

**TERMS AND CONDITIONS**  
**CONTRACT FOR ADULTS SERVICES**

Between

SOLIHULL METROPOLITAN BOROUGH  
COUNCIL

And

**[Insert Providers Name]**

For the purchase of the following Service:

**[Insert Name of Service]**

Start Date of Contract:		End Date of Contract:	See A2
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*For internal use:*

Contract Number:	<b>[tba]</b>		
Notice period: 3 or 6 months (less if Default or Insolvency)		Commissioner	XXXXXXXXXX
Contracts Manager (Provider):		Authorised Officer (SMBC):	Kim Dowsing

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**THIS AGREEMENT** is made on .....

**BETWEEN**

(1) **SOLIHULL MBC** of Council House Manor Square Solihull B91 3QB (“the Council”); and

(2) .....(company registered number (.....)) whose registered office is at:  
.....  
.....  
.....  
(the “Provider”).

**A GENERAL PROVISIONS**

**A1 Definitions and Interpretations**

The Contract shall be interpreted in accordance with **Schedule 2**

**A2 Contract Period**

The Contract shall commence on the Commencement Date and shall be for an initial term of **3 years** and shall expire, unless extended in accordance with **clause F8** for a further 1 year unless it is otherwise terminated in accordance with this Contract.

**A3 Provider’s Status (Principal)**

A3.1 In carrying out the Services, the Provider shall be acting as principal and not as the agent of the Council.

A3.2 Accordingly:

- a. the Provider shall not (and shall procure that its Staff do not) say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Council; and
- b. nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, the Council’s employees, servants or agents.

**A4 The Provider’s Obligations**

A4.1 The Provider agrees to provide the Services to all Individuals so to fully comply with:

A4.1.1 the terms of the Contract; and

A4.1.2 to use reasonable care and skill in the performance of the Services and in accordance with generally recognised practices and standards in the industry for similar services

**A5 The Council's Obligations**

A5.1 The Council shall perform its obligations under the Contract in accordance with these Clauses in its capacity as a Party to this Contract but nothing in this Contract shall operate as an obligation upon, or in any way fetter or constrain, the Council in the exercise of its duties and powers in any other capacity.

**A6 Entire Agreement**

A6.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

A6.2 In the event of and only to the extent of any conflict between the Specification, Invitation to Tender, [Provider's Tender] [and other documents referred to or attached to the Contract], the conflict shall be resolved in accordance with the following order of precedence:

- a. the body of the Contract shall prevail over;
- b. the Schedules;
- c. any other document referred to in this Contract.

Unless expressly agreed, a document varied pursuant to **Clause F3** shall not take higher precedence than specified here.

**A7 Scope of Contract**

Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Council and the Provider.

**A8 Notices**

A8.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by the Authorised Officer or the Provider's Representative.

A8.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail. Such notice or communication shall be addressed to the other Party in the manner referred to in **Schedule 3**. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given **[2]** working

days after the day on which the letter was posted, or four hours, in the case of electronic mail, or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

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

**A9 Mistakes in Information**

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

**A10 Conflicts of Interest**

A10.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any employee, servant, agent, supplier or sub-Provider 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 persons and the duties owed to the Council under the provisions of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

A10.2 The provisions of this Clause shall apply during the continuance of the Contract and indefinitely after its termination or expiry.

**A11 Fraud**

A11.1 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 and sub-contractors.

A11.2 The Provider shall notify the Council Head of Solihull Audit Services on 0121 704 6067 immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

A11.3 The Council reserves the right to take whatever action it deems necessary in the event of either notification of, or a suspected fraud.

**B PROVISION OF THE SERVICES**

**B1 Authorised Officer**

B1.1 The Council shall appoint an Authorised Officer to act on behalf of the Council for all purposes connected with the Contract.

B1.2 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 use reasonable endeavours to give notice to the Provider before changing its Authorised Officer

## **B2 Provider's Representative**

- B2.1 The Provider shall appoint a Provider's Representative to act on behalf of the Provider for all purposes connected with the Contract.
- B2.2 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 Provider's Representative. The Provider shall use reasonable endeavours to give notice to the Council before changing its Provider's Representative

## **B3 The Services**

- B3.1 The Provider shall provide the Services during the Contract Period in accordance with the Council's requirements as set out in the Specification and the terms of this Contract. The Council shall have the power to inspect and examine the performance of the Services at the Providers Premises at any reasonable time without giving notice or provided that the Council gives reasonable notice to the Provider, at any other premises where any part of the Services are being performed.
- B3.2 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.
- B3.3 If the Council informs the Provider that the Council considers that any part of the Services do not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Council, the Provider shall, at its own expense, re-schedule and perform the work correctly within such reasonable time as may be specified by the Council.
- B3.4 Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date.
- B3.5 Without prejudice to any other rights and remedies the Council may have pursuant to the Contract, the Provider shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a direct consequence of the Provider's delay in the performance of the Contract which the Provider has failed to remedy after being given reasonable notice by the Council.
- B3.6 The Provider must be registered and must remain registered throughout the Contract Period with any relevant Regulatory Bodies.

**B4 Standards of the Services**

The Provider shall comply with all relevant current and future statutory provision and local requirements that are laid down in the Contract or that are issued to the Provider as part of a Variation.

**B5 Quality Assurance**

The Provider shall throughout the Contract Period demonstrate and maintain a properly documented system of quality assurance that meets standards set out in the Specification.

**B6 Provider's Staff**

B6.1 The Provider shall employ sufficient trained, suitably qualified and experienced staff to ensure that the Services throughout the Contract Period are provided to the standards set out in the Specification.

B6.2 The Provider shall ensure that it has sufficient Staff to provide the Services to the said standards and in accordance with the Specification during periods of staff absence due to sickness, maternity leave, staff holidays inclement weather or otherwise.

B6.3 The Providers 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.

B6.4 The Provider shall ensure that no staff who are directly employed to deliver Services in respect of the Specification are employed without the regard to the provision of **Clause B7** and **Clause B9** should this be 9?.Yes

**B7 Disclosure and Barring Service**

The Provider shall observe and comply with **Schedule 4**

**B8 Accessing the Services**

The Individual shall gain access to the Services as set out in the Specification

**B9 Safeguarding**

The Provider shall observe and comply with **Schedule 5**

**B10 Rights of Access and Inspection**

B11.1 The Provider shall allow officers of the Council to have reasonable access to the Providers premises, records and Staff to enable the Council to ascertain that the Services are being provided in accordance with the Contract and any relevant statutory provisions.



B11.2 The Provider acknowledges and agrees that in circumstances where the Council has concerns about the safety and/or wellbeing of Individuals the Council may in its sole discretion require access to the Provider's premises at any time without notice in order to monitor the Services and the requirements of the Council.

#### **B11 Minimum Standards and Contract Performance Review**

The Provider shall comply with the Minimum Standards, contract performance and Outcomes set out in the Specification and shall use its best endeavours throughout the Contract Period to ensure continual improvement in the delivery of the Services as detailed in the Specification.

#### **B12 Contract Review**

Contract reviews may be undertaken by the Council to review performance against the Contract as a whole. The Contract will have a minimum annual review and otherwise shall be reviewed in accordance with the Specification. 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 as detailed in the Specification

#### **B13 Failure to Perform**

B13.1 If the Provider fails to supply any of the Services in accordance with the Specification and 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.

B13.2 In the event that:

B13.2.1 the Provider fails to comply with **Clause B13.1** above and the failure is materially adverse to the interests of the Individual or the Council or prevents the Council from discharging a statutory duty; or

B13.2.2 the Provider persistently fails to comply with **Clause B13.1** above,

the Council may terminate the Contract with immediate effect without prejudice to its rights under **Clause H5** by notice in writing.

B13.3 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then The Council may, without prejudice to its rights under **Clauses H1, H2 or H5** do any of the following:

B13.3.1 without terminating the Contract, itself 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;

B13.3.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or,

B13.3.3 terminate in accordance with **Clause H**, the whole of the Contract.

B13.4 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.

B13.5 For the purposes of Clause C13.3 the Provider shall allow the Council and any third party provider unrestricted access to the Premises

#### **B14 Complaints and Whistle Blowing**

The Provider shall observe and comply with **Schedule 5**

#### **B15 Business Continuity, Disaster Recovery and Pandemic Flu Provisions**

For the purposes of **Clause B15** the terms and provisions set out in **Schedule 6** shall apply to the Contract.

### **C PAYMENT AND CONTRACT PRICE**

#### **C1 Contract Price**

C1.1 In return for the Provider carrying out its obligations under the Contract , the Council shall pay the Contract Price in accordance with **Clause C2** .

C1.2 In the event that the cost to the Provider of performing its obligations under the Contract increases or decreases as a result of a change of Law, the provisions of **Schedule 7** shall apply.

C1.3 The Council shall, on the production of a valid Tax invoice, pay the Provider, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Contract.

C1.4 The Council shall not be liable for payment for any Service unless the Service required is identified on the ISC and other than at the Contract Price.

## **C2 Payment and Tax**

C2.1 The Council shall pay the undisputed sums due to the Provider in cleared funds within 30 days of receipt and agreement of invoices, submitted quarterly in advance, for the Services supplied to the Council.

C2.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation required by the Authorised Officer to substantiate the invoice.

C2.3 Value Added Tax (VAT), where applicable, shall be shown separately on valid tax invoices as a strictly net extra charge.

C2.4 The Council may reduce or withhold payment in respect of any Services which the Provider has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.

C2.5 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under **Clause H2.3** for failure to pay undisputed charges.

## **C3 Recovery of Sums Due**

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider, including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract, the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Council without prejudice to the right of the Council to recover any such sums due through any other legal course of action.

C3.2 Any overpayment by the Council to the Provider, whether of the Contract Price or of Tax, shall be a sum of money recoverable by the Council from the Provider under **Clause C3.1**.

C3.3 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 a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.

## **C4 Euro**

C4.1 Any legislative requirement to account for the Services in euro (or to prepare for such accounting) instead of and/or in addition to

sterling, shall be implemented by the Provider at nil charge to the Council.

C4.2 The Council shall provide all reasonable assistance to facilitate such changes.

## **D STATUTORY OBLIGATIONS AND REGULATIONS**

The provisions in **Schedule 8** shall apply to the Contract

## **E PROTECTION OF INFORMATION**

The provisions in **Schedule 9** shall apply to the Contract

## **F CONTROL OF THE CONTRACT**

### **F1 Assignment and Sub-Contracting**

F1.1 The Provider shall not assign all or any benefit, right or interest under the Contract or sub-contract the supply of the Services without prior Approval of the Council. Sub-contracting any part of the Contract or supply of the Services shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract.

F1.2 The Provider shall be and shall remain responsible for the acts and omissions of sub-contractor or agents as though they are its own.

F1.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Provider to the Council within 2 working days of the Council's consent being given.

F1.4 The Provider shall give to the Authorised Officer at least 20 (twenty) Business Days written notice if there is to be a change in its legal status or a change of control in the ownership of its organisation and/or the contracts it holds. There will be no automatic assignment of the Contract in this instance.

F1.5 The Council shall be entitled to:

F1.6.1 assign, novate or dispose of its rights and obligations under the Contract either in whole or in part to any Contracting Authority; or a corporate entity in which the Council has a controlling interest.

F1.6.2 transfer, assign or novate its rights and obligations where required by Law

F1.7 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to **Clause F9.3**, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.

- F1.8 If the Contract is novated to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this **Clause** both such bodies being referred to as “the Transferee”):
- a. the rights of termination of the Council in **Clause H6** shall be available to the Provider in the event of the bankruptcy, insolvency or Default of the Transferee;
- F1.9 The Council shall be entitled to disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Contract by the Provider. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

## **F2 Waiver**

- F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- F2.2 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 A7**.
- F2.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F3 Variation of the Services and Contract**

- F3.1 The Council reserves the right, on giving reasonable written notice, from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever, “a Variation”.
- F3.2 Any such Variation shall be communicated in writing by the Authorised Officer to the Provider’s Representative in accordance with the notice provisions of **Clause A7**. All Variations shall be in the form of an addendum to the Contract

## **F4 Severability**

- F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, by any court of competent

jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

- F4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

## **F5 Remedies in the Event of Inadequate Performance**

- F5.1 Where a complaint is received about the standard of Services or about the way any Services have been delivered or work has been performed or procedures used or about any other matter connected with the performance of this Contract, then the Authorised Officer shall take all reasonable steps to ascertain whether the complaint is valid. If the Authorised Officer so decides, he may uphold the complaint, or take further action in accordance with **Clause H**.

- F5.2 In the event that the Authorised Officer is of the opinion that there has been a material breach of this Contract by the Provider, or the Provider's performance of its duties under the Contract has failed to meet the requirements, then the Council may, without prejudice to its rights under **Clause H** of the Contract, do any of the following:

- a. make such deduction from the payment to be made to the Provider as the Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Provider shall have failed to provide;
- b. without terminating the Contract, itself provide or procure the provision of 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 perform such part of the Services in accordance with the Contract;
- c. 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 provide or procure a third party to provide such part of the Services; and/or
- d. terminate in accordance with **Clause H**, the whole of the Contract.

- F5.3 The Council may charge to the Provider any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Services by the Council or by 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.

F5.4 If the Provider fails to perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall instruct the Provider to perform the work and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 14 days or such other period of time as the Council may direct.

F5.5 In the event that:

- a. the Provider fails to comply with **Clause F5.4**; or
- b. the Provider persistently fails to comply with **Clause F5.4**, and such failures, taken as a whole, are materially adverse to the commercial interests of the Council;

the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

F5.6 The remedies of the Council under this **Clause** may be exercised successively in respect of any one or more failures by the Provider.

## **F6 Remedies Cumulative**

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

## **F7 Monitoring of Contract Performance**

The Provider shall comply with the monitoring arrangements set out in the Specification including provision of such data and information as the Provider may be required to produce under the Contract.

# **G LIABILITIES**

## **G1 Indemnity**

G1.1 Neither Party excludes nor limits liability to the other Party for death or personal injury caused by its negligence, default or for any breach of any obligations.

G1.2 The Provider shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

G1.3 This **Clause G1** shall not apply to the extent that 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 the negligence or default of its staff or sub-contractors, or by any circumstances within its or their control.

## **G2 Insurance**

- G2.1 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover minimum of £10 (ten) million in respect of all risks, that may be incurred by the Provider, arising out of the Provider's performance of the Contract, including loss death or personal injury, loss of or damage to property or any other loss. Such insurance 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 hold public liability insurance cover for an amount of not less than £10 (ten) million in respect of any one incident
- G2.3 The Provider shall hold employer's liability insurance cover for an amount of not less than £5 (five) million in respect of any one incident
- G2.4 The Provider shall produce to the Authorised Officer on request and at least annually copies of any or all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G2.5 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Contract, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- G2.6 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract and any insurance policy taken out to meet the requirements of Clause G2.1 should include an "Indemnity to Principal's Clause" or equivalent.

## **G3 Warranties and Representations**

- G3.1 The Provider warrants and represents that:
- a. the Provider has the full capacity and authority and all necessary consents, licences, rights and permissions (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Provider;
  - b. the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this



**Clause**) in accordance with its own established internal procedures;

- c. all obligations of the Provider pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- d. 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 on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract.

## **H SUSPENSION AND TERMINATION**

### **H1 Suspension of Contract**

- H1.1 Notice of such Suspension may be served on the Provider with immediate effect where in the opinion of the Council the Provider is causing concern in its ability to maintain a satisfactory standard of Services to its existing Individuals with regard to **Clause F5** and **Clause H5**.
- H1.2 Suspension of this Contract will have the effect that no new Individual shall be accepted by the Provider after the date of such notice of Suspension.
- H1.3 Notice of suspension will be served by the Council when:
  - H1.3.1 The Provider is served with a Section 14 (Cancellation of Registration) notice by the Care Quality Commission.
  - H1.3.2 The Council is instigating its local Safeguarding Adults from Abuse investigation and procedure against the Provider.
  - H1.3.3 If the Provider is assessed by the Care Quality Commission as non-compliant for the purposes of the Health and Social Care Act 2008.
  - H1.3.4 There are unsatisfactory reports from statutory agencies (Registration Authority Environmental Health, Fire Authority and the Council's commissioning team) on the Provider.
  - H1.3.5 The Provider receives an unsatisfactory contract performance review as per the Specification
  - H1.3.6 The Provider receives one or more of the above.
  - H1.3.7 The Council has sufficient evidence to suggest that there has been a Material Breach of the Contract on behalf of the Provider

H1.4 A notice of suspension of the Contract will be deemed as to have the effect of committing a Default by the Provider or the Provider's Representative which must be remedied with regard and in accordance to **Clauses F5, H3 and H5**.

H1.5 Such suspension may be lifted by the Council serving a notice setting out the services to be resumed if:

H1.5.1 the actions resulting from a Safeguarding Adults from Abuse Investigation have been met and the specific serious concerns have been closed within the minutes of the meeting; and/or

H1.5.2 the Provider being assessed by the Care Quality Commission (CQC) as compliant and/or;

H1.5.3 the Authorised Officer is satisfied that the Default (being the subject of the notice of suspension) has been remedied in its entirety by the Provider and that the Provider is providing the Services to the standards of performance and service delivery required by the Contract and the Specification.

## **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 or the Provider's Representative with immediate effect if the Provider commits a Default and if:

a. the Provider has not remedied the Default to the satisfaction of the Council within 30 days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or

b. in the reasonable opinion of the Council the Default is not capable of remedy; or

c. the Default is a Material Breach of the Contract.

H2.2 In addition to **Clause H2.1** the Council may terminate the Contract with immediate effect if the Provider has committed a Default on 6 occasions within a six month period.

H2.3 The Provider may terminate this Contract if the Council is in material breach of its obligations to pay undisputed charges by giving the Council 90 days notice, specifying the breach and requiring its remedy. The Provider's right of termination under **Clause H5.2** shall not apply to non payment of the Contract Price where such non payment is due to the Council exercising its rights under **Clause C4.1**.

### **H3 Termination on Change of Control or ceasing of business or Insolvency**

H3.1 The Council may terminate the Contract by notice in writing with immediate effect where:

- a. 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;
- b. the Provider undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or
- c. the Provider is an individual or a firm and a petition is presented for the Provider's bankruptcy, or a criminal bankruptcy order is made against the Provider or any partner in the firm, or the Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Provider's or firm's affairs; or
- d. 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; or
- e. where the Provider is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- f. 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
- g. 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
- h. the Council is of the opinion that the unsatisfactory provision by the Provider of the Services is such as to undermine irreversibly the Council's confidence in the Provider's ability to

provide the Services or is likely adversely to affect the image or reputation of the Council; or

- i. any similar event occurs under the law of any other jurisdiction within the United Kingdom.

H3.2 The Council may only exercise its right under **Clause H3.1(a)** within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Provider shall notify the Authorised Officer immediately when any change of control occurs.

H3.3 If the Provider, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Council shall be entitled to terminate this Contract by notice to the Provider or the Provider's Representative with immediate effect.

#### **H4 Break**

H4.1 The Council shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving not less than six calendar months' written notice to the Provider. The Council may extend the period of notice at any time before it expires.

H4.2 The Provider, at the discretion of the Council, may terminate the Contract by giving not less than six calendar months' written notice to the Council, giving reasons. The Provider will participate fully in meeting provision for existing Individuals. The agreement of the Council to such a termination will not be unreasonably withheld.

H4.3 The Council reserves the right to terminate the Contract with immediate effect if the funding is withdrawn for any reason or the funding given to the Provider to deliver this service is used for any purpose other than detailed in the Specification. .

#### **H5 Consequences of Termination**

H5.1 Where The Council terminates the Contract under **Clauses H1, H2, H3 or H5.4**, or terminates the provision of any part of the Contract, and then makes other arrangements for the provision of the Services, the Council shall be entitled to recover from the Provider the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Council. Where the Contract is terminated under **Clauses H1 H2, H3 or H5.4**, no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements.

H5.2 Where the Council terminates the Contract under **Clause H4.1**, the Council shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the

Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under **Clause H4**.

H5.3 The Council shall not be liable under **Clause H3.2** to pay any sum which:

- a. was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- b. when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated.

H5.4 On the expiry of the Contract or termination by the Council, each Individual who was being provided with the Services immediately prior thereto shall continue to be cared for in accordance with the terms and conditions (and in particular those as to price) of the Contract and the relevant Care and Support Plan provided that the Council may terminate any such Services by giving not less than one month's written notice to the Provider at any time taking effect on or after such expiry or termination. ?

## **H6 Handover**

H6.1 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 H6**.

H6.2 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.

H6.3 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.

H6.4 At any time upon reasonable notice from the Authorised Officer or (where the request is occasioned by the termination of the Contract) forthwith supply to the Council a full, complete and accurate list of those Staff members engaged in the Services (whether or not employed by the Provider), detailing the numbers and composition, for each of the Staff the number of hours of work per week on the Services and the number of hours per week worked for the Provider, job title, age, length of continuous service

including the employment start date, current remuneration, benefits and notice periods of the Staff, terms and conditions of employment including but not limited to wages, holiday pay, bonuses and overtime rates, annual leave entitlement and pension scheme details and including any particulars that the Provider is obliged to give under Section 1 of the Employment Rights Act 1996, any current disciplinary or grievance proceedings on-going and any such proceedings in the preceding two years, any claims, current or which the Provider has reasonable grounds to believe will be brought by the Staff or their representatives or which have been brought in the preceding two years, all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Staff, information on any collective agreements which will have effect in relation to the Staff and any other employee liability information as specified in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations) and Paragraph 13 of Schedule 8 and shall warrant the accuracy of such information and shall forthwith notify The Council of any change in such information.

- H6.5 The Provider shall permit the Council to use the information provided pursuant to Clause H6 for informing any future tenderer for the Services or any part thereof and shall enable and assist the Council and such other persons as the Council may 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 determine.
- H6.6 The Provider shall comply with any reasonable request made by the Council for Staff information detailed in Clause H6, if such request is made by the Council for the purpose of considering the application of, or complying with the requirements of the TUPE Regulations upon the termination of the Contract or any part thereof. The Provider shall supply the requested information to the Council within 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 Services in succession to the Provider.
- H6.7 The Provider undertakes to effect no changes in the numbers, identity, functions and terms and conditions of employment of Staff employed by the Provider in connection with the performance of the Contract during the last 12 months of the Contract Period without the Council's prior written consent; such consent not to be unreasonably withheld or delayed.
- H6.8 At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Provider shall co-operate free of charge 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.

H6.9 The provisions of this **Clause H6** shall survive the continuance of the Contract indefinitely after its termination.

## **H7 Disruption**

H7.1 The Provider shall take reasonable care to ensure that in the performance of the services and of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Provider contracted by the Council.

H7.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H7.3 In the event of industrial action by the Staff or the Provider's suppliers the Provider shall seek the Council's approval to its proposals to perform its obligations under the Contract.

H7.4 If the Provider's proposals referred to in **Clause H7.3** are considered insufficient or unacceptable by the Council, then the Contract may be terminated by the Council by notice in writing with immediate effect.

## **H8 Recovery upon Termination**

Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Provider and the Council accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

## **H9 Force Majeure**

H9.1 For the purpose of this **Clause**, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within the Provider's organisation or within any sub-contractor's organisation.

H9.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of 6 months, either Party may terminate the Contract by notice in writing with immediate effect.

- H9.3 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.
- H9.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in **Clause H9.3** it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- H9.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.
- H9.6 Pandemic Flu will not be considered as a Force Majeure event. The Provider shall use all reasonable endeavours to maintain Services in this event

## **.I DISPUTE RESOLUTION AND LAW**

### **I1 Governing Law**

- I1.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the courts of England and Wales.

### **I2 Dispute Resolution**

- I2.1 If there is a dispute between either Party concerning the interpretation or operation of this Contract then either party may notify the other in writing that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Provider Representative to resolve, negotiating in good faith
- I2.2 If after 20 (twenty) Business Days (or such longer period as the Parties may agree) of the date of the Notice referred to in **Clause I2.1** the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to a meeting of a senior officer of the Council (or a person appointed by them to act on their behalf) and a senior officer of the Provider, to resolve, negotiating on the basis of good faith
- I2.3 If after 20 (twenty) Business Days (or such longer period as the Parties may agree) of the date of the Notice referred to in **Clause I2.2** the dispute has not been resolved then either Party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001



(the 'Model Procedure') or such later edition as may be in force from time to time

- 12.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider (or employee, agent, supplier or sub-Provider) shall comply fully with the requirements of the Contract at all times.
- 12.5 A neutral advisor or mediator ("the Mediator") shall be chosen by agreement between the Parties or If the Parties do not agree on the identity of the Mediator within 20 days of the date of the Notice referred to in **Clause 12.3** or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 20 days from the date of .....  
the date of the Notice referred to in **Clause 12.3** or within 20 days of notice to either Party that he is the Mediator is unable or unwilling to act then either Party may request CEDR to appoint a Mediator
- 12.6 The procedure in the Model Procedure will be amended to take account of:
  - 12.6.1 any relevant provisions in the Contract; or
  - 12.6.2 any other agreement, which both Parties may enter into in relation to the conduct of the mediation ("Mediation Agreement")
- 12.7 Both Parties shall:
  - 12.7.1 use their best endeavours to ensure that the mediation starts within 20 (twenty) Business Days of the date on which the Notice referred to in **Clause 12.3** (Disruption) was served; and
  - 12.7.2 pay the mediator's fee in equal shares
- 12.8 Any agreement the Council reaches with the Provider as a result of mediation shall be binding on both of the Parties, as set out in the Model Procedure. However, if the dispute has not been settled by mediation within 20 (twenty) Business Days of the commencement of mediation, then either Party may commence litigation proceedings (but not before then)
- 12.9 Neither Party shall be precluded by **Clause 12.8** from taking such steps in relation to court proceedings or otherwise as the Council or the Provider (as the case may be) may deem necessary or desirable to protect their respective positions. This shall include:
  - 12.9.1 issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; or
  - 12.9.2 applying for interim relief; and

12.9.3 issuing or otherwise pursuing proceedings that are necessary to protect its employees, agents, or Individuals

12.10 The use of the dispute resolution procedures set out in this **Clause I2** shall not delay or take precedence over the provisions for termination set out in **Clause H1**

The Common Seal of .....  
The Metropolitan Borough of .....  
Solihull was hereunto affixed in Director of Governance  
the presence of:

Executed as a deed by XXXXXXXX .....  
acting by two directors or a director Director  
and secretary

.....  
Director or Secretary