

Dated

2015

WOKINGHAM BOROUGH COUNCIL

AND

OPTALIS LIMITED

AGREEMENT

Relating to the  
Provision of Adult Social Care

## **CONTENTS**

### **Recitals**

- A. Operative Provision
- A1 Definitions
- A2 Interpretations
- A3 Entirety of Contract

### **B. General Provision**

- B1 Contract Period
- B2 Contract Variation
- B3 Notices
- B4 Severance
- B5 Waiver
- B6 Assignment, Sub-contracting and Change of Control
- B7 Agency
- B8 Parties' Obligations
- B9 Force Majeure
- B10 Conflicts of Interest
- B11 Fraud
- B12 Partnership Working

### **C. Provision of Services**

- C1 Authorised Officer
- C2 Contract Manager
- C3 The Service
- C4 Standards of the Service
- C5 Quality Assurance

- C6 Provider's Staff
- C7 Accessing the Service
- C8 Safeguarding of Vulnerable Adults and Children
- C9 Right of Access and Inspection
- C10 Not used
- C11 Contract Monitoring and Performance Framework
- C12 Failure to Perform
- C13 Complaints
- C14 Whistleblowing
- C15 Business Sustainability, Business Continuity, Disaster Recovery and Pandemic Flu Provisions

**D. Contract Price and Payment Arrangements**

- D1 Contract Price, Payment Arrangements and Financial Monitoring
- D2 Value Added Tax
- D3 Recovery of Sums Due
- D4 Not used
- D5 Review of Contract Price – Staffing Related Costs

**E. Statutory Obligations and Regulations**

- E1 Prevention of Bribery & Corruption
- E2 Equalities and Diversity
- E3 The Contracts (Right of Third Parties) Act
- E4 Health and Safety
- E5 Human Rights
- E6 Transfer of Undertakings (Protection of Employment) Regulation

E7 Mental Capacity Act and Deprivation of Liberty Safeguards

**F. Information**

F1 Data Protection Act

F2 Confidentiality

F3 Audit

F4 Publicity

F5 Logo

F6 Records

F7 Freedom of Information

**G. Liability and Insurance**

G1 Liability

G2 Insurance

G3 Warranties and Representations

G4 Premises

**H. Dispute, Disruption and Termination**

H1 Termination

H2 Termination on Default

H3 Not used

H4 Provider's Financial Distress

H5 Consequences of Termination

H6 Suspension

H7 Handover

H8 Disruption

H9 Dispute

- H10 Not used
- H11 Law and Jurisdiction
- H12 Change of Law

**I. Contract Specific Conditions**

- I.1 Outcomes
- I.2 Self Directed Support

**SCHEDULES**

- 1 Authorised Officer and Contract Manager
- 2 Service Specifications
  - 2.1a Brokerage and Professional Support Core Service Specification
  - 2.1b Brokerage and Professional Support Independent Broker Service Specification
  - 2.1c Brokerage and Professional Support Care Act Social Workers Service Specification
  - 2.2 Emergency Provider Service Specification
  - 2.3 Employment Service Specification
  - 2.4 Extra Care Service Alexandra Place Specification
  - 2.5 Extra Care Service Beeches Manor Specification
  - 2.6 Extra Care Service Cockayne Court Specification
  - 2.7 Learning Disability Day Services Specification
  - 2.8 Learning Disability Supported Living (Block and Spot) Service Specification
  - 2.9 Learning Disability Supported Living Services (Spot)
  - 2.10 Long-Term Support (LTS)
  - 2.11 Physical Disability Day Service Specification
  - 2.12 START Service Specification
  - 2.13 Suffolk Lodge

- 3 Contract Monitoring and Performance Framework
- 4 Contract Variation Notice Template

**BETWEEN**

(1) **WOKINGHAM BOROUGH COUNCIL** of Civic Offices Shute  
End Wokingham Berkshire RG40 1BN hereinafter referred to as "the Council"

and

(2) **OPTALIS LTD** (Company number 07630156) whose registered office is at  
Trinity Court Molly Millars Lane Wokingham Berkshire RG41 2PY hereinafter  
referred to as "the Provider"

**PART A – OPERATIVE PROVISION**

**A1 DEFINITIONS**

The terms and expressions used in these Terms and Conditions shall have the meanings set out below:

"Approval" and "Approved"	means the written consent of the Authorised Officer
"Authorisation"	means an authorisation given by the Council after completion of the statutory assessment process, giving lawful authority to deprive a person of their liberty in the Care Home
"Authorised Officer"	means the person(s) for the time being appointed by the Council and specified in Schedule 1 as being authorised to administer the Contract on behalf of the Council or such person as may be nominated by the Authorised Officer to act on its behalf
"Authority"	means the Council
"Business Day"	means between Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays
"Care and Support Plan"	means the plan, drawn up following the assessment of a Customer, which sets out how their care and support needs will be met and the outcomes to be achieved
"Care Home"	means an establishment providing accommodation, together with nursing or personal care, as defined in the Care Standards Act 2000 and the Health and Social Care Act 2008

"Carer"	means any relative, friend, representative or lay advocate of a Customer
"Change of Control"	means a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 of the Provider or any Material Subcontractor or any holding company or subsidiary (as defined in the Companies Acts 1985 to 2006) of either of the foregoing
"Code of Practice"	means the guidance and information about how the Mental Capacity Act 2005 works in practice and is to support the legal framework provided by the Act
"Commencement Date"	Means 1 <sup>st</sup> July 2016
"Commercially Sensitive Information"	means the subset of Confidential Information listed in Schedules [ ] and [ ] inclusive comprised of information: <ul style="list-style-type: none"> <li>(a) which is provided by the Council to the Provider in confidence for the period set out in those Schedules; and/or</li> <li>(b) that constitutes a trade secret</li> </ul>
"Conditions"	means this Contract's terms and conditions and/or any modification duly agreed in accordance with this Contract
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, Developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and Schedules [ ] and [ ] inclusive
"Contract"	means the agreement between the Provider and the Council consisting of these Conditions and any attached Schedules (whether or not referred to in the Conditions)



"Contract Manager"	means the person for the time being appointed by the Provider and specified in Schedule 1 as being authorised to administer the Contract on behalf of the Provider or such person as may be nominated by the Contract Manager to act on its behalf
"Contract Monitoring"	means the monitoring and review of the Provider's performance across all aspects of the Contract including against the requirements of the Service Schedules, performance measures and financial requirements
"Contract Period"	means the period of duration of the Contract in accordance with Clause B1.1
"Contract Price" and "Price"	means the price exclusive of any applicable tax, payable to the Provider by the Council under this Contract, as set out in the Schedules for each individual service inclusive for the full and proper performance by the Provider of its obligations this Contract
"Contract Standard"	means those standards set out in this Contract and the individual service specifications comprising Schedule 2
"Council"	means Wokingham Borough Council or its successor body as applicable
"Council Managed Account"	means a Personal Budget that is held and managed by the Council
"Customer"	means a person to whom the Provider shall provide the Services
"Default"	means any failure, or breach, either on the Council's or the Provider's part, to carry out their respective obligations under this Contract
"Deprivation of Liberty (DoL) Safeguards"	means the framework of safeguards under the Mental Capacity Act 2005 for people who need to be deprived of their liberty in a Care Home or other residential setting in their best interest for care and who lack the capacity to consent to the arrangement made for their care
"Direct Payment"	means the payments made by the Council in accordance with the relevant legislation and government guidance to people with eligible social care needs who have chosen to arrange and pay for their own care and support services instead of receiving these services directly from, or having them arranged by, the Council

"Dispute Resolution Procedure"	means the procedure set out in clause H6
"Expiry Date"	means the 30th June 2021 unless the contract is terminated pursuant to Clause B1.3
"Eligible Social Care Needs"	means those needs which meet social care eligibility criteria under the National Eligibility Criteria Framework introduced in April 2015 pursuant to the Care Act 2014
"Financial Distress Notice"	means a Notice served on the Provider by the Council in the circumstances set out in clause H3.5
Force Majeure"	<p>means and includes the occurrence after the Commencement Date of:</p> <ul style="list-style-type: none"> <li>(a) war, civil war, riot, civil unrest, civil emergency, terrorist attack or threat of terrorist attack, industrial action by non-employees of the Provider on a national scale or industrial action by employees of the Council</li> <li>(b) nuclear, chemical or biological contamination; or</li> <li>(c) an act of God.</li> </ul>
"General Change in Law"	means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which would affect or relate to a comparable supply of Services of the same or a similar nature to the supply of the Services
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking and/or activity as the Provider under the same or similar circumstances.
"Intellectual Property Rights"	means patents, inventions, trademarks, service marks, logos, design rights (whether registrable 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 registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Individual Service Fund"	means a payment in advance to a provider for services to be provided in accordance with the three way agreement between the Council, a provider and

a Customer

"Law"	means but is not limited to any applicable Act of Parliament, statutory legislation, 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, by-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply. Any reference to "Legislation" shall be construed accordingly
"Managing Authority"	means the person or body with management responsibility for the Care Home in which a person is, or may become, deprived of their liberty
"Material Default"	means the following issues are considered (without limitation) to be a Material Default: failure to have in place the insurance cover required under clause G2.  non-compliance with the equal opportunity requirements of clause E2.  Evidence of abuse and/or mistreatment of a Customer by the Provider or the Provider's Staff or agents or by any sub-contractor or such sub-contractor's staff or agents or where the Provider or any sub-contractor is negligent in permitting such abuse or mistreatment  breach of the requirements of clause B11 (Fraud) or clause E1 (Prevention of Bribery and Corruption). the conviction of the Provider of an offence under the provisions of the Care Standards Act 2000  persistent use by the Provider or a sub-contractor of unqualified or untrained Staff except where the Council has given written consent to such use
"Material Subcontractor"	means any subcontractor of the Provider within the Optalis Group of Companies or other sub-contractor with the prior written consent of the Council
"Notice"	means any formal communication between the Parties as required by the Contract
"Outcomes"	means the impacts or end results of the Service on a person's life

"Party" and "Parties"	means a party to this Contract and "Parties" shall be construed accordingly
"Personal Budget"	means the amount of money allocated to a Customer by the Council to fund care and support services to meet their eligible social care needs
"Provider"	means the person, firm or company with whom the Council enters into this Contract and references herein to operating companies of the Provider shall be deemed to be references to the Provider
"Public Sector Reorganisation"	means any transfer of powers, functions, funding and/or areas between bodies constituted by statute or statutory instrument and any associated transfer of staff, property, rights and/or obligations
"Qualifying Change in Law"	means: <ul style="list-style-type: none"> <li>(a) a General, Change in Law</li> <li>(b) a Specific Change in Law which was not foreseeable at the date of this Contract</li> </ul>
"Records"	Means the Contract and all documents, data or other information relating to, produced, or received as part of or in connection with the service as part of or in connection with the Service and stored on whatever medium
"Regulatory Bodies"	Means those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the Providers and "Regulatory Body" shall be construed accordingly
"Replacement Provider"	means any third party appointed by the Council from time to time to provide any services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party
"Schedule"	means a schedule attached to this Contract.

"Self Directed Support"	means the process by which a person with eligible social care needs is allocated a specific amount of money and can control how that money is spent to get the support they need in the way that they want
"Services"	means the services to be provided as specified in the Schedules
"Service Specification Schedule"	means the documents comprising Schedule 2 containing details of the services to be provided
"Significant Decision"	means a decision that needs to be made concerning serious medical treatment and change of accommodation and there are no friends or family who it would be appropriate to consult on the decision
"Specific Change in Law"	means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Provider and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services
"Staff"	means all persons employed by the Provider to perform the Contract together with the Provider's consultants, gents and sub-contractors used in the performance of the Contract
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as may be amended from time to time
"Value Added Tax"	means Value Added Tax or any similar tax replacing it or performing a similar fiscal function
"Variation"	means a change to this Contract or to the Services which may include a new service/schedule, decommissioning a service/schedule and/or price changes made in accordance with clause B2 (Contract Variation)
"WBC"	means the Council
"Whistleblowing"	means raising concerns about misconduct within an organisation or within an independent structure associated with it
"Wokingham Borough Council"	means the Council

## **A2 INTERPRETATIONS**

- A2.1 Except as otherwise expressly provided, the documents comprising this Contract are to be mutually explanatory of one another. Should the Provider become aware of any ambiguities or discrepancies in or between any of the documents comprising the Contract, the Provider shall immediately inform the Authorised Officer giving full details. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise coming to the notice of the Authorised Officer shall be resolved by the Authorised Officer who shall issue to the Provider any appropriate instructions in writing.
- A2.2 Any references to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force, and to include any EU Directives, by-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, guidance, consents or permissions made thereunder, and any condition attaching thereto.
- A2.3 Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the reasonable control of the Provider.
- A2.4 The headings in the Contract are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- A2.5 The expression 'person' used in the Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- A2.6 In the Contract the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- A2.7 Any reference to government departments and the like, is deemed to include its or their successors.
- A2.8 References to Clauses or Schedules shall be to Clauses and Schedules of these Conditions of Contract.
- A2.9 Any numbering without corresponding provisions or reference to "Not used" or similar occurrences in this Contract shall be disregarded as remnants of a standard template.

## **A3 ENTIRETY OF CONTRACT**

This Contract represents the entire understanding between the parties and supersedes all representations, understandings and agreements, whether oral or written, made by the Council or the Provider.

## **PART B – GENERAL PROVISION**

### **B1 CONTRACT PERIOD**

- B.1.1 The Contract shall commence on the Commencement Date and shall continue for a period of five years (subject to the provisions for early termination) ("the Contract Period")
- B.1.2 Either party may give twelve months written notice to the other to terminate the contract. Such notice not to expire before the end of the 4<sup>th</sup> (fourth) year.

### **B2 CONTRACT VARIATION**

- B.2.1 The Provider will be entitled to make only such changes to the Services as provided in the Individual Schedules
- B.2.2 If either party wishes to vary this Contract then it shall serve on the other a Variation Notice using the Contract Variation Notice Template as detailed in Schedule 4. This Notice shall set out the nature of the variation sought and the reasons for it.
- B.2.3 If either party receives a Variation Notice then within 20 Business Days of receipt it shall notify the other whether or not it agrees to the variation and if not, the reasons.
- B.2.4 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Council and agreed in writing with the Provider and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.
- B.2.5 The Provider shall provide such information as may be reasonably required to enable such varied price to be calculated.
- B.2.6 If the Variation cannot be agreed between the Parties the matter shall be determined in accordance with the provisions of clause H9.

### **B3 NOTICES**

- B3.1 Any Notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax, by e-mail or by sending it by registered post or recorded delivery.
- B3.2 Any Notice required by this Contract must be issued by the Contract Manager or Authorised Officer or any person nominated to act on their behalf as set out in Schedule 1, and must be address to the other party as per the named individual(s) in Schedule 1.
- B3.3 Any Notice served personally or sent by email will be deemed to have been served on the day of delivery/sending, any Notice sent by post will be deemed to have been served 48 hours after was posted, any Notice sent by fax will be deemed to have been served 24 hours after it was despatched, save where the deemed date of service falls on a day other than a Business Day or it is not received between the hours of 9am to 5pm on a Business day, in which

case the date of service will be the following Business Day.

- B3.4 The Provider shall inform the Council of any significant or substantial occurrence that adversely affects the Provider's performance of this contract, its customers or the Council and the Council's ability to meet its statutory obligations. If in any doubt the Provider shall inform the Council of the occurrence.

#### **B4 SEVERANCE**

If any provision of this Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the remaining provisions of this Contract shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that either party may seek the consent of the other to the termination of this Contract on such terms as may in all the circumstances be reasonable if the effect of the foregoing provision would be to defeat the original intention of the parties. Where such amendment or termination is required by reason of lack of vices on the part of a party, the costs of or resulting from such amendment or termination shall be borne by that party.

#### **B5 WAIVER**

- B5.1 The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise 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.
- B5.2 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 the provisions of clause B5.1
- B5.3 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.

#### **B6 ASSIGNMENT, SUB-CONTRACTING AND CHANGE OF CONTROL**

- B6.1 The Provider shall not without the prior written consent of the Council which shall not be unreasonably withheld or delayed, assign all or any benefit, right or interest under this Contract or sub-contract the supply of the Services. Any request to make such a change by the Provider must take the form of a Contract Variation Notice.
- B6.2 The Provider shall remain responsible and liable for the acts and omissions of any sub-contractor or agents as though they were its own.
- B6.3 The Council shall be entitled to:
- B6.3.1 (with the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed) assign, novate or dispose of its rights and obligation under this Contract either in whole or part to any



contracting authority (as defined in The Public Contracts Regulations 2015); or

B6.3.2 transfer, assign or novate its rights and obligations where required by Law.

B6.4 In the event of a Public Sector Reorganisation, the Provider shall enter into all such assignments and/or novations as the Council shall specify as necessary. The Council shall produce all necessary documentation for this purpose and shall reimburse the Provider with its properly and reasonably incurred costs associated with such assignments and/or novations.

## **B7 AGENCY**

Apart from the provision of Brokerage Services as detailed in Schedule 2.1 neither the Provider nor its Staff shall in any circumstances hold itself or themselves out as being the employee or agent of the Council or enter into any Contract or bind the Council to any undertaking unless otherwise agreed in writing by the Council. Any request to make such a change by the Provider must take the form of a Contract Variation Notice.

## **B8 PARTIES' OBLIGATIONS**

B8.1 Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counter party and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any of its other capacities, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

B8.2 The Provider shall deliver the Service for the Contract Period to the Contract Standard and in consideration thereof the Council shall pay to the Provider the Contract Price, all in accordance with the terms and conditions of the Contract.

## **B9 FORCE MAJEURE**

B9.1 Neither the Provider nor the Council shall be liable for breach of its obligations under the Contract to the extent that such breach is caused by Force Majeure. For the avoidance of doubt any industrial action occurring within the Provider's organisation, the inability of the Provider to recruit staff, or failure by any sub-contractor to provide services shall not be Force Majeure.

B9.2 The Provider shall as soon as reasonably practicable notify the Council in writing of such Force Majeure events as they occur and shall use its reasonable endeavours to secure the continued provision of all or such part of the service as shall have been affected by the event of Force Majeure.

B9.3 Either Party may terminate the Contract in its entirety or in part by written notice to take effect immediately if the event of Force Majeure persists for more than 28 calendar days and the Parties have not agreed in writing that the Contract will continue, whether or not subject to alternative

arrangements in respect of the event of Force Majeure.

## **B10 CONFLICTS OF INTEREST**

B10.1 Apart from the provisions set out in Schedule 2.1 for which there are agreed safeguarding principles in accordance with the Brokerage Principles concerning brokerage services, the Provider shall take appropriate steps to ensure that neither the Provider nor any employee, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or such person and the duties owed to the Council under the provision of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise. The Provider will ensure that its brokerage staff work at all times in the best interest of the customers they are working with.

B10.2 The provision of this Condition shall apply during the continuance of this Contract and for a period of 24 months after its termination.

## **B11 FRAUD**

B11.1 The Provider shall safeguard the Council's funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Provider's directors and suppliers.

B11.2 The Provider shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or likely to occur.

B11.3 The Council reserves the right to take whatever action it deems necessary in the event of either notification of, or a suspected fraud.

## **B12 PARTNERSHIP WORKING**

B12.1 The Provider and the Council will act collaboratively with a spirit of cooperation and openness in their dealings including contributing to projects, policy development, customer engagement and consultation with regard to the Council's adult social care and wellbeing duties and responsibilities.

B12.2 The Parties will work collaboratively and co-operatively with each other to assist in the management of the Council's adult social care services within allocated budgets

B12.3 The Provider and the Council will actively seek to work closely together in formal or other arrangements with other agencies organisations and stakeholders working with the Council, or otherwise contributing to, involved in or affected by, the provision of adult social services in the Borough.

B12.4 The Provider will demonstrate a collaborative and co-operative working ethos with its Customers and their representatives

## **PART C - PROVISION OF SERVICES**

**C1      AUTHORISED OFFICER**

- C1.1      The Council shall appoint an Authorised Officer(s) to act on behalf of the Council for all purposes connected with the Contract. Details of the person are set out in Schedule 1.
- C1.2      The Council shall forthwith give notice in writing to the Provider of any change in the identity, address and telephone numbers of the person appointed as Authorised Officer. The Council shall give maximum possible notice to the Provider before changing its Authorised Officer.

**C2      CONTRACT MANAGER**

- C2.1      The Provider shall appoint a Contract Manager to act on behalf of the Provider for all purposes connected with the Contract. Details of the person are set out in Schedule 1.
- C1.2      The Provider shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Provider shall give maximum possible notice to the Council before changing its Contract Manager.

**C3      THE SERVICE**

- C3.1      The Provider shall provide the Services during the Contract Period in accordance with the Contract.
- C3.2      The Provider shall use all reasonable endeavours to provide the Services in accordance with the Council's Values and to promote the Councils' priorities wheresoever possible.
- C3.3      The Council will delegate to the Provider authority to act as an agent as defined in the Schedule 2.1 concerning brokerage services
- C3.3      In providing the Services, the Provider shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.
- C3.4      The Provider shall be registered and shall remain registered throughout the Contract Period with any relevant Regulatory Bodies and the Council will use its reasonable endeavours to provide such information and declarations as may be necessary to facilitate the Provider's registration with the relevant Regulatory Body.
- C3.5      The Provider will ensure that the Services are appropriately promoted and publicised which will include having information available on the Services in appropriate formats and locations, including how the Services can be accessed.

**C4      STANDARDS OF THE SERVICE**

- C4.1 The Provider shall comply with all relevant current and future statutory provision. In addition, the Provider shall comply with any local requirements that are laid down in this Contract or that are issued to the Provider as part of the outcome of the variation procedure pursuant to Clause B2 (Contract Variation).
- C4.2 The Provider will establish itself as a champion of professional standards in all of its operations and activities, which includes keeping up to date with recognised best practice.
- C4.3 Where Services are registerable with the Care Quality Commission (CQC) or its successors in title the Provider must ensure these Services meet all the requirements of the CQC.
- C4.3.1 The Provider shall notify the Council of any changes to the Registered Manager at any registerable services.
- C4.4 Notwithstanding the provisions within Clauses C4.1 to C4.3, the Provider must ensure that each Customer has a keyworker, a support/care plan and any necessary risk management plans. The plans must be drawn up in partnership with the Customer wherever reasonably possible and must be regularly reviewed and updated, especially following any incident which has or may have an impact on a Customer's well-being.

## **C5 QUALITY ASSURANCE**

The Provider shall throughout the Contract Period demonstrate and maintain a properly documented system of outcomes focussed quality assurance which will be agreed with the Council as appropriate for the services under consideration. Appropriate service outcomes and quality standards relevant to each service are set out in the individual service specifications comprising Schedule 2 and the Contract Monitoring and Performance Framework detailed in Schedule 3.

## **C6 PROVIDER'S STAFF**

- C6.1 The Provider shall employ sufficiently trained, suitably qualified and experienced Staff to ensure that the Service throughout the Contract Period is provided in all respects to the Contract Standard.
- C6.2 Not used
- C6.3 The Provider's Staff employed in and about the provision of the Services shall at all times exercise due care and diligence in the execution of their duties and the Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services. Including but not limited to working with Customers in an empowering, non-discriminatory and creative way, following best practice and statutory requirements to ensure that the outcomes for individuals are maximised at every opportunity.

- C6.4 The Provider shall meet all legal requirements required concerning the employment and recruitment of staff and volunteers and ensure that it follow best practice in this area including:
- C6.4.4 obtain a full employment history and satisfactory references for all applicants;
  - C6.4.5 confirm the applicant's legal right to work in the UK in those services delivered on behalf of Wokingham Borough Council;
  - C6.4.6 not allow any member of Staff to commence employment prior to the receipt of a satisfactory check unless formally approved by the Contract Manager.
- C6.5 If a member of staff's conduct, as someone employed by the Provider (which includes agency staff and volunteers), is being reviewed as a result of a safeguarding or disciplinary investigation and they choose to terminate their employment with the Provider before the investigation is concluded, the Provider must ensure that its investigation continues and is concluded. The outcome should be based on the balance of probability with the Provider taking any necessary follow-up action in line with statutory requirements and best practice. This should include making a referral to the Disclosure and Barring Service if appropriate.
- C6.6 The Provider shall bear the cost of or costs arising from any Notice, instruction or decision of the Council under this clause.

## **C7 ACCESSING THE SERVICE**

- C7.1 The Provider will, in consultation with the Council, ensure that all Services have a clear policy setting out who is eligible to access the Service and the circumstances in which an application to the Service would not be accepted and where an existing Service would be withdrawn. These must be notified to key referral agencies, stakeholders and prospective customers and are to be subject to regular review.
- C7.2 The Council shall nominate Customers to the Provider pursuant to the policies referred to in Clause 7.1 and as set out in the Service Specifications above. The Provider shall provide the relevant services to all of those nominated by the Council and it shall use its best endeavours to meet the needs of the Customers referred to the Provider and must inform the Council where it is unable to accept an application to a Service or is unable to continue to provide an existing Service to a Customer, stating its reasons.

## **C8 SAFEGUARDING OF VULNERABLE ADULTS AND CHILDREN**

### **Safeguarding Children**

- C8.1 'Working Together to Safeguard Children' and 'Section 11 of the Children Act 2004' places a statutory duty on all Providers 'who provide services for, or work with children' or young people, to 'safeguard and promote the welfare of children'.

- C8.2 The Provider shall at all times comply with the requirements of Section 11 of the Children Act 2004 and the Child Protection Procedures relevant to the Local Safeguarding Children Board (LSCB) in which the child is placed (e.g. Berkshire Child Protection Procedures). The Provider will at all times have arrangements ("the Provider's Arrangements") in force for safeguarding and promoting the welfare of children which are compliant with the local LSCB Child Protection Procedures and the Provider's duties in 'Working Together to Safeguard Children' and will ensure that any additional internal procedures or inter-agency protocols are consistent with these procedures.

### **Safeguarding Adults**

- C8.3 The Provider shall at all times comply with the requirements of the Berkshire Safeguarding Adults Policy and Procedures, including any updates and/or replacement documents, and also comply with the requirements of any Regulatory Body to which the Provider is subject, including Deprivation of Liberty regulations and any change in such requirements. The Provider will at all times have arrangements ("the Provider's Arrangements") in force for safeguarding and promoting the welfare of vulnerable adults which are compliant with the local Safeguarding Adults Procedures and will ensure that additional internal procedures or inter-agency protocols are consistent with these procedures.

### **Safeguarding requirements applying to both Adults and Children**

- C8.4 Providers shall ensure that:
- C8.4.1 All staff and volunteers (including temporary staff) 'are made aware of the Provider's Arrangements';
  - C8.4.2 They publish written policies that explicitly state 'clear priorities for safeguarding and promoting the welfare of children' and vulnerable adults in 'strategic policy documents' and that they ensure the effective dissemination, and implementation, of these policies to staff and volunteers;
  - C8.4.3 They provide 'a clear line of accountability within the organisation for work on safeguarding' and promoting welfare and demonstrate 'a clear commitment by the Provider to the importance of safeguarding and promoting welfare';
  - C8.4.4 Their staff and volunteers are subject to Safer Workforce processes and checks, including, 'recruitment and human resources management procedures that take account of the need to safeguard and promote welfare, including arrangements for appropriate checks on new staff and volunteers', this includes conducting appropriate checks with the Disclosure and Barring Service (DBS);
  - C8.4.5 They adhere to local LSCB 'Procedures for dealing with allegations of abuse against members of staff and volunteers', including arrangements for notifying the Local Authority Designated Officer (LADO), for Services in relation to Children and Young People;
  - C8.4.6 They ensure that all staff and volunteers undertake appropriate training, and to ensure that this is kept up-to-date by refresher training at regular intervals;

- C8.4.7 They respect the confidentiality of individuals and adhere to Wokingham Borough Council's LSCB Information Sharing and Assessment Protocol, which summarises local 'arrangements to work effectively with other organisations to safeguard and promote welfare, including arrangements for sharing information', (subject to any relevant provisions of the Data Protection Act);
- C8.4.8 They disseminate and implement 'appropriate whistle-blowing procedures, and a culture that enables issues about safeguarding and promoting the welfare of children and vulnerable adults to be addressed';
- C8.4.9 They maintain accurate and up-to-date records of decision making and actions taken;
- C8.4.10 They are at all times sensitive to needs arising from race, culture, religion, sexual orientation or linguistic background;
- C8.4.11 They furnish the Client or their agents on their reasonable request, with copies of their records relating to any of the above.

C8.5 The Provider should refer to the LSCB's website for Safeguarding resources ('Safeguarding Toolkit') to assist them in fulfilling these responsibilities.

C8.6 Compliance with these minimum standards will primarily be monitored in review

C8.7 The Local Safeguarding Children Board will monitor Provider compliance with Safeguarding requirements in its Section 11 Audit (Section 11 of the Children Act 2004). Failure to comply with any part of this Clause will be deemed a Material Default of the Contract.

C8.8 The Provider must make available a copy of any of their internal safeguarding policies and procedures to the Council on request.

C8.9 Upon the Council's reasonable request, a copy of the Provider's records relating to the protection of vulnerable adults and children from abuse made in relation to the Service(s) and its response must be supplied.

## **C9 RIGHTS OF ACCESS AND INSPECTION**

C9.1 The Provider shall allow officers and members of the Council to have reasonable access to the Provider's premises, records and Staff to enable the Council to meet its statutory duties and in the event that the Council has any concerns regarding the compliance with the Contract and any relevant statutory provisions.

C9.2 Any information made available to the Council under this Clause shall be treated as Confidential Information except to the extent such information is discloseable by law

## **C10 NOT USED**



## **C11 CONTRACT MONITORING AND PERFORMANCE FRAMEWORK**

- C11.1 Contract monitoring will be undertaken by the Council in accordance with Schedule 3. The Provider shall afford all reasonable resources and facilities to allow the Council to carry out its contract reviews and provide all reasonable information required. This will include access to Customer's files.
- C11.2 Following any Contract Monitoring and in line with clause B2 Contract Variation the Council shall be entitled in its absolute discretion to make a change to any Service by amending the Schedules and to increase or decrease the Service accordingly. Where such a change results in a reduction of funding, the Council will endeavour to give 6 (six) months written Notice of such change except where there is clear evidence of no burden of cost on the Provider, in which case the change will have immediate effect.

## **C12 FAILURE TO PERFORM**

- C12.1 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall acting reasonably instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure within such period of time as the Council may direct.
- C12.2 In the event that:
- C12.2.1 the Provider fails to comply with Clause C12.1 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
  - C12.2.2 the Provider persistently fails to comply with clause C12.1 above;
- the Council may terminate the Contract with immediate effect by Notice in writing UNLESS such failure is caused by compliance on the part of the Provider with any request or impositions of the Council operating outside of this Contract or as the Council acting in its other capacities.
- C12.3 In the event that the Council is of the reasonable opinion that there has been a Material Default of the Contract by the Provider, then the Council may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- C12.3.1 proportionately reduce a block payment where new referrals cannot be taken by the Service, as a result of the Default, until the Council is satisfied the Default has been rectified and the Provider will once more be able to supply the Service(s) in accordance with the Contract;
  - C12.3.2 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply



all or such part of the Services in accordance with the Contract;

C12.3.3 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

C12.3.4 terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

C12.4 The Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

### **C13 COMPLAINTS**

The Provider shall ensure that it has complaints procedures in place which are approved by the Council, reflect best practice and meet the requirements of any Regulatory Body to which the Provider is subject. The complaints procedure which relates to Schedules 2.1a to 2.1d shall be integrated with the Council's Procedure for Dealing with Complaints.

### **C14 WHISTLEBLOWING**

The Provider must have a whistle blowing policy in place which complies with the requirements of any Regulatory Body to which the Provider is subject, and be inline with best practice. The provider must supply the Council with a copy of the procedure on request.

### **C15 BUSINESS SUSTAINABILITY, BUSINESS CONTINUITY AND DISASTER RECOVERY AND PANDEMIC FLU PROVISIONS**

The Provider shall use its best endeavours to assist the Council in meeting its statutory obligations and to support the Council in the emergency provision of services to its community in the case of a disaster.

## **PART D - CONTRACT PRICE AND PAYMENT ARRANGEMENTS**

### **D1 CONTRACT PRICE, PAYMENTS ARRANGEMENTS AND FINANCIAL MONITORING**

D1.1 In return for the Provider carrying out its obligation under this Contract the Council shall pay the Provider the Contract Price as set out in the Schedules in Section 2. For the avoidance of doubt there will be no automatic annual uplift. The Council's decision, when considering any request for an uplift, will take into account satisfactory contract performance, funding available and

clear evidence must be provided by the Provider to demonstrate the need for any increase.

D1.1.1 The Prices set out in the Service Specifications in Schedule 2 include 15% overheads which represent directly attributable overheads for the Services. For the avoidance of doubt, a separate agreement between the Council and the Provider is in existence for all other overheads in relation to the Provider's work for the private sector including the development of such work.

D1.2 Payment of the Contract Price will be made in line with the following:

D1.2.1 Services commissioned on a block basis (as detailed in Section 2 (Service Schedules)) will be paid monthly in advance, following receipt of an accurate invoice which includes a quoted purchase order number, sent to: WBC Finance – Accounts Payable, Wokingham Borough Council, Civic Offices, Shute End, Wokingham, RG40 1BN.

D1.2.2 Spot payments will be made monthly in arrears upon receipt of accurate invoices with a quoted purchase order number. Invoices for spot payments should also include individual customer service delivery details and the customers' reference number from the Council's social care recording system. Invoices should be submitted to: Community Care Services (Finance), Wokingham Borough Council, Civic Offices, Shute End, Wokingham, RG40 1WJ.

D1.3 Payment of the Contract Price is made on the assumption that the Services detailed in Schedule 2 will be delivered in accordance with this Agreement. Where this is not the case, payment or part of the payment may be withheld or reclaimed as appropriate.

D1.4 For periods of absence for spot purchased arrangements, the following will apply:

D1.4.1 If a Customer is absent from the Service concerned during the term of this Agreement, the Provider shall inform the Council within one working day.

D1.4.2 The Council shall continue to pay the agreed price to the Provider for the first 2 weeks of absence.

D1.4.3 At the end of the 2 weeks the situation will be reviewed and the Council will determine whether any payment will continue.

D1.5 For the avoidance of doubt, the Contract Price is the total price paid for the Services.

D1.6 The payment received by the Provider from the Council must be spent in accordance with Clauses D1.6.1 and D1.6.2 below:

D1.6.1 Payment made in respect of Brokerage and Professional Support Services (Schedules 2.1a to 2.1d) is ringfenced and must only be spent in accordance with those Schedules.

D1.6.2 Payment made in respect of the other Services (Schedules [ ] to [ ]) will be made pursuant to the relevant Schedules however the total amounts paid across these Services may be pooled and allocated by the Provider at its own discretion to best meet the requirements listed in those Schedules and for no other purpose whatsoever. For the avoidance of doubt, if the Provider is given payment for a Service and the full amount is not spent then it can be used on another Service which requires additional funding subject to it being spent as per the Service Schedule. Any movement of funds in line with this Clause must be fully recorded.

D1.7 Financial monitoring will be undertaken by the Council in accordance with Schedule 3 where the Provider will provide to the Council accurate evidence of monies spent on each Service. Any monies not spent by the Provider pursuant to Clause D1.6 will be identified and a discussion will take place between the Council and the Provider as to whether the underspend is to be re-invested in Services or returned to the Council.

D1.7.1 Where the Provider is unable to meet the capacity requirements of a block funded service, the Council reserves the right to request that the underspend in relation to this must be returned to the Council.

D1.8 The Provider may request that any underspend due to the Council is used to enhance or vary an existing Service or provide a new Service. Such request should be made to the Council in writing using a Contract Variation Notice and any decision made by the Council acting reasonably will be final.

D1.9 As a partner of the Council, the Provider is expected, each year, to work towards creating financial efficiencies within Services without detriment to quality.

## **D2 VALUE ADDED TAX**

D2.1 Value Added Tax (VAT), where applicable, shall be shown separately on all invoices as a strictly net extra charge.

D2.2 The Council and the Provider agree to pay to the other any VAT properly chargeable.

## **D3 RECOVERY OF SUMS DUE**

D3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any Default of this Contract), the Council may deduct that sum from any sum then due to the Provider under this Contract or under any other agreement or contract with the Council. Where Council withholds any disputed monies which subsequently turn out to be rightfully due to the Provider, the Council may pay interest due to the Contractor at the rate for the time being specified pursuant to section 17 of the Judgments Act 1838.

D3.2 Any overpayment by the Council to the Provider shall be recoverable by the Council and vice versa.

D3.3 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has obtained the prior Approval of the Council to such deduction.

**D4 NOT USED**

**D5 REVIEW OF CONTRACT PRICE – STAFFING RELATED COSTS**

D5.1 If during the Contract Period there is a revaluation of the Local Government Pension Scheme, as a result of which the Provider is required, recommended or advised to pay an increased percentage as its employer's contribution to that scheme, in respect of staff transferred by Wokingham Borough Council only ("the Transferred Employees"), the Parties will seek through bona fide negotiations with all due diligence to ascertain the effect thereof on the solvency level of the Provider taking into account the following factors:

D5.1.1 the normal solvency position of an undertaking of the size and activity of the Provider ("the Required Solvency");

D5.1.2 the Provider's total trading position over the remainder of the Contract Period;

D5.1.3 the proportion of the Provider's total trading position formed by the Services; and

D5.1.4 the adjustments required to achieve and maintain the Required Solvency.

D5.2 If, following an increased employers contribution per Clause D5.1, to maintain the Required Solvency of the Provider, the Contract Price must be increased and/or the Services must be reduced, the parties will seek to agree through bona fide negotiations with all due diligence an action plan to effect an appropriate increase and/or reduction taking into account the following factors:

D5.2.1 the Council's estimates of the needs of actual and potential Customers over the remainder of the Contract Period and thereafter; and

D5.2.2 any potential liabilities of the Provider's directors, officers and/or employees arising from the continued provision of the Services and/or the direction and operation of the Provider and its solvency in the absence of any such increase and/or reduction

but the Council shall not be required to bear more of any required adjustments to the Provider's income or costs than is in accordance with the proportion of the Provider's total trading position expected to be formed by the Services over the remainder of the Contract Period.

D5.3 If such a revaluation requires the Provider to pay a reduced percentage as its

employer's contribution to the Scheme in respect of the Transferred Employees, the parties will seek through bona fide negotiations with all due diligence to implement such changes to the pricing structure of the Contract as shall effect savings to the Council over the remainder of the Contract Period equivalent to such proportion of the savings to the Provider over that period caused by such reduction as the Services form to the Provider's total trading position over that period.

- D5.4 The provisions of Clauses D5.1 and D5.2 shall apply mutatis mutandis in respect of each and every subsidiary of the Provider engaged in the delivery of the Services (a "Relevant Subsidiary"), as if each Relevant Subsidiary were the Provider.
- D5.5 If, at any time in the Contract Period the Provider considers that the factors taken into account pursuant to Clauses D5.1 or D5.2 have been wrongly estimated or calculated, and that there has not been an appropriate increase in the Contract Price, or reduction of Services pursuant to Clause D5.2 following a revaluation as referred to in Clause D5.1, the Provider shall notify the Council, and the provisions of Clauses D5.1 and D5.2 shall be triggered as if there had been a further revaluation as referred to in Clause D5.1.
- D5.6 Where a decision is made by the Council to decommission a Service the Provider shall with the support of the Council be expected to minimise redundancies wherever possible. Where a redundancy is unavoidable the Council will meet the cost of redundancy of any affected Employee.

## **PART E - STATUTORY OBLIGATIONS AND REGULATIONS**

### **E1 PREVENTION OF BRIBERY & CORRUPTION**

- E1.1 The Provider, whether acting by any person engaged by the Provider or acting on its behalf (whether with or without the knowledge of the Provider), shall :
- E1.1.1 not offer or give, or agree to give, to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to this Contract or any other contract with the Council or any other public body and comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and under Section 117, Local Government Act 1972; ("Relevant Requirements");
  - E1.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - E1.1.3 comply with the Council's Anti-bribery and Anti- corruption Policies in force from time to time and if none then to comply with the relevant industry body latest guidance applicable from time to time ("Relevant Policies").

- E1.1.4 maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause E1.1.1 and will enforce them where appropriate;
  - E1.1.5 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Customer;
  - E1.1.6 immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Provider or acquires a direct or indirect interest in the Provider (and the Provider warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
  - E1.1.7 within 12 months of the date of this agreement, and annually thereafter, certify to the Council in writing signed by an officer of the Provider, compliance with this clause E1 by the Provider and all persons associated with it. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- E1.2 The Provider shall ensure that any person associated with the Provider who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this clause E1 (Relevant Terms). The Provider shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any Default by such persons of any of the Relevant Terms.
- E1.3 For the purpose of this clause E 1, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause E1 a person associated with the Provider includes but is not limited to any subcontractor of the Provider.
- E1.4 The Provider warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.
- E1.5 If the Provider, it's Staff or anyone acting on the Provider's behalf (whether or not with the knowledge of the Provider), engages in conduct prohibited by clauses E1.1 or E1.2, the Council may:
- E1.5.1 terminate the Contract and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the

Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

E1.5.2 recover in full from the Provider any other loss sustained by the Council in consequence of any Default of those clauses.

E1.6 In exercising its rights or remedies under this clause, the Council shall:

E1.6.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;

E1.6.2 give all due consideration, where appropriate, to action other than termination of the Contract

## **E2 EQUALITIES AND DIVERSITY**

E2.1 In the performance of the Services, the Provider and any sub-contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, belief, disability, sexual orientation, age, human rights or otherwise) in employment.

E2.2 The Provider shall take all reasonable steps to secure the observance of clause E2.1 by its Staff employed in the execution of this Contract:

E2.2.1 The Provider shall have an Equalities policy that is in line with all current legislative requirements and is in line with best industry practice and consistent with the Council's values

E2.2.2 The Provider shall provide such information as the Council may reasonably require for the purpose of assessing the Provider's continued compliance with this clause E2.

E2.3 The Provider shall have a Diversity Policy that complies with all legal requirements and promotes an inclusive society, opposing all forms of intolerance and prejudicial discrimination, whether intentional, institutional or unintentional. The Provider and its staff shall comply with the Diversity Policy

## **E3 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

No person who is not a Party to the Contract shall have any 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.

## **E4 HEALTH AND SAFETY**

E4.1 In relation to the Provider's Staff, the Provider shall at all times comply with the requirements of the Health and Safety at Work Act 1974 and any other acts,

order, regulations and codes practice pertaining to the health and safety of employees and others who may be affected by the Provider's acts or omissions in providing the Services under this Contract and shall require that any sub-contractors likewise comply.

- E4.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Council on request.
- E4.3 The Provider shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Service and the acts of its Staff. The Provider shall notify the Council in writing if any method or practice set out in the Specification shall be or shall become an unsafe method of practice.
- E4.4 The Provider shall undertake regular audits to ensure compliance with statutory duties in relation to health and safety and must have a robust policy in place for dealing with any incidents, a copy of which should be provided to the Council upon reasonable request.
- E4.5 The Council reserves the right to suspend the provision of the Services in whole or in part (to the extent reasonable) without paying compensation if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work Act 1974 and provision within this clause E4.

## **E5 HUMAN RIGHTS**

- E5.1 The Provider shall comply with the Human Rights Act 1998 (HRA) as if it were a 'Public Authority' within the meaning of the legislation.
- E5.2 The Provider shall indemnify the Council against any liability, loss, claim or proceedings arising out of any violation of the HRA by the Provider in the course of the provision of the Service under this Contract.

## **E6 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS**

- E6.1 Subject to Data Protection (Clause F1) and Confidentiality (Clause F2) the Provider must provide the Council with such information as it may reasonably require and upon reasonable request to enable it to comply with its obligations under TUPE when either this Agreement comes to an end or it ceases to apply to a particular Service
- E6.2 The Provider must ensure that it complies with the provisions of the TUPE. The Provider hereby indemnifies the Council and any future employer of staff (accepting a transfer of the Provider's staff as a result of TUPE) from and against all losses, costs, demands, expenses and damages arising as a result of the Provider's non-compliance with the provisions of this Clause.
- E6.3 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Staff shall be borne by the Provider up to and including any transfer date



## **E7 MENTAL CAPACITY ACT AND DEPRIVATION OF LIBERTY SAFEGUARDS**

E7.1 In relation to the Mental Capacity Act 2005 (MCA):

E7.1.1 The Provider, including its Staff shall comply with the provisions set out in the MCA when delivering Services

E7.1.2 All staff shall receive appropriate training on the Mental Capacity Act which should be updated annually or in line with legislative and practice changes.

E7.1.3 The Provider shall notify the Council immediately where a Customer may lack the capacity and a Significant Decision is to be made.

E7.2 In relation to the Deprivation of Liberty Safeguards

E7.2.1 The Provider shall have regard to the MCA Code of Practice Including the supplementary Deprivation of Liberty (DoL) Safeguards in its role as a Managing Authority.

E7.2.2 The Provider shall have a clear written policy approved by the Council on its approach to the DoL which includes but is not limited to the following

E7.2.2.1 a clear procedure for the recording of information

E7.2.2.2 the process for applying for an Authorisation to the Council

E7.2.2.3 the process once a DoL Authorisation request has been made

E7.3

E7.3.1 The Provider shall appoint a lead contact to act on behalf of the Provider for all purposes connected with the MCA and DoL. The Provider shall notify the Councils of the lead contact details prior to the Commencement Date.

E7.3.2 The Provider shall forthwith give Notice in writing to the Council of any change in the identity, address, e-mail and telephone numbers of the person appointed as lead contact. The Provider shall give maximum possible notice to the Council before changing its lead contact

## **PART F - INFORMATION**

### **F1 DATA PROTECTION ACT**

F1.1 Each party, including their employees, shall comply with the requirements of the Data Protection Act 1998 (the "DPA") in relation to the provision of the Services

and shall not knowingly or negligently by any act or omission, place the other party in breach, or potential breach of the DPA.

F1.2 The Provider shall in accordance with the DPA be notified and shall advise the Authorised Officer of its notification reference on the Public Register of Data Controllers.

F1.3 The Provider shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

F1.3.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;

F1.3.2 immediately notify the Council of any breach of the security measures required to be put in place pursuant to this Clause F1; and

F1.3.3 ensure that it does nothing knowingly or negligently which places the Council in breach of the Council's obligations under the DPA.

F1.4 Each Party agrees to indemnify the other Party against all costs that it incurs as a result of the other Party's failure to comply with this clause F1.

F1.5 Each Party shall ensure that personal data is not transferred to a country or territory outside the European Economic Area without the prior written consent of the other Party.

F1.6 On termination of this Contract the Provider shall return all personal data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Council.

F1.7 The provision of this Condition shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## **F2 CONFIDENTIALITY**

F2.1 Each Party: -

F2.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

2.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

- F2.2 Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other under or in connection with the Contract:
- F2.2.1 is given only to such of staff of the Council and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
  - F2.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any staff of the Council or such professional advisors or consultants otherwise than for the purposes of the Contract.
- F2.3 Each Party shall refrain from using any Confidential Information it receives from the other otherwise than for the purposes of the Contract.
- F2.4 The provisions of clauses F2.1 to F2.3 shall not apply to any Confidential Information received by one Party from the other:
- F2.4.1 which is or becomes public knowledge (otherwise than by Default of this Clause);
  - F2.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - F2.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - F2.4.4 which is independently developed without access to the Confidential Information; or
  - F2.4.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 pursuant to clause 46
- F2.5 Nothing in this clause shall prevent the Council disclosing any Confidential Information:
- F2.5.1 for the purpose of the examination and certification of the Council's accounts; or
  - F2.5.2 any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or
  - F2.5.3 to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any

government department or any Contracting Authority; or

F2.5.4 to any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Contract provided that in disclosing information the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

F2.6 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

F2.7 If a party fails to comply with this Clause F2, the other party may terminate the Contract by Notice with immediate effect.

### **F3 AUDIT**

The Provider shall keep, maintain and archive full and accurate records in relation to the Contract, which includes those in relation to business, customers and finance, in line with the requirements of the Council's Record Retention Schedule. The Provider shall on request afford the Council or the Council's representatives such access to those records and its premises as may be required by the Council in connection with the Contract.

### **F4 PUBLICITY**

F4.1 Except with the Approval of the Council, such Approval not to be unreasonably withheld or delayed the Provider shall not make any press announcement or publicise this Contract or any part thereof in any way. The Provider may refer to this Contract in its general marketing and in submission and presentations for contracts.

F4.2 The Provider shall take reasonable steps to ensure the observance of the provision of clause F4.1 by all its Staff.

F4.3 The provision of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

### **F5 LOGO**

F5.1 Subject to F5.2, neither Party shall use the crest, logo or arms belonging to the counter party either on its own or in combination with their crest, logo or arms nor cause nor permit it to be used without express permission.

F5.2 The Provider shall (a) maintain an appropriate logo and branding scheme for itself as a provider of the Services which shall not use the colour scheme or any other distinguishing feature of the Council's arms, logo and/or branding scheme and (b) use the latter arms, logo and/or branding scheme in its stationery, signage and other means of communication with the public in such manner as the Council shall from time to time reasonably stipulate.

F5.3 The Council's participation with the Provider must be identified on the Provider's official business stationery in relation to the work carried out as per Schedules 2.1a to 2.1d only.

## **F6 RECORDS**

F6.1 The Provider shall maintain current and accurate Records of all work carried out in the provision of the Services and shall ensure that these Records shall be available for inspection by an authorised representative of the Council at all reasonable times.

F6.2 The Provider shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of Records irrespective of the storage media which are under the Provider's control as part of the Services. Such safeguards shall include an obligation on the Provider to ensure that access to Records is only obtained by such Council Staff as may be specifically designated by the Authorised Officer.

F6.3 If any Records are:

F6.3.1 accidentally or wilfully destroyed, otherwise than by the Council or on the authorisation of the Council, or;

F6.3.2 altered without authorisation

in the event that the Provider does not put in hand a method for reinstatement or replacement of such Records within seven days of receipt of a Notice from the Council then without prejudice to the Council's other rights at law, the Provider shall reimburse the Council its reasonable costs in restoring such Records.

F6.4 Immediately upon expiry or termination of this Contract for any reason whatsoever the Provider shall at the sole option of the Council either return to the Council all Records in an agreed form, timescale and location or destroy all copies thereof.

## **F7 FREEDOM OF INFORMATION**

F7.1 The Parties acknowledge that they are subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 and must assist and cooperate with the other (at their own expense) to enable compliance with these information disclosure requirements.

F7.2 The Provider must procure that any sub-contractors:

F7.2.1 transfer any request for information to them as soon as practicable after receipt and in any event within Five Business Days of receiving a request for information;

F7.2.2 provide the other with a copy of all information in its possession or power in the form that they require within Five Business Days (or such other period as the Party concerned may specify) of the Party requesting that

Information; and

- F7.2.3 provide all necessary assistance as reasonably requested by the other to enable the Party to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- F7.3 The Party will be responsible for determining at its absolute discretion whether any information:
- F7.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
- F7.4 The Parties acknowledge that they may, acting in accordance with the Ministry of Justice Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information following consultation with each other and having taken their views into account (which the Parties will use all reasonable endeavours to do before responding, but without prejudice to its statutory obligations).
- F7.5 The Parties must ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and must permit the other to inspect such records as requested from time to time.
- F7.6 The Parties acknowledge that any lists or Schedules provided by them outlining Confidential Information are of indicative value only and that the Parties may nevertheless be obliged to disclose Confidential Information in accordance with clause F7.4. The Parties acknowledge that the other is subject to the requirements under the Freedom of Information Act 2000 (the "Act") and the Environment Information Regulations 2004 (the "Regulations") and shall cooperate with each other (at their own expense) to enable them to comply with these information disclosure requirements.
- F7.7 The Parties shall to the extent practicable seek the views of the other where information is requested under FOIA which is reasonably likely to affect the commercial interest of the Provider and shall take into account the representations of the Provider in deciding on release or withholding of the information but this clause shall not fetter the discretion of the Council in its obligation to have regard to the public interest.

## **PART G - LIABILITY AND INSURANCE**

### **G1 LIABILITY**

- G1.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations.
- G1.2 Subject to clauses G1.3, G1.4 and G1.5 the Provider shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses, loss or damage and any other liabilities whatsoever arising out of, in respect of or in connection with this Contract including but not limited to any death or personal injury, loss or damage to property, or any other loss

which is caused directly by any act or omission of the Provider. For the avoidance of doubt, the Provider shall not be liable for such claims etc. in respect of risks which are required under any lease to be insured by the Council or a superior landholder.

- G1.3 This Clause G1 shall not apply if the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default or by any circumstances within its control.
- G1.4 Subject to clause G1.1 and G1.2, the Provider shall not be liable to the Council in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Council of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business, goodwill, anticipated savings, corruption of data or information.
- G1.5 The Provider's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restriction or otherwise arising out of the performance of contemplated performance of this Contract shall be limited up to the financial value specified in any of the provisions in Clause G2 (Insurance) corresponding to whichever insurance policy covers the subject claim and where more than one insurance policy is invoked then the greater value shall apply and in any other event an uninsured claim shall be limited to the Contract Price .

## **G2 INSURANCE**

- G2.1 Subject to the provisions of Clause G2.7 the Provider 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 potential liabilities pursuant to this Contract which may be incurred by the Provider or the Council arising out of the Provider's performance of the Contract, including but not limited to the following without prejudice to the foregoing:
  - G2.1.1 public liability Insurance cover for an amount of not less than £20 (twenty) million or such other sum as may be reasonably requested by the Council from time to time in respect of any one claim or series of claims arising from any one cause in a single calendar year;
  - G2.1.2 professional indemnity insurance cover for an amount of not less than £5 (five) million or such other sum as may be reasonably required by the Council from time to time in respect of all claims in the aggregate made in any one period of insurance;. Such insurance shall be maintained for a minimum of [12 (twelve)] years following the expiration or earlier termination of this Contract.
  - G2.1.3 employer's liability insurance cover for an amount of not less than £10 (ten) million or such other sum as may be reasonably required by the Council from time to time for claims arising from any one claim or series of claims arising from any one cause in a single calendar year

- G2.1.4 medical malpractice insurance cover for an amount of not less than £2 (two) million or such other sum as may be reasonably required by the Council from time to time in respect of claims in the aggregate made in any one period of insurance; Such insurance shall be maintained for a minimum of 12 (twelve) years following the expiration or earlier termination of this Contract; and such of the above policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider .
- G2.2 The Provider shall supply to the Council forthwith and upon each renewal date of any relevant policy referred to in clause G2.1 a certificate from its insurers or brokers demonstrating that appropriate cover is in place.
- G2.3 The Provider shall hold adequate insurance for all vehicles used by the Provider and ensure that any Staff using their motor vehicles to carry Customers and/or Carers have valid business insurance on their motor vehicles and shall produce a copy of each certificate to the Authorised Officer if requested to do so provided that if the Council requests this information more often than once a year the Council shall meet the Provider's reasonable cost of production.
- G2.4 If the Provider fails to take out and maintain the insurances required by this Contract or the Parties agree that the Council shall effect any of the insurances required by the terms of this Contract whether or not in joint names then the Council may itself insure against any risk and to a level which in its reasonable opinion is required by the terms of this Contract and a sum or sums equivalent to the amount paid or payable by the Council in respect of premiums therefore may be deducted by the Council from any monies due or to become due to the Provider under this Contract or such amount may be recoverable by the Council from the Provider as a debt.

### **G3 WARRANTIES AND REPRESENTATIONS**

- G3.1 The Provider warrants and represents that:
- G3.1.1 the Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, in circumstances where the Parent company is not the Council the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Provider;
- G3.1.2 the Provider shall discharge its obligation hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;
- G3.1.3 the Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect



to its business, assets or financial condition or its ability to observe or perform its obligations under this Contract

#### **G4 MAINTENANCE AND DILAPIDATIONS OF PREMISES**

- G4.1 In this clause, the term "Premises" means such premises as the Provider occupies at the date hereof and the term "Leases" means the documentation or arrangements under which the Provider occupies the Premises at any time.
- G4.2 The Council and the Provider shall forthwith negotiate in good faith the transfer of money (in addition to the Price) sufficient to enable the Provider to carry out its obligations under the Leases in respect of (a) the repair and decoration and maintenance of the Premises (including firstly both the repair and where reasonably required (where repair is not economic) the renewal of utilities and plant serving the Premises and secondly the cost (where reasonably and properly required) of complying with any statutory obligations imposed on the Tenant pursuant to the Leases the latter being limited only to the use at the date hereof) and (b) the Provider's expected obligations in respect of liabilities arising from any claim for dilapidations, including reinstatement (if required) of any alterations undertaken by the Provider with the prior approval of the Council (or other landlord) under the terms of the Leases.
- G4.3 Until such negotiations are concluded by written agreement the Council shall reimburse the Provider on demand with the proper and reasonable costs expended by the Provider pursuant to the provisions set out in G4.2 except to the extent that such costs are incurred in consequence of failure by the Provider to use the Premises in a reasonable and tenant-like manner and limited only to the use at the date hereof.
- G4.4 If the Parties have not reached agreement under G4.3 within three months of whichever is the later of either the Commencement Date or the date of expenditure pursuant to clause G4.2 (or within such longer period as may be agreed by the Parties) and written notification from the Provider to the Council (as the case may be) either Party may require reference of the matter to dispute resolution under Clause H9 (dispute).
- G4.5 For the avoidance of doubt, the Provider shall undertake and fulfil its obligations under each Lease and the Council shall meet its obligations set out in G.4.2 from the Commencement Date or (if later) the date of legal formalisation/continuation of the Lease.
- G4.6 If the Council is in default in relation to its obligation hereunder to pay the Provider a sum or sums properly due as the Contract Price (the total amount so unpaid at any one time being "the Default Amount"), the Provider shall be entitled to make such withholding(s) from payment of sums due under the Leases ("the Rents") as shall not exceed in total at any time the Default Amount as reasonably anticipated by the Provider over the period to which the Rents relate (the total amount so withheld at any one time being "the Withholding") but shall forthwith pay to the Council any amount by which the Withholding at any time exceeds the Default Amount.

G4.7 If the Council permits the continued occupancy of real property on a tenancy at will or licence to the Provider (or provides property by any informal arrangement with the provider) property ("the Original Property") for the purposes of the delivery of the Services but subsequently terminates that tenancy or licences (or arrangements) other than by reason of:-

- (a) **material default** of the Provider under the terms of the tenancy or licence (or arrangement);
- (b) termination of this Contract; or
- (c) written notification by the lessor of the Original Property of an intention, whether or not conditional, to commence proceedings requiring the cessation of the continued occupancy and/or seeking forfeiture of the relevant lease ("Threat of Enforcement")

the Council will make available to the Provider on or before the date of termination of the tenancy or licence or arrangement ("the Transfer Date") substitute real property ("the Substitute Property") which shall be no less suitable than the Original Property for use for the delivery of the Services in the same way as the Original Property was used and shall be offered on terms which:

- (i) are no more onerous in sum than those on which the Original Property was held (notwithstanding changes required by the physical nature of the Substitute Property or the legal nature of the Council's interest therein);
- (ii) permit access to the Substitute Property for not less than the five working days preceding the Transfer Date for all purposes reasonably connected with the relocation of the Provider to the Substitute Property; and
- (iii) do not require payment in respect of any period prior to the Transfer Date and for the avoidance of doubt the Council shall bear the proper and reasonable costs incurred by the Provider in relocating such parts of the Services as were carried out in the Original Property to the relevant Substitute Property (with such sums being paid to the Provider within 10 working days of invoice to the Council from the Provider).

## **PART H- DISPUTE, DISRUPTION AND TERMINATION**

### **H1 TERMINATION**

H1.1 The Contract consists of a number of separable activities and the Parties acknowledge that, if termination of the contract is permitted in consequence of Default by the Provider in respect of any particular activity, the Council may in its absolute discretion terminate the Contract in relation only to a specified activity or group of activities.

- H1.2 Not used
- H1.3 Subject to the provisions of clause 89 (Force Majeure) the Council may terminate the Contract by Notice in writing with immediate effect if (other than by the act or omission of the Council):
- H1.3.1 the Provider ceases or threatens to cease to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets that in the reasonable opinion of the Council would adversely affect the delivery of the Services;
  - H1.3.2 the Provider fails to obtain or retain any consent, licence or permission (or such consent, licence or permission is varied, restricted or suspended) and the Council reasonably considers that the effect thereof will or may be to have a material adverse effect on the provision of the Services; or
  - H1.3.3 Not Used
  - H1.3.4 the Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge;
  - H1.3.5 or where the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 in respect of any premises which are essential to the delivery of the Services, any landlord is granted an order for the forfeiture of the lease; or
  - H1.3.6 any person holding a mortgage or other charge over any premises which are essential to the delivery of the Services is granted an order for possession of the premises or any similar order; or
  - H1.3.7 or any similar event occurs under the law of any other jurisdiction within the United Kingdom
- H1.4 The Provider shall notify the Council immediately if any of the events listed in Clause H1.3 occur

## **H2 TERMINATION ON DEFAULT**

- H2.1 The Council may terminate the contract, or terminate the provision of any part of the Contract, by written Notice to the Provider with immediate effect if the Provider commits a Material Default and if:
- H2.1.1 the Provider has not remedied the Default to the satisfaction of the Council within the timeframe specified by the Council in a written Notice specifying the Default and requesting it to be remedied (which timeframe shall be determined by the Council acting reasonably)
  - H2.1.2 the Default is not capable of remedy; or
  - H2.1.3 the Default relates to a fundamental part of the Contract.
- H2.2 Without prejudice to any other right or remedy, the Council may terminate this Agreement
- H2.2.1 by giving Forty Business Days' notice to the Provider where the Provider has committed a Default on Six occasions in any consecutive Three month period whether or not such Defaults are remedied in accordance with this Contract; or
  - H2.2.2 the Contract may be terminated in accordance with a failure to meet Quality and Performance clauses in the Service Specifications (Schedule 2) and Contract Monitoring Schedule 3.
- H2.3 The Provider shall have equivalent rights to those set out in 2.1 and 2.2 above against the Council, references to the Council therein being deemed to be references to the Provider and vice versa.
- H2.4 The Provider acknowledges that any act or omission by any employee or temporary staff member of the Provider which:
- H2.4.1 results in the death of or actual bodily harm to any Customer
  - H2.4.2 constitutes abuse of a Customer (and for this purpose abuse occurs when, whether as part of a pattern or as a single incident, physical violence and/or the threat thereof and/or emotional coercion is used to gain or maintain power or control in a relationship); or
  - H2.4.3 would, if the perpetrator were a first time adult offender who has pleaded not guilty, require sentencing in the Crown Court (but for the avoidance of doubt the standard of proof for the purposes of this clause H2.4.3 shall be that of the balance of probabilities and not that of the criminal conviction of any person)

shall constitute a Material Default of the Contract by the Provider and will permit the Council to terminate the Contract with immediate effect.

### **H3 NOT USED**

#### **H4 - PROVIDER'S FINANCIAL DISTRESS**

H4.1 The Council may at its sole option and discretion serve a Financial Distress Notice if upon considering the financial statements and other evidence related to the Provider the Council reasonably considers that the Provider is no longer a going concern or that there is a significant risk that the Provider will cease to be a going concern within six months, then the Council may serve a Financial Distress Notice on the Provider and the process set out in Section H.4 shall commence.

H4.2 The Notice shall be sent to the Provider's last known email address and the Council shall make reasonable endeavours to contact the Provider by telephone to advise it that the Notice has been served. A copy shall be sent immediately by first class post

H.4.3 The Notice shall:

H4.3.1 state that it is a Financial Distress Notice

H4.3.2 set out the reasons why the Council believes that the Provider is no longer a going concern, or is at significant risk of ceasing to be a going concern within the next six months

H4.3.3 state that the Contract shall terminate one month from the date of the Notice, or at such later date as the Council may specify.

H4.4 If the Provider does not accept that the Council is correct in its assessment that the Provider is no longer a going concern, or is at significant risk of ceasing to be a going concern within the next six months it may serve on the Council, within ten days of receipt of the Financial Distress Notice, an appeal (the "Appeal Notice").

H4.5 The Appeal Notice shall set out the grounds for appeal and the Provider may enclose with the Notice concise and pertinent information and evidence in support of the appeal.

H4.6 The Council shall consider the Appeal Notice and shall at the Provider's request meet the Provider and/or its financial advisers within five working days of the date of the Notice and shall notify the Provider within ten days of receipt of the Notice whether it accepts the appeal.

H4.7 If the Council rejects the Provider's appeal then, at the Provider's request, the matter shall be submitted to an independent expert for binding determination under Clause H9

### **H5 CONSEQUENCES OF TERMINATION**

- H5.1 If the Council terminates this Contract or terminates the provision of any part of this Contract under clause H2 or clause C12, the Council shall:
- H5.1.1 be entitled to employ and pay a Replacement Provider to provide and complete the provision of the Services or any part thereof; and
  - H5.1.2 be entitled to recover from the Provider the costs incurred of making those other arrangements including any additional expenditure incurred by the Council; and
  - H5.1.3 be entitled to deduct from any sum or sums which would have been due from the Council to the Provider under this Contract or the recovery of any sum or sums as a debt
- H5.2 Where this Contract is terminated, no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making alternative arrangements.
- H5.3 Termination of this Contract for any reason (including expiry) shall not affect any rights or liabilities that have accrued prior to the date of termination.

## **H6 SUSPENSION**

- H6.1 This Clause shall apply if:
- H6.1.1 the Council reasonably considers that a Default by the Provider of any obligation under this Contract:
    - H6.1.1.1 may create an immediate and serious threat to the health or safety of any person; or
    - H6.1.1.2 may result in a material interruption in the provision of one or more of the Services; or
    - H6.1.1.3 The performance monitoring and/or remedial action requirements of Schedules 2 and 3 so specify; or
    - H6.1.1.4 the Council would be entitled to terminate this Contract pursuant to clause H1.3, H1.4 or H2.
- H6.2 Where this clause applies, the Council may partially or totally suspend the affected Service or part of it and the Provider's right to receive payment for it PROVIDED THAT if the Provider demonstrates to the reasonable satisfaction of the Council that it is able to resume the performance of the relevant Service to the required standard at a specific time agreed by the Council (such agreement not to be unreasonably delayed or withheld) the Council shall lift the suspension if resumption occurs at the agreed time.
- H6.3 The Council may recover from the Provider its costs resulting from suspension or partial suspension under this clause H6 (Suspension).

H6.4 The Provider shall have equivalent rights to those set out in 6.1 to 6.3 above against the Council, mutatis mutandis.

## **H7 HANDOVER**

H7.1 The Provider shall not charge the Council or any Replacement Provider for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this clause H7.

H7.2 At the end of the Contract Period (and howsoever arising) the Provider shall forthwith deliver to the Council upon request all the Council's Property (including but not limited to materials, documents, information) relating to the Contract.

H7.3 The Provider shall use all reasonable endeavours to transfer all data in accordance with industry standard format (or any format reasonably specified by the Council or a Replacement Provider) relating to the Services including without limitation requests for Services to be undertaken which have not been completed.

H7.4 At any time upon reasonable notice from the Authorised Officer or (where the request is occasioned by the termination of the Contract) forthwith and in any event upon the day which shall be not less than fifteen (15) months before the end of the Contract Period or within four (4) weeks of early termination of the Contract the Provider shall supply to the Council full, complete and accurate information as to the identity and terms and conditions of employment of all employees then currently engaged in the provision of the Service (whether or not employed by the Provider) and any other employee liability information as specified in the Regulations and shall warrant the accuracy of such information and shall forthwith notify the Council of any change in such information.

H7.5 The Provider shall permit the Council to use the information provided pursuant to Clause H7.4 for informing any tenderer for the Service or any part thereof and shall enable and assist the Council and such other persons as the Council may reasonably determine to communicate with and meet the Staff and their trade unions or other employee representatives or staff associations as when and where the Council may reasonably determine.

H7.6 The Provider shall comply with any reasonable request made by the Council for information concerning the numbers, identity, functions and terms and conditions of employment of Staff employed by the Provider in connection with the performance of the Service, if such request is made by the Council for the purpose of considering the application of, or complying with the requirements of the Directive and/or the Regulations upon the termination of the Contract or any part thereof. The Provider shall supply the requested information to the Council with a reasonable time following the request and shall use its best endeavours to ensure that such information is accurate. The Council shall treat such information as confidential to itself and its advisors, save as required by law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Service in succession to the Provider.

H7.7 At the end of the Contract Period (howsoever arising) and for a period of 6 months after the Contract Period the Provider shall co-operate with the Council and any new provider appointed by the Council to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress. The council will pay the provider reasonable costs for this work except where the provider has not complied with Clause H7.1 – H7.6.

H7.8 The provisions of this Clause H7 shall survive the expiry of the Contract

## **H8 DISRUPTION**

H8.1 The Provider shall give the maximum possible advance warning of prospective industrial action by the Provider's Staff or other industrial disputes likely to affect the performance of this Contract adversely.

H8.2 In the event that:

H8.2.1 industrial action is taken by any Staff of the Provider such as that the provision of the Services are, in the reasonable opinion of the Council, materially disrupted; or

H8.2.2 action is taken by the Provider so as to prevent its Staff from providing the Services the Council reserves the right to make alternative arrangements for the provision of the Services and to charge the Provider for any difference in resultant cost or terminate this Contract by Notice in writing to the Provider.

H8.3 In the event that industrial action is taken by Staff of the Council the Provider shall make every attempt to ensure that its Staff continue to provide the Services and the Council shall meet the Provider's reasonable and proper additional costs incurred in so maintaining the Service in these circumstances.

## **H9 DISPUTE**

H9.1 If there is a dispute between either party concerning the interpretation or operation of this Contract or in respect of a Variation Notice then either party may notify the other that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Contract Manager to resolve, negotiating on the basis of good faith.

H9.2 If after 20 Business Days (or such longer period as both of the Parties may agree) of the date of the Notice referred to in clause H9.1 the dispute has not been resolved then either party may notify the other that it wishes the dispute to be referred to a meeting of the Chief Executive of the Council (or a person appointed by him to act on his behalf), with reference to the Leader of the Council, and a senior officer of the Provider, to resolve, negotiating on the basis of good faith however the ultimate decision will be taken by the Council and will be final and binding on both parties. For the avoidance of doubt the appointed senior offer should not be a person whose appointment could lead to a conflict of interest

## **H10 NOT USED**



## **H11 LAW AND JURISDICTION**

Subject to clauses H9 the parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Contract and the legal relationship established by this Contract.

## **H12 CHANGE OF LAW**

H12.1 The Provider shall take all steps reasonably necessary to ensure that the Services are performed in accordance with the terms of this Contract following any change in Law

H12.2 General Change in Law:

The Provider shall comply with any General Change in Law at the Provider's sole risk and cost.

H12.3 Qualifying Change in Law:

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

H12.3.1 any necessary change in the Services and the Contract Price;

H12.3.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;

H12.3.3 whether relief from compliance with the obligations is required, including the obligation of the Provider to achieve the Commencement Date, milestones or to meet any service level requirements at any time.

H12.4 As soon as practicable after any notification in accordance with Clause H12.3 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Provider can mitigate the effect of the Change in Law, including:

H12.4.1 providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors

H12.4.2 demonstrating that a foreseeable Qualifying Change in Law had been taken into account by the Provider before it occurred;

H12.4.3 giving evidence as to how the Qualifying Change in Law has affected the cost of providing the Services; and

H12.4.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price

H12.5 Any increase in the Price or relief from the Provider's obligations agreed by the Parties pursuant to this Clause H12 shall be implemented in accordance with Clause B2.

## **PART I - CONTRACT SPECIFIC CONDITIONS**

### **11 OUTCOMES**

The Provider shall comply with the arrangements for delivering and monitoring outcomes as defined and set out in the individual service specifications in Schedule 2 and the Contract Monitoring and Performance Framework Schedule 3.

### **12 SELF-DIRECTED SUPPORT**

12.1 This Contract sets out the amount of monies to be paid to the Provider to cover those Services set out in Schedule 2. With respect to Self-Directed Support and those services funded on a block basis, the following will apply:-

12.1.1 Where a current Customer applies for and receives a Personal Budget under Self Directed Support and chooses after notification of the unit cost of the service that they are purchasing to use the Block Contract services to spend their Personal Budget, there will be no additional payment to the Provider other than existing payments through the block contract;

12.1.2 Where an individual is not a current Customer and applies for and receives a Personal Budget under Self-Directed Support (and chooses after notification of the unit cost of the service that they are purchasing) to use the Provider Block Contract service, there will be no additional payment to the Provider in so far as there is spare capacity under the Block Contract and that the customer is supported through existing capacity and the arrangement has been made by the Brokerage Team or other service or agency;

12.1.3 Where the relevant part of the Personal Budget is taken as a Direct Payment and the block capacity has not been reached, the Provider shall reimburse the Council with the relevant amount. Where a Direct Payment is used and the block capacity has been reached, the Provider can retain the Direct Payment.

12.2 Where a new or existing Customer takes up a Personal Budget as an Individual Service Fund, a separate contract for the service will be drawn up by the Council.

12.3 These arrangements will not apply to Service Schedule X (START),

which are outside the Self Directed Support arrangements.

**EXECUTION**

IN WITNESS of which this Contract has been duly executed by the parties.

On behalf of the Provider:

Executed by Optalis Limited:  
acting by its Director  
in the presence of :

Witness	Signature
	Name
	Address

The Common Seal of Wokingham Borough Council  
was hereunto affixed in the presence of:

Solicitor / Barrister





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