or woman may have difficulty walking, sitting or standing and may even look uncomfortable.
- A girl or woman may spend longer than normal in the bathroom or toilet due to difficulties urinating. A girl may spend long periods of time away from a classroom during the day with bladder or menstrual problems.

- A girl or woman may have frequent urinary, menstrual or stomach problems
- There may be prolonged or repeated absences from school or college
- A prolonged absence from school or college with noticeable behaviour changes (e.g. withdrawal or depression) on the girl's return could be an indication that a girl has recently undergone FGM
- A girl or woman may be particularly reluctant to undergo normal medical examinations
- A girl or woman may confide in a professional
- A girl or woman may ask for help, but may not be explicit about the problem due to embarrassment or fear
- A girl may talk about pain or discomfort between her legs

www.gov.uk/government/uploads/system/uploads/attachment_data/file/380125/MultiAgencyPracticeGuidelinesNov14.pdf

2.4 The provider needs to be aware that most care workers have little or no experience of dealing with female genital mutilation. When coming across FGM for the first time, they can feel shocked, upset, helpless and unsure of how to respond appropriately to ensure that a child, and / or a mother, is protected from harm or further harm. The provider must ensure all care workers are made aware, understand and receive the appropriate training in relation to FGM

2.5 The provider shall provide:

- Any information or concern that a child is at immediate risk of, or has undergone, female genital mutilation should result in a child protection referral to Waltham Forest Children's Social Care in line with *Referral and Assessment, London Child Protection Procedures, LSCB, 2006*
- Any information or concern that a child is at immediate risk of, or has undergone, female genital mutilation should result in a child protection referral to Waltham Forest Children's Social Care in line with *Referral and Assessment, London Child Protection Procedures, LSCB, 2006*
- Where a child is thought to be at risk of FGM, practitioners should be alert to the need to act quickly – before the child is abused through the FGM procedure in the UK or taken abroad to undergo the procedure
- Have in place and comply with the London Child Protection Procedures, LSCB (2007)

(http://www.londonscb.gov.uk/files/resources/fgm_resources/d_london_fgm_procedure.pdf)

SCHEDULE 5

TUPE

1. TUPE and EMPLOYMENT MATTERS

The definitions in the section at the end of this Schedule shall apply to the interpretation of the provisions below (in conjunction with the other defined terms and interpretation provisions on definitions and interpretation in Schedule 1).

Application of TUPE Regulations

- 1.1. The Authority and the Supplier agree that where the identity of a Supplier (including the Incumbent Supplier) of any service which constitutes or which will constitute part of the Services is changed pursuant to this Contract (including upon termination of this Contract) then the change shall constitute a Relevant Transfer.
- 1.2. Following the Effective Date, on the occasion of any Relevant Transfer during the Contract Period (but excluding for the avoidance of doubt a Relevant Transfer upon termination of this Contract), the Supplier shall and shall procure that any new Supplier (including any new Sub-contractor) of the relevant Services shall comply with all of its obligations under the TUPE Regulations and the Directive in respect of the Relevant Employees.
- 1.3. The Authority and the Supplier acknowledge and accept that under the TUPE Regulations the contracts of employment of the Transferring Employees will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Supplier.

Sub-contractors

- 1.4. In the event that the Supplier enters into any Sub-contract in connection with this Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this paragraph 1 (TUPE and Employment Matters) and paragraph 2 (Employee Provisions on Expiry or Termination) and shall procure that each Sub-contractor complies with such terms. The Supplier shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Authority as a result of or in connection with any failure on the part of a Sub-contractor to comply with such terms.

Emoluments and Outgoings

- 1.5. The Parties acknowledge that the Incumbent Supplier is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of the Relevant Transfer.
- 1.6. The Supplier shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and all Relevant Employees employed by the Supplier or any Sub-contractor appointed by the Supplier, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE,

national insurance contributions, pension contributions and otherwise, from and including the Transfer Date. The Supplier will indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may incur in respect of the same.

Provision of Information

- 1.7. Not used
- 1.8. The Supplier agrees to comply with the provisions set out in paragraph 2 (Employee Provisions on Expiry or Termination) below in respect of information provision.

Indemnities

- 1.9. The Supplier shall indemnify the Authority from and against all Loss in connection with or as a result of any claim or demand by any Transferring Employee or Relevant Employee arising out of the employment of or termination of the employment of any Transferring Employee or Relevant Employee provided that this arises from any act, negligence, fault or omission of the Supplier or any Sub-contractor in relation to any Relevant Employee, on or after the date of the Relevant Transfer.
- 1.10. The Supplier shall indemnify the Authority from and against all Loss in connection with or as a result of any claim by any Transferring Employee or Relevant Employee that the identity of the Supplier or Sub-contractor is to that Transferring Employee or Relevant Employee's detriment or that the terms and conditions to be provided by the Supplier or any Sub-contractor or any proposed measures of the Supplier or any Sub-contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.
- 1.11. The Supplier shall indemnify the Authority from and against all Loss in connection with or as a result of any failure by the Supplier to comply with its obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority to comply with any of its obligations under Regulation 13 of TUPE.
- 1.12. The Supplier shall indemnify the Authority from and against all Loss in connection with or as a result of any claim (including any individual employees entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Supplier to comply with any legal obligations to such trade union, body or person.

Pension Protection

- 1.13. The Supplier shall, from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Effective Date, in the event of there being a Relevant Transfer on that date), comply and procure that each Sub-contractor shall comply with the or any applicable Cabinet Office Statement and any related governmental guidance or codes of practice.
- 1.14. Without prejudice to the generality of paragraph 1.13 (Pension Protection), the Supplier shall, and shall procure that each Sub-contractor shall, ensure from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of

doubt, from the Effective Date, in the event of there being a Relevant Transfer on that date) that:

- (a) Original Public Sector Employees who are eligible for public sector pension scheme to which the Cabinet Office Statement applies, shall be offered membership of a pension scheme broadly comparable to their pre-transfer pension scheme;
 - (b) when employing staff who are not Original Public Sector Employees, such staff have access to good quality pension arrangements that comply with relevant legislation from time to time in force including the Pensions Act 2004, and the pension provisions of the or any applicable Cabinet Office Statement on the subject.
- 1.15. Without prejudice to the generality of paragraph 1.13 (Pension Protection), the Supplier shall, and shall procure that each Sub-contractor shall, ensure that from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Effective Date, in the event of there being a Relevant Transfer on that date) and on expiry or termination of this Contract, that it will comply with the Cabinet Office Statement in respect of compliance with bulk transfer agreements and any requests relating to the same and to the Relevant Transfer received from any Replacement Supplier and the Supplier will cooperate in the provision of information in respect of relevant bulk transfer agreements and the Relevant Transfer with any Replacement Supplier.
- 1.16. Paragraphs 1.13 to 1.16 (Pension Protection) are intended to confer rights on the Transferring Employees pursuant to this Contracts (Rights of Third Parties) Act 1999 provided that if the Authority and the Supplier rescind this Contract or vary any of its terms (including any release or compromise in whole or in part of liability) in accordance with the relevant provisions of this Contract or terminate this Contract, such rescission, variation or termination will not require the consent of any Transferring Employee.

2. Employee Provisions on Expiry or Termination

Handover on Termination

- 2.1. During the six (6) Months preceding the expiry of this Contract or after the Authority has given notice to terminate this Contract or at any other time as directed by the Authority, and within fifteen (15) Working Days of being so requested by the Authority, the Supplier shall fully and accurately disclose to the Authority and shall procure that any relevant Sub-contractor shall accurately disclose any and all information in relation to all personnel engaged in providing the Services, (whether engaged by the Supplier or any Sub-contractor) including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to any of the following:
- (a) a list of employees employed by the Supplier, or any Sub-contractor;
 - (b) a list of agency workers, agents and independent contractors engaged by the Supplier;
 - (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
 - (d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the

- commencement date, accrued holiday entitlement, pension details, location, retirement age, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- (e) details of any current disciplinary or grievance proceedings on-going or circumstances likely to give rise to such proceedings and details of any claims current or threatened; or
 - (f) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- 2.2. Where information has been provided in accordance with paragraph 2.1 (Handover on Termination) above and the Supplier or Sub-contractor makes or becomes aware of any changes or discovers new information the Supplier shall notify the Authority within seven (7) days of any such change or discovery.
- 2.3. The Supplier shall warrant the accuracy and completeness of all the information provided to the Authority pursuant to paragraphs 2.1 and 2.2 (Handover on Termination) and authorises the Authority to use any and all of the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Services (or any part of the Services).
- 2.4. During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Supplier shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.
- 2.5. During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Supplier shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:
- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
 - (b) increase or decrease the number of employees employed in connection with the Services; or
 - (c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.
- 2.6. The Supplier confirms that it will comply fully with its obligations under the TUPE Regulations in respect of providing information to any subsequent Supplier and hereby warrants that any information provided in accordance with Regulation 11 shall be accurate and complete.

Indemnity

- 2.7. The Supplier shall indemnify the Authority and any Replacement Supplier appointed by the Authority and keep the Authority and any Replacement Supplier appointed by the Authority indemnified in full from and against all direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Authority or any Replacement Supplier appointed by the Authority as a result of or in connection with:

- (a) the employment or termination of employment of any Relevant Employee or employee of any Sub-contractor during any period prior to and including the date of expiry or termination of this Contract.
 - (b) any claim brought against the Authority or any Replacement Supplier as a result of the Suppliers failure to comply with any of its obligations under the TUPE Regulations.
- 2.8. Notwithstanding any other provisions of this Contract for the purposes of these paragraphs 1 (TUPE and Employment Matters) and 2 (Handover on Termination), and in accordance with this Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Supplier shall be entitled to enforce the benefits conferred by it hereunder provided that if the Parties rescind this Contract or vary any of its terms (including any release or compromise in whole or in part) in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Supplier shall not be required for such rescission, variation of termination.
- 2.9. Paragraph 1 (TUPE and Employment Matters) and this paragraph 2 (Handover on Termination) shall apply during the Contract Period and indefinitely thereafter.
3. Additional Definitions:

Directive means EC Council Directive 2001/23/EC;

Incumbent Supplier means any contractor providing any service that constitutes or that will constitute part of the Services immediately before the Transfer Date;

Relevant Employees means the employees of the Supplier (including the Transferring Employees) who are wholly or mainly assigned to work in the provision of the Services and who are or will be the subject of a Relevant Transfer by virtue of the application of the

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

Transfer Date means the date the Transferring Employee is transferred to the employment of the Supplier from the Incumbent Supplier;

Transferring Employees means employees of the Incumbent Supplier who are wholly or mainly assigned to work in the provision of the Service and who are subject of a Relevant Transfer to the Supplier by virtue of the application of the TUPE Regulations;

TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended;

SCHEDULE 6

FORM OF BOND

This Performance Bond is made as a deed between the following parties whose names and addresses are set out in the Schedule to this Bond ("the Schedule")

- (1) The Supplier as principal
- (2) The Guarantor as guarantor
- (3) The Authority

Whereas

1. By a Supplier Agreement ("the Supplier Agreement") entered into or to be entered into between the Authority and the Supplier particulars of which are set out in the Schedule the Supplier has agreed with the Authority to execute and perform the Services (as defined in the Supplier Agreement) upon and subject to the terms and conditions set out therein.
2. The Guarantor has agreed with the Authority at the request of the Supplier to guarantee the performance of the obligations of the Supplier under the Supplier Agreement upon the terms and conditions of this Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:

1. The Guarantor guarantees to the Authority that in the event of a breach of the Supplier Agreement by the Supplier or the termination of the Supplier Agreement by the Authority for any reason the Guarantor shall subject to the provisions of this Bond satisfy and discharge the damages sustained by the Authority as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Supplier Agreement and taking into account all sums due or to become due to the Supplier.
2. The maximum aggregate liability of the Guarantor and the Supplier under this Bond shall not exceed the sum set out in the Schedule ("the Bond Amount") but subject to such limitation and to clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Supplier under the Supplier Agreement.
3. The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Supplier Agreement or in the extent or nature of the Services and no allowance of time by the Authority under or in respect of the Supplier Agreement or the Services shall in any way release reduce or affect the liability of the Guarantor under this Bond.
4. Whether or not this Bond shall be returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of a breach of Supplier Agreement which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.

5. The Supplier having requested the execution of this Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Authority or the Guarantor against the Supplier) to perform and discharge the obligations on its part set out in the Supplier Agreement.
6. The Supplier undertakes to the Authority that it will not seek to recover from the Authority a sum due or to become due to the Supplier which has been taken into account in assessing sums due to the Authority under this Bond.
7. This Bond and the benefits thereof shall not be assigned without the prior written consent of the parties.
8. This Bond shall be governed and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

The Schedule

The Supplier: [] of []

The Guarantor: [] of []

The Authority: The Mayor and Burgesses of the London Borough of Waltham Forest of
Town Hall Forest Road Walthamstow London E17 4JF

The Supplier Agreement: The Supplier Agreement dated [] [to be entered into]
between the Authority and the Supplier for the execution and
performance of the Services.

The Bond Amount: The sum of [] (£)

Expiry: Upon the expiry of the Supplier Agreement at the end of its term or
other such date as may be specified by the Authority

In Witness whereof the Supplier and the Guarantor have executed and delivered this Bond
as a Deed this day of Two Thousand and Fifteen.

The Common Seal of the
Supplier was hereunto
affixed in the presence of:

Director

Secretary

The Common Seal of the
Guarantor was hereunto
affixed in the presence of:

Director
Secretary