

AGREEMENT

between

EAST AYRSHIRE COUNCIL

and

[insert Grant Recipient's name]

THIS IS AN AGREEMENT BETWEEN:

(First) EAST AYRSHIRE COUNCIL, a local authority constituted in terms of the Local Government etc. (Scotland) Act, 1994, and having its principal offices at Council Headquarters, London Road, Kilmarnock, KA3 7BU (hereinafter referred to as "the Council") and its statutory successors and;

(Second) [insert Grant Recipient's name and details] (hereinafter referred to as "the Grant Recipient").

Preamble

This Agreement is entered into by the Council and the Grant Recipient to regulate their respective obligations relative to the Project hereinafter referred to and accordingly the Council and the Grant Recipient agree as follows:-

1. **DEFINITIONS INTERPRETATION & RELATED MATTERS**

In this Agreement, unless the context otherwise requires, the following terms shall have the following meaning given to them below:-

1.1 Definitions

1.2 "**Agreement**" means this Agreement together with the Schedule annexed hereto.

"**Care Inspectorate**" means Social Care and Social Work Improvement Service (SCSWIS) being the body established under section 44 of the Public Services Reform (Scotland) Act 2010, having its headquarters for the time being at Compass House, 11 Riverside Drive, Dundee, DD1 4NY;

"**Disclosure**" means a criminal record certificate or enhanced criminal record certificate issued by Disclosure Scotland under Part V of the Police Act 1997.

"**Disclosure Information**" means-

- (a) disclosure records disclosed under section 52, 53 or 54 of the PVG Act and
- (b) any information in such a disclosure record which is obtained only by virtue of section 51, 52, 53 or 54 of the PVG Act.

"**Disclosure Scotland**" means an agency of the Scottish Government that discharges the functions of Scottish Ministers under the Police Act 1997 and in particular provides disclosure of conviction information and manages the PVG Scheme on behalf of the Scottish

Government, based for the time being at the Scottish Criminal Record Office, Pacific Quay, Glasgow, G51 1EA

“Enhanced Disclosure” means an enhanced criminal record certificate issued under Part V of the Police Act 1997.

“Financial Year” means any period of a year from 1st April to 31st March.

“Grant Funding” means that amount or amount(s) which the Council will make to the Grant Recipient for providing the Project and Services in accordance with this Agreement.

“Parties” means the Council and the Grant Recipient and **“Party”** shall be construed accordingly.

“Project/Service” means the provision by the Grant Recipient of the Services to Service Users in terms of this Agreement and as specified in the Schedule.

“Public Sector Equality Duty” means the duty imposed on the Council as a relevant authority by virtue of Section 1 of the Equality Act 2010.

“PVG Act” means the Protection of Vulnerable Groups (Scotland) Act 2007.

“PVG Scheme” means the scheme established under section 44 of the PVG Act managed by Disclosure Scotland for Individuals undertaking Regulated Work with Protected Adults and/or Regulated Work with Children as defined in the PVG Act.

“Regulated Work” means as defined in section 91 PVG Act.

“Regulated Work with Children” means Regulated Work described in Schedule 2 of the PVG Act.

“Regulated Work with Protected Adults” means Regulated Work described in schedule 3 of the PVG Act.

“Risk Assessment and Risk Management Plan” means the process of identifying individual behaviours, environmental hazards, and risks concerned with the safety and welfare of the Service User. This includes measuring the seriousness and likelihood of the impact, and subsequently developing management plans and recording methods to minimise this.

“Schedule” means the Schedule annexed and executed as relative hereto.

“**Scottish Government**” means the Scottish Ministers and reference to “government” shall be construed accordingly.

“**Scheme Record**” means the document defined in section 48 of the PVG Act

“**Scheme Record Update**” means a short scheme record as defined in section 53 of the PVG Act

“**Services**” means the provision by the Grant Recipient of the services to the Service Users in terms of this Agreement and as specified in the Schedule.

“**Service User**” means any person for whom or for whose benefit the Grant Recipient provides the Project and/or Services to in accordance with the terms of this Agreement; and “**Service Users**” shall be construed accordingly.

“**Staff**” means any person engaged by the Grant Recipient in terms of a contract of employment or contract for services between that person and the Grant Recipient for the purposes of providing the Services and any agency staff engaged in compliance with this Agreement, but shall exclude any sub-contractor or Volunteer involved in or with the provision of the Services.

“**Vetting Information**” means as defined in section 49 of the PVG Act

“**Volunteer**” means any person willing to provide the Services in terms of this Agreement other than by way of a contract of employment or of service and who do not receive any payment for the same by way of wages or otherwise except repayment of necessary outlays.

- 1.3 Reference to any enactment, order, regulation, Statutory Instrument, or the like shall include references to any amendment, replacement, consolidation or re-enactment of the same.
- 1.4 Words importing the masculine gender include the feminine gender, words in the singular include the plural and words importing individuals shall be treated as including bodies corporate, unincorporated associations and partnerships and, in each case, vice versa.
- 1.5 Clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.

2. DURATION

Notwithstanding the date or dates of signature hereof, this Agreement shall commence on [insert date], and shall thereafter continue until [insert date], unless terminated early in accordance with the terms of this Agreement.

3. PAYMENT

- 3.1 In return for the Grant Recipient providing the Project/Service and fulfilling all other obligations incumbent upon the Grant Recipient in terms of this Agreement the Council shall pay the Grant Funding as detailed within the Schedule.
- 3.2 In the event of termination of this Agreement for whatever reason, the Grant Recipient shall on demand immediately pay to the Council any residual sums remaining from the Grant Funding received from the Council.
- 3.3 In the event of the Grant Recipient receiving additional non-Council funding relative to the Project/Service the Grant Recipient shall notify the Council and advise details of such additional funding. Upon receipt of such notification the Council shall be entitled to review the Project/Service and amend the Grant Funding.

4. GRANT RECIPIENT'S OBLIGATIONS

- 4.1 Throughout this Agreement the Grant Recipient shall:-
- (i) provide the Project/Service specified within the Schedule;
 - (ii) perform and deliver the Project/Service in a timely and professional manner and with the level of experience, skill and care reasonably to be expected within the industry from a supplier of similar services.
 - (iii) ensure the Project/Services are performed at all times by appropriately qualified and trained personnel, and in accordance with all relevant statutes and other legislative requirements, the provisions and requirements of this Agreement, and good industry practice;
 - (iv) devote to its obligations in terms of this Agreement, such resources including time, labour, attention and skill as are necessary for the satisfactory performance of those obligations;
 - (v) use and apply the entire amounts of the Grant Funding solely for the purposes of providing the Project/Service, except where otherwise explicitly authorised in writing by the Council. The Grant Recipient's use of any part of the Grant Funding for any other purpose shall be regarded as a material breach of this Agreement;
 - (vi) ensure that documentation used in connection with the Project/Service clearly records that the Council is a funder of the Project/Service.

- (vii) if applicable, be registered and subject to inspection in accordance with the terms of the Public Services Reform (Scotland) Act 2010, and shall comply fully with the terms of the Act;
- (viii) provide services that are non-denominational, culturally sensitive and inclusive, catering for Service Users of all faiths, or none;
- (ix) take no action which could or is likely to bring the Council into disrepute;
- (x) throughout the duration of this Agreement observe and comply with all legislation, statutory enactments, by-laws and regulations applicable to the Project/Service and any variation, amendment or replacement thereof;
- (xi) notify the Council if for any reason it is unable to sustain the Project/Service. Upon receipt of such notification the Council shall be entitled to review the payments and amounts made or which would have been made to the Grant Recipient during the period in which the Grant Recipient is unable to sustain the Project/Service, and may, in its sole discretion, reduce or vary such amounts;
- (xii) notify the Council in writing as soon as is reasonably practicable of any loss of personal data as defined at clause 5.2.2 and/or breach of confidentiality; and
- (xiii) shall not be party political and the Grant Recipient shall not use any Grant Funding received by them from the Council in any way which would result in this amount being made or perceived to have been made for any purpose to any political party or any separate body, company or other legal entity subsidiary to, or otherwise associated with any political party.

5. POLICIES AND PROCEDURES

5.1 Customer Care

- 5.1.1 The Grant Recipient shall establish, monitor and review a customer care policy which includes a complaints procedure and can demonstrate Service User satisfaction and shall notify the Council of any complaints made by Services Users.

5.2 Data Protection

- 5.2.1 The Grant Recipient shall comply, at all times, with the terms of the Data Protection Act 1998, (hereinafter referred to as "the DPA").
- 5.2.2 The Grant Recipient shall operate sufficient and appropriate technical and organisational

measures to protect against unauthorised or unlawful processing of 'personal data' which shall have the same meaning as that assigned to it in the DPA and against accidental loss or destruction of, or damage to, such data, and shall provide evidence of such measure to the Council.

- 5.2.3 The Grant Recipient shall indemnify the Council against the costs including investigation conducted or proceedings brought under the DPA and data restoration costs, fines and expenses, which arise directly or indirectly out of dealing with any claims made in respect of a breach of the DPA which claims would not have arisen but for the act, omission or negligence of the Grant Recipient, its sub-contractors, consultants, agents, volunteers or staff.
- 5.2.4 On termination of this Agreement, for whatever reason, the Grant Recipient shall return to the Council all the personal data it holds relating to the provision of the Project/Service under this Agreement. Where the personal data has been passed to any agents or subcontractors of the Grant Recipient, the Grant Recipient undertakes to retrieve from the agent or subcontractor at the end of the consultancy, agency or subcontract or at termination of this Agreement, whichever occurs first all the personal data and return it to the Council. In this clause 5.2.4 the expression "return" means that the Grant Recipient shall provide the Council with all hard copies of the personal data concerned and copies of all electronic personal data, and then the Grant Recipient shall securely and irrevocably delete any copies of personal data from the Grant Recipient's own computer systems.
- 5.2.5 Any breach of this clause 5.2 shall be deemed a material breach of this Agreement.

5.3 Confidentiality

- 5.3.1 The Grant Recipient shall ensure that the confidentiality of the service users is respected in relation to spoken, written and database information through the operation of confidentiality procedures.

5.4 Health and Safety

- 5.4.1 The Grant Recipient shall provide a safe system of work for its staff and Volunteers and for those using its facilities and shall at all time comply with (i) all relevant health, safety and environmental Standards, Code of Practices and legislation; and (ii) all relevant European Standard and British Standard specifications or British Standard Codes of Practice current at the date of carrying out of any of the Services under this Agreement to ensure that all goods and materials supplied or used and all workmanship shall at least meet the requirements of that European Standard or British Standard, as the case may be.

5.5 Equality

5.5.1 In providing the Project/Service, the Grant Recipient shall comply with Equal Opportunities and the Public Sector Equality Duty and shall ensure compliance with the Council's written policies on such matters and with all Laws, regulations and Guidance from time to time applicable in such regard.

5.5.2 The Grant Recipient shall provide such information and documentation to the Council as the Council may reasonably require from time to time for the purposes of:

- a. assessing the Grant Recipient's compliance with its obligation under Clause 5.5.1 above;
- b. enabling the Council to review diversity in employment data such as total staff in post, applications for posts, appointments to post, annual gender pay audits, promotions, performance reviews, training, disciplinary matters, grievances, tribunal matters and all other relevant information required for the Council to comply with its Public Sector Equality Duty;
- c. enabling the Council to review data in respect of complaints and satisfaction surveys in respect of the Grant Recipient's approach to equalities, diversity and human rights.

5.5.3 In delivering and reviewing the Project/Service the Grant Recipient shall:

- a. comply with the Council's Public Sector Equality Duty and shall have regard to any Guidance on the Public Sector Equality Duty (including assisting in or preparing reports in order to secure the Council's compliance with the Public Sector Equality Duty);
- b. comply with reasonable requests for information or data in respect of the Council's Public Sector Equality Duty including any occasion when the Council undertakes an equalities impact assessment;
- c. compile and keep all required records in order that the Council may comply with the Public Sector Equality Duty including any occasion when the Council undertakes an equalities impact assessment.

5.5.4 The Grant Recipient shall deliver the Project/Service in a non-discriminatory manner that ensures fairness and equality to all Service Users. The Grant Recipient recognises that the Council has a responsibility to monitor the extent to which the provision of the Project/Service extends to groups who are at risk of social exclusion. The Grant Recipient

agrees, where appropriate and practicable, to provide information to the Council in relation to employment of staff and use of the services by service users by the following criteria:

- age;
- sex;
- sexual orientation;
- disability;
- religion or belief;
- race;
- marriage and civil partnership;
- pregnancy and maternity; and
- gender reassignment.

5.5.5 The Grant Recipient shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of gender reassignment, age, marriage or civil partnership, sexual orientation, disability, religion or belief, sex, pregnancy or maternity and race contrary to the Equality Act 2010.

5.5.6 The Grant Recipient shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Grant Recipient under the legislation contained in the Equality Act 2010. Where any investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Grant Recipient's performance of the Agreement being in contravention of the Equality Act 2010, the Grant Recipient shall free of charge:

- a. provide any information requested in the timescale allotted;
- b. attend any meetings as required and permit the Grant Recipient's affected staff to attend;
- a. promptly allow access to and investigation of any document or data deemed to be relevant;
- c. allow itself and any Staff of the Grant Recipient to appear as witness in any ensuing proceedings; and
- d. co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

5.5.7 Where any such investigation is conducted or proceedings are brought under the Equality Act 2010, which arise directly or indirectly out of any act or omission of the Grant Recipient, its agents or sub-contractors, or the staff of the Grant Recipient, and where there is a finding

against the Grant Recipient in such Investigation or proceedings, the Grant Recipient shall indemnify the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.

- 5.5.8 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Equality Act 2010 the Grant Recipient may be subject to the requirement to complete a questionnaire and/or provide information to the Council's officers on the extent and quality of the Grant Recipient's equalities and diversity policies and practice. Poor practice in this regard may result in the Council issuing a mind to comply letter describing the nature of improvement required and associated timescales.
- 5.5.9 In the event that the Grant Recipient enters into any sub-contract in connection with the Agreement it shall impose obligations on its subcontractors in proportionate and relevant terms substantially similar to those imposed on it pursuant to this condition.

5.6 Protection of Vulnerable Adults and Children

- 5.6.1 The Grant Recipient shall comply with any local procedures in relation to the protection of vulnerable adults and children and to work in accordance with any inter-agency guidelines that are in place or any updated version.
- 5.6.2 The Grant Recipient shall immediately notify the Council of any adult and/or child protection issues pertaining to a service user.
- 5.6.3 The Grant Recipient shall ensure that information on its policies and procedures for the protection of vulnerable adults and children are made available to the council, staff, the service users and/or their representative and that all Staff are trained in these policies and procedures.
- 5.6.4 The Grant Recipient shall have a policy and procedure for reporting details of any allegation of financial, physical, sexual or any other form of abuse of the service user. The Grant Recipient shall immediately inform the Council of any such reports. Disclosure of such reports shall not be regarded as a breach of clause 5.3.
- 5.6.5 The Grant Recipient shall ensure compliance with all statutory and judicial requirements not to disclose information pertaining to any place of safety order granted by either the Children's Hearing or the Court.
- 5.6.6 The Grant Recipient shall ensure the non disclosure of any information pertaining to the whereabouts of the service user, where the Authority Reporter has determined that information relating to the service user's whereabouts shall not be disclosed in terms of Rule 9 of the Children's Hearings (Scotland) Rules 1996.

5.6.7 The Grant Recipient shall demonstrate to the satisfaction of the Council, that systems are in place to ensure that non disclosure/place of safety conditions are not breached and if a breach does occur the Grant Recipient shall inform the Council, as soon as reasonably practicable, of any such breach.

5.7 Human Rights

5.7.1 The Grant Recipient shall in its implementation of this Agreement comply with the requirements of the Human Rights Act 1998 (“the 1998 Act”) and all secondary legislation made under the 1998 Act as though the Grant Recipient were a Public Authority for the purposes of the 1998 Act.

5.7.2 The Grant Recipient shall take all reasonable steps to ensure the observance of the condition contained in such Clause 5.6.1 by all employees employed, agents and/or Volunteer by the Grant Recipient.

6. STAFFING

6.1 The Grant Recipient will fulfil its statutory obligations concerning the employment of staff and at all times ensure it has a sufficient number of suitably trained, qualified and competent staff in accordance with the law, the directions and guidance of the relevant regulatory bodies, and any requirements set out in the Schedule which are not in conflict with the Agreement.

6.2 The Grant Recipient will ensure that all staff, who are required to be registered, are registered with the appropriate regulatory bodies, as appropriate. This may include the Scottish Social Services Council for Care Staff, the Health Professions Council and the British Psychological Society for Psychologists, the Nursing and Midwifery Council for Nurses. The Grant Recipient will comply with the SSSC Employers Codes of Good Practice and the Code of Practice and take all reasonable steps to secure the compliance by all Staff with any relevant codes of practice and guidance documents issued by the relevant regulatory bodies.

6.3 Volunteers may be used in the provision of the Project/Service but not as a substitute for staff.

6.4 The Grant Recipient will provide the Council on request with full details of all staff’s job descriptions and titles and also provide equivalent information in respect of any Volunteers participating in or involved in the provision of the Project/Service.

6.5 Suitably trained and qualified agency staff may be used in the provision of the Services but only where the Grant Recipient is unexpectedly short-staffed and is consequently unable otherwise to provide the Service. Notwithstanding this, the Grant Recipient will not use

agency staff unless it has, in the first instance, used its best endeavours to secure the availability of its own staff on an over-time or sessional basis. If a situation arises where agency staff are regularly being used then the Grant Recipient will promptly review and remedy this.

- 6.6 As at the dates hereof the Grant Recipient certifies that the staff employed by them for the purposes of the Project/Service is sufficient to provide the Services .The Grant Recipient shall at no time during this Agreement increase or decrease the level of said Staff without the prior written consent of the Council which consent shall not be unreasonably withheld.
- 6.7 Where information regarding the identity of a member of staff or a volunteer is requested by the Council in relation to any complaint made to the Council, the Grant Recipient shall provide the relevant information. In any other case the relevant information shall be provided at the discretion of the Grant Recipient.
- 6.8 The Council reserves the right, to require any member of staff or volunteer to be withdrawn and an acceptable person substituted in the event of the disclosure of any information that in the opinion of the Council renders the member of staff or volunteer unsuitable.
- 6.9 In the event of the Grant Recipient being wound up, or ceasing to continue its activities, the Council shall have no responsibility for any redundancy or other severance payments which might be due to the Grant Recipient's employees. All such liabilities will be the responsibility of the Grant Recipient.
- 6.10 All employee conditions of service are the responsibility of the Grant Recipient as employer.
- 6.11 The Grant Recipient will at all times be liable for the actions and omissions of its Staff and/or Volunteers engaged in connection with the provision of the Project/Service.
- 6.12 For the avoidance of doubt, neither the Grant Recipient nor its staff will be deemed to be entitled to act or hold themselves out as agents or employees of the Council, and the Grant Recipient will at all times be liable for the actions and omissions of its staff, sub-contractors, volunteer.
- 6.13 Where applicable, in terms of the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003, the Grant Recipient will require any person that it proposes to employ or otherwise use in the provision of the Project and/or Services, to complete a statement concerning their previous convictions for offences of any description.
- 6.14 PVG Scheme

- 6.14.1 Before an Individual is assigned to the delivery of the services the Grant Recipient shall determine whether the delivery of the Services requires the Individual to undertake Regulated Work with Protected Adults and/or Children.
- 6.14.2 Where the services require the Individual to undertake Regulated Work, the Grant Recipient shall ensure the procedures set out herein relative to the PVG Act are adhered to throughout the duration of the contract.
- 6.14.3 The Grant Recipient hereby acknowledges that it is an offence in terms of section 35 of the PVG Act to offer Regulated Work with Protected Adults and/or Children to an Individual where the Individual is barred from that work. Should such an individual be used in the provision of the Services, this will be treated as a material breach of contract for the purposes of clause 14.2.
- 6.14.4 The Grant Recipient shall not permit an Individual to carry out the type of Regulated Work required in connection with the delivery of the Services until the Grant Recipient has obtained from Disclosure Scotland:
- (i) the Individual's Scheme Record for the type(s) of Regulated Work to be undertaken by the Individual in delivering the Services; or
 - (ii) where the Individual evidences existing membership of the PVG Scheme for the type of Regulated Work to be undertaken by the Individual in delivering the Services, a Scheme Record Update; and
 - (iii) where a Scheme Record Update obtained in accordance with Clause 6.14.4 (ii) above evidences that there is new or existing Vetting Information in relation to the Individual, the Scheme Record of the Individual.
- 6.14.5 The Grant Recipient shall use the contents of the Scheme Record, and/or the Scheme Record Update, where applicable, as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of Service Users. Where the contents of the Scheme Record show that the Individual has convictions, reprimands, warnings, cautions or any other relevant information, the Grant Recipient shall conduct a risk assessment and use that assessment to protect the interests of Service Users, including, without prejudice to the foregoing generality, prohibiting the subject of the Scheme Record (or Scheme Record Update, as applicable) from providing the Services to Service Users.
- 6.14.6 In the event that the Grant Recipient is notified by Disclosure Scotland that the Individual is barred from PVG Scheme membership for the type of Regulated Work undertaken, the Grant Recipient shall immediately remove an Individual from the provision of the Services. The Grant Recipient shall in addition notify the Council immediately of their receipt of such

notification from Disclosure Scotland, or from an agency, and confirm what actions have been or will be taken following thereon.

6.14.7 Where applicable, for the delivery of the Services which fall outside of the scope of Regulated Work under the PVG Act, the Grant Recipient shall obtain the appropriate level of Disclosure directly from Disclosure Scotland:

- (i) The appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 (as amended) and, for the avoidance of doubt, by reference to any regulations made under that Act and Guidance issued by Disclosure Scotland;
- (ii) The Grant Recipient shall use the findings of the Disclosure as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of Service Users. Where the Disclosure shows that the Individual has convictions, reprimands, warnings, cautions or any other relevant information, the Grant Recipient shall conduct a risk assessment and use that assessment to protect the interests of Service Users including, without prejudice to the foregoing generality, prohibiting the subject of the Disclosure from being involved in the provision of the Services to Service Users;
- (iii) The Grant Recipient shall recheck the status of their existing Staff, volunteers and anyone else involved in the provision of the Services not less than every three (3) years in order to ensure that their Disclosure is up-to-date;
- (iv) To ensure compliance with the requirements of this clause and subject to the written consent of the subject of the Disclosure, the Grant Recipient will share the disclosure information with the Council on request.

6.14.8 To ensure compliance with clauses 6.14.5 and 6.14.7(ii), the Grant Recipient shall record the fact that a risk assessment has been undertaken and shall on request from the Council disclose that record to it.

6.14.9 Before using the services of agency, sessional or relief staff the Grant Recipient must, as appropriate, either obtain a signed written statement from the agency that is supplying the staff, which confirms that such staff:

- (i) are PVG Scheme members holding a Scheme Record in respect of the type of Regulated Work being undertaken in the provision of the Service and have not subsequently been barred, or
- (ii) have been through the appropriate Disclosure checks with Disclosure Scotland should the provision of services fall outside of the scope of Regulated Work in terms of the PVG Scheme.

The appropriateness of the signed written statement from an agency shall be construed in accordance with clauses 6.14.1 to 6.14.8 hereof. A copy of the said statement from the agency shall be supplied to the Council on request.

- 6.14.10 In the event of the Grant Recipient failing to comply with any of the requirements of this clause 6.14, or where any person as aforesaid has refused to complete a statement concerning their previous convictions in accordance with clause 6.13, or in the reasonable opinion of the Council a person is unsuitable to deliver the services, the Council reserves the right without prejudice to its other legal remedies to require such person to be withdrawn immediately from provision of the services.
- 6.14.11 The Grant Recipient hereby acknowledges that it is an offence under Section 66 of the PVG Act for it as a party having access to Disclosure Information under sections 51, 52, 53 or 54 of that Act to disclose it to any other person. Accordingly the Grant Recipient further acknowledges that it cannot disclose such Disclosure Information to the Council and that the Grant Recipient, in carrying out the risk assessment and coming to a decision under clause 6.14.8 hereof shall ensure that no Disclosure Information is disclosed in advising the Council, where appropriate, of the outcome of its action under clause 6.14.8 other than as permitted under the PVG Act.
- 6.15 The Grant Recipient will be responsible for ensuring that any volunteer who has access to the service user is either supervised or has an Enhanced Disclosure containing no adverse entries and is employed following the usual processes of application, references, etc. Decisions about unsupervised access by third parties to the service user will be taken by the Council and Grant Recipient as part of the care planning process and, where the duties involved would require the Individual to undertake Regulated Work with Protected Adults and/or Children the Grant Recipient shall ensure that the procedures contained within 6.14 are followed.
- 6.16 The Grant Recipient shall record and store information disclosed to it in connection with Disclosures and/or the PVG Scheme as detailed in the Code of Practice published by the Scottish Government under section 122 of Part V of the Police Act 1997 (as may be amended from time to time).
- 6.17 The Grant Recipient shall comply with all Scottish Government and regulatory and statutory requirements in relation to safe recruitment, selection and development including without prejudice to the foregoing generality the 'Safer Recruitment through better recruitment' and any successor guidance in relation to those working in social care and social work settings published by the Scottish Government (available from : www.scotland.gov.uk).
- 6.18 The Grant Recipient shall ensure that all staff are trained to the appropriate Child Protection level and that this is evidenced within staff training records. The Council in investigating any

Child Protection matter may request the Grant Recipient to make available Staff training records and the Grant Recipient will forthwith comply with such a request.

- 6.19 The Grant Recipient shall ensure that the requirements of any new legislation or method of checking the suitability of a member of staff and/or volunteer to work with vulnerable groups are adhered to.
- 6.20 The Grant Recipient shall ensure that Staff deployed under this Agreement in the provision of the Project/Service are instructed in relation to all relevant provisions of the Agreement and will ensure that Staff are familiar with the Grant Recipient's policies and procedures via ongoing supervision and training.
- 6.21 Where applicable, the Grant Recipient shall have in place and implement all policies and procedures required to satisfy the Care Inspectorate's requirements in relation to employment and management of Staff and Volunteers.
- 6.22 The Grant Recipient shall ensure that it has in place, and will exhibit to the Council's satisfaction upon request, a policy for its Staff in relation to protected disclosures with regard to expressing concerns outwith line management (whistle blowing) in accordance with the Employment Rights Act 1996, as amended.
- 6.23 For the purposes of this clause, an "Individual" is any person that the Grant Recipient does use or is considering using to provide the Project/Service or any part thereof on either a paid or unpaid basis and, for the avoidance of any doubt, includes a person recruited directly, or from an employment or similar agency, or from any other source.

7. PREMISES

- 7.1 The Grant Recipient shall satisfy itself and the Council that all premises used for the purposes of delivering the Project/Service comply with all relevant statutory requirements applicable to the Project including without prejudice to the foregoing generality Town & Country Planning, the Fire Regulations, Building and Health & Safety at Work legislation.
- 7.2 The Grant Recipient shall satisfy itself and the Council that all premises used for the purposes and/or the delivery of the Project/Service are suitably insured with a reputable insurance company and the premiums have been paid. If required by the Council the Grant Recipient will produce a copy of the relative insurance policy together with confirmation that all due premiums have been so paid.
- 7.3 In the event that any part of any premises used to deliver the Project/Service becomes temporarily unavailable or uninhabitable or unsuitable for the provision of the Project the Grant Recipient shall use its best endeavours to secure suitable alternative accommodation

at its own expense, and shall advise the designated officer within the Council of any temporary or permanent relocation of any premises and/or provision of the Project/Service.

8. MONITORING AND REVIEW

- 8.1 The Council shall monitor and review the operation of the Project/Service throughout the duration of this Agreement as specified within the Schedule and for the purposes of monitoring and review the Grant Recipient shall ensure that the Council obtains access to records pertaining to the Project/Service at any reasonable time including financial, staffing and complaints records as the Council reasonably require.
- 8.2 The Grant Recipient shall co-operate with any inspection, reporting, monitoring or evaluation procedures required by the Council.
- 8.3 Throughout the duration of this Agreement the Grant Recipient shall allow duly authorised officers of the Council access to their premises and the Project/Service for the purposes of consulting with employees and/or Volunteer, the Service Users and/or their representatives (subject always to the rights of the Service Users to decline to be included in any such consultation) as to the effectiveness and operation of the Project/Service. Such visits shall be undertaken by prior appointment, except in instances where the Council have reasonable cause for concern in which case such visits may take place without notice.
- 8.4 The Grant Recipient will notify the Council's nominated representative in advance of the time and venue of any meetings at which the Services is to be under discussion. Notice of Special Meetings e.g. AGM or EGM shall be given in writing and usually not less than 14 days prior to any such meeting. Those appointed to attend any meeting will receive copies of the agenda and the minutes relative to that meeting.

9. INDEMNITY

- 9.1 Except as may otherwise be expressly stipulated in this Agreement, the Council shall not be liable to the Grant Recipient or to the Service Users or to any third party for any claims, demands, losses, costs, expenses, fines or damages incurred or suffered including but not limited to any personal injury or death or damage to property arising directly out of or in consequence of or in connection with the performance or failure to perform the obligations by the Grant Recipient under this Agreement.
- 9.2 The Grant Recipient shall indemnify the Council against all proceedings, claims, costs, expenses, liabilities, injury, loss or damage arising from or incurred by reason of any claim, demand or action made or raised against the Council on behalf of the Service Users, an employee of the Grant Recipient, or Council, or any other third party which arises out of a breach or negligent performance or failure in performance by the Grant Recipient, it's

agents, sub-contractors, volunteers and staff of the terms of this Agreement. The Council shall act reasonably in relation to any costs, expenses or damages paid by it and shall take all reasonable steps to minimise its payments/costs/losses and shall only make payment in relation to legally valid claims or proceedings.

- 9.3 The Grant Recipient shall have no liability for and shall not be liable to indemnify the Council in relation to any matter which occurs as a result of a breach, negligent performance or failure in performance of the terms of this Agreement on the part of the Council, its agents or employee.

10. INSURANCE

- 10.1 The Grant Recipient shall take its own professional insurance advice and shall ensure that adequate insurance is maintained for Employers Liability, Public Liability/Products Liability, medical malpractice insurance (where applicable), Directors and Officers liability (where applicable), risks including the actions of any Volunteer involved in the Project and/or Services, any property used by the Project and/or Services and any vehicle utilised by the Project and/or Services and Building Contents insurance/Gross Revenue/Increased Costs of Working Insurance/Money/Fidelity Guarantee Insurance (where applicable) for the purposes or in connection with the provision of the Project and/or Services and shall, on request, provide evidence to the Council that such cover has been effected. The interest of the Council shall be noted in the aforementioned insurance policy. The Grant Recipient shall confirm to the Council that said interest has been noted, failing which that the aforementioned Public/Products Liability insurance policy includes an Indemnity to Principals clause and shall, on request, provide evidence to the Council that such cover has been effected. The insurance in respect of claims for personal injury or the death of any person under contract of employment with the Grant Recipient and arising out of or in the course of such person's employment shall comply with the Employers Liability (Compulsory Insurance) Act, 1969, as amended. Notwithstanding the terms of that Act, the Grant Recipient shall arrange such Employer Liability insurance providing a minimum indemnity limit of TEN MILLION Pounds (£10,000,000.00) in respect of any one event. For Public Liability and all other claims to which this clause applies including where applicable the administration of medicines, the insurance cover shall be not less than FIVE MILLION POUNDS (£5,000,000.00) in respect of any one event. The policy must include Products Liability cover for an indemnity limit of at least FIVE MILLION POUNDS (£5,000,000.00) in any one event and in the aggregate for any one period of insurance. Such insurance must remain in force for such period during which any claim may be raised.
- 10.2 The Grant Recipient, having taken its own professional insurance advice shall ensure that any property used by the Grant Recipient in delivering the Services and consequential losses following insured damage are properly insured against the risk of loss or damage by fire, lightning, explosion, aircraft and other aerial devices (other than such aerial devices as

are hostile), or articles dropped there from, earthquake, riot and civil commotion and malicious damage, storm or tempest, bursting or overflowing of water, apparatus or pipes, flood, impact of road vehicles, the cost of shoring up, demolition and site clearance and all professional fees, charges and outlays and that with an established United Kingdom Insurance Company for such amount as in the opinion of the Grant Recipient (taking account of any representations made by the Council), shall reasonably represent the full reinstatement value of such premises and contents and fixtures and fittings and any additions thereto from time to time. The Grant Recipient shall on request provide evidence to the Council that such cover has been effected and all premiums have been paid.

- 10.3 If the Grant Recipient and/or any employee and/or Volunteer of the Grant Recipient utilises motor vehicles for the purposes of the Project and/or Services and/or Service Users they shall be properly insured in respect of vehicles and passenger insurance cover together with a valid MOT certificate in respect of such vehicles and the Grant Recipient shall, on request, provide evidence to the Council that such cover has been effected and all due premiums have been paid.
- 10.4 The Grant Recipient shall have a system in place to check that those Staff and Volunteers whilst undertaking Clause 10.3 above have a valid UK driving licence and MOT certificate.
- 10.5 Clause 10.1 shall survive the termination or expiry of this Agreement.

11. RESOLUTION OF DISPUTES

- 11.1 In the event of any dispute between the Parties, either party may serve a written notice on the other outlining the terms of the dispute and proposing a time and place for a meeting between the Parties' representatives where the representatives shall attempt to resolve the dispute. The other Party shall respond to such a written notice within 7 working days of receipt. If the matter is not resolved within 10 working days of service of the written notice the matter may be referred by either party to the appropriate senior officer of each party for resolution. If the dispute is not resolved within a further ten working days, the matter may be referred by either Party to a single independent arbiter to be mutually agreed by the Parties which arbiter's decision on the matter and any expenses relating to such arbitration shall be final.
- 11.2 If an arbiter is unable to be identified or agreed upon in terms of Clause 13.1 above either Party may refer the matter in dispute to a single arbiter to be appointed by the Sheriff Principal of the Sherifffdom in which the Project and/or Services are delivered, which arbiter's decision on the matter and any expenses relating to such arbitration shall be final.
- 11.3 For the purposes of resolving disputes in terms of Clause 13.1 above the Council and the Grant Recipient shall formulate operational guidelines as to the levels of officer hierarchy

within the respective organisations to which disputes should be referred.

12. TERMINATION

- 12.1 Either Party may terminate this Agreement at any time without cause by giving not less than three months prior written notice to the other Party.
- 12.2 The Council may terminate this Agreement forthwith if in its opinion the Grant Recipient commits a material breach or repeated breach of the terms of this Agreement or is in breach of the stated outcomes of the Project, which shall not be capable of remedy, or if capable of remedy, which shall not have been done within the specified period in terms of clause 14.3
- 12.3 If in the opinion of the Council, the Grant Recipient has committed a material breach or repeated breaches of the terms of this Agreement or is in breach of the stated outcomes of the Project, the Council shall serve written notice on the Grant Recipient identifying the breach or breaches of Agreement and requesting its or their remedy within twenty eight (28) days.
- 12.4 If the Grant Recipient, or any successor has a Receiver appointed, becomes insolvent, apparently insolvent or is sequestrated, or goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction or amalgamation) or is wound up by the Court or is voluntarily wound up by creditors, or by members, the Council shall be entitled to treat this Agreement as terminated by material breach on the part of the Grant Recipient. If the Grant Recipient seeks a voluntary liquidation for the purpose of restructuring or amalgamation, the prior written consent of the Council shall be required.
- 12.5 On termination of this Agreement for whatever reason, the Grant Recipient shall return to the Council all goods, machinery and equipment related to the Project and/or Services which is owned by the Grant Recipient and funded by the Grant Funding, except where otherwise explicitly authorised in writing by the Council.
- 12.6 In the event of the Grant Recipient having not used any part of the Grant Funding or having used any part of the Grant Funding for any purpose other than authorised in terms of this Agreement in breach of clause 4.1(v), then the Grant Recipient shall in the event of non use return to the Council the residual balance of the Grant Funding held within its accounts or, in the event of use for a purpose other than one authorised by this Agreement, the total of sums so used.
- 12.7 The Council shall not be obliged to pay any sums due for any period during which the Grant Recipient is or was in breach of its obligations in terms of this Agreement or for any period following the service of a notice to terminate in terms of Clause 14.2 and 14.3 hereof.

13. BUSINESS CONTINUITY

13.1 The Grant Recipient shall have in place a comprehensive and current business continuity plan for use in the event of an emergency, serious incident and/or crisis. The business continuity plan will cover all aspects of the organisation to include personnel, resources and Services delivery which will be required to enable continuity of business critical activity and minimise disruption to the Service Users.

14. VARIATION

14.1 The terms of this Agreement shall not be amended or varied in any way other than by a written Minute of Variation between duly authorised representatives of the Parties.

15. ASSIGNATION AND SUB CONTRACTING

15.1 The Grant Recipient may neither assign nor sub contract its interest and/or obligations under this Agreement to any other person without the prior consent in writing of the Council, which consent shall not be unreasonably withheld.

15.2 Where there is agreement to sub contract any part of the Services, the Grant Recipient shall be responsible for the acts and / or omissions of their sub contractor as though they were their own.

16. FORCE MAJEURE

16.1 If a Party to this Agreement is prevented or delayed in the performance in any of its obligation under this Agreement by Force Majeure (as defined in Clause 18.4), and if such Party gives written notice to the other Party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue then the Party in question shall be excused the performance or the practical performance as the case may be of such of its obligations in terms of this Agreement which are so affected as from the date on which it became unable to perform them and for as long as the cause of prevention or delay shall continue subject to Clause 18.2.

16.2 If the period during which either Party is delayed in or prevented from the performance of its obligations hereunder by reference of Force Majeure exceeds two months either Party may serve on the other one month notice of termination of this Agreement.

16.3 The Parties agree to use their best efforts to ensure that during any period when Force Majeure circumstances exist that the needs of the Service Users are accommodated to the fullest extent practical.

16.4 For the purpose of this agreement "Force Majeure" shall be any cause affecting the performance of this Agreement arising from or attributed to acts, events, omissions or accidents beyond the reasonable control of any Party to perform.

17. CORRUPT PAYMENTS OR INDUCEMENTS

17.1 The Grant Recipient shall not offer or give, or agree to give, to any member, employee or representative of the Council any gift or consideration of any kind as an inducement or reward for doing any act in relation to the obtaining or execution of this or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract with the Council.

17.2 In the event of a breach of the obligation contained in clause 19.1 above (which for the avoidance of doubt shall be a material breach), the Council shall be entitled to recover from the Grant Recipient the amount of any loss reasonably incurred resulting from the Council enforcing its right to terminate the Agreement.

18. FREEDOM OF INFORMATION AND PUBLIC RECORDS (SCOTLAND) ACT 2011

18.1 The Grant Recipient acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the Act") and acknowledges in particular that the Council may be required to provide information relating to this Contract or to the Grant Recipient to any person on request in order to comply with the said Act.

18.1.2 Where the Council seeks to consult the Grant Recipient in connection with a request for information made under the Act the Grant Recipient will facilitate the Council's compliance with the Act by consulting timeously with the Council.

18.1.3 In the event that the Grant Recipient is or becomes a designated Scottish public authority by Order of the Scottish Ministers under section 5 of the 2002 Act the Grant Recipient shall comply with the said Act.

18.1.4 The Grant Recipient shall co-operate with the Council in order to ensure that the Council can meet its obligations in relation to records management under the Public Records (Scotland) Act 2011 together with any guidance issued thereon.

18.1.5 The Grant Recipient shall at all times comply with the obligations which are incumbent upon the Council as a 'public authority' in terms of the Public Records (Scotland) Act 2011 (the 2011 Act) and of all secondary legislation and guidance issued under the 2011 Act.

18.1.6 The Grant Recipient shall take all reasonable steps to ensure the observance of this paragraph by all its Staff, servants, employees or agents of the Grant Recipient and all

subcontractors engaged by the Grant Recipient.

18.1.7 The Grant Recipient shall indemnify the Council against all losses, costs, expenses and damages and shall keep the Council indemnified against all liabilities, demands, claims, actions or proceedings incurred as a result of an alleged breach of this paragraph by the Provider.

18.1.8 The Council may monitor the Provider's compliance with the 2011 Act at periodic intervals throughout the duration of the Agreement.

18.1.9 The Council may request and the Grant Recipient will supply demonstrable evidence as to how the Grant Recipient intends to secure compliance with the provisions of the 2011 Act.

19. NOTICES

19.1 Any written notice to be provided to a Party in terms of this Agreement shall be sufficiently served and deemed to have been received if it is delivered or sent by Registered or Recorded Delivery post (in which case receipt shall be deemed to have occurred two working days after posting) to the appropriate person or post holder as follows:-

- (i) in relation to the Council, Head of [insert department], East Ayrshire Council, Department of [insert], [insert address] or any other person notified by the Council from time to time as being the appropriate person to receive such notices; and
- (ii) in relation to the Grant Recipient, [details to be inserted].

20. WAIVER OF REMEDIES

20.1 No forbearance, delay or indulgence by either Party enforcing the provisions of this Agreement shall prejudice or restrict the rights of that Party, nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy conferred upon or reserved right for either Party in this Agreement is exclusive of any other right, power or remedy available for that Party and each such right, power or remedy shall be cumulative.

21. COURTS POWER TO MODIFY AGREEMENT

21.1 If any court of competent jurisdiction holds any provision of this Agreement invalid, illegal or unenforceable for any reason the remaining provisions shall continue in full force and effect (notwithstanding such invalidity, illegal or unenforceability) and the court shall have the power to modify the Agreement if this is required to ensure that the Parties can so enforce the remaining provisions.

22. ENTIRE AGREEMENT

22.1 The terms of this Agreement shall constitute the entire agreement between the Parties in respect of the Project/Service and supersedes all prior oral or written agreements, understandings or undertakings between them in respect thereof, provided that nothing in this clause shall exclude the liability of any party for fraud or fraudulent misrepresentation.

23. SCOTS LAW

23.1 The construction, validity and performance and all other matters arising out of or in connection with this Agreement shall be governed by the Law of Scotland and subject to the exclusive jurisdiction of the Scottish Courts. IN WITNESS WHEREOF: these presents consisting of this page and the preceding [] pages together with the Schedule relative hereto are executed as follows:

Authorised to sign for and on behalf of the Council

.....
Signature

.....
Name and Title in Block Capitals

.....
Capacity in which signs

.....
On (date)

.....
At (place)

Common Seal of East Ayrshire Council

Signature for and on behalf of the Grant Recipient

.....
Signature (authorised signatory)

.....
Witness Signature

.....
Name and Title in Block Capitals

.....
Full Name in Block Capitals

.....
Capacity in which signs

.....
On (date)

.....
At (town)

.....
Address

This is the Schedule referred to in the foregoing Agreement between East Ayrshire Council and []