

**DATED 1<sup>ST</sup> AUGUST 2010**

**ESSEX COUNTY COUNCIL**

**AND**

**BARNARDOS**

**SERVICES AGREEMENT**

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## SERVICES AGREEMENT

DATED 1<sup>ST</sup> AUGUST 2010

### BETWEEN:

- (1) **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex, CH1 1QU (the “**Authority**”);  
and
- (2) Barnardo’s whose registered office is at Scotch House, Tanners Lane, Barkingside, Ilford, Essex IG6 1QG and whose registered number is 61625 and Charity registration is 216250 and SC37605 (the “**Contractor**”).

### RECITALS

- (A) The Authority has selected the Contractor to provide the Services and the Contractor undertakes to provide the Services on the terms set out below.

#### 1. COMMENCEMENT AND DURATION

- 1.1 This Services Agreement and the rights and obligations of the Parties under this Services Agreement shall take effect on the Commencement Date and shall continue for the Agreement Term.

#### 2. THE SERVICES

- 2.1 The Contractor shall provide the Services during the Agreement Term to the Authority in accordance with:
  - 2.1.1 the Authority’s requirements as set out in Schedule 2 (Service Specification);
  - 2.1.2 all applicable Legislation;
  - 2.1.3 the Authority’s Policies as the same may be updated by the Authority from time to time and as notified by the Authority to the Contractor; and
  - 2.1.4 Good Industry Practice.

#### 3. SERVICES PAYMENT

- 3.1 In consideration of the provision of the Services, the Authority shall pay the Services Payment to the Contractor in accordance with Schedule 3 (Payment).
- 3.2 The Contractor shall not, whether himself, or by any person employed by him, solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge for any part of the Services other than the Services Payment.

#### 4. STAFF

- 4.1 The Contractor will ensure that at all times they have sufficient numbers of people of appropriate ability, qualification, skill, knowledge, training and experience available to provide and supervise the provision of the Services and cater for staff holiday, sickness and absence.
- 4.2 Where the Services may involve contact with Children or Young People the Contractor shall ensure that safe recruitment procedures are in place and the recruitment and selection procedures include the following matters:
- a) The Contractor shall be registered with the Criminal Records Bureau ("The CRB") or an umbrella agency and shall ensure that all employees and volunteers who may work with or have access to information about children or young people (or vulnerable adults) are checked to an enhanced level through the CRB, which includes the Protection of Children Act (POCA) and this is repeated a minimum of every three years. The Contractor shall provide written confirmation of the enhanced CRB Check to the Authority's Authorised Officer where requested. No member of staff shall be employed or work in the delivery of this service with children or young people (or vulnerable adults) prior to receipt of satisfactory enhanced CRB checks by the Contractor. No agency staff or volunteer will work in the delivery of this service with children or young people (or vulnerable adults) prior to receipt of satisfactory enhanced CRB checks by the Contractor.
  - b) Staff will be trained on safeguarding and promoting the welfare of children. This training will be made available for all staff working with or in contact with children and families.
  - c) All such questions as shall reasonably be required to assess the suitability of the applicant for the position and are permitted by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).
  - d) The Contractor shall ensure that two written references are obtained.
  - e) With effect from October 2009 the Contractor shall:
    - (i) to the extent required at law ensure that no person is engaged in the delivery of the Services except as permitted in accordance with the Vetting and Barring Scheme; and
    - (ii) on demand furnish the Authority with written proof that the engagement of any person engaged (or reasonably believed or reasonably expected by the Authority to be engaged) in the delivery of the Services and identified by the Authority is permitted in accordance with the Vetting and Barring Scheme.
  - f) The Contractor shall ensure that all employees and volunteers are aware of their obligation to limit contact with the Service Users to that required in order to deliver the Service. Authorisation must be sought from the Authority's Authorised Officer for any contact or relationship beyond that.
  - g) The Contractor will fully comply with the Statutory Guidance (voluntary Contractors will comply with the Statutory Guidance as a matter of Good Practice) on making

arrangements to safeguard and promote the welfare of children under Section 11 of the Children Act 2004.

Breach of this requirement shall be a fundamental breach of this Agreement notwithstanding that the individual concerned is subsequently removed from the delivery of the Service or that proof is furnished other than on demand.

- 4.3 The Contractor shall be responsible for all acts and omissions of its employees and agents and the Authority shall not be responsible, and cannot be held liable, for any act or omission of any person engaged by the Contractor in relation to the Service provided under this Partnership Agreement.
- 4.4 The Contractor shall be responsible for the payment of all fees, income, taxes, national insurance contributions, and levies of any kind, relating to or arising out of the engagement of any person employed or contracted by the Contractor in relation to the provision of Services under this Services Agreement.
- 4.5 The Contractor shall maintain up to date records on employees and volunteers such as monitoring, supervision, training, absenteeism and complaints monitoring of incidents/accidents. The Contractor shall issue all employees with an up-to-date job description and a written contract of employment. These records shall be made available to the Authority's Authorised Officer as required and on request.

## **5. WARRANTIES AND REPRESENTATIONS**

- 5.1 The Contractor warrants and represents that:
  - 5.1.1 it has full capacity and has taken all steps and obtained all approvals to enable it to lawfully enter into and to perform each of its obligations under this Services Agreement;
  - 5.1.2 it 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 this Services Agreement;
- 5.2 The Contractor shall not in any way be relieved from any obligation under this Services Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

## **6. INDEMNITY**

- 6.1 Nothing in this Services Agreement is to be deemed to exclude or limit either party's liability in respect of death or personal injury arising as a result of that party's negligence, fraud or any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.
- 6.2 The Contractor shall be responsible for and indemnify the Authority, its employees, agents and contractors on demand from and against all Losses arising out of or in connection with this Services Agreement including in respect of death and personal injury, loss of or damage

to property and breach of statutory duty which is caused directly or indirectly by the performance or non-performance by the Contractor of its obligations under this Services Agreement.

- 6.3 This clause 6 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, loss or damage to property or breach of statutory duty 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.

## **7. INSURANCE**

- 7.1 The Contractor shall during the Agreement Term take out and maintain or procure the maintenance of the following insurances:
- 7.1.1 Employer's liability insurance to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident;
- 7.1.2 Third party public liability to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident;
- 7.1.3 Professional Indemnity insurance to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident; and
- 7.1.4 any other insurances that may be required by law.
- 7.2 The Contractor shall provide to the Authority evidence and copies on request of all insurance policies required under this clause 7.
- 7.3 If the Contractor is in breach of this clause 7, the Authority may pay any premia required to keep such insurances in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 7.4 Failure to comply with the insurance provisions of this Services Agreement shall not limit or relieve the Contractor of its liabilities and obligations under this Services Agreement.

## **8. TERMINATION**

### **Termination on Authority Break Point**

The Authority may terminate the Services Agreement on any of the Authority Break Point Dates by complying with its obligations under clauses 8.1 to 8.2 below.

- 8.1 If the Authority wishes to terminate the Services Agreement under clause 0, it must give notice to the Contractor stating:
- 8.1.1 that the Authority is terminating the Services Agreement under clause 0; and
- 8.1.2 that the Services Agreement will terminate on the date specified in the notice, which must be a minimum of falling ninety (90) Days after the date of receipt of the notice.

- 8.2 The Services Agreement shall terminate on the date specified in the notice referred to in clause 8.1 above.

#### **Termination on Contractor Default**

- 8.3 Subject to clause 8.4, the Authority may terminate the Services Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor with immediate effect if the Contractor commits a Contractor Default and if:
- 8.3.1 the Contractor has not remedied the Contractor Default to the satisfaction of the Authority within twenty five (25) Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Contractor Default and requesting it to be remedied; or
  - 8.3.2 the Contractor Default is not, in the opinion of the Authority, capable of remedy; or
  - 8.3.3 the Contractor Default is a material breach of the Agreement.
- 8.4 If the Contractor Default which has occurred is an Insolvency Event of Default, the Authority may in its sole discretion give notice terminating this Services Agreement whereupon this Services Agreement shall terminate with immediate effect.

### **9. CONSEQUENCES OF EXPIRY OR TERMINATION**

- 9.1 The Contractor and the Authority shall each carry out their respective responsibilities in accordance with this Services Agreement until the Expiry Date or earlier termination in accordance with this Services Agreement.
- 9.2 The Contractor shall use all reasonable endeavours to assist the Authority to effect an orderly continuation of the Services after termination or expiry of this Services Agreement in such a manner as the Authority may reasonably require.
- 9.3 The costs of any assistance provided by the Contractor under clause 9.2 shall be borne by the Contractor.
- 9.4 On termination or expiry of this Services Agreement, neither Party shall have any further obligations or rights with respect to the other Party provided that termination of this Services Agreement shall not affect the continuing rights and obligations of the Parties under clauses 6 (Indemnity), 10 (Dispute Resolution Procedure), 12 (Confidentiality), 13 (Assignment and Sub-Contracting) and 22 (Law and Jurisdiction) or under any other provision of this Services Agreement that is expressed to survive termination or is required to give effect to such termination or the consequences of such termination.

### **10. DISPUTE RESOLUTION PROCEDURE**

- 10.1 Any dispute or difference arising out of or in connection with this Services Agreement (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this clause 10.

- 10.2 The Parties shall each use reasonable endeavours to resolve a Dispute by means of prompt, bona fide discussion at a managerial level appropriate to the Dispute in question.
- 10.3 In the event that a Dispute is not resolved within seven (7) Days of it having been referred to a managerial level for discussion then either Party may refer it to Chief Executive or equivalent officer of each Party for resolution and the same shall meet for discussion within fourteen (14) Days thereafter or such longer period as the Parties may agree.
- 10.4 If the dispute is not resolved within twenty (20) Days of escalation of the dispute in accordance with clauses 10.1 to 10.3, the parties shall refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.
- 10.5 If the parties cannot agree on a mediator, the parties shall appoint a mediator nominated by CEDR.
- 10.6 The parties shall use their reasonable endeavours to conclude the mediation within forty (40) Days of referral of the dispute to mediation.
- 10.7 If
- 10.7.1 either Party is dissatisfied with or otherwise wishes to challenge the Mediator's decision;  
or
- 10.7.2 both Parties agree
- then either Party may , within fifteen (15) Days of the conclusion of the mediation , notify the other Party of its intention to refer the dispute to litigation and for such purposes the parties agree that the Courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.
- 10.8 Where any Dispute is referred to litigation pursuant to clause 10.7 the Courts shall have full power to disregard, open-up, review and/or revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the recommendations of the Mediator and, where appropriate, to order financial compensation to be paid by one party to the other.
- 10.9 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause and shall give effect forthwith to every recommendation of the Mediator and the Courts delivered under this clause.

## **11. INTELLECTUAL PROPERTY**

- 11.1 Copyright, patent rights or other intellectual property rights and title in any material produced by the Contractor for the Authority during the Agreement Term and in all reports submitted under the terms of the Services Agreement shall vest in the Authority unless otherwise expressly agreed or approved by the Authority's Authorised Representative in writing.
- 11.2 Such materials shall not be used, reproduced or disseminated for any other purposes without the prior written permission of the Authority's Authorised Representative.



## **12. CONFIDENTIALITY**

- 12.1 The parties shall, and shall use reasonable endeavours to ensure that their employees, agents and sub-contractors, keep confidential all information and documents received by them in connection with and all matters relating to the Services and this Services Agreement.
- 12.2 Schedule 5 shall be of effect.

## **13. ASSIGNMENT AND SUB-CONTRACTING**

- 13.1 Subject to any express provision of this Services Agreement, the Contractor shall not without the prior written consent of the Authority, assign all or any benefit, right or interest under this Services Agreement or sub-contract any of the Services.
- 13.2 Notwithstanding any sub-contracting permitted under this Services Agreement, the Contractor shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.
- 13.3 The Authority shall be entitled to:
- 13.3.1 assign, novate or otherwise dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in Regulation 3(1) of the Public Contracts Regulations 2006); or
- 13.3.2 transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or part of the Authority's business.

## **14. CHANGE CONTROL PROCEDURE**

- 14.1 Either Party may request a change to the Services in accordance with the Change Control Procedure.

## **15. VARIATION**

This Services Agreement can only be varied or amended provided that such variation or amendment is agreed in writing by an authorised representative of the Authority and the Contractor.

## **16. ENTIRE AGREEMENT**

The Parties acknowledge that this Services Agreement sets forth the entire agreement between them with respect to the provision of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

**17. NO WAIVER**

- 17.1 No waiver of any of the provisions of this Services Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 19 Notices).
- 17.2 No waiver under clause 17.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Services Agreement unless (and then only to the extent) expressly stated in that waiver.

**18. SEVERANCE**

- 18.1 If any term, condition or provision contained in this Services Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision of this Services Agreement shall not affect the validity, legality or enforceability of the remaining parts of this Services Agreement.

**19. NOTICES**

- 19.1 Any notice required by this Services Agreement to be given by either Party to the other shall be in writing and shall be served personally, by fax or by sending the same by registered post or recorded delivery to the following:

<b>Address:</b>	<b>Contractor</b>	<b>Authority</b>
	<b>Barnardo's</b>	<b>Essex County Council</b>
	<b>Scotch House</b>	<b>County Hall</b>
	<b>Tanners Lane</b>	<b>Market Road</b>
	<b>Barkingside, Ilford</b>	<b>Chelmsford Essex</b>
	<b>Essex IG6 1QG</b>	<b>CM1 1QH</b>
<b>For the attention of:</b>	Assistant Director Children's Services – South East Sub Region (LEaSE)	Head of Externally Commissioned Placements & Family Support Commissioning and Procurement
<b>Tel:</b>	020 8551 0011	01245 438847
<b>Fax:</b>	020 8551 8267	
<b>E-mail:</b>		

- 19.2 Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served forty eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty four (24) hours after it was despatched.

**20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Parties agree that this Services Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

**21. BUSINESS CONTINUITY**

The contractor is required to establish, test and maintain robust plans in order to ensure Business Continuity through the life of this Agreement and on demand to demonstrate compliance with this clause to the reasonable satisfaction of the Authority

**22. LAW AND JURISDICTION**

This Services Agreement shall be governed by the laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS** whereof the Parties have executed this Services Agreement as a deed and delivered it on the date first written.

**Execution by the Contractor**

Signed as a deed by  
acting by

)  
)

Director

Director/Secretary

**Execution by the Authority**

Signed as a deed by  
on behalf of

)  
)

Authorised Signatory

Authorised Signatory

## APPENDIX 1

### Schools, Children's and Families Additional Clauses

These clauses are to be adhered to under this contract but are specific to SCF directorate.

#### 1. DUTY OF CARE

The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with the Contract.

#### 2. MONITORING AND EVALUATION

- 2.1 The Contractor is required to maintain records to account for the payments made in accordance with schedule 3 (payment schedule). Such records shall be maintained (a) in accordance with generally accepted accounting principles, (b) in a form enabling the Authority to compare actual expenditure in total and by individual budget head with the expenditure indicated in the Contract and (c) in sufficient detail to enable the Authority to satisfy itself that the Service is being delivered in accordance with this Contract. Such records are to be made available to the Authorities Authorised Officers upon request.
- 2.2 The Contractor shall comply with the monitoring and evaluation arrangements as set out in schedule 2 (service specification) which may be subject to variation. The Contractor shall liaise with the Authority's Authorised Officer to ensure a planned programme is in place to undertake Equality Impact Assessments (EIA)
- 2.3 Communication with the Authority shall be maintained through the Authority's Authorised Officer, who shall be the first point of contact between the Authority and the Contractor and may attend the meetings and activities of this Contractor as an observer, both announced and unannounced (however, these powers may be delegated as appropriate). The Contractor is required to notify the Authority upon the departure and replacement of its nominated officers for contact purposes within the scope of this Contract within one calendar month of the departure/new appointment.

#### 3. CONTINUOUS IMPROVEMENT

Both parties shall work to continually improve the provision of Services against this Contract to achieve the highest level of Service user satisfaction within the delivery of a high quality Service.

#### 4. RECOVERY OF SUMS DUE

- 4.1 Any amount of Funding which is over and above the value of activity completed by the expiry of this Agreement shall be returned to Essex County Council. Such monies shall be payable by any of the following methods:
  - 4.1.1 Recovery direct from the Contractor to the Authority,
  - 4.1.2 Payable by the Contractor from a payment under this Partnership Agreement, or

4.1.3 Payable by the Contractor from a payment under another Contract with the Authority.

## **5. EQUAL OPPORTUNITY FOR STAFF AND SERVICE USERS**

- 5.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provision of the Race Relations Acts 1976 and 2000, the Sex Discrimination Act 1975 and 1986 and the Amendment Regulations 2003, the Equal Pay Act 1970, the Disability Discrimination Act 1995 and 2005, or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions or agents of the Contractor and all sub-contractors employed in the execution of the Contract.
- 5.2 The Contractor must operate an Equal Opportunities Policy which complies with the recommendations set out in the Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equal Opportunity in Employment issued by the Commission for Racial Equality pursuant to section 47(1) and (7) of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 ("The Act") and in reference to the Disability Discrimination Codes of Practice. The Contractor shall provide its Equal Opportunities Policy to the Authority's Authorised Officer as required and on request, and shall ensure Services are equally accessible to all.
- 5.3 If a complaint is made pursuant to the Race Relations Act 1976 and 2000, the Sex Discrimination Act 1975 and 1986, the Equal Pay Act 1970 or the Disability Discrimination Act 1995 and 2005 about the acts or omissions of the Contractor or its employees, volunteers or agents when undertaking work for the Authority, the Contractor may be the subject of an investigation by the Authority. In such circumstances the Contractor shall make documents available and co-operate with the investigation, and to the extent that breaches of the Authority's duties under the Act(s) are found to have occurred due to the acts or omissions of the Contractor, its employees, volunteers or agents, then in such circumstances the Contractor shall indemnify the Authority in respect of any loss, damages/ compensation, fines and costs which may be suffered or imposed and the Contractor shall pay any such loss, damages/compensation, fines or costs incurred awarded or recommended by the court, tribunal or ombudsman.

## **6. HEALTH AND SAFETY**

- 6.1 The Contractor shall observe the provisions of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and all other regulations, approved Codes of Practice and amendments thereto. The Contractor shall provide its Health & Safety Policy to the Authority's Authorised Officer as required and on request.
- 6.2 The Contractor shall maintain a record of any Health and Safety incidents /hazards arising and shall promptly notify the Authority's Authorised Officer of those incidents/hazards that arise in connection with the performance of the Services. The Contractor shall provide access of these records to the Authority's Authorised Officer as required and on request.

## **7. HUMAN RIGHTS ACT**

When the Contractor is performing a public function pursuant to this Contract the Contractor shall indemnify the Authority against all actions, claims, demands, losses, proceedings, damages, costs and expenses whatsoever arising out of any breach of the Human Rights Act 1998 by the Contractor.

## **8. SAFEGUARDING, CHILD PROTECTION AND VULNERABLE ADULT MATTERS**

- 8.1 All safeguarding, child protection and vulnerable adult matters that arise in relation to this Contract, shall be acted upon in accordance with the SET and/or POVA procedures (see appendix 3). The Contractor shall ensure that the children, young people, families and vulnerable adults that they work with understand that whilst in general their confidentiality shall be upheld, any potential child protection and vulnerable adult concerns shall be reported utilising the SET and/or POVA procedures.
- 8.2 The Authority and the Contractor shall take all reasonable steps to ensure that all information concerning Service Users is treated as confidential. Any significant breach of confidentiality is a breach of this Contract and as such can be the basis for terminating this Contract.

## **9. IMPROPER CONDUCT**

- 9.1 The Contractor shall have a policy acceptable to the Authorised Officer to ensure that Service Users are consistently treated with respect and courtesy and shall have written procedures for investigating allegations of improper conduct by their staff.
- 9.2 The Contractor shall ensure that all staff are fully aware of such procedures and are supported, through supervision and training, in identifying and addressing potential areas of concern.
- 9.3 In cases of alleged gross misconduct the Contractor will be expected to take immediate appropriate action to ensure the safety of the Service User, initiate the investigation of the allegation/s and notify the Authorised Officer within 24 hours. The following would constitute gross misconduct:
- 9.3.1 Sexual/physical/mental/financial abuse; including: assault, verbal abuse, acts of cruelty, threatening behaviour, harassment, physical restraint, deprivation, neglect, wilful inaction fraud or theft
- 9.3.2 Exploitation or harassment
- 9.3.3 Racist comments or discriminatory behaviour

## **10. STATUTORY AND OTHER REGULATIONS**

The Contractor shall at its own expense comply with all statutory and other provisions to be performed and observed in connection with the Service and shall indemnify the Authority against any claims, actions, proceedings, loss, liability, penalties, costs or expenses made or incurred as a result of any failure in compliance.

## SCHEDULE 1

### Definitions and Interpretation

1. The terms and expressions used in this Services Agreement shall have the meanings set out below:

**“Agreement Term”**

means the period from and including the Commencement Date to the Expiry Date or, if earlier, the date of termination of the Services Agreement for any reason;

**“Authority Break Point Dates”**

Means the 28<sup>th</sup> February 2011  
30<sup>th</sup> September 2011;

**“Authority’s Policies”**

- i. means Health & Safety
- ii. Equal Opportunities
- iii. Safeguarding
- iv. Risk Assessment
- v. Race Relations
- vi. Insurance
- vii. Safe Recruitment

**“CEDR”**

means the Centre for Effective Dispute Resolution;

**“Change Control Procedures”**

means the change control procedures set out in Schedule 4 (Change Control Procedures);

**“Commencement Date”**

means the date of this Services Agreement;

**“Contractor Default”**

means one of the following events:

- (a) in relation to the Contractor:
  - i. a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;
  - ii. any receiver or manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
  - iii. any voluntary arrangement is made for a composition of debts or a scheme or arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985 in respect of the Contractor;



- iv. an administration order is made, or an administrator is appointed in respect of the Contractor;
- (b) a breach by the Contractor on any of its obligations under this Services Agreement which materially and adversely effects the performance of the Services;
- (c) a breach by the Contractor of its obligation to take out and maintain the insurances referred to in clause 7;
- (d) a breach of the Contractor of its obligations in clause 13 (Assignment and Sub-Contracting);

**“Day”**

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

**"Dispute"**

shall have the meaning given to it in clause 10 (Dispute Resolution Procedure);

**“Dispute Resolution Procedure”**

means the procedure to deal with disputes as set out at clause 10 (Dispute Resolution Procedure);

**“Expiry Date”**

means 31<sup>st</sup> March 2012 (further 1yr Essex County Council extension option available dependant on continued funding)

**“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 contractor in the delivery of the Services seeking in good faith to comply with its contractual obligations, complying with all applicable Legislation and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

**“Insolvency Event of Default”**

means any of the events listed in limb (a) of the definition of Contractor Default;

**“Intellectual Property Rights”**

means any and all patents, trademarks, service marks, copyright, data base rights, moral rights, rights in a design, know-how, confidential information, and all or any other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

**“Legislation”**

means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative,

and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;

**“Loss”**

means all losses, liabilities, damages, costs, claims, actions, proceedings, compensation, demands, fines, awards, expenses (including reasonable legal fees and disbursements), penalties and interest;

**“Party”**

means a party to this Services Agreement and “Parties” shall be construed accordingly;

**“Services”**

means the whole or any part of the services set out in Schedule 2 (Output Specification) to be provided by the Contractor to the Authority under this Services Agreement;

**“Services Payment”**

means the payment by the Authority to the Contractor for the provision of the Services as set out in Schedule 3 (Payment);

**“Sub-Contractor”**

means a person to whom the Contractor sub-contracts any of its obligations under this Services Agreement;

- 1.1 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.2 Save where it is stated to the contrary, any reference to this Services Agreement or to any other document shall include any permitted variation, amendment or supplement to such document.
- 1.3 Headings are included in this Services Agreement for ease of reference only and shall not affect the interpretation or construction of this Services Agreement.
- 1.4 References to clauses, paragraphs, Parts and Schedules are, unless otherwise provided, references to the clauses, paragraphs, Parts and the Schedules to this Services Agreement.
- 1.5 Except as otherwise expressly provided in this Services Agreement, all remedies available to the Contractor or to the Authority under this Services Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

## SCHEDULE 2

### INDEPENDENT ADVOCACY FOR LOOKED AFTER AND VULNERABLE CHILDREN AND YOUNG PEOPLE.

#### 1. INTRODUCTION

1.1 Essex County Council has a statutory responsibility to provide an independent advocacy service to those Essex children and young people looked after in a number of settings including those residential units listed at Appendix 3 as well as to those children and young people who have been assessed and are receiving a social care service, within the following groups. The table provided at Appendix 2 provides a breakdown of the Looked after Children and Young People per Essex County Council District

- a. Those at risk of family breakdown (section 17b Children Act)
- b. Those at risk of placement breakdown (section 20-31 Children Act)
- c. Care leavers (section 17a Children Act)
- d. Those needing a service to work on difficulties around life experiences (section 24 Children Act)
- e. Age 0 – 19 yrs (25 for young people with learning disabilities)

In circumstances where a child or young person is unable to give a clear indication of their wishes or view in a specific situation, non instructed advocacy will be made available. Act 1989.

1.2 Advocacy is about speaking up for children and young people and when they choose to helping them to speak up for themselves. Advocacy is about empowering children and young people to make sure that their rights are respected, they are treated fairly and their views and wishes are heard at all times. Advocacy is about presenting the views, wishes and needs of children and young people to decision-makers, and helping them to navigate the system to get their voice heard.

Advocacy services provide independent and confidential

- Information
- Access to Advice
- Advocacy
- Representation
- Support

1.3 The provider will be required to:

1.3.1 Ensure that staff are vetted, recruited, assessed, trained and supported in their role, and they should be able to meet the needs of those Children and Young People identified at 1.1

1.3.2 Provide a coordinated service throughout the administrative boundaries of Essex, so that Children and Young People who meet the criteria have consistent and equitable access to independent advocacy.

1.3.3 Arrange a programme of visits to those residential establishments listed in Appendix 3 and to the Children and Young People living there or receiving respite care.

1.3.4 Maintain strong working relationships with statutory services so that independent advocacy is an integral offer to children and young people receiving statutory support.

- 1.3.5 To be able to provide services to a number of young people with a diverse range of emotional, health, social and behavioral needs across varying ages in a variety of settings but not limited to residential, fostering, respite, and daycare provisions.
- 1.3.6 To support a number of adhoc events or open days held at identified units which would be of benefit to the children and young people.
- 1.3.7 Strengthen links with Essex County Council's Independent Reviewing Officers in advocating with the young people. A number of scheduled meetings should be arranged on a quarterly basis to work together with the Independent Reviewing Officers to ensure opportunities and engagements are timely and effective.

## **2. AIMS AND OBJECTIVES**

- 2.1 To provide independent, confidential Advocacy and to Children and Young People meeting the criteria as set out above (1.1)
- 2.2 To facilitate opportunities for Children and Young People to express their views directly to persons in positions of authority on matters affecting them, and where this is impossible, to represent the child's views and wishes.
- 2.3 To provide access to legal advice to the Child or Young Person and Advocate as necessary, and to provide representation to children if such representation is necessary.
- 2.4 The provider shall maintain established drop-in centres for Children and Young People, to facilitate referrals to the appropriate organisations within the residential establishments listed in Appendix 3.
- 2.5 The provider shall help Children and Young People to access legal services if required.

## **3. CRITICAL SUCCESS FACTORS**

- 3.1 To achieve the required outcomes of the service the provider will work with vulnerable Children and Young People and help identify the most appropriate route to resolve their issues. This might be achieved by negotiation, by assisting the child to express his or her view, by assisting frontline staff to support the child, by referring cases and where necessary, by accessing legal advice, by acting as an Independent Visitor to identified Children and Young People. Their principle responsibilities are to work with children and young people, in particular to help them to express their wishes and feelings to service providers.
- 3.2 Independent Advocacy is accessible to all Essex Children and Young People where there is statutory duty, as identified at 1.1
- 3.3 There is good coordination of services throughout Administrative Essex to ensure that there is consistency of provision to a high standard.
- 3.4 Act as a conduit for all Advocacy enquires and then assessing and accessing the most appropriate channel for resolution;
- 3.5 Promoting Advocacy services to the Authority's front-line staff throughout the administrative boundaries of Essex
- 3.6 Maintain relationships with establishments where drop-in centres have been established this allowing children and young people to access the advocacy services directly.
- 3.7 Wherever possible resolve the issue without further referral.
- 3.8 The provider will work to the National Advocacy Standards as set out in Appendix 1

- 3.9 The service is well known and there is good access to the service through the provision of free phone access, internet access and good information and publicity. This information will be reviewed and updated in a timely fashion.
- 3.10 The provider shall ensure that there is a clearly defined communication strategy.
- 3.11 The service provider shall fully engage with the Authority in order to commit themselves to the service and make themselves known to the teams that will be accessing them. The provider must take all reasonable steps to ensure that the Authority's front line staff are aware of how the service can be accessed by Children and Young People. The provider will be pro-active in attending internal team meetings. This will be facilitated by the authority in order to roll out this provision in communicating service delivery potential.

#### **4. SERVICE DELIVERY**

- 4.1 Overall Outcome: Looked after and Vulnerable Essex Children and Young People in Administrative Essex will be familiar with and be able to an Independent Advocate/Independent Visitor.

- 4.2 The Provider delivering this service shall visit a number of residential and respite provisions on a regular basis to make contact with children and young people and be available to work with them as a group or individually.

**Measurement of 4.2: Appendix 3 sets out the minimum number of visits to the Authorities homes required by this contract. The provider shall evidence details of visits and broadly indicate any specific advocacy undertaken.**

- 4.3 The provider will ensure that sufficient resources are available to meet the ongoing and continuing assessed need of the authority.

**Measurement of 4.3: The provider must clearly demonstrate that the allocation of resources is proportionate to the number of Looked After and Vulnerable Children and Young People in the four geographic locations of Essex (North, South, West and Mid)**

- 4.4 The provider will ensure that there is sufficient accessibility to the service available to all children and young people entitled to the service identified in 1.1.

**Measurement of 4.4: The provider will demonstrate that there are services in place to inform Looked After and Vulnerable Children and Young People of the service, including a free phone line, internet access and other marketing or publicity. The provider must demonstrate a minimum of 15% of the targeted group (identified in 1.2) work with an independent advocate/visitor on an individual basis.**

- 4.5 The provider will ensure that children and young people can inform and develop the service and where possible incorporate any comments suggestions of Children and Young People.

**Measurement of 4.5: The provider shall demonstrate how the service has developed and responded to the suggestions from Children and Young People and what mechanisms they have in place for the collection of feedback.**

- 4.6 The provision of the service will be monitored on a two tier basis as follows:
- a. By attendance at the steering group meetings, scheduled quarterly.
  - b. By an inspection and audit of the providers offices and files looking at contract compliance at least annually.

- 4.7 The provider will demonstrate an understanding of statutory service provision and the processes Children Looked After and Vulnerable children will be engaged. They will have a thorough and up to date understanding of the resources and services Children and Young People are able to access.

- 4.8 A form of newsletter or communication for the children and young people should be created by the children and young people.
- 4.9 The provider will have a quality assurance system seeking to maintain and measure performance. The system should demonstrate and analysis of staffing consistency; issues raised and their means of resolution (Complaint Procedure must be compliant with the Authority's Complaints Procedure). Positive and negative feedback from the young people and staff, how this feedback has been responded to within the service.
- 4.10 The provider will have systems in place to ensure the safe storage, recording and transmission of confidential information. Data and information will be handled in accordance with the Data Protection Act 1998.

## 5. SERVICE PERFORMANCE MEASURES

- 5.1 It is recognised by the Authority that an intervention may include one or more of the following
- a. Telephone call
  - b. Visit
  - c. Face to Face Engagement
  - d. Judicial Review
  - e. Negotiation on behalf of the Young Person
  - f. Seeking legal advice/support

	<b>% Time involvement against delivery</b>	<b>Detail</b>	<b>Time</b>
Tier 1	40%	Regular visits, familiarisation with children and young people	As per Appendix 3
Tier 2	35%	Initial intervention – scoping of issues  Time limited undertaking of requirement that can be delivered	2 hrs max
Tier 3	15%	Engagement via identified intervention – conclusion	8hrs max
Tier 4	5%	Engagement via identified intervention requiring on going support to reach maximum delivery and satisfactory outcomes.	4 months max

- 5.2 Based on a known population of 1320 Children Looked After the Service provider will be expected to reach at least 15% of this population.
- 5.3 Within 4 months of service delivery the provider must have a form of newsletter or communication created, aimed and available to the Essex Young People accessing the service.

## 6. STAFFING

6.1 Overall Outcome: The provider shall ensure that the services provided are delivered by qualified professionals that are trained and competent to meet the needs of the stakeholders engaged in providing services to Young People. The provider is required to comply with all employment law and legal requirements.

6.2 The provider will ensure that all staff are recruited professionally and ensure that every member of staff has an enhanced level of CRB checks prior to commencing employment in accordance with the vetting and barring process.

**Measurement of 6.2: No less than 100% of CRB checks in place prior to employment or delivery of service, 100% of the time. This information must be made available for evidence upon request. Risk Assessments must be completed where staff, work as part of an agency agreement in conjunction with having an enhanced CRB check.**

6.3 The provider will ensure that staff employed to manage the service possess the necessary business, management and financial expertise. The service should be delivered efficiently and effectively and at all time in a professional manner.

6.4 The provider will ensure that there is adequate administrative backup and infrastructure to support the service delivery enabling staff to carry out their duties in an efficient and effective manner.

6.5 Young People accessing the service could be offered the opportunity of an apprenticeship with the delivery of the service. For example maintaining the providers webpage, Editor of the required Newsletter, or apprentice advocates.

## 7. TRAINING

7.1 Overall Outcome: The provider shall ensure that their staff are appropriately qualified and competent to deliver the service and actively ensuring continuous professional development, performance appraisal and individual supervision.

7.2 The provider shall ensure that their staff have received an appropriate induction, which will include contractual obligations, Code of Conduct, familiarisation of Policies and Procedures and information which pertains to Looked After and Vulnerable children and young people.

**Measurement of 7.2: Induction – No less than 100% received 100% of the time – Recording of signatures that staff have received and understood the induction and evidence is kept upon the recipient persons file. This information must be made available for recording upon request.**

7.3 The provider shall ensure that their child protection procedures are consistent with the local policies and procedures agreed by the Local Safeguarding Commissioning Board. All staff must be aware of the existence of this procedure and have received training as part of both their induction programme and ongoing development.

## 8. BEING HEALTHY

8.1 Overall Outcome: The health needs of a young person in its broadest sense should be considered within the Independent Advocacy arrangements. Independent Advocacy for children and young people with mental health issues will be provided through mental health provision.

## **9. BEING SAFE**

9.1 Overall Outcome: There are systems in place to promote the safety and welfare of Young people and to ensure that they are protected from harm, neglect, abuse, exploitation and deprivation.

9.2 The provider shall ensure that their staff are aware of their duties to safeguard children under the guidance 'working together to safeguard children', and know how to deal with and share information which they are given in confidence for child protection purposes.

The provider shall ensure that if and when supervised and unsupervised activities take place they take into account the safety of young people at all times and where substantial or unusual hazards are involved, a recorded risk assessment is made.

## **10. ENJOYING AND ACHIEVING**

10.1 Overall Outcome: Each child and young person is able to access Independent Advocacy to ensure that they receive specific service and support to assist them maximise their potential and to lead a full life.

## **11. MAKING A POSITIVE CONTRIBUTION**

11.1 Overall Outcome: Young People are encouraged and supported to make decisions about their lives and the care they receive. No young person is assumed to be unable to communicate their views.

## **12. ACHIEVING ECONOMIC WELLBEING**

12.1 Overall Outcome: To understand the importance of listening to the view of the individual, respecting their dignity, privacy and confidentiality and enhancing the individual's confidence and feelings of self-worth.

12.2 The provider will ensure that the young people are encouraged to attain their full potential.

## **13. MONITORING AND STEERING GROUP EXPECTATIONS**

13.1 Statistical data will be required from the provider, detailing;

- a. Numbers of Young People utilising the provision
- b. The tiers of service being delivered
- c. Numbers of new cases and conclusions
- d. Districts

This information should be produced in a monthly format and reported to into the Steering Group Meeting on a quarterly basis. The format of this document shall be developed and agreed at

13.2 The Steering Group meetings will be held quarterly for the duration of the contract. These will be held throughout the county and will be last for approximately 3hrs, chaired on a rotational basis between Essex County Council staff and the service provider.

13.3 At each Steering Group meeting there must be an item brought to the meeting raised by a young person, this shall be a standard section on the agenda.



## **Appendix 1**

### **National Independent Advocacy Standards**

- Advocacy is led by the views and wishes of Children and Young People
- Advocacy champions the rights and needs of children and young people
- All Advocacy services have clear policies to promote equalities issues and monitor services to ensure that no young person is discriminated against due to age, gender, race, religion, language, disability or sexual orientation.
- Advocacy is well publicised, accessible and easy to use
- Advocacy gives help and advice quickly when they are requested
- Advocacy works exclusively for children and young people
- Advocacy service operates to a high level of confidentiality and ensures that children and young people and other agencies are aware of its confidentiality policies
- Advocacy listens to the views and ideas of children and young people in order to improve the services provided
- Advocacy service has an effective and easy to use complaints procedure
- Advocacy is well managed and gives value for money

## Appendix 2

### Statistical data of Children Looked After in Essex County Council Districts

Essex County Council – District / Borough	Number of Children Looked After
Basildon District Council	282
Braintree District Council	118
Brentwood Borough Council	36
Castle Point Borough Council	52
Chelmsford Borough Council	167
Colchester Borough Council	202
Epping Forest District	56
Harlow District Council	151
Maldon District Council	30
Rochford District Council	33
Tendring District Council	174
Uttlesford District Council	14

### Appendix 3

List of ECC Residential & Respite Units, and minimum requirement of visits to each.

Unit Type/Name	Minimum visit requirement
<b>CWD Residential Unit</b>	
Hargrave House	Monthly
<b>Residential Units</b>	
The Willows	Monthly
The Meadows	Monthly
Old Manse	Monthly
The Lodge	Monthly
The Limes	Monthly
The Sailings	Monthly
<b>Crisis Units</b>	
The Chestnuts	Weekly
Leverton House	Weekly
<b>CWD Respite Units</b>	
Lavender House	Weekly
The Maples	Weekly

### **SCHEDULE 3**

Payment – This Section has been redacted

### **SCHEDULE 4**

#### Change Control Procedure

#### **1. PRINCIPLES**

- 1.1 Either Party may at any time request a change to the Services in accordance with the procedure set out in paragraph 2 below.
- 1.2 Neither the Authority nor the Contractor shall unreasonably withhold its agreement to any change.
- 1.3 The obligations of the Parties shall not be effected until a change control note in the form attached to this Schedule 3 (a “**Change Control Note**”) has been signed by the authorised signatory of both Parties.
- 1.4 The Authority shall not be responsible for the cost of any work undertaken or goods or materials ordered by the Contractor or its Sub-Contractors which has not been authorised in advance by a Change Control Note.

#### **2. PROCEDURE**

- 2.1 The Authority and the Contractor shall discuss changes proposed by either Party to this Services Agreement and such discussion shall result in:
  - 2.1.1 a decision not to proceed further; or
  - 2.1.2 a written request for a change by the Authority; or
  - 2.1.3 a recommendation for a change by the Contractor.
- 2.2 Where a written request for a change is received from the Authority, the Contractor shall submit two signed copies of a Change Control Note to the Authority within seven (7) days of such request.
- 2.3 A recommendation to amend this Services Agreement by the Contractor shall be submitted direct to the Authority in the form of two copies of a Change Control Note signed by the Contractor.
- 2.4 Each Change Control Note shall contain details of the change including, where applicable:
  - 2.4.1 the title of the change;
  - 2.4.2 the originator and the date of the request or recommendation for the change;
  - 2.4.3 the reason for the change;
  - 2.4.4 full details of the change including any specifications;

- 2.4.5 the price, if any, of the change;
  - 2.4.6 a timetable for implementation together with any proposals for acceptance of the change;
  - 2.4.7 a schedule of payments, if applicable;
  - 2.4.8 the impact, if any, of the change on other aspects of the Services Agreement;
  - 2.4.9 the date of expiry of validity of the Change Control Note; and
  - 2.4.10 provision for signature by the Authority if the change is agreed.
- 2.5 For each Change Control Note submitted to the Authority, the Authority shall, within the period of the validity of the Change Control Note, evaluate the Change Control Note and, as appropriate:
- 2.5.1 request further information from the Contractor in which case the Contractor shall provide such information as soon as reasonably practicable and in any event within seven (7) Days. The request for information and the information once provided shall be deemed to be part of the Change Control Note, and the Authority may approve or reject the Change Control Note upon receipt of the new information; or
  - 2.5.2 notify the Contractor of the rejection of the Change Control Note.
- 2.6 A Change Control Note signed by both Parties shall constitute a variation to this Services Agreement in accordance with the terms of clause 14 of the Services Agreement.

### **3. AUTHORISED SIGNATORIES**

- 3.1 Where the change incurs no additional charges for the Authority the authorised representatives for both Parties will act as authorised signatories.
- 3.2 The authorised signatory for the Authority will be the Authority's Authorised Representative and the Head of Procurement and Direct Services for changes up to £70,000 in value and the Authority's Authorised Representative and the Head of Procurement and Direct Services reported to the Service Cabinet Member for changes above £70,000 in value.
- 3.3 The authorised signatory for the Contractor shall be deemed to be the Contractor's Authorised Representative in the absence of any written notification to the contrary from the Contractor to the Authority.

## Change Control Note

Ref No:

Date:

Title of Change:

Details of Change:

Reasons for Change:

Impact of Change:

Timetable:

Price:

Contractor:

Signed:

Authority Response: Accept/Reject

Signed:

Note: The format of the Change Control Note may vary from time to time in circumstances where additional information is deemed necessary by the Authority or the Contractor in order to accurately reflect the nature of the change.

## SCHEDULE 5

### Data Protection Act, Caldicott Principles and Freedom of Information Act

#### 1 DATA PROTECTION ACT 1998

1. In order that the Authority may comply with paragraphs 11 and 12 (relating to the seventh data protection principle) of Part II of Schedule 1 to the Data Protection Act 1998 the Contractor hereby undertakes as follows:
  - 1.1 The Contractor will have in place at all times when processing personal data technical and organisational security measures sufficient to ensure that the Data Protection Act 1998 is complied with.
  - 1.2 The Contractor shall so far as concerns personal data obtained under or for the purposes of this Contract:
    - 1.2.1 comply with the Data Protection Act 1998 and all relevant codes of practice issued under the Act;
    - 1.2.2 maintain the confidentiality of personal data to which he has authorised access under the terms of this Contract;
    - 1.2.3 indemnify the Authority against loss, destruction or processing contrary to the Data Protection Act 1998 of data by himself, his servants or agents; and
    - 1.2.4 in accordance with paragraph 12 of Part II of Schedule 1 to the Data Protection Act 1998 (a) process any personal data supplied to him by the Authority only on instructions from the Authority (but including any set out in this Agreement) and (b) comply with obligations equivalent to those imposed on a data controller by the seventh principle of Part I of the said Schedule.

#### 2. Caldicott Principles

The Contractor must also observe the Caldicott Principles, which are set out below.

##### **The purpose must be justified.**

Every proposed use or transfer of personal data within or from the organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed by an appropriate guardian.

##### **Personal data must not be used unless it is absolutely necessary.**

Personal data should not be used unless there is no alternative.

##### **The minimum necessary personal data information is to be used.**

Where use of personal data is considered essential, each individual item of information should be justified with the aim of reducing identifiability.

**Access to personal data should be on a strict need to know basis.**

Only those individuals who need access to personal data should have access to it, and they should only have access to the data that they need to see.

**Everyone should be aware of their responsibilities.**

Those handling personal data - both frontline and support staff - must be aware of their responsibilities and obligations to respect personal confidentiality

**All persons handling personal data must understand and comply with the law.**

Every use of personal data information must be lawful.

**3. Freedom of Information Act 2000**

- 3.1 The Contractor shall nominate a contact or contacts who will be responsible for ensuring that the Contractor's obligations as set out in this schedule are met.
- 3.2 It shall be a contractual obligation that, if under Section 5(1)(b) of the Freedom of Information Act 2000 the Lord Chancellor designates the Contractor as a public authority for the purposes of the Act, the Contractor shall comply with the Act.
- 3.3 It shall be a contractual obligation that the Contractor shall provide promptly to the Authority any information required to allow the Authority to respond to requests under Freedom of Information or Data Protection within the statutory deadline. the Authority shall only request such information from the Contractor as is required to meet their statutory duty.
- 3.4 The Authority shall consider any advice from the Contractor regarding information that may be exempt from disclosure but responsibility for disclosure decisions rests with the Authority.

**4. Breach, termination and continuance**

- 4.1 The Contractor shall permit the Authority to take all reasonable steps to ensure that the provisions of this Schedule (and in particular that the measures referred to in paragraph 1.2) are being complied with.
- 4.2 Failure on the part of the Contractor to comply with the provisions of this Schedule shall entitle the Authority to terminate the contract with immediate effect and to recover the costs incurred in consequence as a civil debt from the Contractor.
- 4.3 On termination of this Contract howsoever arising the Contractor shall, if so requested by the Authority, (a) transfer to the Authority the whole or any part of the personal data and other information received or acquired by the Contractor for the purposes of or in the course of the delivery of the Services and (b) destroy or erase the whole or any part of such personal data and other Information retained by the Contractor.
- 4.4 The provisions of this Schedule shall continue in effect notwithstanding termination of this Contract.



## List of Changes

15.1.08 Cl. 3.2 (gratuities) added.

Cl. 6.4 – addition of “not”.

Data protection, etc. Cl. 11.2 and Schedule 5 incorporate Procedure 2g.

Marker re liquidated damages and KPIs in Schedule 3, para. 2.