



Dated 17 October 2025

SUPPLY OF SERVICES AGREEMENT

BETWEEN

BUCKINGHAMSHIRE COUNCIL

AND

AGINCARE HOMES HOLDINGS LIMITED

Contract Ref: 300076
Legal and Democratic Services
Buckinghamshire Council
Walton Street Offices
Walton Street
Aylesbury
Buckinghamshire HP20 1UA

THIS AGREEMENT is dated 17 October 2025

FORM OF AGREEMENT

BETWEEN

- (1) **BUCKINGHAMSHIRE COUNCIL** of The Gateway, Gatehouse Road, Aylesbury, Buckinghamshire HP19 8FF ("**the Council**"); and
- (2) **AGINCARE HOMES HOLDINGS LIMITED** incorporated and registered in England and Wales with company number 07199693 whose registered office is at Agincare House Admiralty Buildings, Castletown, Portland, Dorset, DT5 1BB ("**the Provider**")

RECITALS:

- (A) The Council is a local authority as defined by section 270 of the Local Government Act 1972.
- (B) The Council sought proposals for the provision of residential care home, nursing, and Extra Care services, as more particularly described in Schedule 2 (Specification) by means of a public tender exercise. The Council placed a tender notice 2025/S 000-017209 on 28 April 2025 on the Central Digital Platform, seeking expressions of interest from potential providers for the provision of the Services.
- (C) The Council has, through a competitive process, selected the Provider to provide these Services and the Provider is willing and able to provide the Services in accordance with the terms and conditions of this Agreement.

IT IS AGREED:

1. this Agreement is comprised of the following documents:
 - 1.1 This Form of Agreement;
 - 1.2 The Contract Particulars;
 - 1.3 The Supplementary Conditions;
 - 1.4 The Conditions of Contract;
 - 1.5 The Schedules (excluding Schedule 4 (the Provider's Tender) and Schedule 1 (the Supplementary Conditions)); and
 - 1.6 Schedule 4 (the Provider's Tender)

and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above, save that, where any standards contained in

Schedule 4 (the Provider's Tender) exceed those in the Specification, the higher standards contained in Schedule 4 (the Provider's Tender) shall take precedence.

2. Terms and expressions used in this Agreement shall have the meanings given in clause 1 of the Conditions of Contract.

EXECUTION AS A DEED

IN WITNESS whereof this Agreement has been executed by the Parties as a deed:

**THE COMMON SEAL of)
BUCKINGHAMSHIRE COUNCIL)**
was hereunto affixed in the)
presence of:



Sealed By: Buckinghamshire Council Legal Services
Sealed Time: 17 October 2025 | 12:43 BST

BC-S-2190

Authorised Signatory

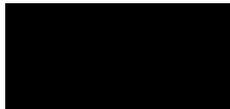


**EXECUTED AS A DEED by
AGINCARE HOMES HOLDINGS
LTD acting by RAINA TAYLOR-
SUMMERSON, a director, in the
presence of a witness:**



Witness Name: Andrew Needham

Witness Signature:



Address: Agincare House, Admiralty Buildings, Castletown, DT51BB

Occupation: Director

CONTRACT PARTICULARS

No.	Particular	Amendment to Conditions of Contract	Clause affected
1.	Commencement Date:	5pm on 29 September 2025	(clause 2)
2.	Initial Term:	From the Commencement Date until midnight on 07 December 2035	(clause 2 and clause 3)
3.	Charges:	As set out in Schedule 5	(clause 11)
4.	Contract Extension:	The Council’s option to extend the Contract Period in Clause 3 (Extending the Initial Term) shall apply, and the Contract Period may be extended in any number of periods for up to a total of 3 years in the aggregate, and the notice period is twenty-four months	(clause 3)
5.	Address for Service of Notices	<p>For the Council:</p> <p>Director of Strategic Commissioning and Procurement Adults & Health Directorate Buckinghamshire Council, Walton Street Offices, Walton Street, Aylesbury, Buckinghamshire HP20 1UA</p> <p>Email: Ops_commandmarketmngt@buckinghamshire.gov.uk</p> <p>For the Provider: Raina Summerson or Andrew Needham Agincare House Admiralty Buildings, Castletown, Portland, Dorset, England, DT5 1BB Email raina.summerson@agincare.com or andrew.needham@agincare.com Office Phone - 01305825500</p>	(clause 43)

- | | | | |
|-----|--|--|---|
| 6. | Service Levels
and Service
Credits | Clause 6 applies

Clause 12 does not apply

Clause 30.5 applies | (clause
6, clause
12,
clause
30
Schedule
3) |
| 7. | Transport | clause 8.6 applies | (clause
8.6) |
| 8. | Key Personnel | clause 13 does not apply | (clause
13) |
| 9. | Safeguarding | clause 15 applies | (clause
15) |
| 10. | The
Establishments | Schedule 12 applies | |
| 11. | Parent
Company
Guarantee | clause 19.4 and Schedule 16 do not apply | |
| 12. | Performance
Bond | clause 19.5 and Schedule 17 do not apply | |
| 13. | Price
Adjustment | clause 11.14 applies | |
| 14. | Audit | Period for which records must be maintained
after the end of the Agreement:

12 years | (clause
28) |

15.	Liability and Indemnity	No additional provisions relating to liability	(clause 23)
16.	Insurance	Public Liability Insurance: £10 million per claim or series of claims Employer’s Liability Insurance: £10 million per claim or series of claims Either Professional Indemnity Insurance or Medical Malpractice Insurance (as appropriate): in either case at a minimum of £5 million per claim or series of claims	(clause 24)
17.	Additional Insurances	Additional Insurances are not required	(clause 24)
18.	Business Continuity	clause 10 applies	(clause 10)
19.	Branding Principles	Schedule 14 does not apply	(Schedule 14)
20.	Break Clause	clause 31 does not apply	(clause 31)
21.	Commercially Sensitive Information	Schedule 11 applies	(Schedule 11)
22.	Material Sub-Contractors and Material Sub-Contracts	Clause 21 applies and the below are Material Sub-Contractors and the Sub-Contract with such Material Sub-Contractor shall be a Material Sub-Contract: a) Agincare (Southwark) Limited (co. reg. no. 14657122) (Reg. Office Address: Agincare House, Admiralty Buildings, Castletown, Portland, Dorset, DT5 1BB)	(clause 21)

CONDITIONS OF CONTRACT

IT IS HEREBY AGREED AS FOLLOWS:

CONTENTS

CLAUSE

1.	Definitions and Interpretation.....	10
2.	Term	20
3.	Extending the initial term	20
4.	Consents, Provider's warranty, due diligence and performance guarantees	21
5.	Supply of services	24
6.	Service levels	24
7.	Service standards	25
8.	Health and Safety	26
9.	The Establishments	28
10.	Business Continuity	30
11.	Payment And Indexation	31
12.	Service credits	34
13.	Key personnel.....	34
14.	Other staff used to provide the services	35
15.	Safeguarding children and vulnerable adults	36
16.	TUPE	37
17.	Reporting and meetings	37
18.	Monitoring.....	38
19.	Change control, benchmarking and continuous improvement.....	38
20.	Dispute resolution	39
21.	Sub-Contracting and assignment	40
22.	Indemnities.....	42
23.	Limitation of liability.....	42
24.	Insurance	43
25.	Freedom of information	44
26.	Data protection	45
27.	Confidentiality	46
28.	Audit	47
29.	Intellectual property.....	48
30.	Termination for breach	49
31.	Termination on notice	51
32.	Force majeure	52
33.	Prevention of bribery and Prohibited acts	53
34.	Anti-Slavery	54
35.	Counter-terrorism	55
36.	Consequences of termination	56
37.	Non-solicitation	58
38.	Waiver	59
39.	Remedies Cumulative.....	59
40.	Severability	59
41.	Partnership or agency	59
42.	Third party rights.....	60
43.	Publicity And Branding	60
44.	Notices.....	60

45.	Entire agreement.....	61
46.	Counterparts	61
47.	Complaints and compliments.....	61
48.	Governing Law and Jurisdiction.....	61

SCHEDULE

SCHEDULE 1: SUPPLEMENTARY CONDITIONS	65
SCHEDULE 2: SPECIFICATION	74
SCHEDULE 3: SERVICE LEVELS	75
SCHEDULE 4: PROVIDER'S PROPOSAL.....	76
SCHEDULE 5: CHARGES AND PAYMENT.....	77
SCHEDULE 6: CONTRACT MANAGEMENT.....	78
SCHEDULE 7: BUSINESS CONTINUITY	79
SCHEDULE 8: CHANGE CONTROL	80
SCHEDULE 9: EXIT	82
SCHEDULE 10: TUPE.....	86
SCHEDULE 11: COMMERCIALY SENSITIVE INFORMATION.....	94
SCHEDULE 12:THE ESTABLISHMENTS	95
SCHEDULE 13: INSURANCE.....	96
SCHEDULE 14: BRANDING PRINCIPLES	97
SCHEDULE 15: AGREED INFORMATION AVAILABLE FOR PUBLICATION	98
SCHEDULE 16: PARENT COMPANY GUARANTEE	99
SCHEDULE 17: PERFORMANCE BOND.....	112
SCHEDULE 18: DATA PROTECTION	113

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Achieved Service Levels: in respect of the Services (or part of) in any measurement period, the standard of performance actually achieved by the Provider in the provision of the Services in the measurement period in question (calculated and expressed in the same way as the Service Level for the Services is calculated and expressed in Schedule 3 (Service Levels)).

Agreement: all those documents which are set out in paragraph 1 of the Form of Agreement.

Appendix: means an appendix or appendices (or annex) to this Agreement.

Associated Company: any holding company from time to time of the Provider and any subsidiary from time to time of the Provider, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Council and the Provider, the first such persons being set out in Schedule 6 (Contract Management).

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the Service Levels, the Term, the Charges and any other relevant factors.

Best Value Duty: means the duty imposed on the Council by Part 1 of the Local Government Act 1999 (“1999 Act”) (as may be amended from time to time) and under which the Council is under a statutory duty to continuously improve the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Public Sector Audit Appointments Limited and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation.

Block Beds: means the number of bed spaces purchased by the Council in accordance with the Specification (Schedule 2).

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Continuity Plan: a plan agreed by the parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal and/or external threats.

Catastrophic Failure

- (a) a failure by the Provider for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms on the occurrence of an internal or external threat; and/ or
- (b) any action by the Provider, whether in relation to the Services and this Agreement or otherwise, which in the reasonable opinion of the Council's Representative has or may cause significant harm to the reputation of the Council.

Change: any change to this Agreement including to any of the Services.

Change Control Procedure: the procedure for changing this Agreement, as set out in Schedule 8 (Change Control).

Change Control Note: the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.

Charges: the sums which shall become due and payable by the Council to the Provider in respect of the Services in accordance with the provisions of this Agreement, as such charges are set out in Schedule 5 (Charges and Payment).

Commencement Date: means the date specified in the Contract Particulars or if none stated, the date of this Agreement.

Commercially Sensitive Information: the information listed in Schedule 11 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Provider significant commercial disadvantage or material financial loss.

Comparable Supply: means the supply of services to another customer of the Provider that are the same or similar to any of the Services.

Contract Particulars: the contract particulars contained forming part of this Agreement.

Contract Year: a period of 12 months, commencing on the Commencement Date.

Council Void: means a Void Bed that arises due to the Council making insufficient referrals of Service Users to utilise all of the Block Beds at the relevant Dependency Level and/or making inappropriate (including where the relevant Dependency Level has been reached) referrals where the Provider is not obliged to accept such Service Users.

Council Assets: any materials, plant or equipment owned or held by the Council and provided by the Council for use in providing the Services.

Data Controller: as defined in the Data Protection Legislation.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Processor: as defined in the Data Protection Legislation.

Data Protection Impact Assessment: an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Legislation: (i) the DPA; (ii) the UK General Data Protection Regulation as defined in s3(10) (as supplemented by section 205(4) of the DPA ((UK GDPR)); and (iii) any other applicable Law about the processing of Personal Data and privacy (including, without limitation, the privacy of electronic communications) in force from time to time in the UK.

Data Protection Officer: as defined in the Data Protection Legislation.

Data Subject: as defined in the Data Protection Legislation.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Default: means any breach of the obligations of the Provider under the Agreement or any default, act, omission or negligence of the Provider or Staff in connection with or in relation to the subject matter of the Agreement.

Dependency Level: means the level of need of a Service User which is categorised as Low Dependency, Medium Dependency or High Dependency, as the context requires.

Dependency Tool: means the tool to be implemented by the Provider to monitor Dependency Levels and undertake screenings of Service User Dependency Levels. The Dependency Tool shall be one that is nationally recognised within the health and social care sector; adheres to Best Industry Practice in how it operates; and will enable the requirements of the Agreement to be discharged.

Dispute Resolution Procedure: the procedure set out in clause 20.

DPA: the Data Protection Act 2018.

Establishment: means the properties subject to a Lease being the place(s) where Services are to be performed by the Provider namely:

- (a) Hazlemere Lodge Care Home, Barn Lane, Cedar Ave, Hazlemere, High Wycombe HP15 7BQ;
- (b) St James Court (Extra Care) Barn Lane, Cedar Ave, Hazlemere, High Wycombe HP15 7DQ;
- (c) Swan House, High Street, Winslow, MK18 3DN;
- (d) Swan Court (Extra Care) High Street, Winslow, MK18 3DR;
- (e) The Chestnuts, Lavric Road, Aylesbury, HP12 8JN;
- (f) Willowmead Court (Extra Care), Lavric Road, Aylesbury, HP12 8JW; and
- (g) The Croft, Penningtons, Chestnut Lane, Amersham, HP6 6EJ.

as more specifically set out in the Specification (Schedule 2).

Environmental Information Regulations: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Exit Management Plan: the plan set out in Schedule 9 (Exit).

Expert: shall mean a professional person with social care and/or care home expertise who can make an independent judgement appointed by the parties in accordance with SC6 (Managing Void Disputes) to resolve a Voids Dispute.

Extremist Activity: vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: any event, occurrence, circumstance, matter or cause that affects the performance by a party of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings that are not within a party's reasonable control which prevents or materially delays it from performing its obligations under the Agreement including, without limitation:

- (a) acts of Gods, flood, drought, earthquakes or other natural disaster;
- (b) epidemic, outbreak, pandemic, or disease;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation of war, armed conflict, imposition of sanctions, political unrest or embargo;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any Law or any action taken by a government or public authority (excluding any action by the Council whilst acting in its role as a customer under this Agreement);
- (f) collapse of a building(s), fire, explosion or accident.

FNC: Means funded nursing care. Funded Nursing Care is a financial support mechanism provided by the NHS to cover the cost of nursing care in a care home.

Form of Agreement: the form of Agreement included within this Agreement.

Gross of Service User Contribution: the Council pays the Provider the full cost of the placement and the Council bills the Service User for the Service User Contribution.

High Dependency: means when using the Dependency Tool to evaluate the needs of a Service User the result is either: Low, Medium or High Needs (see SC4.1)

Information: has the meaning given under section 84 of FOIA.

Initial Term: the period stated in the Contract Particulars commencing on the Commencement Date.

Insolvency Event: where:

- (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as

having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company);
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (g) the Provider (if an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) days;
- (i) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- (j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) the Provider (if an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and

procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Key Personnel: those personnel identified in Schedule 6 (Contract Management) for the roles attributed to such personnel, as modified pursuant to clause 13 (Key Personnel).

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Provider is bound to comply.

Lease: means the lease(s) and/or service level agreement in respect of each Establishment to be entered into between the Registered Landlord and the Provider to make the Establishment available to the Provider for the provision of the Services in the form as set out in Part 2 of Schedule 12.

Low Dependency: means when using the Dependency Tool to evaluate the needs of a Service User the result is either: Low, Medium or High Needs (see SC4.1)

Management Reports: the reports to be prepared and presented by the Provider in accordance with clause 17 and (Reporting and Meetings) and Schedule 6 (Contract Management) to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Material Sub-Contract: any Material Sub-Contract detailed in the Contract Particulars.

Material Sub-Contractor: any Material Sub-Contractor detailed in the Contract Particulars.

Medium Dependency: means when using the Dependency Tool to evaluate the needs of Service User the result is either: Low, Medium or High Needs (see SC4.1)

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

Net of Service User Contribution: the Council pays the Provider the cost of the placement less the charge for the Service User Contribution and the Provider invoices the Service User for the Service User Contribution.

Payment Plan: the plan for payment of the Charges as set out in Schedule 5 (Charges and Payment).

Personal Data / Personal Data Breach: as defined in the Data Protection Legislation.

Policies: the following of the Council's policies:

- (a) Adult Social Care and Integrated Commissioning (Quality Monitoring Framework for Commissioned Providers);

- (b) Serious Concerns and Suspensions Policy; and
- (c) all such Safeguarding Policies as are relevant to the Services, or any part of them,

in each case, copies of which the Council shall provide to the Provider, and shall replace the policies as the same may be updated by the Council from time to time, provided that the Council shall issue any updated copy of any such policy to the Provider.

Provider Void: means any Void Bed that is not a Council Void. The Provider Voids include (without limitation) situations where a room cannot be used because of fire safety works or other remedial works, the Provider cannot meet the overall Dependency Level allocation for the Block Beds and/or where the Provider commits an inappropriate refusal of the referral of a Service User.

Prohibited Act: the following constitute Prohibited Acts:

- (a) offering, promising or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other Agreement with the Council; or
 - (ii) showing favour or disfavour to any person in relation to this Agreement or any other Agreement with the Council;
- (b) committing any offence:
 - (i) under the Bribery Act and or the Data Protection Legislation; or
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other Agreement with the Council; or
 - (iv) defrauding or attempting to defraud or conspiring to defraud the Council;
 - (v) any action that may reasonably be considered to be to the detriment of the Council and or any Service User's welfare, either by positive action or by omission. Such action shall include but is not limited to; breach of any Law, related to health, safety and or care, safeguarding, abuse, sexual allegations and or misconduct; financial malpractice or business continuity failure;

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it.

Provider Party: the Provider's agents and providers, including each Sub-Contractor.

Provider's Tender: the tender submitted by the Provider and other associated documentation set out in Schedule 4 (Provider's Tender).

Registered Landlord: Riverside Group Limited (Co. Reg. No. 30938R), Registered Address: 2 Estuary Boulevard, Estuary Commerce Park, Liverpool, L24 8RF or any subsequent freehold owner of the Establishments as may be the case from time to time.

Refusal & Referral Report: has the meaning given to it in SC5.1.4.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Council internally or by any Replacement Provider.

Replacement Provider: any third party Provider of Replacement Services appointed by the Council from time to time.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Schedule: any schedule (and any attached Appendix attached to the schedule) to this Agreement.

Services: the services to be delivered by or on behalf of the Provider under this Agreement, as more particularly described in Schedule 2 (Specification).

Service Credits: the sums attributable to a Service Failure as specified in Part 2 of Schedule 3 (Service Levels).

Service Failure: a failure by the Provider to provide the Services in accordance with any individual Service Level.

Service Levels: the minimum service levels to which the Services are to be provided, in accordance with Schedule 3 (Service Levels).

Service User: mean a person assessed by the Council to need the Services and/or a person receiving the benefit of the Services from the Provider.

Service User Contribution: means any sum to be recovered from a Service User as specified by the Council in accordance with clause 11 (Charges and Payment).

Staff: all employees, personnel, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Sub-Contract: a contract between one (1) or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement (including, without limitation, any Material Sub-Contract).

Sub-Contractor: providers that enter into a Sub-Contract with the Provider (including, without limitation, any Material Sub-Contractor).

Sub-Processor: any third party appointed to process Personal Data on behalf of the Provider related to this Agreement.

Supplementary Conditions: means the conditions listed in Schedule 1 (Supplementary Conditions) of this Agreement.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this Agreement which are agreed pursuant to clause 3 (Extending the Initial Term); or
- (b) the earlier termination of this Agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this Agreement.

Termination Payment Default: is defined in Schedule 5 (Charges and Payment).

Total Occupancy means the total number of beds within the Block Beds that are occupied by a Service User referred by the Council or if not occupied are a Council Void.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended from time to time).

Void Bed: means a bed purchased by the Council as part of the Block Beds not currently in use but which is either a Provider Void or a Council Void.

Void Bed Dispute: means any dispute between the parties regarding the categorisation of Void Beds under the Agreement.

Void Payment: means the sum payable by the Council to the Provider in accordance with SC3 (Void Payments) of Schedule 1.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 The Schedules and Appendices form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules, appendix and appendices (subject always to the order of precedence of such documents as set out in the Form of Agreement).
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to all other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes e-mail.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses, Schedules and Appendices are to the clauses, Schedules and Appendices of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule (or Appendix as the case may be).

COMMENCEMENT AND DURATION

2. TERM

- 2.1 Subject to clause 2.2 below, this Agreement shall take effect on the Commencement Date and shall continue for the Term unless it is otherwise terminated in accordance with the provisions of this Agreement, or by operation of Law or extended under clause 3 below.
- 2.2 It shall be a condition precedent to this Agreement that the Provider shall enter into such Leases in relation to the Establishments as are necessary in order to enable the Provider to deliver the Services, in the form as set out in Part 2 of Schedule 12 (the Establishments).

3. EXTENDING THE INITIAL TERM

- 3.1 Where stipulated in the Contract Particulars, the Council may at its discretion extend this Agreement beyond the Initial Term by such further period or periods as stated in the Contract Particulars (the "**Extension Period**"). If the Council wishes

to extend this Agreement, it shall give the Provider the number of months' written notice of such intention required by the Contract Particulars before the expiry of the Initial Term or any Extension Period.

- 3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice served pursuant to clause 3.1 above and the provisions of this Agreement shall continue to apply throughout any Extension Period.
- 3.3 If the Council does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term and the provisions of clause 36 (Consequences of Termination) shall apply.

4. CONSENTS, PROVIDER'S WARRANTY, DUE DILIGENCE AND PERFORMANCE GUARANTEES

- 4.1 The Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of this Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has used reasonable endeavours to obtain a Necessary Consent in line with the requirements of the Services.
- 4.3 The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.
- 4.4 The Provider acknowledges and confirms that:
 - (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
 - (b) it has received all information requested by it from the Council pursuant to clause 4.4(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
 - (c) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.4(b);
 - (d) it has reviewed and is familiar with the requirements and implications of the Council's Policies;
 - (e) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - (f) it has entered into this Agreement in reliance on its own due diligence.

4.5 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law. Save as otherwise expressly provided, the obligations of the Council under the Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Council to the Provider.

4.6 The Provider:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement;
- (b) shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information forming part of its due diligence in accordance with clause 4.4 above which materially and adversely affects its ability to perform the Services or meet any Service Levels; and
further warrants and represents that:
- (c) it has full capacity and authority and all Necessary Consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Agreement and that the Agreement is executed by a duly authorised representative of the Provider;
- (d) in entering the Agreement it has not committed any Prohibited Act or been notified that any Staff are subject to an investigation or prosecution which relates to a Prohibited Act;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Agreement;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

- (h) it is aware of the various obligations imposed on it under the Policies and has, and will continue to, disclose all such information, and provide such assistance and cooperation to the Council as may be required from time to time in respect of the issues addressed in those Policies insofar as the same are relevant to the delivery of the Services;
- (i) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Agreement;
- (j) in the three (3) years prior to the date of the Agreement:
 - (i) it has conducted all financial accounting and reporting activities in compliance, in all material respects, with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax Laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Agreement.

4.7 The Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Provider in accordance with clause 4.6(b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be agreed by the Parties pursuant to the Change Control Procedure.

4.8 Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

4.9 The Provider shall take appropriate steps to ensure that neither the Provider nor any of the Provider's Staff are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or the Provider's Staff and any of their respective obligations to the Council under the provisions of the Agreement. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise immediately on discovery of the same.

- 4.10 The Council reserves the right to terminate the Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or any of the Provider's Staff and any of their respective obligations to the Council under the provisions of the Agreement. The actions of the Council pursuant to this clause 4.10 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

THE SERVICES

5. SUPPLY OF SERVICES

- 5.1 The Provider shall provide the Services to the Council with effect from the Commencement Date and for the duration of this Agreement in accordance with the provisions of this Agreement.
- 5.2 In delivering the Services, the Provider shall use reasonable endeavours to secure demonstrable, measurable and continuous improvement (having regard in particular to economy, effectiveness and efficiency) in the performance of the Services; the time, cost, quality and health and safety standards within the various processes of the Service and generally to provide best value to the Council and Service Users.

6. SERVICE LEVELS

This clause 6 shall apply where stated in the Contract Particulars.

- 6.1 Where any part of the Service is stated in Schedule 3 (Service Levels) to be subject to a specific Service Level, the Provider shall provide that part of the Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 6.2 As existing Services are varied and new Services are added, Service Levels for the same will be determined in accordance with Schedule 3 (Service Levels)
- 6.3 The Provider shall provide records of and Management Reports summarising the Achieved Service Levels and attainment of other service expectations specified in the Specification as provided for further in clause 17 (Reporting and Meetings).
- 6.4 In the event that any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the Council may have, the Council may follow the procedures set out in the Policies.

7. SERVICE STANDARDS

7.1 Without prejudice to clause 6 (Service Levels), the Provider shall provide the Services, or procure that they are provided:

- (a) with due skill, care and diligence in accordance with Best Industry Practice prevailing in the industry from time to time;
- (b) with adequate number of Staff who are appropriately experienced, qualified and trained to perform the Services and ensure that Staff comply with the Provider's obligations under the Agreement;
- (c) in all respects in accordance with the Council's policies set out in Schedule 2 including, it's health and safety policy, and the Policies;
- (d) in accordance with all applicable Laws; and
- (e) the requirements of the Agreement (including the Specification).

7.2 Without limiting the general obligation set out in clause 7.1, the Provider shall (and shall procure that the Provider's Staff shall):

- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise and including (without limitation) the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or any preceding, successor or amending legislation concerning the same) and shall fully indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Provider of this obligation;
 - (ii) any Council equality and diversity policy provided to the Provider from time to time (including without limitation codes of practice issued for combating discrimination); and
 - (iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Provider at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal;
- (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable

the Council to comply with its obligations under the Human Rights Act 1998; and

- (d) comply with the quality standards set out in the Specification, and where applicable shall maintain accreditation with the relevant authorisation body. To the extent the standard of the Services are not specified in the Agreement the Provider shall agree the relevant standard of the Services with the Council's Authorised Representative prior to the delivery of the Services and the Provider shall undertake its obligations in accordance with Best Industry Practice. In the event that the Provider's Tender contains any quality standards which exceeds that detailed in the Specification then this clause 7.2 (d) shall be disapplied (to the extent that the higher standards apply) and the Provider shall instead comply with the higher quality standard detailed in the Provider's Tender.

- 7.3 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Agreement, then the Council shall be entitled to investigate the complaint in accordance with the Policies, as the same may be supplemented in any way by the monitoring and management procedures in Schedule 6 (Contract Management). The Council may, in its sole discretion, uphold the complaint and take further action in accordance with the Policies, or clause 30 (Termination for Breach) of the Agreement, as the Council may determine in its sole discretion.

8. HEALTH AND SAFETY

- 8.1 The Provider shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Agreement (including those at the Establishments of which it becomes aware). The Provider shall instruct its Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 8.2 While on the Establishments, the Provider shall comply with any health and safety measures implemented by the Registered Landlord in respect of Staff and other persons working on the Establishments.
- 8.3 The Provider shall notify the Council and the Registered Landlord immediately in the event of any incident occurring in the performance of the Agreement on the Establishments where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Provider Staff and other persons working on the Establishments in the performance of the Agreement.

- 8.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.
- 8.6 This clause 8.6 shall apply where stated in the Contract Particulars. The Provider must ensure that any transport provided in conjunction with the Services is in compliance with all Laws, regulations and Best Industry Practice, including without limitation:
- (a) the driver and/or escort being subject to a valid enhanced disclosure check for regulated activity (pursuant to clause 15 (Safeguarding Children and Vulnerable Adults) of this Agreement) undertaken through the Disclosure and Barring Service (DBS) including a check against the adults' barred list or the children's barred list as appropriate (and which is rechecked a minimum of every three years), a valid licence and all required authorisations to use the relevant vehicle;
 - (b) that each vehicle used in the provision of the Services has current vehicle insurance appropriate to the type of service being provided (including the vehicle being insured for business use).
 - (c) they keep suitable transport records which can be viewed by the Council as part of the monitoring arrangements referred to in clause 17 (Reporting and Meetings) and/or clause 18 (Monitoring) of this Agreement or at any other time at the Council's reasonable request. The number of passengers must never exceed the insured or licensed maximum;
 - (d) the vehicles used in the Services (and any additional equipment on the vehicle) are maintained and serviced in accordance with the manufacturer's instructions with full records being kept to verify this and must have a current MOT Certificate if appropriate;
 - (e) the vehicles used in the Services are suitable for the type and condition of passengers to be carried, and having seat belts, personal restraints or other equipment which conform to the relevant British Standard and which are used in all instances;
 - (f) the vehicles are always driven safely and with consideration to passengers' needs. This includes conforming to all road traffic legislation and never driving whilst under the influence of any amount of alcohol, drugs or medication;
 - (g) the driver must always be properly trained in handling the type of vehicle and the nature of the passengers to be carried. The latter will not apply if a suitable escort is provided;
 - (h) all vehicles carry a first aid kit that conforms to legislation. Fire extinguishers will also be carried on the vehicles and these will be maintained in accordance with the manufacturer's instructions;
 - (i) in the event of the breakdown of a vehicle or the sickness of a driver it will be the responsibility of the Provider to provide a replacement vehicle

and/or driver in order to ensure continuation of the Services as applicable and such replacement vehicle will be of the standard stipulated within this Agreement;

- (j) second hand equipment will not be used unless its history is known and it has full instructions so that it can be fitted and used correctly. The seat or harness must be appropriate for the vehicle in which it is used and be fitted in accordance with the manufacturer's instructions; and
- (k) any door safety locks must be used.

The Council shall, throughout the Term, have the right and the power to undertake any number of spot checks, without notice, of the vehicles and/or any documents or registrations relating to the vehicles as may be reasonably required to ensure they are in compliance with the obligations under this Agreement. The Provider shall provide all reasonable assistance to the Council in the completion of such checks.

9. THE ESTABLISHMENTS

9.1 The Council shall, subject to clause 8 (Health and Safety) and clause 14 ((Other personnel used to be provide the Services) and the provisions of the Lease set out in Part 2 of Schedule 12 (The Establishments), use its reasonable endeavours to procure that the Registered Landlord will:

- (a) enter into the Lease substantially in the form set out in Part 2 of Schedule 12 (The Establishments) and;
- (b) provide the Provider (and its Sub-Contractors) with access to such parts of the Establishments as the Provider reasonably requires for the purposes only of properly providing the Services.

9.2 The Provider is deemed to have inspected the relevant Establishments before submitting its tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Agreement.

9.3 The Council shall use its reasonable endeavours to procure that the Registered Landlord will provide the Provider with such accommodation and facilities in the Establishments as is specified in Schedule 12 (Establishments).

9.4 Subject to the requirements of clause 36 (Consequences of Termination) and the Exit Management Plan, in the event of the expiry or termination of the Agreement, the Council shall use its reasonable endeavours to procure that the Registered Landlord will, on reasonable notice, provide the Provider with such access as the Provider reasonably requires to the Establishments to remove any of the Provider's equipment. All such equipment shall be promptly removed by the Provider.

9.5 The Provider shall ensure that:

- (a) it complies fully with its obligations in respect of the repair and maintenance of the Establishments in accordance with the relevant Lease for each Establishment;
- (b) it provides regular reports to the Council on any scheduled or routine maintenance and any reactive maintenance which it carries out in respect of each Establishment;
- (c) it reports any issues in respect of the state of repair which are described as the Provider's responsibility under the relevant Lease in respect of each of the Establishments as soon as reasonably practicable and in any event within one (1) month of becoming aware of the relevant issue;
- (d) it provides regular reports to the Council on any scheduled or routine maintenance and any reactive maintenance which the Registered Landlord carries out in respect of each Establishment;
- (e) it reports any issues in respect of the state of repair which are described as the Registered Landlord's responsibility under the relevant Lease in respect of each of the Establishments as soon as reasonably practicable and in any event within one (1) month of becoming aware of the relevant issue;
- (f) it informs the Council of any dispute between the Provider and the Registered Landlord in respect of their respective repair and maintenance obligations under the relevant Lease for each Establishment as soon as reasonably practicable and in any event within five (5) Working Days of the relevant dispute arising;
- (g) it uses its best endeavours to enforce any obligation on the Registered Landlord to carry out its own repair and maintenance obligations in respect of each Establishment under each Lease;
- (h) the Establishments are kept properly secure and that it will comply and cooperate with the Registered Landlord and the Council's Authorised Representative's reasonable directions regarding the security of the same;
- (i) only those Staff that are duly authorised to enter upon the Establishments for the purposes of providing the Services, do so.

9.6 The Council shall use its reasonable endeavours to procure that the Registered Landlord will maintain and repair each of the Establishments in accordance with the relevant Lease, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Provider or its representatives (fair wear and tear excluded), the costs incurred by the Registered Landlord in maintaining and repairing the same may, in accordance with the relevant Lease shall be recoverable from the Provider as a debt.

9.7 The Provider shall notify the Council and the Registered Landlord immediately on becoming aware of any damage caused by the Provider, the Provider's Personnel, its agents, or Sub-Contractors to any property of the Council or the Registered

Landlord, to any of the Establishments or to any property of any other recipient of the Services in the course of providing the Services.

- 9.8 Unless otherwise agreed in writing, the Provider shall provide all the equipment necessary for the supply of the Services.
- 9.9 The Provider shall not deliver any equipment nor begin any work on the Establishments without obtaining prior approval from the Council and the Registered Landlord.
- 9.10 All equipment brought onto the Establishments shall be at the Provider's own risk and neither the Council or the Registered Landlord shall have any liability for any loss of or damage to any equipment unless the Provider is able to demonstrate that such loss or damage was caused by the Council's or the Registered Landlord's default (as the case may be). The Provider shall provide for the haulage or carriage thereof to the Establishments and the removal of equipment when no longer required at its sole cost. Unless otherwise agreed, equipment brought onto the Establishments will remain the property of the Provider.
- 9.11 The Provider shall maintain all items of equipment for which it is responsible under each Lease within each Establishment in a safe, serviceable and clean condition.
- 9.12 The Provider shall, at the Council's or the Registered Landlord's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from any Establishment any equipment which in the reasonable opinion of the Council or the Registered Landlord is either hazardous, noxious or not in accordance with the Agreement; and
 - (b) replace such item with a suitable substitute item of equipment.
- 9.13 On termination or expiry of the Agreement the Provider shall remove the equipment together with any other materials used by the Provider to supply the Services and shall leave the Establishments in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Establishments or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or Provider Personnel in accordance with the relevant Lease.

10. BUSINESS CONTINUITY

- 10.1 The Provider shall provide no later than sixty (60) Working Days after the Commencement Date a Business Continuity Plan capable of acceptance by the Council which shall ensure that the Provider can restore or regenerate full business activity in the event of an internal or external threat within a reasonable period of time as specified by the Council.

- 10.2 The Business Continuity Plan shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of a major failure of the Services or any part thereof.
- 10.3 The content of any Business Continuity Plan submitted in accordance with this clause 10 shall be agreed and / or determined by the Council's Authorised Representative and in the event that the Council's Authorised Representative raises any concerns regarding such Business Continuity Plan then the Provider shall submit a revised Business Continuity Plan, addressing any such concerns, within thirty (30) days of such concerns being notified to the Provider in writing.
- 10.4 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Agreement it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council. The Provider shall immediately inform the Council of any internal and/or external threat which affects or might affect its ability at any time to perform its obligations under the Agreement. In the event of an internal and/or external threat the Provider must enact their Business Continuity Plan.
- 10.5 The Provider shall comply at all times with the relevant provisions of the Business Continuity Plan, unless the Council has provided explicit written consent. The Provider shall review and assess the Business Continuity Plan, which shall include the identification and testing of the critical elements of the Business Continuity Plan, every twelve (12) months and produce a report to the Council within ten (10) Working Days of the success or failure thereof. If the Council is not at that time satisfied with the Business Continuity Plan provided by the Provider, the Provider shall be required to take all reasonable steps to improve the Business Continuity Plan to the Council's satisfaction.
- 10.6 Any costs incurred in the preparation and implementation of the Business Continuity Plan shall be the responsibility of the Provider.

CHARGES AND PAYMENT

11. PAYMENT AND INDEXATION

The provisions of this clause 11 shall be without prejudice to the generality of the provisions of the Supplementary Conditions referred to in Schedule 1 below. In the event that there is any inconsistency or conflict between the terms of this clause 11 and the Supplementary Conditions in Schedule 1 below, then the provisions of the Supplementary Conditions in Schedule 1 shall take precedence.

- 11.1 In consideration of the provision of the Services by the Provider in accordance with the terms and conditions of this Agreement, the Council shall pay the Charges to the Provider in accordance with the Payment Plan as set out in Schedule 5 (Charges and Payment) subject to Supplementary Condition, SC3 (Void Payments).

- 11.2 Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract a provision to pay the Sub-Contractor the Charges in accordance with the Payment Plan within thirty (30) days of the date on which the Provider receives a valid and undisputed invoice. An invoice shall be regarded as valid and undisputed twenty (20) Working Days after the date on which it is received by the Provider.
- 11.3 Where any Party disputes any sum to be paid by it then provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until thirty (30) days after resolution of the dispute between the parties. The Provider shall not suspend the supply of Services unless the Provider is entitled to terminate the Agreement under clause 30.4 (Termination for Breach) for failure to pay undisputed sums of money.
- 11.4 Subject to clause 11.3, interest shall accrue and be payable on the late payment of any undisputed Charges under this Agreement at a rate of 4% per annum above the then current base rate of the Bank of England. The Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Agreement under clause 30.4 (Termination for Breach) for failure to pay undisputed charges.
- 11.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this Agreement including, without limitation, where the Provider is in breach of the covenants and warranties contained at clause 21.5 (Sub-contracting and Assignment) of this Agreement.
- 11.6 Where applicable the Service User Contribution shall be collected directly from the Service User by the Provider at the contribution rate assessed by the Council from the period in which the Provider is notified of the Service User Contribution. The Charges the Council pay the Provider are Net of Service User Contribution. If the Service User Contribution changes, the Council will notify the Provider so that they can change the amount they are collecting. The Provider is required to collect the Service User Contribution directly from the Service User unless the Council agrees to pay any Charges on a Gross of Service User Contribution basis in respect of that Service User.
- 11.7 Where a Service User is assessed as being required to make a Service User Contribution but fails to do so then the Provider shall seek to recover the debt using the following procedure:
- (a) Send an invoice to the Service User on day 1 of the arrears;
 - (b) A statement together with the next month's invoice will be sent out on day 28 of the arrears;

- (c) A chasing letter is sent out on day 56 of the arrears; and
 - (d) A second chasing letter is sent out on day 84 of the arrears including a further account reminder of the unpaid element and if any sum remains outstanding for a further 7 days thereafter then clause 11.8 shall apply.
- 11.8 If the Provider has followed the procedure set out in clause 11.7 above, and Service User Contribution remains unpaid following the Provider's debt collection process, as set out in clause 11.7, then the debt shall be transferred to the Council on day 91 of the arrears and the Council shall pay the Provider the outstanding sum in accordance with clause 11.1 above, and the Service User Contribution shall be reduced to zero on the Council's system thereafter. The Council will then, in respect of that Service User, pay Charges on the basis of the full gross fee for each period thereafter. In transferring the debt to the Council the Provider shall provide full copies of all correspondence in relation to the debt and provide such assistance as the Council requires.
- 11.9 In respect of a deceased Service User the Provider shall notify the Council's Authorised Representative of any outstanding Service User Contributions and provide copies of all correspondence in relation to the debt.
- 11.10 Where the Provider is receiving payment of the Charges in respect of a Service User the Provider shall not be entitled to (nor shall it seek) any payment in addition to the Charges or benefit in kind from the Service User, family member/carer or any other third party in respect of the Services unless consent in writing is provided by the Council.
- 11.11 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Agreement. Such records shall be retained for inspection by the Council for seven (7) years from the end of the Contract Year to which the records relate.
- 11.12 The Council may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under this Agreement, or any other agreement pursuant to which the Provider or any Associated Company of the Provider provides goods or services to the Council.
- 11.13 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 11.14 The Charges shall remain fixed for the Initial Term and any Extension Period subject to Supplementary Condition (SC) 1.1 as set out in Schedule 1.
- 11.15 In the event that the Council exercises its rights in accordance with the Policies, such that the Council notifies the Provider, in accordance with those Policies, that

it will suspend placements to the Provider and accordingly no longer be liable to make payments in respect of any Void, or otherwise, then the payment of the Charges through the Council's scheduler of payments system (as described in Schedule 5) shall be adjusted to reflect that fact for the duration of the application of such suspension.

12. SERVICE CREDITS

Not Used

STAFF

13. KEY PERSONNEL

This clause 13 shall apply if so stated in the Contract Particulars.

13.1 Each Party shall appoint the persons named as such in Schedule 6 (Contract Management) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each Party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on the matters for which they are expressed to be responsible.

13.2 The Provider shall not remove or replace any of the Key Personnel unless:

- (a) requested to do so by the Council;
- (b) the person is on long-term sick leave;
- (c) the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
- (d) the person resigns from their employment with the Provider; or
- (e) the Provider obtains the prior written consent of the Council.

13.3 The Provider shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within fifteen (15) Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

13.4 Each Party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than twenty (20) Working Days. Any replacement shall be as, or more, qualified and experienced as the previous

incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Provider or the Council becoming aware of the role becoming vacant.

- 13.5 The Council may require the Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 13.6 If the Provider replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Provider.

14. OTHER STAFF USED TO PROVIDE THE SERVICES

- 14.1 At all times, the Provider shall ensure that:
- (a) each of the Provider's Staff is suitably qualified, adequately trained and capable of providing the applicable part of the Services in respect of which they are engaged;
 - (b) there is an adequate number of Staff to provide the Services in accordance with this Agreement;
 - (c) only those Staff who are authorised by the Provider (under the authorisation procedure to be agreed between the Parties) are involved in providing the Services; and
 - (d) Staff comply with all of the Council's policies detailed in Schedule 2.
- 14.2 The Council may refuse to grant access to, and remove, any of the Provider's Staff who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Provider shall replace any Staff who the Council reasonably decides to have failed to carry out their duties with due skill and care. Following the removal of any of the Provider's Staff for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services. The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Provider has failed to comply with clause 14.4 below shall be final and conclusive and the Provider shall indemnify the Council in respect of all claims, costs, losses and expenses arising from a decision under this clause 14.3.
- 14.4 The Provider shall maintain up-to-date personnel records on Staff engaged in the provision of the Services and, on request, provide information to the Council on Staff which the Council reasonably requests. Failure to comply with such request within fourteen (14) Working Days of the date of such request shall be deemed a material Default under this Agreement. The Provider shall ensure at all times that

it has the right to provide these records in compliance with the applicable Data Protection Legislation.

- 14.5 The Provider shall use its best endeavours to ensure continuity of Staff and to ensure that the turnover rate of Staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

15. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

This clause 15 shall apply where stipulated in the Contract Particulars.

- 15.1 The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 15.2 The Provider shall ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS), including a check against the adults' barred list or the children's barred list, as appropriate and the Provider shall monitor the level and validity of the checks under this clause 15.2 for each member of Staff.
- 15.3 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 15.4 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.
- 15.5 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.
- 15.6 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 15.7 The Provider will, at its sole cost ensure that:
- (a) the Provider and all persons involved in any way in providing a service on behalf of the Provider understand and operate in accordance with the

safeguarding policies for Buckinghamshire as may be more specifically described and required in the Specification and that they are appropriately trained to recognise abuse;

- (b) all Services provided under this Agreement comply with all relevant Law including (without limitation) all statutes directives regulations orders codes of practice and best practice guidance (as amended from time to time) related to the prevention of, and protection from, abuse issued by (but without limitation) any government department;
- (c) all persons involved in providing a service on behalf of the Provider cooperate fully with all investigations by the Council or any person authorised by the Council (including any Safeguarding Board or other supervisory board in relation to either vulnerable adults or children) to conduct such investigations of any alleged, suspected or actual abuse;
- (d) the Council is informed immediately of any adult or child protection investigation, concern or adult/child protection strategy arising from or related to the delivery of Services under this Agreement or where they have grounds to believe there has been abuse of a Vulnerable Adult or child, in accordance with the published Buckinghamshire Inter-Agency Safeguarding Adults procedures, or abuse of a child, in accordance with the Buckinghamshire Inter Agency Child Protection procedures as may be further described in the Specification; and
- (e) there are robust arrangements for the auditing, monitoring and reporting of activity related to protection from abuse.

15.8 Where in the sole opinion of the Council, the safeguarding vulnerable adults or safeguarding children policies are invoked in respect of the Services, the Council will be entitled to reasonably withhold any new business until such time as any issue is resolved to the satisfaction of the Council and the Provider hereby waives any claims that it might have for any losses or other damages arising from the withholding of new business by the Council in accordance with this clause 15.8.

16. TUPE

The Parties agree that the provisions of Schedule 10 (TUPE) shall apply to any Relevant Transfer of staff under this Agreement.

CONTRACT MANAGEMENT

17. REPORTING AND MEETINGS

17.1 The Provider shall comply with all of its reporting and meeting obligations described in the Policies in accordance with any instruction from the Council issued in connection with the Policies from time to time.

17.2 Without prejudice to the generality of clause 17.1 above, the Provider shall provide the Management Reports in a form and at intervals as required by the Council in accordance with Schedule 6 (Contract Management).

17.3 Without prejudice to the generality of clause 17.1 above, the Authorised Representatives and relevant Key Personnel (if applicable) shall meet at times as required by the Council in accordance with Schedule 6 (Contract Management) and the Provider shall, at each meeting, provide information as required by the Council in accordance with Schedule 6 (Contract Management).

18. MONITORING

18.1 The Council shall monitor the Provider's performance of the Services in accordance with the Policies.

18.2 Without prejudice to the generality of clause 18.1 above, the Council shall monitor the performance of the Services by the Provider in accordance with Schedule 6 (Contract Management).

18.3 The Provider shall in so far as it is able at all reasonable times during the period of this Agreement allow the Council's Authorised Representative and/or such persons as may be reasonably nominated by the Council's Authorised Representative reasonable access to review the provision of the Services including information, records and documentation in relation to the Services, Service User and Staff necessary for the Council to effectively monitor the performance of the Provider in relation to the Agreement.

18.4 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the contract monitoring referred to in clauses 17 and 18 at no additional charge to the Council.

19. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT

19.1 Any requirement for a Change shall be subject to the Change Control Procedure.

19.2 The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Provider shall identify and report to the Council's Representative quarterly in the first Contract Year and once every six (6) months for the remainder of the Term on:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which

might result in efficiency or productivity gains or in reduction of operational risk; and

- (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.

19.3 Any potential Changes highlighted as a result of the Provider's reporting in accordance with clause 19.2 shall be addressed by the Parties using the Change Control Procedure.

19.4 Where stipulated in the Contract Particulars the Provider shall procure delivery of a parent company guarantee substantially in the form contained in Schedule 16 (Parent Company Guarantee).

19.5 Not used.

20. DISPUTE RESOLUTION

In addition to, or instead of, the Dispute Resolution Procedure outlined below in this clause 20, the Provider acknowledges and accepts that in the event of any dispute arising in connection with the Services, the Council's Director of Strategic Commissioning and Procurement (or such replacement role carrying out the same function as may be the case from time to time) shall review the Council's actions in respect of such dispute in accordance with the Policies and may direct that any action be taken in accordance with those Policies, or this Agreement, at such director's sole discretion.

20.1 Either Party may call an extraordinary meeting of the Parties by service of not less than five (5) days' written notice and each Party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Council (if any) shall attend all extraordinary meetings called in accordance with this clause.

20.2 The members of the relevant meeting shall attempt in good faith to resolve disputes arising out of this Agreement. If any dispute referred to a meeting is not resolved at that meeting then either Party, by notice in writing to the other (a **Dispute Notice**), may refer the dispute to senior officers of the Parties who shall co-operate in good faith to resolve the dispute as amicably as possible within fourteen (14) days of service of the Dispute Notice.

20.3 If the senior officers fail to resolve the dispute in the allotted time, then the Dispute Resolution Procedure shall be deemed exhausted **and** the Parties will attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in

- writing (**ADR Notice**) to the other Party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than ten (10) Working Days after the appointment of the mediator.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the Parties as to submission to the mediation but not as to its outcome.
- 20.5 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute at a future date. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings. Except for any Party's right to seek interlocutory relief in the courts, no Party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration unless the Parties have failed to reach a binding agreement in the structured negotiations within sixty (60) days of the date of appointment of the mediator (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.6 If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the Parties, shall become binding on the Parties. Failing agreement, either of the Parties may invite the mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of the Parties.
- 20.7 The Parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the Parties equally.

21. SUB-CONTRACTING AND ASSIGNMENT

- 21.1 Subject to clause 21.2, the Provider shall not assign, novate, transfer, Sub-Contract or otherwise dispose of any or all of its rights or obligations under this Agreement without the prior written consent of the Council. The giving of consent is at the Council's absolute discretion.
- 21.2 The Council shall be deemed to have consented to the entering of any Sub-Contract, or any Material Sub-Contract where stated in the Contract Particulars.
- 21.3 In the event that any assignment, novation, transfer or Sub-Contracting is permitted by the Council pursuant to clause 21.1 or 21.2, such consent shall not relieve the Provider from any liability or obligation under this Agreement and the Provider shall be responsible for the acts, omissions, defaults or neglect of any Sub-Contractor and its agents or employees in all respects as if they were the acts, omissions, defaults or neglect of the Provider.

- 21.4 Where the Council gives consent to the Provider to Sub-Contract the Services (or any part thereof) in accordance with clause 21.1 or 21.2 such consent shall be limited to the matters within the scope of that permission and the Provider shall not proceed unless it has satisfied all matters required by the Council as a condition of grant of its consent.
- 21.5 Without prejudice to the generality of clause 21.4 above, it shall be a condition of any consent by the Council to any Sub-Contract (including any Material Sub-Contract) that the Provider:
- (a) covenants that it is not VAT grouped (as that is described in HMRC's policy paper "[Use of VAT grouping within the care industry](#)" (dated 24 April 2025) (as the same may be updated from time to time) (a **VAT Group**) with the Sub-Contractor or Material Sub-Contractor (as the case may be) at the date of any Sub-Contract or Material Sub-Contract;
 - (b) warrants that, as at the date that the Sub-Contract, or Material Sub-Contract (as the case may be), comes into effect, the relevant Sub-Contract or Material Sub-Contract is not entered into for the purpose of establishing a VAT Grouping structure; and
 - (c) covenants that it will not, at any time, VAT Group with the Sub-Contractor or Material Sub-Contractor during the Term.
- 21.6 In the event the Council gives consent in accordance with clause 21.1 or 21.2 and the Provider enters into a Sub-Contract in connection with this Agreement, the Provider shall ensure it has entered into a contract which imposes obligations on its Sub-Contractors on the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms. The Provider warrants that the Council shall have direct third-party rights pursuant to the Contracts (Rights of Third Parties) Act 1999 under any Sub-Contract the Provider enters into pursuant to this Agreement.
- 21.7 The Provider shall provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
- 21.8 The Provider shall not terminate, or materially amend the terms of any Sub-Contract without the Council's prior written consent.
- 21.9 The Council shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council or any contracting authority as defined in Section 2 of the Procurement Act 2023.
- 21.10 Any change in the legal status of the Council such that it ceases to be a contracting authority as defined in Section 2 of the Procurement Act 2023 shall not affect the

validity of the Agreement. In such circumstances, the Agreement shall bind and inure to the benefit of any successor body to the Council.

- 21.11 Provided that the Council has given prior written consent, the Provider shall be entitled to novate the Agreement where:
- (a) the specific change in Provider was provided for in the procurement process for the award of this Agreement; or
 - (b) there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.

LIABILITY

22. INDEMNITIES

The Provider shall indemnify and hold harmless and keep indemnified the Council against all actions, damages, judgements, proceedings, costs, sums, claims, demands, liabilities, losses, expenses and any other liabilities whatsoever howsoever caused, whether arising in tort (including negligence) default or breach of this Agreement, to the full extent of that amount to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or Sub-Contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement, or applicable Law by the Council or its representatives (excluding any Staff).

23. LIMITATION OF LIABILITY

- 23.1 Subject to clause 23.5, neither Party shall be liable to the other Party (as far as permitted by Law) for indirect special or consequential loss or damage in connection with the Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 23.2 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.
- 23.3 Not Used
- 23.4 Subject to clause 23.5, the Provider's total aggregate liability is unlimited in respect of:
- (a) the indemnities given by the Provider in:
 - (i) clause 22;

- (ii) clause 29.2;
 - (iii) Schedule 10 (TUPE);
 - (b) any wilful default under this Agreement; and
 - (c) any breach of clause 33 (Prevention of bribery and prohibited acts).
- 23.5 Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable Law.
- 23.6 Subject to clauses 23.4 and 23.5 the Parties' respective liability under this Agreement shall be limited to the amount stated in the Contract Particulars.

24. INSURANCE

- 24.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the levels of cover stated in the Contract Particulars for:
- (a) public liability insurance;
 - (b) employer's liability insurance in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
 - (c) professional indemnity and/or medical malpractice insurance and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- (the **Required Insurances**) in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 24.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

- 24.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement.
- 24.5 The Provider shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the Agreement or such other period as detailed in the Contract Particulars.

INFORMATION

25. FREEDOM OF INFORMATION

- 25.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations (EIRs) and shall assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 25.2 The Provider shall and shall procure that its Sub-Contractors shall:
 - (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 25.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
 - (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 25.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 25.5 The Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the

Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations. The Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

- 25.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.5.
- 25.7 The Parties agree that the information listed in Schedule 15 (Agreed Information available for Publication) of this Agreement may be published by the Council at intervals elected by the Council in its sole discretion. The Provider acknowledges that this list is not an exhaustive list and that the obligations and rights of the Council under this clause 25 continue to apply in relation to information which may or may not be included in Schedule 15 (Agreed Information available for Publication).

26. DATA PROTECTION

- 26.1 The Provider shall (and shall procure that any and all Staff involved in the provision of the Services) comply with all applicable requirements of Data Protection Legislation including but not limited to any requirements specifically set out in this Agreement.
- 26.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them from time to time in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. The Council envisages that in the provision of the Services the relationship is to be that of Joint Controllers, however there may be some circumstances where a Party may act as:
 - i. “Controller” (where the other Party acts as the “Processor”);
 - ii. “Processor” (where the other Party acts as the “Controller”);
 - iii. “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and further clauses relating to the relevant relationship between the Parties as detailed above are set out in Schedule 18 (Data Protection) and shall each apply to any Personal Data which is shared or otherwise processed in

accordance with the Parties' performance of their respective obligations, as is determined, and as the case may be, from time to time due to the nature of the Parties' respective activities in discharge of such obligations.

27. CONFIDENTIALITY

27.1 Subject to clause 27.2, the Parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

27.2 Clause 27.1 shall not apply to any disclosure of information:

- (a) required by any applicable Law, provided that clause 25.1 (Freedom of Information) shall apply to any disclosures required under the FOIA or the EIRs;
- (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Agreement;
- (c) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
- (d) by the Council of any document to which it is a party and which the Parties to this Agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 20 (Dispute Resolution);
- (f) which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- (g) by the Council to any other department, office or agency of the Government; and
- (h) by the Council to any other local authority, NHS body, regulator of social care provision, or any other agency involved in the provision of social care services in response to any concerns with the Provider's performance of the Services in accordance with the provisions of the Policies;
- (i) by the Council relating to this Agreement and in respect of which the Provider has given its prior written consent to disclosure; or
- (j) where either Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

27.3 On or before the Termination Date the Provider shall ensure that all documents, records, and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or Service Users

and details of the Services received (in the case of Service Users), are delivered up to the Council or securely destroyed, as instructed by the Council.

28. AUDIT

28.1 During the Term, and for the period agreed in the Contract Particulars after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:

- (a) in accordance with any of its various rights to audit the Services under the Policies;
- (b) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of the Provider (including any Sub-Contractors) at the level of detail agreed in Schedule 5 (Charges and Payment);
- (c) to review the integrity, confidentiality and security of any data relating to the Council or any Service Users;
- (d) to review the Provider's compliance with the DPA, the FOIA and EIRs in accordance with clause 25 (Freedom of Information) and clause 26 (Data Protection) and any other legislation applicable to the Services;
- (e) to review any records created during the provision of the Services;
- (f) to review any books of account kept by the Provider in connection with the provision of the Services;
- (g) to carry out the audit and certification of the Council's accounts;
- (h) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 or sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources; or
- (i) to verify the accuracy and completeness of the Management Reports delivered or required by this Agreement.

28.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 28 more than twice in any calendar year. For the avoidance of doubt this clause specifically relates to an audit in compliance with clause 28.1 (g) above and does not relate to any contract monitoring activities pursuant to clause 18 (Monitoring).

28.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.

28.4 Subject to the Council's obligations of confidentiality, the Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or

representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information relevant to the Services that is requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- (c) access to the Provider's Personnel.

28.5 The Council shall endeavour to (but is not obliged to) provide at least fifteen (15) days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

28.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Provider in which case the Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

28.7 If an audit identifies that:

- (a) the Provider has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Council has overpaid any Charges, the Provider shall pay to the Council the amount overpaid within twenty (20) days. The Council may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
- (c) the Council has underpaid any Charges, the Council shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Provider in relation to invoicing within twenty (20) days.

29. INTELLECTUAL PROPERTY

29.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Provider or any employee, agent or Sub-Contractor of the Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

- 29.2 The Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

TERMINATION

30. TERMINATION FOR BREACH

- 30.1 Without prejudice to other rights or remedies of the Council, the Council may terminate this Agreement in whole or part with immediate effect (or on such date as specified in the notice) by the service of written notice on the Provider if the Provider:
- (a) commits a material Default which is not capable of remedy;
 - (b) commits a material Default and the Provider has not remedied the Default to the satisfaction of the Council within fourteen (14) Working Days or such other shorter or longer period which may be specified by the Council after issue of a written notice specifying the Default and requesting it to be remedied;
 - (c) commits a Default on a persistent or repeated basis, whether in respect of the same or different obligations of the Provider under the Agreement and whether or not rectified;
 - (d) commits (or any member of Staff commits) an act of grave misconduct in the course of the business;
 - (e) performs the Services in such a manner as gives rise to a right for the Council to terminate the Agreement in accordance with the Policies;
 - (f) is subject to any event giving rise to a right to terminate the Agreement under the Policies;
 - (g) the Provider commits a Catastrophic Failure;
 - (h) the Provider is in an Insolvency Event;
 - (i) the Provider ceases or threatens to cease to carry on business in the United Kingdom or disposes of all its assets or ceases to carry on a substantial part of its business or disposes of a substantial part of its assets

which in the reasonable opinion of the Council would materially affect the delivery of the Services;

- (j) undergoes a change of control and for this purpose where the Provider is a company, there is a change of control if the majority of the shares carrying a right to vote in the Provider or its holding company are required by a person who is not at the date Agreement a major shareholder (“holding company” shall have the same meaning as in section 1159 of the Companies Act 2006) save that if there is a change from one subsidiary to another (“subsidiary company” having the same meaning as in section 1159 of the Companies Act 2006) then that shall be deemed not to be change of control for the purposes of this clause 30.1 (h);
- (k) it falls within any of the provisions of Regulation 78, Procurement Act 2023;
- (l) the Provider or Staff has committed or commits, or attempts to commit in any way a Prohibited Act;
- (m) is convicted (or any member of Staff is convicted) of a serious criminal offence related to the business or professional conduct;
- (l) any registrations or licences in relation to the provision of the Services are cancelled by a regulatory body;
- (m) has provided any information as part of its tender (Schedule 4, Provider’s Tender) or given any information to the Council at any time prior to the Council entering into a binding contract with the Provider which proves to be materially untrue or incorrect;
- (n) has a contract for services terminated due to the Provider’s default where those services are similar to the Services;
- (o) is no longer able to enter any of the Establishments in order to carry out the Services as the Provider’s Lease is terminated by the Registered Landlord: or
- (p) if there is a change of control of a Material Sub-Contractor.

30.2 Without prejudice to the generality of clause 30.1 and other rights the Council might have, the Council may terminate this Agreement in accordance with the provisions of clause 4.10 (Consents, Provider’s warranty, due diligence and performance guarantees) and clause 32 (Force Majeure).

30.3 If this Agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

30.4 The Provider may terminate this Agreement in the event that the Council commits a Termination Payment Default by giving thirty (30) days' written notice to the Council. In the event that the Council remedies the Termination Payment Default

in the thirty (30) day notice period, the Provider's notice to terminate this Agreement shall be deemed to have been withdrawn.

30.5 This clause shall apply where stated in the Contract Particulars. In the event that the Council is of the reasonable opinion that there has been a material breach of this Agreement by the Provider, or the Provider's performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification, or the circumstances described in the Policies in relation to the Council having a Serious Concern (as defined in the Policies) apply and/or any event described in Clause 30.1 (a)-(p) inclusive has occurred, then the Council may, without prejudice to its rights or remedies under this clause 30 or, clause 31 (Termination on Notice) or Agreement, do any of the following:

- (a) make such deduction from the Charges to be paid to the Provider as the Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such part or parts of the Services as the Provider shall have failed to provide or perform adequately;
- (b) exercise any right prescribed to it in the Policies in accordance with the Policies;
- (c) without terminating the Agreement, itself provide or procure the provision of part or parts of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to perform such part or parts of the Services in accordance with the Agreement;
- (d) without terminating the Agreement, terminate the Agreement in respect of part or parts of the Services only (whereupon a corresponding reduction to the Charges shall be made) and thereafter itself provide or procure a third party to provide such part or parts of the Services.

30.6 Without prejudice to any other rights the Council may have, the Council may charge the Provider for any cost reasonably incurred by the Council and any reasonable administration costs incurred in the provision of such part or parts of the relevant Services by the Council or by a third party to the extent such costs exceed the Charges which would otherwise be payable to the Provider for such part or parts of the relevant Services and provided that the Council used its reasonable endeavours to mitigate any additional expenditure in delivering such part or parts of the Services itself, or obtaining replacement provision such part or parts of the Services from a third party. Any such charges shall be recoverable by the Council from the Provider as a debt.

31. TERMINATION ON NOTICE

31.1 Not used

31.2 Not used.

32. FORCE MAJEURE

- 32.1 Subject to the remaining provisions of this clause 32, neither Party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.
- 32.2 In the event that either Party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such Party shall:
- (a) give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 32.3 A Party cannot claim relief if the Force Majeure Event is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 32.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable provider should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Provider is the affected Party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 32.6 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 32.7 The Council may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than ten (10) Working Days.

33. PREVENTION OF BRIBERY AND PROHIBITED ACTS

33.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

33.2 The Provider shall not during the term of this Agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, Providers, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

33.3 The Provider shall during the Term:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 33.3(a) and make such records available to the Council on request.

33.4 The Provider shall immediately notify the Council in writing if it becomes aware of any breach of clause 33.1 and/or clause 33.2, or has reason to believe that it has or any of the Provider's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

- 33.5 If the Provider makes a notification to the Council pursuant to clause 33.4, the Provider shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with clause 28 (Audit).
- 33.6 If the Provider is in Default under clause 33.1 and/or clause 33.2, the Council may by notice:
- (a) require the Provider to remove from performance of this Agreement any Staff whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.
- 33.7 Any notice served by the Council under clause 33.6 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate). The Council may terminate this Agreement by written notice with immediate effect if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 33.1.
- 33.8 Any notice of termination under clause 33.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - (c) the date on which this Agreement will terminate.
- 33.9 Despite clause 20 (Dispute resolution), any dispute relating to:
- (a) the interpretation of clause 33; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 33.10 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

34. ANTI-SLAVERY

- 34.1 The Provider, if required to make a statement under Section 54 of the Modern Slavery Act 2015, shall notify the Council each time its statement is published.
- 34.2 The Provider warrants from the Commencement Date and throughout the Term that to the best of its knowledge:
- (a) no activity constituting an offence under the Modern Slavery Act 2015 is occurring within its business; and

- (b) no activity constituting an offence under the Modern Slavery Act 2015 is occurring within its supply chain.
- 34.3 The Provider shall procure that its Sub-Contractors shall not engage in activity which would constitute a breach of this clause 34.
- 34.4 The Provider acknowledges that the Council is subject to the requirements of Section 52 of the Modern Slavery Act 2015 and the Modern Slavery Act 2015 (Duty to Notify) Regulations 2015 and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with its duties.
- 34.5 If the Provider becomes aware of or has a reasonable suspicion of a breach of this clause, it shall immediately notify the Council.
- 34.6 If the Provider makes a notification to the Council pursuant to clause 34.5 above, the Provider shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to access the documents which led the Provider to make the notification.
- 34.7 If the Provider is in Default under clauses 34.2 and/or 34.3, the Council may:
 - (a) require the Provider to remove from performance of this Agreement any Staff whose acts or omissions have caused the Default;
 - (b) immediately terminate this Agreement;
 - (c) refer the matter to the Police and/or other relevant agencies, authorities and bodies;
 - (d) take all or any combination of actions listed at (a), (b) and/or (c).
- 34.8 If the Provider is in Default under this clause, the Council shall make a notification to the Secretary of State pursuant to section 52 of the Modern Slavery Act 2015.

35. COUNTER-TERRORISM

- 35.1 The Provider acknowledges that the Council is subject to the requirements of Section 26 of the Counter Terrorism and Security Act 2015 (the **Prevent Duty**) and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with its duties in connection therewith.
- 35.2 The Provider represents and warrants that neither it, nor to the best of its knowledge any Staff have at any time prior to the Commencement Date:
 - (a) been engaged in any Extremist Activity or been subject to an investigation or prosecution which relates to alleged Extremist Activity;
 - (b) disseminated extremist views or been subject to an investigation or prosecution which relates to alleged dissemination of extremist viewpoints;

- (c) allowed its funds or funds under its control to be used to support Extremist Activity or disseminate extremist viewpoints.
- 35.3 The Provider shall not, and shall procure that any of its Sub-Contractors shall not:
 - (a) allow its resources, or the resources of the Council, to the extent that they are available for the Provider's use, to provide a platform for Extremist Activity or to disseminate extremist viewpoints;
 - (b) allow its funds or funds under its control to be used to support Extremist Activity or disseminate extremist viewpoints; or
 - (c) do or suffer to be done anything which may cause the Council to be in breach of its obligations under the Prevent Duty.
- 35.4 The Provider shall immediately notify the Council (in writing if appropriate), if it becomes aware of any breach of clauses 35.2 or 35.3 above.
- 35.5 If the Provider makes a notification to the Council pursuant to clause 35.4 above, the Provider shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to access the documents which led the Provider to make the notification.
- 35.6 If the Provider is in default under clauses 35.2 and/or 35.3, the Council may:
 - (a) require the Provider to remove from performance of this Agreement any Staff whose acts or omissions have caused the default;
 - (b) immediately terminate this Agreement;
 - (c) refer the matter to the police and/or other relevant agencies, authorities and bodies; or
 - (d) take all or any combination of actions listed at (a), (b) and/or (c).
- 35.7 If the Council takes action under clause 35.6 above it may (if appropriate) specify to the Provider the nature of the breach, the identity of the party who the Council believes has engaged in the Extremist Activity and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).

36. CONSEQUENCES OF TERMINATION

- 36.1 On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Provider.
- 36.2 On termination of this Agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Provider shall procure that all data and other material belonging

- to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Provider's Authorised Representative shall certify full compliance with this clause. In the event that through any default of the Provider, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such default.
- 36.3 Without prejudice to the generality of the above, if when the provision of the Services is re-tendered the Council is of the reasonable opinion that the TUPE Regulations may apply to the new agreement the Council may request from the Provider such details relating to the provision of the Services and to the Provider's Staff who would transfer to an incoming provider of the Services and of their terms and conditions of service as the Council may reasonably require as being necessary for other tenderers to prepare and make an informed bid.
- 36.4 The Provider shall promptly, and in any event within thirty (30) Working Days of the Council's request for information under clause 36.3 above, provide any such information as the Council may reasonably require to assist in a re-tendering exercise or for the purpose of adequately understanding the manner in which the Services have been provided and shall cooperate with the Council to ensure continuity of care provision to the Service Users. Should the Provider not provide the information to the Council within the prescribed timescales in accordance with this clause 36, this shall constitute a material Default.
- 36.5 Where the Council has terminated this Agreement pursuant to clauses 30.1 and 30.2 (Termination for breach):
- (a) the Council may recover from the Provider all costs reasonably incurred of making other arrangements for the delivery of replacement services, and any additional expenditure incurred by the Council throughout the remainder of the Term. The Council shall take all reasonable steps to mitigate such additional expenditure; and
 - (b) no further payments shall be payable by the Council to the Provider (for Services supplied by the Provider prior to termination and in accordance with the Agreement but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause 36.
- 36.6 The Provider shall comply with requests under this Clause as soon as reasonably practicable and in any event within twenty-eight (28) Working Days of being so requested.

- 36.7 Should TUPE apply on re-tendering, the Provider shall make available its Staff for the purposes of meetings and training events with the new provider to facilitate the smooth and efficient handover of the Services.
- 36.8 On the expiry of the Term or termination of this Agreement the Provider shall:
- (a) pass all enquiries made after termination in relation to the Services, and full details of current and potential Service Users, to the entity and/or person identified by the Council;
 - (b) cease to use the Council Assets (including any access keys) and any other software, hardware or equipment supplied to the Provider by the Council and return all elements of it (including that held or under the control of any permitted suppliers and/or Sub-Contractors) at its expense and in good working order and condition, including all software, data, hardware and documentation relating to it (until they have been returned or repossessed, the Provider shall be solely responsible for the safe keeping, supervision, custody and insurance of the Council Assets);
 - (c) return or at the option of the Council, destroy, all copies of the manual, stationery, and other products, collateral or materials bearing any of the intellectual property or branding of the Council and take all such actions as are required by Schedule 14 (Branding Principles).
- 36.9 If the Provider fails to fulfil its obligations under this clause 36 within a reasonable time, the Council may, at the expense of the Provider, immediately and without notice, enter onto the relevant Establishment and take such steps as it thinks fit to fulfil any outstanding obligations.
- 36.10 The provisions of clause 6.3 (Service Levels), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 36 (Consequences of termination) and clause 42 (Publicity and Branding) shall survive termination or expiry of this Agreement.

GENERAL PROVISIONS

37. NON-SOLICITATION

Neither Party shall (except with the prior written consent of the other) during the Term, and for a period of one (1) year thereafter, solicit the services of any senior staff of the other Party who have been engaged in the provision of the Services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent provider or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other Party.

38. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Provider in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Provider of its obligations to deliver the Services in accordance with the provisions of this Agreement.

39. REMEDIES CUMULATIVE

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at Law or in equity by statute or otherwise.

40. SEVERABILITY

40.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

40.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

41. PARTNERSHIP OR AGENCY

41.1 Nothing in this Agreement shall be construed as constituting a partnership or joint venture between the Parties or as constituting either Party as the agent of the other for any purpose whatsoever or authorising any Party to make or enter into any commitments for or on behalf of any other Party except as specified by the terms of this Agreement. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

42. THIRD PARTY RIGHTS

- 42.1 Subject to Clause 42.2, no term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to this Agreement.
- 42.2 The Council shall have direct third party rights pursuant to any Sub-Contract the Provider enters into pursuant to Clause 21 (Sub-Contracting and Assignment) of this Agreement.

43. PUBLICITY AND BRANDING

43.1 The Provider shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Council's name or brand in any promotion or marketing or announcement of orders,

except as required by Law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

- 43.2 The Provider shall take all reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, suppliers, professional advisors and consultants comply with clause 43.1.
- 43.3 The Provider shall comply with the branding principles in Schedule 14 (Branding Principles) of the Agreement and as set out in the Specification.

44. NOTICES

- 44.1 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post or by the recorded delivery service), or electronic mail (confirmed in either case by letter). Any such notice or communication shall be addressed to the other Party in the manner referred to in Clause 44.2. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.
- 44.2 For the purposes of Clause 44.1 the address of each Party shall be the address stipulated in the Contract Particulars.
- 44.3 Either Party may change its address for service by serving a notice in accordance with this clause.

45. ENTIRE AGREEMENT

Subject to clause 30.1(m), this Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

46. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

47. COMPLAINTS AND COMPLIMENTS

47.1 Without prejudice to the generality of clauses 47.2 to 47.5 (inclusive) below, the Provider shall:

- (a) comply with any obligations imposed on it;
- (b) comply with any instruction issued to it by the Council; and
- (c) provide all such assistance as the Council may require in response to any compliant,

in each case, in accordance with the Policies.

47.2 The Provider must have a process in place to log any complaints or any complimentary feedback received from any Service User or member of the public with regard to the Services provided under this Agreement.

47.3 The Provider's log shall be in line with the Council's policy and procedures in place as updated from time to time.

47.4 The Provider will report the data obtained by the logging process to the Council by means of a quarterly report or more frequently if requested by the Council. The data must be sent in accordance with the Council's policy and procedures in place as updated from time to time.

47.5 All complaints from Service Users should be dealt with and resolved appropriately by the Provider and any serious complaint that cannot be resolved shall be notified to the Council as soon as reasonably practicable so that the Parties can co-operate and endeavour to satisfy the complainant.

48. GOVERNING LAW AND JURISDICTION

48.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall

be governed by and construed in accordance with the Law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into as a deed on the date stated at the beginning of it.

SCHEDULE 1: SUPPLEMENTARY CONDITIONS

SC1 CHARGES

SC1.1 The Council and the Provider shall use all reasonable endeavours to ensure that the Charges represents best value to the Council throughout the Term

SC1.2 The Provider agrees to co-operate and assist the Council with fulfilling its Best Value Duty.

SC1.3 An annual review of the Charges shall take place in reasonable time in order to take effect from 1 April each year commencing April 2027. If there is any delay in the annual review of the Charges, the change in Charges will be backdated to 1 April of the year to which the review applies.

SC1.4 The annual review of the Charges shall be reviewed according to the following formula:

- a. in relation to 40% of the Charges, the increase shall be calculated in accordance with the amount by which Consumer Price Index (CPI) had increased in the 12 month period ending on the 30 November falling before the 1 April upon which the increase in fees is to take effect. In the event that CPI has remained unchanged or fallen over the preceding 12 month period in question then this proportion of the sum received by the Provider shall remain unchanged; and
- b. in relation to 60% of the sum received by the Provider, the increase shall be calculated in accordance with the amount by which the National Living Wage (NLW) had increased in the 12 month period ending on the 30 November falling before the 1 April upon which the increase in fees is to take effect. In the event that NLW has remained unchanged or fallen over the preceding 12 month period in question then this proportion of the sum received by the Provider shall remain unchanged.

SC2 BLOCK BEDS

SC 2.1 The Parties agree that the Block Beds comprises 197 beds in the mix of beds as set out in the Specification (Schedule 2).

SC2.2 The Parties acknowledge that there may be exceptional circumstances where the whole or part of an Establishment is not available, including as a result of closure on a temporary basis and Service Users will not be resident in that Establishment as a result. Where this is the case, then the Council shall not be liable to pay the Charges in respect of any Block Beds that are not available to it.

SC3 VOID PAYMENTS

- SC3.1 Subject to the application of the Policies such that the Council's obligations to make any Void Payment are suspended, and subject further to the Provider's compliance with the procedure set out in SC3.2 below, where a Void Bed arises for a Block Bed and it is a Council Void then the Council shall pay to the Provider the Void Payment in respect of the Block Bed and the Void Payment shall be calculated in accordance with the Charges as set out in Schedule 5 (Charges and Payment).
- SC3.2 The Provider shall, in respect of any Void Beds, comply with the following procedure in order to receive the Void Payment from the Council:
- SC3.2.1 the Provider shall comply with any requirements in the Specification in relation to Void Beds;
 - SC3.2.2 the Provider shall prepare a Void Bed reconciliation report each month which shall provide such detail as the Council may request, in writing, from time to time, which shall include, without limitation:
 - SC3.2.2.1 the number of Void Beds;
 - SC3.2.2.2 the reasons for any Void Beds remaining Void Beds;
 - SC3.2.2.3 the Provider's timetable for any Void Bed being made available to the Council to place a new Service User in to receive Services from; and
 - SC3.2.2.4 the reason for any refusal by the Provider to accept any such nomination from the Council in respect of a Void Bed;
 - SC3.2.3 in the event that the Provider and the Council fall into a dispute in relation to any Void Bed, then such dispute shall be resolved in accordance with the provisions of SC6 (Managing Void Disputes) below;
 - SC3.2.4 the Provider shall comply with any and all obligations imposed on it in relation to any Void Beds in accordance with the Lease in relation to such Void Beds; and
 - SC3.2.5 the Provider shall use its best endeavours to require the Registered Landlord of the Establishment to comply with its obligations under the Lease in relation to Void Beds, in particular, but without limitation, so as to ensure that the Registered Landlord of the Establishment in question takes such actions as it is able and required to do to minimise the period that any such Void Beds remain Void Beds and shall report on any delay or issue arising in respect of the Registered Landlord's

compliance with such obligations to the Council within five (5) Working Days of such delay or issue arising.

SC3.2 With effect from the first anniversary of the Commencement Date, where a Void Bed is a Provider Void and otherwise than in relation to Extra Care Units, the Charges payable in respect of each Provider Void shall be determined by reference to the sliding scale set out in this SC3.2 such that where Total Occupancy is 95% or above the Void Payment in respect of any Provider Void shall be 100% of the Charges and where Total Occupancy is below 70%, the Void Payment in respect of any Provider Void shall be 0% of the Charges:

Total Occupancy as a proportion of the Block Beds	Void Payment due in respect of The Provider Voids - % of the Charges
95%+	100%
90 – 94%	90%
85 – 89%	65%
80 – 84%	50%
70 -79%	35%
Under 70%	0%

SC3.3 The Total Occupancy, Provider Voids and Council Voids shall be reviewed within fourteen (14) days following the end of each successive four (4) week period commencing on a date not less than four (4) weeks from the Commencement Date and as notified by the Council during which the Council has paid for beds in advance in respect of the Block Beds.

SC3.4 The Council shall send the Provider within seven (7) days of the end of each four (4) week period:

SC3.4.1 its calculation of the actual number of days during each four (4) week period that a Provider Void or a Council Void existed; and

SC3.4.2 its calculation of any adjustment required in connection with the payment for the Block Beds for the four (4) week period immediately following the review period setting out the Charges it proposes for that period.

SC3.5 The Provider will confirm or specify its objections to the Council’s calculations within seven (7) days of receiving them.

SC3.6 For the avoidance of doubt each four (4) week period will be subject to a separate review and calculation so that the review in each four (4) week period is based on the Block Beds during that four (4) week period.

SC3.7 If the process described in SC3.3 to SC3.6 (inclusive) identifies that there is a Void Payment due (determined in accordance with the table in SC3.2 above) then the Council shall issue an invoice to the Provider for the amount of that adjustment and the Provider shall pay to the Council the sum so invoiced within thirty (30) days of receipt of the invoice.

SC4 DEPENDENCY LEVELS

SC4.1 The Parties agree that the Dependency Level capacity at each individual Establishment providing the residential and nursing Block Beds (which for the avoidance of doubt are: Hazlemere Lodge, Swan House, The Chestnuts and The Croft) is as follows:

- (a) Low Dependency: 10%;
- (b) Medium Dependency: 60%; and
- (c) High Dependency: 30%.

SC4.2 The Parties agree that the Dependency Level in SC4.1 above shall be kept under regular review to ensure that it accurately reflects the needs of the Service Users. The Dependency Level shall be updated at each monitoring meeting which takes place between the Parties in accordance with SC5 (Monitoring and Reviewing Voids) below, and the Specification, at a minimum but shall also be updated in the event that there is a change to the needs of any of the Service Users, or via agreement of the Parties in accordance with the Change Control Procedure.

SC4.3 The Dependency Tool shall determine the care hours and level of staffing required for each Dependency Level.

SC4.4 The Parties agree that the Dependency Level capacity in SC4.1 is indicative only and shall be adjusted to reflect the actual Service Users' needs from time to time and the Provider shall re-allocate staffing resource to reflect the actual needs of Service Users such that where more, or less, care hours than specified for a particular Dependency Level are utilised then the Parties shall agree an adjustment to the other Dependency Levels to balance the staffing capacity across the Service.

SC4.5 If the Dependency Levels across the Block Beds move materially (which the Parties agree is any move that is 5% or greater away from any of the three Dependency Levels identified in SC4.1), during the Term then the Parties shall work collaboratively to put in place measures to move the Dependency Levels back to those in SC4.1

SC4.6 The Parties shall keep under review the Dependency Levels at SC4.1 and any agreed change shall replace those values at SC4.1.

SC4.7 The Parties agree that the Dependency Tool shall be used to determine the staffing levels required to deliver the Services so as to satisfy the Service Users'

respective needs. Those staffing levels shall be kept under regular review as against the changing needs of the Service Users and the Parties shall use the Dependency Tool to determine whether there is any need, from time to time, to amend the staffing levels, or the Charges, or otherwise. Should any such review demonstrate that there is a need to vary the staffing levels, or the Charges, or any other element of the Services, then the Parties shall agree such a change in accordance with the Change Control Procedure.

SC4.8 Where the Council refers a potential new Service User to the Provider and the needs of that Service User are such that, when taken together with the aggregate needs of the existing Service Users in the Block Beds, the Provider does not have sufficient staff resource available to fully meet the needs of the potential new Service User, then the Provider shall be entitled to reject that referral and any resulting void in the Block Beds due to that rejected referral shall be a Council Void and not a Provider Void.

SC4.9 The Parties agree that if the Dependency Tool is not used by the Provider in accordance with the Agreement, such that the Council is unable to assess either:

SC4.9.1 the validity of any rejection of a new referral into the Service; or

SC4.9.2 any change to the needs of the Service Users which affects the Dependency Levels amongst the (at the relevant time) existing Service Users,

then all voids shall be deemed to be a Provider Void and SC3.2 shall apply until such time as the Provider begins to use the Dependency Tool in accordance with the Agreement once more.

SC5 MONITORING & REVIEWING VOIDS

SC5.1 The Parties agree that, in order to ensure that voids are monitored and reviewed in a transparent manner, in addition to contract monitoring and management provisions set out in the Agreement, the following provisions shall apply:

SC5.1.1 refusals to admit potential new Service Users to the Services who are referred by the Council will be reviewed and authorised by the CQC registered manager at each individual Establishment. The Provider shall have appropriate processes in place to ensure there is overview and scrutiny of the decisions to reject any such referral being made;

SC5.1.2 the Provider will review each potential new Service User referred by the Council; the Council will give the Provider an indicative Dependency Level for each potential new Service User it refers to the Provider; The Provider will use the Dependency Tool to assess the Dependency Level of the individual Service User and assess the

Provider's capacity to admit the Service User against the Dependency Level profile of the Establishment and advise the Council of its decision to reject the referral;

SC5.1.3 the Council will consider the Provider's reasons for rejecting any referral of a potential new Service User and may seek further information from the Provider to justify any such refusal. Should the Council consider that the Provider's reasons for rejecting any referral are unjustified then the Council may trigger a dispute in relation to such a refusal in accordance with SC6 (Managing Void Disputes) below;

SC5.1.4 The Provider shall prepare, within five (5) Working Days of the end of each calendar month throughout the Term, a report detailing all referrals made by the Council into each Establishment and any refusal to accept any such referral by the Provider (a **Refusal and Referral Report**).

SC5.1.5 The Council will review that Refusal and Referral Report within five (5) Working Days of receipt from the Provider and shall raise any questions seeking additional information, or clarifying any mistake, omission, or other error in the Refusal and Referral Report.

SC5.1.6 Should either Party consider that the Refusal and Referral report indicates that either:

(a) the Council has made insufficient referrals (whether in terms of volume of referrals (when considered against the number of empty Block Beds in any Establishment), or in terms of the appropriateness of the level of needs of any potential new Service User the subject of such referral (when considered against the current Dependency Level for the relevant Establishment)); or

(b) the Provider has made a high number of refusals (as determined in accordance with SC5.1.9 below),

then the relevant Party shall notify the other Party in writing of that fact, and its reasons for considering that to be the case, as soon as reasonably practicable, and in any event within thirty (30) days of the Refusal and Referral Report being provided to the Council and the process described in SC5.1.7 to SC5.1.9 shall apply.

SC5.1.7 where the Refusal & Referral Report shows that the Council has made insufficient referrals (as described in SC5.1.6(a) above) then, where requested by the Provider, the Council shall provide to the Provider, within fourteen (14) days, details of total number of referrals made by the Council during the period of that Refusal and Referral Report, including information which identifies those referrals made to the Provider and those made to other providers of

services the same or similar to the Services and such other information as the Council reasonably determines to explain the insufficient referrals to the Provider. The Council shall not be obliged to provide any information to the extent it would identify individual Service Users and/or would place the Council in breach of any legal obligation and/or any confidential or commercially sensitive (including pricing) information regarding referrals;

SC5.1.8 the Parties shall meet to discuss each Refusal and Referral Report in respect of which either Party raises issues in accordance with SC5.1.6(a) or (b) above; and

SC5.1.9 where the Refusal & Referral Report shows the number of refusals by the Provider across the Establishments for Block Beds are at a high level (which the Parties agree is a refusal rate that is at 25% or greater of referrals over any calendar month across the Block Beds or is less than 25% across the Block Beds but is at 50% or greater of referrals over any calendar month for an individual Establishment), then:

(a) the Parties will in the first instance have a meeting between the Authorised Representative for the Council and the Authorised Representative for the Provider. If the Parties cannot agree the steps required to reduce the number of refusals by the Provider then the following provisions at SC5.1.9(b) and (c) (inclusive) apply.

(b) the Provider shall share updated Dependency Level information including the level of care hours, staffing levels and updated Dependency Level capacity across the Block Beds and at each Establishment; and

(c) the Parties shall add an agenda item to the next series of monthly review meetings with an aim to improve the process for referrals.

(d) the Parties reserve the right to review from time to time the refusal rates that constitute a high level in accordance with this SC5.1.9. Any amendment to these must be agreed and that agreement will be confirmed in writing from the Authorised Representative for the Council to the Authorised Representative for the Provider. In the absence of any written confirmation of agreement the refusal rates set out in SC5.1.6 above shall continue to apply without amendment.

SC5.1.10 The Provider shall at all times and separately from its Refusal & Referral Report maintain a record in real time showing all Council Voids, Provider Voids and Voids Disputes. This record shall be made

available to the Council on request and prior to any review under SC4.

SC5.1.11 In circumstances where the Party responsible for a Void Bed is unclear the Parties will use all reasonable endeavours to agree the identity of the responsible Party. Where it is not possible to agree the Party responsible for a Void Bed then that will constitute a Voids Dispute which shall be dealt with in accordance with SC6 (Managing Voids Disputes).

SC6 MANAGING VOIDS DISPUTES

SC6.1 The Parties acknowledge that a Voids Dispute must be resolved swiftly and so agree that the following process and not clause 20 of the Conditions of Contract shall apply for the resolution of a Voids Dispute between the Parties:

SC6.1.1 the Council and the Provider will use all reasonable endeavours to resolve by agreement any dispute between them;

SC6.1.2 where a Voids Dispute is identified as such by either Party in writing to the Authorised Representative for the Council or for the Provider it shall initially be assessed at a contract monitoring meeting between the Parties' respective Authorised Representatives (or their respective nominees) within ten (10) Working Days of the Voids Dispute being so identified (or such other period as may be agreed between the Parties);

SC6.1.3 if the matter remains unresolved between the Parties within ten (10) Working Days of the said initial meeting, the dispute will be escalated to the Service Director for Integrated Commissioning at the Council (or a respective Service Director or equivalent role as determined by the Council) and the Provider Chief Executive;

SC6.1.4 where the Voids Dispute cannot be satisfactorily resolved within a period of ten (10) Working Days from the date of escalation in accordance with SC6.1.3, or such other period as may be agreed between the Parties in writing, then the matter may be referred to the Expert jointly identified and appointed by the Parties. The Expert shall act as an expert and not as an arbitrator;

SC6.1.5 the Parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of their appointment;

SC6.1.6 the Expert will be required to prepare a written decision including reasons and give notice (including a copy) of the decision to the Parties as soon as reasonably practicable and in any event within a maximum of one month of the matter being referred to the Expert. The Expert's written decision on the matters referred to them shall

be final and binding on the Parties in the absence of manifest error or fraud;

- SC6.1.7 the Parties will provide (or procure that their agents provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision;
- SC6.1.8 the Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Party who is unsuccessful in the Voids Dispute or as the Expert may otherwise direct;
- SC6.1.9 each Party shall act reasonably and co-operate to give effect to the provisions of this SC6 and otherwise do nothing to hinder or prevent the Expert from making their determination; and
- SC6.1.10 all matters concerning the process and result of the determination by the Expert shall be kept confidential among the Parties and the Expert;

SC7 SUSPENSION

- SC7.1 The Council may cease to refer Service Users to any or all of the Establishments in the event of adverse regulatory, safeguarding reporting or similar reasons, having regard the Policies. No Void Payments shall be due in relation to any void arising as a result of such cessation of referrals until the Council is permitted to resume making referrals (in accordance with SC7.2 below) at which point the Council shall resume payment of the Void Payment.
- SC7.2 The Council shall resume making referrals to the Establishments as soon as the matters that gave rise to the Council's concerns are resolved to the Council's reasonable satisfaction in accordance with the Policies.

SCHEDULE 2: SPECIFICATION

Tender for the Provision of Block Residential, Nursing and Extra Care Services for Adults in Buckinghamshire
Ref: 23_24 665



BUCKINGHAMSHIRE COUNCIL

Service Specifications for Purchasing of

Block Residential, Nursing Care Home and Extra Care Services

Contents

Section	
1.1	Introduction
1.2	Local context
1.3	Legislative and policy context
2.1	Service Vision
3.1	Service Objectives
3.2	The Service
3.3	Provider eligibility
3.4	Service eligibility criteria
3.5	Service availability and response times
3.6	Referrals
4.1	Nursing Care
4.2	Access to healthcare
4.3	Personal Care
4.4	Medication
4.5	Management of Falls
4.6	Nutrition and Hydration
4.7	Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS)
4.8	Provision of and Assessment of Equipment
4.9	Managing behaviours that challenge
4.10	Special Conditions
4.10.1	NHS Continuing Healthcare
4.11	Self-Funders
5.1	Outcomes and Performance Monitoring
5.2	Quality Standards
5.3	Contract Monitoring/Contract Management
5.4	PAMMS
5.5	Concerns and Serious Concerns
5.6	Safeguarding
5.7	Serious Incidents
5.8	Advocacy
5.9	Service policies and procedures
6.1	Staff Numbers & Job Roles
6.2	Employee Status
6.3	Recruiting Staff
6.4	Supervision and Annual Appraisals
6.5	Workplace Learning Culture
6.6	Induction and the Care Certificate
6.7	Leadership and management
6.8	Developing skills, knowledge, and qualifications
6.9	Safer Recruitment
6.10	Staff Wellbeing
7.1	Prevent Duty
7.2	Modern Slavery Awareness
7.3	Complaints and Compliments
7.4	Whistle Blowing
7.5	Health and Safety
7.6	Infection Control Measures – Including Covid 19
7.7	Equality and Diversity
7.8	Data Sharing and Data Protection

7.9	Information Sharing Requests
7.10	Contingency Planning
7.11	Social Value
8	Areas for development and innovation

Glossary

Best Interests Decision	Any act done or decision made for, or on behalf of, a person who lacks capacity which is done or made in his or her best interests.
Better Lives Strategy	Buckinghamshire Council’s Strategy outlining how we will help people to live healthier lives and to regain their independence, offering a little extra support when needed.
Buckinghamshire, Oxfordshire and Berkshire West (BOB) Integrated Care Board (ICB)	An Integrated Care Board (or ICB) is a statutory NHS organisation which is responsible for developing a plan for meeting the health needs of the population, managing the NHS budget and arranging for the provision of health services in a geographical area. ICBs were established in July 2022 and replaced Clinical Commissioning Groups (CCGs). The local ICB covers Buckinghamshire, Oxfordshire and Berkshire West (BOB).
Capacity	Whether a Service User can make decisions for themselves as outlined in the Mental Capacity Act (2005).
Capacity Tracker	A web-based digital insight tool built by the North of England Commissioning Support Unit (NECS) in partnership with NHS England. It enables care providers to easily and quickly share vacancy and other critical information in real time. This allows Council and the ICB to have insight across the sector.
Care Worker	An employee of the Provider who provides care and support to all Service Users.
Community Equipment	Any equipment or adaptation / aid to daily living that may help maintain / restore independence, safety and quality of life or support and sustain a caring role.
Continuing Healthcare (CHC)	Continuing Healthcare (CHC) is a fully funded package of care that some Service Users are entitled to receive because of a disability, accident or illness. If a Service User meets the eligibility threshold set out in the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care 2022 (the ‘national framework’, then it covers the full cost of their care.
Contract Manager	The Commissioner within the Buckinghamshire Council Commissioning and Procurement Hub who is the main point of contact for the Provider in relation to the agreement.
Decision Support Tool (DST)	The decision support tool (DST) is a national tool that has been developed to support practitioners in the application of the national framework. The tool is a way of bringing together information from the assessment of needs and applying evidence in a single practical format to facilitate consistent evidence-based recommendations and decision-making regarding eligibility for NHS Continuing Healthcare.
Delegated Health Task (DHT)	A delegated health care intervention, usually of a clinical nature, is a task that a registered health care professional delegates to a paid Care Worker, following appropriate assessment, training and support.
Enablement	Supporting people to recognise, develop and maximise their strengths and resources. Helping people to do things for themselves, rather than doing things for people that they can do themselves. This will enable people to achieve their desired goals and improve outcomes and wellbeing.
End of Life	A Service User in the last months/years of their life, who may have a terminal condition that has become advanced, progressive, and/or incurable.

Fall	An unintentional or unexpected loss of balance resulting in coming to rest on the floor, the ground, or an object below knee level.
Fast Track	A category under the national framework. People with a rapidly deteriorating condition, who may be entering the end-of-life phase of their illness, may need 'fast tracking' for immediate provision of NHS Continuing Healthcare.
Key Performance Indicators (KPIs)	Measures to support monitoring and oversight of service quality and the Agreement obligations for the Provider of the Services.
Least restrictive	The least possible restriction on personal liberty and the exercise of rights. Any restriction in place must be proportionate to the need of keeping the Service User safe.
Commissioning and Procurement Hub	Buckinghamshire Council's team responsible for the commissioning and Contract Management of care and support services including Care Homes.
National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (2022)	The national framework which sets out the principles and processes for deciding eligibility for CHC in England.
Outcomes Framework	Buckinghamshire Council's framework which sets out the expectations around a satisfactory level of quality that focuses on outcomes for Service Users. It establishes a structure for assuring quality that is consistent, clear, and transparent for Providers.
Personal Care	This is a regulated activity defined by CQC and involves supporting people in their home (or where they are living at the time) with things like washing, bathing or cleaning themselves, getting dressed or going to the toilet.
Person-Centred	The Service User is at the centre of everything done with and for them. Providers need to take account of Service User's wishes and needs; their life circumstances and health choices.
Referral	A written request for a bed to support Service Users with 24-hour care needs.
Risk Assessment	A systematic process of identifying hazards and evaluating any associated risks for a Service User, then implementing reasonable control measures to remove or reduce them.
Self-funder	A Service User that pays for their own care as they have savings above the upper capital limit as outlined in the Care Act (2014).
Strengths-based	Considering a Service User's strengths and networks, focusing on what is most important to them.
Care plan	A document setting out the support a Service User requires in order to achieve specific outcomes and meet assessed needs.
Technology Enabled Care	Any device or system that allows a Service User to perform a task that they would otherwise be unable to do or increases the ease and safety with which the task can be performed.
Twelve Week Disregards	Refers to the first twelve weeks of care received after entering a Council funded residential or nursing home on a permanent basis in order to give time to decide with regards to their owned property and how they will meet the cost of future care needs.

Key Acronyms

BAME	Black, Asian, and Minority Ethnic
BCP	Business Continuity Plan
CHC	Continuing Healthcare
CQC	Care Quality Commission
DBS	Disclosure and Barring Service
DoLs	Deprivation of Liberties Safeguards
DSPT	Data Security and Protection Toolkit
HCPC	Health and Care Professionals Council
FNC	Funded Nursing Care
LGBTQ	Lesbian, Gay, Bisexual, Transgender and Queer
MCA	Mental Capacity Act
MHRA	Medicines and Healthcare products Regulatory Agency
MUST	Malnutrition Universal Screening Tool
NICE	National Institute for Health and Care Excellence
NMC	Nursing and Midwifery Council
NMS	New Medicines Service
NOK	Next of Kin
PAMMS	Provider Assessment and Market Management Solution
PIN	Professional Identification Number
POA	Power of Attorney
PPE	Personal Protective Equipment
PRR	Provider Risk Rating
SMH	Stoke Mandeville Hospital
WPH	Wexham Park Hospital

1. Introduction

1.1. Introduction

- 1.1.1 This Service Specification forms part of the Agreement between Buckinghamshire Council (“Buckinghamshire Council”) and the Provider (“the Provider”) for the provision of residential and nursing services for Service Users of Buckinghamshire (“the Services”). The Council is the responsible organisation for the overall delivery of the Agreement.
- 1.1.2 Nothing contained in this Service Specification and its appendices absolves the Provider from complying with any law, standards, practices, or such like applicable to the performance of the Services. In performing the Services, the Provider shall be required, as a minimum, to comply with all applicable law irrespective of whether such requirements are expressly referred to in this Service Specification or the Agreement, including all appendices.
- 1.1.3 This Service Specification sets out the requirements for the provision of block residential, nursing and extra care beds which are purchased by the Council in the following establishments:
- The Chestnuts and Willowmead Court- Lavric Road, Aylesbury
 - The Croft- The Penningtons, Chestnut Lane, Amersham
 - Hazlemere Lodge and St James Court- Barn Lane, Hazlemere, High Wycombe
 - Swan House and Swan Court- High Street, Winslow

The Provider will provide high quality and person-centred support and care for people assessed by Buckinghamshire Council or the Integrated Care Board (ICB) as being eligible for health and social care support under the provisions of The Care Act 2014 and The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care 2022.

- 1.1.4 The Services will be provided by a Care Quality Commission (CQC) Registered Provider. Under the Health and Social Care Act 2008, providers of health and adult social care services must, by law, register with CQC if they carry out a regulated activity (as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006)¹.
- 1.1.5 This Service Specification sets out the general background and principles underpinning service provision, details outcomes for Service Users, the objectives the Provider is expected to meet in delivering services in accordance with this Agreement, and a clear framework for monitoring and Agreement compliance. The Provider is also required to deliver care and support in accordance with the requirements contained within the following:
- Terms and Conditions
 - Financial Schedule

1.2. Local context and demand

- 1.2.1 Buckinghamshire is a long, thin, rural county. It is over 60 miles end to end. The northern part of the county (north of Aylesbury) is rural with several small, dispersed villages. Population estimates from 2020 puts the total population of Buckinghamshire at 545,900 with 19% of those aged over 65. This is projected to increase to 123,500 (21.9%) by 2030.²

¹ [Safeguarding Vulnerable Groups Act 2006 \(legislation.gov.uk\)](https://legislation.gov.uk)

² <https://poppi.org.uk/>

1.2.2 The largest population can be found in the former district area of Aylesbury Vale (36%), followed by Wycombe (33%), Chiltern (18%) and finally South Bucks (13%). Projections show that Buckinghamshire is expected to see 32.5% growth in the 65+ population and a 42.8% growth in the 75+ population by 2042.³ The county is facing significant housing growth in the coming period. Housing projections assume growth of 42,773 new homes to be built between 2013 and 2033⁴.

1.2.3 Buckinghamshire is predominantly served by two acute hospitals - Wexham Park Hospital (WPH), Slough, operated by Frimley Health NHS Foundation Trust, serves the south of the county; and Stoke Mandeville Hospital (SMH) operated by Buckinghamshire Healthcare NHS Trust serves predominantly north and central Buckinghamshire. Buckinghamshire is also served by three non-acute hospitals: Buckingham, Amersham, and Wycombe Hospitals. The Whiteleaf Centre, in Aylesbury, is the mental health inpatient facility. Service User on the county's borders may visit neighbouring acute sites e.g., John Radcliffe in Oxford or Milton Keynes Hospital.

1.2.4 Buckinghamshire Council procures residential and nursing care for 1,059 older people (February 2025) on a spot or block basis (spot 692; block 367).

- 431 (41.4%) are nursing, 621 (58.6%) are residential
- 628 (59.3%) are specialist residential or nursing (dementia), 431 (40.7%) are standard
- 69% have physical support as their primary need. 14% have memory and cognition as their primary support need.

1.2.5 The majority of the county's residential and nursing care capacity is in Aylesbury (24%) and High Wycombe (17%), which corresponds to the two major population towns.

1.2.6 The effects of the pandemic meant that there was a decline in need for residential and nursing care between 2020-2021. However, recent projections based on population data and Adult Social Care market analysis anticipates the following demand.

1.2.7 Residential Care

It is estimated that the demand for residential care is likely to maintain at the current level, but the number of people with dementia will increase in Buckinghamshire, therefore, the Council will need to purchase more Residential Dementia services.

1.2.8 Nursing Care

We anticipate that the demand is likely to increase because of an increase in the 85+ population; an increasing 85+ population will have higher prevalence of complex care and health needs, including increasing prevalence of dementia related needs.

1.3 **Legislative and policy context**

1.3.1 Services purchased under this Agreement must provide care and support that complies with but is not limited to Law and Good Industry Practice, the values, standards, and objectives set out in the following strategies, policies, legislation, frameworks and best practice guidance (as amended and updated from time to time). These documents are either available on the Council's website, at www.gov.uk or will be provided to you at the start of the contract.

³ Housing LIN Adult Social Care Accommodation Market Analysis 2022

Strategies and Market Position Statements
Buckinghamshire Joint Health and Wellbeing Plan 2022-2025
Buckinghamshire Council Corporate Plan 2020-2025
Buckinghamshire Council Better Lives Strategy (2022 – 2025)
Buckinghamshire Council Equality Policy 2020 - 2024
Buckinghamshire Adult Social Care Market Analysis 2022
Buckinghamshire Equipment in Care Homes Protocol
Buckinghamshire Council Medications Guidance
Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board Guidance on medications management in Care Establishments.
Buckinghamshire Council Falls Guidance
Quality Monitoring Framework for Commissioned providers
Buckinghamshire Council Concerns and Serious Concerns Procedure
Legislation
Health and Care Act 2022
Health and Social Care Act 2008
The Mental Health Act 1983
Mental Capacity Act 2005
Mental Capacity (Amendment) Act 2019
Equalities Act 2010
The Human Rights Act 1998
Care Home Regulations 2001
The Regulatory Reform (Fire Safety) Order 2005
Frameworks and Policies
Enhanced Health in Care Home
NHS Continuing Healthcare and NHS Funded Nursing Care (2022 – revised)
Adult Social Care Outcomes Framework (2018/19)
Hospital Discharge and Community Support Policy and Operating Model (March 2022)
Coronavirus Guidance

People at the heart of care: Adult Social Care Reform White Paper
Buckinghamshire Council Charging Policy for Residential Services
Best Practice Guidance and Resources
Buckinghamshire Safeguarding Adults Board
National Institute for Health and Care Excellence (NICE)
NHS Long Term Plan
White Paper: Integration and innovation: working together to improve health and social care for all (2021)
Regulatory Bodies
Health and Safety Executive
Care Quality Commission
Health and Care Professionals Council (HCPC)
Nursing and Midwifery Council (NMC)
Medicines and Healthcare products Regulatory Agency (MHRA)

1.3.2 The Provider will actively ensure they are up to date with current government and other regulatory bodies’ guidance, including public health. They will work with Buckinghamshire Council and other relevant regulatory bodies if support is required with interpretation and application of guidance and will make changes to practice, procedures, and processes as appropriate to reflect any changes in government guidance. The Provider will share good practice where appropriate to support the wider market.

1.3.3 In addition, Opportunity Bucks⁵ is the council’s flagship programme to improve opportunities for people in Buckinghamshire. Responding to the government’s Levelling Up agenda, it seeks to address the reality that Buckinghamshire, like everywhere, has areas of affluence and other areas where health, work and education outcomes are poorer.

1.3.4 In particular, the Opportunity Bucks programme identifies 10 wards across 3 areas where people experience the most hardship.

- Aylesbury - Aylesbury North, North-West and South-West;
- Chesham
- High Wycombe – Abbey; Booker, Cressex & Castlefield; Ryemead & Micklefield; Terriers & Amersham Hill; Totteridge & Bowerdean and West Wycombe

1.3.5 The ambition for the Opportunity Bucks programme is to improve opportunities for all, making sure that the people living in the 10 identified wards can access the same level of opportunity that people in other parts of the county benefit from.

1.3.6 The programme hopes to achieve the following:

- a good quality job, that pays enough money to support a decent quality of life
- good standard of attainment and skills
- learning and career progression
- good mental and physical wellbeing and independent living
- a decent, warm home and good quality food

⁴ [Opportunity Bucks | Buckinghamshire Council and Appendix 1 for Buckinghamshire Levelling Up Framework.pdf \(moderngov.co.uk\)](#)

- involvement in shaping their community, with strong social connections
- a feeling of being safe where they live
- pride in where they live.

1.3.7 Some of the establishments relevant to this contract are within the Opportunity Bucks areas; so the Provider will be required to work proactively with the Council, its partners and the communities living and working in these wards to:

- Contribute to or create new projects which share the objectives of the Opportunity Bucks programme; and/or
- Develop or enhance existing projects to support people living and working in the identified wards experiencing significant hardship.

2.1 Service Vision

2.1.1 The Commissioning and Procurement Hub commissions high quality and value for money health, social care, and prevention services to enable Buckinghamshire Service Users of all ages to access the right services, in the right place at the right time. We do this by:

- Putting people at the center of everything we do through actively listening, engaging, and focusing on outcomes
- Developing open, honest, and collaborative relationships with Providers, Service Users and their families, and stakeholders
- Acting as a catalyst for Change and integration by encouraging innovation
- Following an ethical, evidence-based, and inclusive approach which seeks to reduce inequalities and improve outcomes
- Supporting resilience and improvement and measuring impact
- Investing in our own staff by developing and sharing knowledge and skills and recruiting new talent

2.1.2 This Service Specification sets out the requirements for the purchasing of block Agreement services.

“Our goal is to reduce inequalities and give everyone the support and skills they need to live independent, happy, and fulfilling lives... We want...our older, disabled and vulnerable people to receive the right support, at the right time”⁶

3. Service to be provided

3.1 Extra Care

3.1.1 **Appendix 1** Sets out the specific requirements of the delivery of the extra care element of this specification. The following sections of this specification are relevant to the delivery of extra care but are not repeated in Appendix 1.

- Section 1
- Section 2
- Section 4.7
- Section 5
- Section 6

⁶ [Corporate plan | Buckinghamshire Council](#)

- Section 7
- Section 8
- Appendix 2
- Appendix 3
- Appendix 4

3.2 Service Objectives

3.1.1 The Provider will need to adhere to the following set of objectives which will govern how they work with Buckinghamshire Council, stakeholders/partners, and Service Users. The Provider should be able to provide evidence of how they comply with the objectives through the life of the Agreement. There is a requirement for all these objectives (which are designed and intended to operate alongside both the outcomes set out in **Appendix 2** and the Key Performance Indicators set out in **Appendix 3** such that delivery against one element shall facilitate delivery against the others) to be achieved by the Provider throughout the life of the Agreement.

<p>A high quality, Establishment environment</p>	<p>Accommodation in the Establishments will comprise a single room (unless the Service User has stated they wish to share a room). There must be access to a toilet, a bath or shower, whichever meets the Service User’s need, full board, personal care, routine access to primary health care and access to secondary or tertiary care according to the Service User’s needs. Supervision will be provided on a 24-hour basis and a range of stimulating meaningful activities will be available, that will be discussed and agreed with the Service Users and families or carers and reflect their needs and preferences.</p> <p>The environment should be kept to a high standard of cleanliness and safety.</p>
<p>A highly skilled, resilient, competent, and stable workforce</p>	<p>Services will be delivered by appropriately qualified Managers, Nurses and Care Workers, who will be competent to do the job. The Provider will demonstrate a commitment to staff development, career progression and strategies which support workforce recruitment, retention, and wellbeing.</p> <p>The Provider will comply with the legal requirements for recruiting and retaining staff and to operate safe working practices. The Provider will present evidence of analysis of training needs and a delivery of a training plan. The provider will provide the appropriate level of training to develop a skilled and competent workforce.</p>
<p>Person-centred, outcomes-based support</p>	<p>People will be seen as individuals and placed at the centre of decisions around planning, developing, and monitoring care to make sure it meets their needs. They will be listened to and will exercise choice and control regarding how and when they receive support.</p> <p>The Provider will work alongside Service Users and their families to develop appropriate care plans which take account of the Service Users’ strengths and abilities as well as their desires, values, aspirations, family situations, lifestyles, and their definition of quality of life. Outcomes will be defined by the Service User or those appointed to look after their best interests. The Provider will use a recognised methodology for measuring outcomes and goals.</p>

	Where the Service User may not have capacity for a decision about their care, the Provider will apply the Mental Capacity Act 2005 (MCA), informed by the MCA Code of Practice and relevant case law. The requirements around MCA are set out in section 4.7 of this Specification.
Promoting Independence and Enablement	The Provider will have an enabling approach, using strengths-based practices designed to maximise the independence of Service Users and enhance their skills. The Provider will provide care in the least restrictive and most empowering way.
Flexible Provision	The Provider will be flexible to provide the relevant level of care to meet the assessed needs of the Service User. The Provider will also work collaboratively with Commissioners to support future development opportunities linked to Buckinghamshire Council’s commissioning strategy.
Trust and Reliability	The Provider will deliver the Services which have been specified and demonstrate a proven track record of providing quality, timely and right-size care which affords Service Users and their families and carers with the confidence to plan and live their lives.
Value for Money	The Provider will be able to demonstrate their value for money offer throughout the life of the Agreement through innovative, efficient and proactive approaches to Service delivery.
Financial Standing	The Provider will be required to evidence good financial standing at the point of this Agreement being implemented and throughout the life of the Agreement. The Provider will have an open and transparent relationship with Buckinghamshire Council in respect of its financial matters and will supply documentation to support its ongoing financial viability and continuity of service.
Co-production	The Provider will work with Service Users to ensure that they influence the support and the Services they receive. The views and thoughts of Service Users and their families will be routinely sought and will influence the design and delivery of Services and Service developments.
A Core Focus on Safeguarding	The Provider will demonstrate excellent practice around safeguarding vulnerable Service Users. They will support Service Users to live free from harm, abuse, and neglect. The Provider will be able to demonstrate their procedure for working with the Council’s Early Resolution and Safeguarding Team for escalation of queries and raising incidents.
Dignity and Respect	<p>The Provider will demonstrate recognition of the intrinsic value of people, regardless of circumstances, by respecting their uniqueness, their personal needs, and their right to be treated with respect.</p> <p>The privacy, dignity and respect of Service Users will be always maintained, especially if Service Users have requested a shared room.</p> <p>The Provider will ensure that Managers, Nurses, Care Workers and all other staff employed within the organisation will operate and demonstrate compliance with their relevant regulatory body e.g., NMC or HCPC and Standards of Conduct Performance and Ethics.</p>
Privacy	The Provider will respect the right of Service Users to expect sensitivity and confidentiality in the support of personal matters (with the exception of safeguarding concerns) and confidentiality in dealing with information about them as well as working in line with relevant Data Protection Legislation. It is a requirements that the Provider will comply with the requirements of the Data Protection Toolkit Resources available for the Data Security and Protection Toolkit (oacp.org.uk)

Equality	The Provider will ensure Service provision is responsive and sensitive to ethnicity, gender, disability, sexual identity age, religion, sexual orientation and marital/civil partnership status, culture, lifestyle, values and social circumstance. The Provider will ensure it and its workers do not discriminate against people in any way, including on any of these grounds.
Community Integration	The Provider will ensure Service Users are supported to be part of their local community in which their accommodation is based. This may include intergenerational opportunities, events held at the Establishment attended by members of the community, supporting, and facilitating cultural and religious needs, and suitable activities taking place within the community.
Use of Technology Enabled Care	<p>The Provider will be innovative in the use and development of technology to maximise independence for Service Users and reduce the need for more restrictive support methods.</p> <p>The Provider will work in partnership with Buckinghamshire Council's Technology Enabled Care service as appropriate, utilise the Immedicare Service for virtual health consultations, and Restore 2 to monitor physical deterioration.</p>
Effective Partnership Working	The Provider will be required to evidence effective partnership working with stakeholders across the system, building strong relationships to support the effective use of health services, reduce avoidable admissions and enable appropriate and timely hospital discharge. This will be reflected at the Service User client level in the Service User's care plan.

3.2 The Services

3.2.1 This Specification is for the delivery of care and support to Service Users at the following settings:

1. The Croft care home is a 60 bed residential Establishment. Included within the block Agreement are 25 residential and 27 Residential Dementia beds. The remaining 8 beds are available for the Provider to use at their discretion. The home was last inspected by CQC in January 2022 and is rated Good.
2. The Chestnuts care home is a 64 bed residential Establishment. Included within the block are 16 residential and 27 residential dementia beds. The remaining 21 beds are available for the Provider to use at their discretion. Willowmead Court is a 12 unit Extra Care facility adjoined to the care home and all 12 beds are included in the block contract The home was last inspected by CQC in April 2019 and is rated Requires improvement.
3. Hazlemere Lodge care home is a 64-bed residential Establishment with nursing. Included within the block Agreement are 32 Nursing beds, 16 residential beds. The remaining 16 beds are available for the Provider to use at their discretion. St James Court is a 12 unit Extra Care facility adjoined to the care home and all 12 beds are included in the block contract. The home was last inspected by CQC in November 2019 and is rated Good.
4. Swan House care home is a 32 bed residential Establishment. Included within the block are 10 residential and 8 residential dementia beds. The remaining 14 beds are available for the Provider to use at their discretion. Swan Court is a 12 unit Extra Care setting adjoined to the Care home and all 12 beds are included in the block contract.. The home was last inspected by CQC in October 2021 and is rated Requires improvement.

3.2.2 **Appendix 5** sets out a definition and description of services to be provided under each of the categories.

- Nursing care
- Residential care
- Enhanced Residential Care

3.3 Provider Eligibility

3.3.1 Any Provider who wishes to provide residential and nursing care must be registered with the Care Quality Commission. The Provider must have a good track record and be rated by CQC as 'Good' or above in 50% of their registered service portfolio or be registered 'Good' or above if they only have one other service.

3.3.2 If there are concerns around safety and quality and/or any of the registered services in Buckinghamshire receive a rating of 'requires improvement' or 'inadequate' during the life of the contract, Buckinghamshire Council will evoke their Concerns and Serious Concerns Procedure which could lead to a suspension of referrals while the concerns are being addressed.

3.3.3 The Provider must have in post a registered person or Director who must have the qualifications, competence, skills, and experience necessary for the role. They must not have been responsible for any serious misconduct or mismanagement while carrying out a regulated activity.

3.4 Service eligibility criteria (n.b eligibility criteria for extra care is set out in Appendix 1)

3.4.1 The Service shall be delivered to Service Users who satisfy the following eligibility criteria:

- 65+ years old
- Meet the eligibility requirements and criteria in The Care Act 2014 and associated statutory guidance and regulations following an adult social care assessment
- For nursing beds, meet the eligibility requirements for NHS Funded Nursing Care in the National Framework for NHS Continuing Healthcare and NHS funded Nursing Care 2022 following an eligibility decision
- Are referred to the Provider by Buckinghamshire Council Commissioning and Procurement Hub
- Are ordinarily resident in Buckinghamshire

3.4.2 The Provider must demonstrate sound knowledge of the support needs of Service Users within the Service including:

- Older people (65+) including those with dementia
- Adults with a learning disability
- Adults with physical disabilities
- Adults with sensory disabilities
- Adults with mental health needs
- Adults with Autism
- Adults with substance dependency needs
- End of life care services

3.4.3 The Provider must also support Service Users who may have a combination of the above needs. Buckinghamshire Council reserves the right to alter the eligibility criteria when considering future requirements.

3.5 Service availability and response times

3.5.1 The Provider is required to deliver the Services 24 hours a day, for 365 days a year, including bank holidays and public holidays as required to meet the needs of Service Users within the care Establishment.

3.6 Referrals

3.6.1 The Commissioning and Procurement Hub will review each Service User referral prior to sharing with the Provider to ensure it meets the eligibility criteria for a block bed. Block bed vacancies are always considered first before considering other procurement approaches (e.g. spot). Block beds are not considered for Twelve Week Disregards and cannot be used for self-funders.

3.6.2 The Commissioning and Procurement Hub will contact the service to identify whether a suitable vacancy is available. The referral and the Buckinghamshire Council screening tool (**Appendix 6**) will be emailed securely to the registered manager and a named deputy.

3.6.3 The Provider will use the referral information to consider if they are able to meet the needs and outcomes of the Service User. If the Provider feels they can meet the needs and outcomes of the Service User, they will undertake an assessment to determine if the person is suitable for the Service. This will often include family/next of kin formally viewing the Establishment.

3.6.4 If the Service User is suitable for the Service, the Provider will inform the Commissioning and Procurement Hub and the placement will be finalised. A purchase order will be sent to the Provider to confirm the placement. If the Provider declines the referral, they must clearly state the basis on which they cannot accept the placement. All refusals data shall be sent to the Commissioner with the outcome of the assessment.

4. Health care

4.1 Nursing Care

4.1.1 Nursing staff must have maintained and regularly updated their nursing skills in accordance with NMC guidelines and have met the revalidation guidelines.

4.1.2 Nursing staff must hold a valid Professional Identification Number (PIN) and the Provider should keep records including dates of revalidation for each member of nursing staff. Nursing staff must be trained in the use of the equipment as set out in the MHRA publication MDA DB 9801 and the Care Home Regulations 2001

4.1.3 Nurses must be able to demonstrate that they have maintained all competencies and continued to develop professionally, meeting NMC requirements for registration and (as appropriate) revalidation. The Provider must be able to demonstrate policies, which facilitate these professional nursing standards.

4.2 Access to Healthcare

4.2.1 All new admissions should receive baseline assessments that include detailed assessment of weight, Malnutrition Universal Screening Tool (MUST), Clinical Frailty scale⁷, falls risk, nutritional risk, communication, cognitive function, skin integrity, medication requirements,

⁷ [Clinical Frailty Scale — Specialised Clinical Frailty Network \(scfn.org.uk\)](http://scfn.org.uk)

moving and handling requirements, sleep and continence needs. The expectation is that these are all reviewed regularly and in line with any changes to the Service User's needs. This will be checked as part of routine contract monitoring visits.

- 4.2.2 There is an expectation that the Provider will use the Telemed service (Immedicare) and the linked GPs through ward rounds where the healthcare need is not an emergency to discuss health concerns and access the appropriate clinical advice. The Provider can access the Multi-disciplinary Day Assessment Unit (MuDAS) where the GP has referred, or a quick clinical assessment is needed.
- 4.2.3 It is required as part of this Agreement that the Provider registers and utilizes the Telemed service and RESTORE 2. Registration is at no cost to the Provider and full training on how to use these services will be provided.

4.3 Personal Care

- 4.3.1 Personal care is where Care Workers and Nurses support people in their Establishment with things like washing, bathing, or cleaning themselves, getting dressed or going to the toilet. The Provider shall help and/or prompt the Service User with personal care and treatment sensitively, discretely and in a way that maintains their dignity and privacy and in line with the Service User's Care plan. This must include use of essential toiletries (i.e. soap, shampoo, toothbrush and toothpaste as a minimum), which the Provider must deliver as part of the core service and at no additional cost to the Service User. The Provider will instruct and train staff on how to aid in bathing or providing full body washes.
- 4.3.2 Specific arrangements must be safe and promote the privacy of the Service User. Care Workers and Nurses will assist with food and fluid intake when needed due to physical, psychological, or emotional ill-health, understand potential swallowing difficulties and their risks. The Provider will use food and fluid charts where appropriate and required by the care plan.
- 4.3.3 The Provider shall work with the Service User to support them to carry out personal care tasks for themselves to as great a degree as possible, and which remains appropriate and safe for the Service User, depending on their needs and abilities. Personal care tasks includes the following:
- getting up or going to bed;
 - transferring from or to bed/chair/toilet;
 - washing and bathing using equipment if necessary, shaving and hair care, denture and mouth care, hand and fingernail care, foot care (excluding any aspect of nail care which requires a state registered chiropodist or podiatrist, surgical or cosmetic procedures);
 - accessing toilet facilities, including necessary cleaning and safe disposal of waste/continence pads;
 - emptying or changing catheter or stoma bags where this is an existing care requirement and associated monitoring;
 - skin care such as moisturising very dry skin;
 - skin inspection to identify any pressure or moisture damage;
 - deciding what to wear for the day;
 - dressing and undressing;
 - putting on appliances with appropriate training for example leg calliper, artificial limbs and surgical stockings and assistance with visual and hearing aids e.g. glasses care, hearing aid battery checks;
 - dealing with correspondence;

- accessing social activities, both in-house and externally;
- settling for the night when Service User need and/or want;
- managing medication;
- accessing timely health appointments as required;
- managing health;
- eating and drinking and monitoring and recording weight;
- monitoring food and fluid balance if there is an assessed need

4.3.4 Where a Service User requires assistance through pressing a call alarm, the Provider shall respond as soon as possible and with an immediate response to emergency alarms.

4.4 Medication

4.4.1 The Provider shall ensure that staff who provide support with any aspect of the medication administration processes are appropriately trained and competent to do so. Such staff must receive annual, accredited as best practice and appropriate training in the safe handling of medication, and will have their competency in practice assessed periodically (at least annually). The Provider must ensure the continuity of medication for Service Users through effective communication and co-ordination with permanent carers.

4.4.2 The Provider shall ensure that:

- There are policies and procedures in place for all medicines used within the Establishment including controlled drugs, refrigerated medicines, Establishment remedies, medicines for internal and external use and dressings
- Staff adhere to the policies and procedures for obtaining supplies of medicines, receipt, recording (on MAR sheets and Care plans), storage (particularly controlled drugs and refrigerated items), handling, administration, and disposal of medicines in accordance
 - with:
 - a) The Handling of Medicines in Social Care Settings by The Royal Pharmaceutical Society of Great Britain 2007 or subsequent revisions;
 - b) Buckinghamshire Council Medicines Management Guidance document
 - c) Integrated Care Board Medications Management in care homes guidance
 - d) Professional advice documents produced by the Care Quality Commission, including The Administration of Medicines in Care Establishments, Medicine Administration Records (MAR) In Care Establishments and Domiciliary Care, and the Safe Management of Controlled Drugs in Care Establishments or subsequent revisions
 - e) The Misuse of Drugs Act 1971 (Modification) Order 2001.
 - f) The Health and Social Care Act 2008 (regulated activities) Regulations 2014. Regulation 12, Managing Medicines in Care Establishments 2014 NICE Guidance (SC1)

4.4.3 The Provider's policies and procedures for medicines management must be made available to all GPs providing services to the Establishment upon request. The Provider shall seek information and advice from a pharmacist regarding medicines policies within the Services and medicines dispensed for Service Users in each Establishment. The Provider's policy for medicines administration shall include procedures to ensure that Service Users are able to take responsibility for and self-administer their own medication if they wish, within a risk management framework, and the Provider's policies and procedures must protect Service Users in doing so.

4.4.4 Prescribed medication shall be administered in a format suitable for the Service User, with the Service User's consent where the Service User has capacity to give this. Where the Service User lacks capacity for treatment decisions, a covert medication protocol will be

developed with the Service User's GP and the pharmacist. The Provider shall have procedures for dealing with verbal orders from prescribers; giving medicines to Service Users with difficulties in swallowing; for covert administration and crushing tablets; expired medicines and for adverse drug reactions. The Provider, where appropriate, shall have a system in place to ensure that anticipatory end of life drugs can be prescribed and stored in the Establishment for Service Users who have reached the last days of life. The Provider shall ensure that staff monitor the condition of the Service User on medication and shall prompt a medication review with the GP if there are concerns relating to use of medicines.

- 4.4.5 The Provider will have a system in place to ensure that Service Users have medication reviews. The CQC and NICE state that the frequency of medication reviews shall be based on the health and care needs of the Service User but at a minimum once a year. Safety of the Service User shall be the most important factor when deciding how often to do the review. The frequency shall be recorded in the Care plan.
- 4.4.6 Medicines prescribed for Service Users shall not be supplied, administered, dispensed to, or used by any other person.
- 4.4.7 The Provider must ensure that staff adhere to controlled drugs procedures. The Provider shall have procedures to safely manage the transfer of medicines when a Service User transfers to another health/social care setting; returns from hospital stays, is newly admitted or passes away.
- 4.4.6 The Provider shall have procedures in place to deal with errors or incidents relating to any aspect of medicines management. Safe procedures shall be put into place to ensure security regarding keys to medicines cupboards, trolleys, and controlled drugs cabinets.
- 4.4.7 The Provider shall make the necessary arrangements in accordance with regulatory requirements for the disposal of medical waste.
- 4.4.8 The Provider must ensure that staff are appropriately trained in all aspects of safe handling and use of medicines appropriate to their role and that staff training must be documented. Staff must be competent in undertaking the medicines related tasks delegated to them and appropriate competency assessments must be in place.
- 4.4.9 The Provider shall maintain adequate records including, but not limited to:
 - A medication Administration Record (MAR)
 - Medication administered per Service User (except those for self-administration)
 - Medicines that the Service User stores and self-administers (following a risk assessment)
 - A "Controlled Drugs (CD) Register" for recording:
 - The receipt, administration and disposal of controlled drugs schedule 2, in a bound book with numbered pages
 - The balance remaining for each product
 - The Provider shall facilitate access to the BOB ICB Medicines Management Team in carrying out medicines audits in nursing and residential care establishments in Buckinghamshire on behalf of Buckinghamshire Council.

4.5 Management of Falls

- 4.5.1 The Provider should include a falls risk assessment as part of a holistic assessment process and have a policy in place to determine how falls risks will be assessed and managed. This should include how to get the Service User from the floor when they have fallen, and when

to call for additional support. The Provider should review risk assessments at a minimum monthly and adhere to Buckinghamshire Council Falls Guidance document.

- 4.5.2 The Provider shall assess all Service Users for risk of falls within 24 hours of admission and record the outcome in their care plan. Those Service Users, who are vulnerable to falls, shall be actively supported by their key worker or equivalent member of care/nursing staff to reduce/prevent the risk of a fall occurring and thereby supporting a reduction in unnecessary emergency admissions to hospital related to falls.
- 4.5.3 Staff should be offered training and support on how to undertake a physical activity assessment with a Service User and develop a personalised physical activity plan on admission to the Establishment. The Provider should train staff on falls prevention and management and physical activities.
- 4.5.4 The Provider shall maintain a falls register recording such information as the causes of falls (injurious or otherwise) and regularly audit the register to understand event patterns and to ensure that necessary actions are taken to reduce falls within the Establishment. Information on falls and the management of falls will be provided to the Contract Manager through regular Agreement monitoring.

4.6 Nutrition and Hydration

- 4.6.1 The Provider shall provide a full kitchen service for each Establishment which includes three full meals a day and access to food outside of regular mealtimes for all Service Users including those Service Users who are absent or unwell at the time the meal is served. Meals shall have sufficient nutritional value, be culturally specific for each Service User where required and be of sufficient portion size to enable the Service User to maintain a healthy balanced and consistent weight. The Service Provider will seek advice from Healthcare Professionals with any areas of concern and maintain a minimum level 4 food hygiene rating. Alcohol should be available on site for Service Users to request.
- 4.6.2 In accordance with the individual needs of Service Users, the Provider shall:
- Operate a flexible approach to nutrition and hydration which addresses healthy food choice
 - Work with healthcare professionals to ensure nutrition and hydration related health needs are known and recognised
 - Use the Malnutrition Universal Screening Tool (MUST), the recognised industry standard
 - Have a robust Food First Policy to ensure prescriptions to dietary supplements for Service Users are only used where absolutely necessary
 - Address weight management issues to prevent diabetes

4.7 Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS)

- 4.7.1 The Provider shall work within the principles of the Mental Capacity Act (2005) and its Code of Practice to understand best practice and including interest decision making.
- 4.7.2 The Deprivation of Liberty Safeguards (DoLS) are to be replaced by the Liberty Protection Safeguards (LPS) although the implementation schedule is not yet known. There may also be a period of overlap, when the two schemes are running side by side. The Provider shall stay informed and work closely with the relevant responsible bodies involved in implementing the new law to ensure that the Provider's responsibilities are known and complied with as

defined by the Mental Capacity (Amendment) Act 2019 (MCA), its accompanying Code of Practice, Regulations and local NHS or Council policies and procedures.

- 4.7.3 Whilst DoLS remains in force, the Provider must understand its responsibilities under the DoLS addendum to MCA and the Deprivation of Liberty Safeguards Code of Practice. The Provider shall have a policy in place in line with the MCA and DOLS Codes of practice. Information shall routinely be provided to Service Users, their families and friends about the Mental Capacity Act 2005, Deprivation of Liberty Safeguards and Liberty Protection Safeguards when it comes to force. Information must be included about the right of a concerned person to bring to the Provider's attention that there shall be an application for a Deprivation of Liberty or Liberty Protection Safeguards authorisation, and what else they could do if the Provider did not agree.
- 4.7.4 The Provider shall have a system in place to ensure that the role of representative under Deprivation of Liberty Safeguards is carried out adequately in line with the guidance in the Deprivation of Liberty Code of Practice 7.25 – 7.28.
- 4.7.5 The Provider shall have a procedure in place that identifies:
- How restraints are recorded to ensure that they are in an Service User's best interests in each case
 - How to identify when these restraints constitute a Deprivation of Liberty in line with current case law and guidance
 - Whether they have taken all practical and reasonable steps to avoid deprivation of liberty
 - When to implement an Urgent Authorisation
 - How to apply for a Standard Deprivation of Liberty Authorisation
 - Who would be the authorised applicant (the Registered Manager in an Establishment)
 - A prompt response to eligible persons concerned that there may be a Deprivation of Liberty
 - How to implement any conditions
 - How and when to request a review of a standard authorisation
 - How they would monitor and record the representative's contact with the Service User
 - What governance processes are in place to evaluate the procedures, duties, referral rates and authorisations.

4.8 Provision of and Assessment of Equipment

- 4.8.1 The care Establishment should have hospital beds throughout the Establishment and have in place basic moving and handling equipment, mobility aids and adaptations. For those items of non-standard equipment as defined by the latest Buckinghamshire Equipment in Care Establishments Policy, the Provider is expected where necessary, to request the loan of a piece of equipment. This will ensure that the needs of the Service User are met. When the items are no longer required by that Service User, the Provider must return the equipment within 7 days. The Provider is required to contact the Integrated Community Equipment Service, and request collection.
- 4.8.2 Equipment specific to Occupational Therapy or minor aids and adaptations are assessed for, and provided by, Buckinghamshire Council's Occupational Therapy team. The Provider will be responsible for making referrals to the Occupational Health Team and facilitating and supporting these assessments.

4.9 Positive Behaviour Support

- 4.9.1 The Provider must have a policy to positively engage and support Service Users who show behaviours that challenge, reflective of relevant legislation and guidance and good practice. The Provider must be aware of and have plans for known behaviour that challenges and the triggers, in the Service User's Care plan. The Provider shall take all reasonable endeavours to maintain a safe environment. The Provider will develop supportive environments and skills that can enhance a Service User's quality of life.
- 4.9.2 There is an expectation that the service will be staffed in a way that meets the needs of residents 24 hours a day 365 days per year. Only in exceptional circumstances should the use of extra support be considered over and above core staffing for support e.g greater hours of 1:1, 2:1 or higher. A request should be made for extra support where a Service User displays extreme behaviour that challenges which cannot be managed through the core staffing requirement.
- 4.9.3 The request should be sent in writing to the Council's Adult Social Care team and supported with a clinical rationale including evidence of behaviour charts, care plans and risk assessments. One to ones should not be used to manage other activity e.g falls, wandering etc. Any request for enhanced observations will be a temporary agreement for a specific reason with clear review dates.
- 4.9.4 The Provider will provide Service Users with the opportunity to engage in meaningful activities to avoid isolation, increase physical activity and engage with the wider community.

4.10 Special Conditions

4.10.1 NHS Continuing Healthcare

- 4.10.2 Any changes in the Service User's level of need must be raised with Buckinghamshire Council Adult Social Care so that where necessary the Social Care Worker can undertake a Care Plan review. If a significant change in health needs is identified by the Social Worker, Provider or other Professionals, a Continuing Healthcare (CHC) checklist will be completed by an appropriate professional. This could include the District Nurses, Social Care Worker or the CHC clinical assessment team. When the completed checklist triggers a Decision Support Tool (DST) meeting, this will be attended by the Adult Social Care (ASC) representative and NHS ICB representative. Where it is identified that a Service User's needs have changed, including where they may be eligible for CHC, the Provider will continue to be responsible for maintaining records and daily notes that provide adequate detail to support decision making, including CHC checklists and the DST.
- 4.10.3 If the Service User becomes eligible for CHC funding, the Council will remove the Block Bed from the Council's funding responsibility until such time that the Service User no longer occupies the bed. The Provider will be notified of the change in funding by the Council who will send a copy of the CHC Care Prescription and formalise the agreement by issuing an Individual Placement Agreement. From this point the ICB will become responsible for funding the placement. Please refer to SC4 Supplementary Condition in the Agreement for more information.
- 4.10.4 If the Service User is assessed by the CHC Team as no longer having eligibility for CHC funding, the Council will issue a Care plan and Purchase Order to the Provider to formalise the agreement to take over funding responsibility. Please refer to SC5 Supplementary Condition in the Agreement for more information.

4.10.5 In all instances, the Provider must notify the Council as soon as the Block Bed becomes available again such as being vacated by the ICB funded Service User so it can be added back to the Block Bed Agreement and to ensure the Council re-instates funding responsibility.

4.11 Self-Funders

4.11.1 The Provider will also take on Beds outside the block Agreement which are available for self-funders. The Provider cannot admit a self-funder into a block bed. Block Beds are solely for the use of Services Users in receipt of Council funded care.

4.11.1 The Provider will work with the incumbent Provider to transfer Agreements and any relevant information about self-funders and ensure the Terms and Conditions of their Agreements are met. The Provider should ensure self-funders their families, POA and Advocates are aware and understand any change in care provider and consent to the transfer of information to enable the Provider to continue providing care.

5 Quality Assurance

5.1 Outcomes and Performance Monitoring

5.1.1 Buckinghamshire Council will take an outcomes-based approach to performance management of the Service. This means it will focus on the long-term positive changes to enhance people's independence, quality of life, inclusion, and involvement within their community, rather than simply on what activities have been delivered.

5.1.2 The Provider will be responsible for ensuring they meet the requirements outlined in the outcome's framework (**Appendix 2**) and key performance indicators (KPI's) (**Appendix 3**) as well as the Service Objectives detailed in paragraph 3.1.1 of this Specification above.

5.1.3 The Provider will support the Service User to identify where they are doing well and where there is more work to be done based on the outcomes set out in this Specification. It is expected that any tool used for measuring outcomes will be adapted to suit different client groups. Outcomes will be personalised, and ways of measuring achievement of outcomes will be accessible to meet different needs, including easy read, pictorial etc.

5.1.4 Information on Service Users' progress against outcomes should be supplied by the Provider to Buckinghamshire Council at a frequency and on a format agreed with Buckinghamshire Council. The Provider must also seek the views of the Service Users and families/ carers using the Services, to demonstrate Service User satisfaction and validate the outcomes achieved. This should be presented in the form of "I" statements linked to the outcomes framework and set out in **Appendix 4**. This information should be collated and fed back to Buckinghamshire Council as part of contract management meetings or when requested to provide information on Service User satisfaction.

5.1.5 It is expected that the Provider will work with Buckinghamshire Council and Health partners to ensure continuous improvement in the Service. Recommendations for areas of improvement and innovation in delivery of the Service to meet the stated outcomes will be fed back to Contract Managers.

5.2 Quality Standards

5.2.1 It is the Provider's responsibility to ensure that the quality of service delivered meets the required level. It is expected that care and support are provided in line with the following quality standard documents and guidance:

- The Provider must be appropriately registered in line with the Health and Social Care Act (2008). This includes meeting the registration requirements, standards and outcomes of the Care Quality Commission (CQC).
- The Provider must ensure that they maintain an overall CQC service rating of 'requires improvement' or above in each of the Services following inspection of the Service, during the lifetime of this Agreement. Any failure to do so in one or more of the Services and Buckinghamshire Council may take action in line with the Commissioning and Procurement Hub Concerns and Serious Concerns Procedure.
- The Provider must meet the minimum standards which are set out in relevant national and local legislation and guidance, including, but not limited to, the Care Quality Commission, Health and Social Care Act (2008 and 2014), the Mental Capacity Act (2014), Medicines and Healthcare Products Regulatory Agency, Nursing and Midwifery Council, the Health & Safety Executive, the Fire Safety Order Act (2005).
- The Provider should proactively prepare to comply with any future legislation, policy and guidance introduced during the Agreement Period.
- All regulated and unregulated activity must be delivered in line with the principles set out in this Service Specification, the Terms and Conditions and delivered to the safeguarding standards set out in local policies and any other agreed standards.
- The Provider shall operate a robust, self-regulatory system of quality assurance. The system will measure and monitor the standard of care and support. The standard of care expected is set out in the Commissioning and Procurement Hub's Quality Monitoring Framework for Commissioned Providers.

5.3 Contract Monitoring/Contract Management

5.3.1 Contract Monitoring will form an important part of this Agreement. The Commissioning and Procurement Hub within Buckinghamshire Council will lead on the management of this Agreement. Buckinghamshire Council will manage the Agreement in line with the Commissioning and Procurement Hub's Quality Monitoring Framework for Commissioned Providers.

5.3.2 Buckinghamshire Council will take a risk-based approach in accordance with Buckinghamshire Council's Contract Management Framework. This approach ensures that the management of the Agreement is not over arduous to the Provider but is at the correct level, fair and appropriate. This allows time and effort to be focussed on Providers requiring assistance to meet and exceed required standards for quality and value for money.

5.3.3 New Providers will be subject to an increased level of contract management for the first year of the Agreement and more regular monitoring may be necessary during the early stages after the Agreement award. Additional meetings may also be held when required, for example, to work on a performance action plan, when a specific piece of development requires input from the Commissioning team and if any concerns about performance are identified. Informal meetings will be held to develop relationships between the Provider and Contracts manager and gain updates on service delivery.

5.4 PAMMS

- 5.4.1 The Provider Assessment and Market Management Solution (PAMMS)⁸ quality assurance tool will be used as a framework for quality assessments by Buckinghamshire Council. PAMMS is a standardised and consistent approach to quality monitoring across the Southeastern Region of England. There is a close relationship between PAMMS and the CQC current inspection requirements. The PAMMS assessment is a supportive tool which can give an indication of area(s) of provision achieving high quality care. Similarly, it also highlights areas of care that are not delivering the same high standards, and support can then be identified to improve the quality of the provision.
- 5.4.2 PAMMS assessments looks at quality in the following areas:
- Involvement and information
 - Personalised care and support
 - Safeguarding and safety
 - Suitability of staffing
 - Quality of management
 - Overall Performance
- 5.4.3 The Provider shall be registered to use this application. The performance management process will include elements of Provider self-assessment. There is no financial fee charged to the Provider for using the PAMMS application and the Council will support the Provider to use this application with training and guidance.
- 5.4.4 Buckinghamshire Council, following consultation, will be entitled to withdraw or replace any of the systems or specifications monitoring and quality control as required, giving reasonable notice to the Provider. This is not withstanding and in addition to the quality assurance and quality control systems operated by the Provider.

5.5 Concerns and Serious Concerns

- 5.5.1 Buckinghamshire Council has a responsibility to ensure that people are kept safe when using statutory services and will take a robust and objective response to concerns raised about performance where these relate to standards of safety, safeguarding and organisational abuse.
- 5.5.2 The Commissioning and Procurement Hub's Concerns and Serious Concerns Procedure outlines an ethos of collaboration, where health and social care partners work with Providers to deliver effective change. It also describes the steps that the Commissioning and Procurement Hub will take should a Provider not make the required improvement following initial concerns being raised. This will include the steps in the decision-making process whereby, as a last resort, Buckinghamshire Council suspends new referrals, placements, and payments of Voids with the Provider. The procedure will be subject to regular reviews and updates and the provider will be informed of any change in the procedure because of these reviews. Provisions relating to breach or persistent breach of the Agreement are laid out within the Terms and Conditions.

⁸ [PAMMS](#) | [PAMMS provider portal](#) | [The Access Group](#) | [Support](#)

5.6 Safeguarding

- 5.6.1 The Provider has a responsibility to safeguard all Service Users. All Service Users receiving care and support from the Provider under this Agreement require proportionate support to protect them from harm and safeguard them from abuse and neglect.
- 5.6.2 The Provider must comply with all laws in relation to safeguarding vulnerable adults and have policies and procedures in place for identifying and dealing with the abuse of vulnerable adults, the provider will adhere to Buckinghamshire Council’s Inter-agency protocols and procedures for safeguarding⁹.
- 5.6.3 The Provider will ensure that Staff have a new Disclosure and Barring Service (DBS) check carried out prior to undertaking work with Service Users and renew existing staff checks. Staff will be required to have the highest level of DBS check in accordance with the safe and fair recruitment guide set by Skills for Care¹⁰.
- 5.6.4 All Staff must undergo safer recruitment checks prior to starting their roles. All Staff must be trained, at induction, to identify, report and respond to suspected abuse and neglect. Safeguarding Training must be updated at least annually by all Staff.
- 5.6.5 Buckinghamshire Council’s Safeguarding Team must be notified immediately of all safeguarding instances and must be dealt with in line with Buckinghamshire Council’s Safeguarding of Vulnerable Adults and Children’s policies and procedures. The Provider must, in the circumstances described, refer any such incident or issue using the following contact details:

Circumstances	Refer to
if there is an immediate risk of harm to the Service User(s)	Call 999
Circumstances of the vulnerable adult are unknown or if they do not have a care package commissioned by Buckinghamshire Council, or funded via direct payments	Early Resolution and Safeguarding Team: Tel: 0800 137 915 Email: ascfirstresponse@buckinghamshire.gov.uk Online: https://adultsportal.buckinghamshire.gov.uk/web/portal/pages/saconcernpub#hSaPub
Vulnerable adult has an allocated Social Care Worker/Case Manager, and their name and details are known	Contact allocated Social Care Worker or Case Manager. If they are not available, contact as above.
Adult hasn’t got an allocated worker, but has a care package paid for by Buckinghamshire Council, either directly commissioned or through Direct Payments	Central - 01296 387 980; asccentral@buckinghamshire.gov.uk
Referral is urgent and outside normal hours	Emergency Duty Team: Tel: 0800 999 7677 Email: adultearlyhelpteam@buckinghamshire.gov.uk
Concerns about a child	Tel: 01296 383962 (0800 999 7677 out of hours) Email: secure-cypfirstresponse@buckinghamshire.gov.uk

⁹ [Safeguarding Policies and Procedures | Care Advice Buckinghamshire](#)

¹⁰ [Safe and fair recruitment December 2020 \(skillsforcare.org.uk\)](#)

- 5.6.6 The Provider shall maintain and regularly review a written register of any safeguarding incidents, accidents and near misses, risks and complaints, comments or compliments received. This is to be made available to Buckinghamshire Council at any time.
- 5.6.7 Where necessary contract managers may take part in multi-agency safeguarding investigations and link these investigations to ongoing Service quality discussions and visits. This will be necessary where it is apparent that Service quality has or could directly impact on the Service Users' safety. Please see information in Section 5.5 regarding Buckinghamshire Council's procedure for dealing with concerns and serious concerns about a Provider.
- 5.6.8 The Provider will ensure that they have policies and procedures in place that actively support and promote the safety and wellbeing of Service Users accessing their support including a whistleblowing policy and code of conduct for Staff. Providers should ensure that Safeguarding is a standing issue on agendas in supervision and team meetings. Providers will promote a culture of continued learning and improvement in relation to safeguarding in their organisation through, but not limited to, regular audits of practice and safeguarding incidents and sharing of effective practice guidance.

5.7 Serious Incidents

- 5.7.1 The Provider must inform Buckinghamshire Council's Contract Manager in the event of a serious incident. This includes acts or omissions to act, that result in:
- unexpected or avoidable death of one or more people
 - unexpected or avoidable injury to one or more people that requires further treatment by a healthcare professional to prevent death or serious harm
 - actual or alleged abuse; sexual abuse, physical or psychological ill-treatment, or acts of omission which constitute neglect, exploitation, financial or material abuse, discriminative and organisational abuse, self-neglect, domestic abuse, human trafficking, and modern-day slavery
 - an incident (or series of incidents) that prevents, or threatens to prevent, an organisation's ability to continue to deliver an acceptable quality of services
 - major loss of confidence in the service, including prolonged adverse media coverage or public concern about the quality of healthcare or an organisation
 - Mismanagement of medication and or medication errors which result in a hospital admission
 - Any incident or series of incidents that threatens to disrupt the delivery of services
- 5.7.2 The Provider should also make notifications regarding incidents to CQC in line with its registration requirements.

5.8 Advocacy

- 5.8.1 The Care Act 2014 introduced a duty on local authorities to arrange for the provision of advocacy to support people who are deemed to have substantial difficulty in representing themselves or require support to understand the relevant care and support processes, to ensure that their needs are met. As part of meeting this requirement, the Provider shall be able to recognise where people may require advocacy of this type and be fully aware of the local service provision available.
- 5.8.2 The Provider will take a positive and co-operative approach and organise advocate support when this is desirable for Service Users. The Provider will undertake basic Mental Capacity assessments and Best Interest decisions. The Provider should have awareness of situations

where Independent Mental Capacity Advocacy (IMCA) are appropriate and an understanding of how to access the service.

5.9 Service Policies and Procedures

5.9.1 The Provider will have policies and procedures in place that ensure the safe and effective operation of the service. All policies and procedures should be regularly reviewed and updated in line with changes in legislation, regulations, good practice developments and learning from complaints and serious incidents. Staff competency and understanding of relevant policies and procedures will be embedded in training and induction plans. The Provider will have as a minimum, but not limited to, written policies and procedures covering the following:

- Safeguarding adults
- Equalities and diversity – promoting diversity
- General Data Protection, confidentiality, and information security including cyber security
- Business continuity and emergency planning
- Health and safety (including infection control)
- Fire risk assessment
- Risk assessment and risk management
- Service User/carer engagement and involvement
- Complaints, comments, and compliments
- Modern day slavery
- Safer Recruitment
- Disclosure and Barring
- Employment Policy
- Induction and staff training
- Recruitment and selection
- Disability Discrimination Act 1995 compliance
- Equal Opportunities
- Disciplinary/Capability and Grievance
- Complaint/Disputes
- Bullying/Harassment
- Staff code of conduct
- Flexible working
- Workforce supervision, appraisal and/or performance management
- Professional boundaries
- Whistleblowing
- Deprivation of Liberty Safeguards (DoLS)
- Medication Administration
- Needs Assessment
- Care planning
- Managing Behaviours that Challenge
- Client group specific policies such as dementia awareness, epilepsy, autism etc
- Cash handling
- Food Hygiene

5.9.2 Where changes in legislation introduce requirements that are likely to impact the Services, the Provider will take an active role in introducing the new requirements and supporting good practice. The Provider will be required to submit copies of all policies to the Commissioning Lead within the first 6 months of the commencement of the Agreement.

6. Workforce Requirements

6.1 Staff Numbers and Job Roles

- 6.1.1 In line with Regulation 18 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Provider must provide sufficient numbers of suitably qualified, competent, skilled and experienced staff to meet the needs of the people using the service at all times.
- 6.1.2 The Provider must ensure that staffing capacity and skill level is always appropriate to enable the requirements of the Service Users' care plans and to be able to offer continuity of care during emergency situations.
- 6.1.3 The Provider will deploy the use of a dependency tool. The Dependency Tool shall determine the care hours and level of staffing required for each Dependency Level. More information regarding the requirements of a dependency tool is available in the Service Agreement in Schedule 1 at SC4.
- 6.1.4 The Provider will use flexibility in staffing and demonstrate operating efficiencies where more than one Establishment is concerned, i.e. using the same staff team to work across, or provide cover to each Establishment, or to be used as and when required.
- 6.1.5 The Provider must keep the use of agency Staff at an absolute minimum. The Provider must ensure any agency Staff deployed are familiar with the Service and the needs of the Service Users living there and have undergone Safer Recruitment checks, induction and training to ensure suitability and competency to work with vulnerable Service Users.
- 6.1.6 The Provider will provide to the Council a plan at the commencement of the Agreement to reduce the use of temporary staff. This plan should be reviewed in line with fluctuations in the use of temporary staff through the life of the agreement.
- 6.1.7 The Provider must employ a suitably qualified person(s) as the registered manager to manage day to day its regulated activity, where this responsibility is not undertaken by the owner or person responsible for the organisation's services. The registered manager has legal responsibilities in relation to that position and shares the legal responsibility for meeting the requirements of the relevant regulations and enactments with the Provider.
- 6.1.8 The Provider will ensure that there is access by telephone to on-call senior managerial support with relevant experience and expertise 24 hours a day, 365 days per year whilst there is a Council supported Service User living in the Establishment. The Provider will ensure adequate arrangements are in place to provide additional Staff on site in the event of an emergency.
- 6.1.9 The Provider will ensure that where staff numbers are significantly reduced due to an outbreak or spread of illness or disease that they have robust contingency plans to ensure the continued provision of care and support to Service Users. This should be explicitly detailed in the Providers Business Continuity Plan.

6.2 Employee Status

- 6.2.1 Buckinghamshire Council expects that the Staff engaged in the delivery of the Service by the Provider will be employees with full employment rights. Buckinghamshire Council requires

that Providers work co-operatively and positively to engage with the ambition to develop and improve the professional status of care and support work. This requires that Providers develop strategies to recruit and retain Staff, with effective pay, terms and conditions, Agreements, training, support, and professional development. Providers should have a proven track record of retention of skilled high-quality staff at all levels.

- 6.2.2 The Provider must demonstrate that all Staff employed (including agency and other staff) in the delivery of the Service have the knowledge, behaviours, and skills, to fulfil the roles and responsibilities designated to them by the Provider. This will include management, quality assurance, and administrative functions to support effective care delivery. They should be able to effectively evidence appropriate staffing levels and capacity to meet all Service Users' needs and deliver outcomes effectively. Staff should have access to good quality supervision from their line manager and clinical supervision where required.
- 6.2.3 The Provider shall develop workforce plans to be updated at least annually and more often as appropriate to ensure that arrangements are in place to maintain the workforce capacity and capabilities required to deliver the Service. Specific plans must be developed for the following:
- Attraction, recruitment and retention of Staff.
 - Management of sickness and other absences, including contingency plans to cover Staff absence, sickness, annual leave and succession planning.
 - Learning and development, including a matrix of training planned and completed.
- 6.2.4 The Provider shall have a training plan, a training matrix and keep records of successfully completed training of members of staff and a central file to continuously monitor and develop this. This will be reviewed as part of Agreement monitoring activity.
- 6.2.5 The Provider must have robust policies in place for international recruitment in line with the Department of Health and Social Care good practice guide.¹¹

6.3 Recruiting Staff

- 6.3.1 The Provider is expected to operate a values and behaviours-based approach to Staff recruitment in line with national and local guidance. The Provider is expected to involve Service Users and their families in the recruitment and selection process.
- 6.3.2 Staff must have the personal qualities and caring attitudes which enable them to relate well to people and have the required skills in written and spoken English, literacy, and numeracy to do the tasks required for caring and supporting people within the Services.
- 6.3.3 The Recruitment of staff must be in line with Safer Recruitment Guidance and practices.

6.4 Supervision and Annual Appraisals

- 6.4.1 The Provider is expected to ensure that all employees have regular supervision sessions with their line manager to discuss their work. The Provider is expected to be able to demonstrate how Staff are supported and advised between supervision sessions and that additional meetings are facilitated where required.

¹¹[International recruitment toolkit for adult social care providers: a guide to good practice - GOV.UK](#)

- 6.4.2 The Provider is expected to ensure that all employees have a documented annual appraisal with their line manager which includes identification of training and development needs. A copy of the appraisal should be placed on the personnel file for each employee.
- 6.4.3 The Provider must ensure that employees know when and how to raise an issue, comment, concern or complaint with their manager or supervisor or another member of the organisation they work for.
- 6.4.4 The Provider must keep a record of any disciplinary incidents where the Provider's disciplinary procedure is applied, and details shall be entered in the personnel file of the member of staff concerned.
- 6.4.5 The Provider must adopt and apply policies that help employees who are also working carers to sustain their caring responsibilities.

6.5 Workplace Learning Culture

- 6.5.2 The Provider will develop and implement a workforce development plan which embeds an understanding of Service User centred provision and creates a workforce with the necessary skill sets, considering the following (not exhaustive):
- Person centered care skills, development tools and resources
 - Delegated Health activities in line with the Skills for Care guiding principles ¹²
 - Outcomes based approaches
 - Strengths based practice
 - Motivational interviewing/ increasing engagement techniques/ change models
 - Independence skills teaching, behaviour modelling and relationship building (on an Individual and community basis)
 - Specific training in relevant conditions, e.g. diabetes, learning disabilities, mental ill health conditions, autism, acquired brain injury, dementia, epilepsy, PEG feeding, strokes, multiple sclerosis, and healthy lifestyles
 - Safeguarding, MCA, Deprivation of Liberties, and best interest decisions
 - Mental health, suicide awareness and suicide first aid
 - Alcohol and substance misuse awareness, overdose awareness and Naloxone
 - Trauma informed approach
 - Identification and implementation of technology enabled care where it can be used to enhance the Service User's care and support and /or promote their independence
 - Positive behaviour strategies and safe caring
 - Housing and welfare benefits awareness
 - Community asset mapping and facilitating meaningful activities
 - Health and safety, COSHH, manual handling, infection control, food hygiene
 - Prevent, modern slavery, child sexual exploitation
 - Effective communication with Service Users
 - Medication compliance and administration
 - Effective Service User case recording and care planning
- 6.5.2 It is expected that training will be facilitated by accredited training providers and should include face to face interactive training alongside online training.

¹² [Delegated healthcare activities guiding principles November 2024](#)

6.5.3 All staff / volunteers, including new and temporary staff, must be competent and trained to carry out their duties to provide the Service to the levels set out in this Service Specification. All staff / volunteers must be made aware of risk assessments and be trained accordingly.

6.6 Induction and the Care Certificate

6.6.1 The Provider must ensure that all employees receive a thorough induction to their new role, the organisation, and the sector. The induction by the Provider is expected to take account of relevant guidance including from Skills for Care, the Nursing and Midwifery Council and CQC.

6.6.2 The Provider must ensure that all new employees achieve the Care Certificate (or an appropriate equivalent standard) within the time period defined by Skills for Care, and that all existing staff meet the standards of the Care Certificate.

6.7 Developing Skills, Knowledge, and Qualifications

6.7.2 The Provider is expected to develop their workforce, supporting, or facilitating staff to obtain recognised qualifications, including (but not limited to):

- The Care Certificate
- Level 2 Health and Social Care Diploma
- Level 3 Health and Social Care Diploma
- ILM 2 or 3
- Level 4 Health and Social Care Diploma
- Level 5 Diploma in Leadership for Health and Social Care
- Qualifications and continuing professional development relevant to specific roles including registered manage

6.8 Leadership and Management

6.8.1 The Provider is expected to evidence that it is developing effective leadership at all levels of the organisation by encouraging and supporting staff to develop leadership skills and competencies through training, supervision, and reflective learning.

6.8.2 The Provider must notify the Buckinghamshire Council Contract Manager immediately of any changes to the management arrangements of the Service, extended absences, or a delay in appointing a registered manager, and of its plans to ensure the effective management of the Service in the interim.

6.9 Safer Recruitment

6.9.1 The Provider must have a clear Recruitment and Selection Procedure including completion of an appropriate application form, two satisfactory written references, medical clearance and a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS) prior to new staff commencing work.

6.9.2 The Provider must employ sufficient staff / volunteers to ensure that the service can be provided in accordance with the Service Specification, including adequate levels of staff to cover all absences, training and emergencies.

6.9.3 The Provider shall maintain individual staff files, which shall contain all relevant details pertaining to the Service User including documentation in relation to the recruitment and selection process, training and induction records, supervisions and appraisals undertaken.

6.10 Staff Wellbeing

6.10.1 The Provider shall ensure that it actively supports its staff by promoting their wellbeing and by providing a proactive staff support programme.

6.10.2 The Provider will actively promote staff wellbeing by having an overarching staff health and wellbeing policy that reflects the most recent NICE Guidance on workplace health and has specific references to:

- Mental wellbeing
- Smoking cessation
- Physical activity
- Substance use including alcohol
- Effectively manage staff working remotely

6.10.2 In order to avoid burn-out, the Provider will consider rotating Staff across a mix of services. The Provider will have active provision for monitoring 'wellness' of Staff. The Provider will factor in briefing and de-briefing time for Staff.

7 General standards

7.1 Prevent Duty

7.1.1 The Provider shall take all reasonable steps necessary to prevent people from being drawn into Terrorism in line with the 'Prevent Duty for local authorities' within the Counter Terrorism and Security Act 2015. For further information, refer to this link:
<https://www.gov.uk/government/publications/prevent-duty-guidance>

7.2 Modern Slavery Awareness

7.2.1 The Provider will ensure that that their organisational practice and that of suppliers in their supply chain are compliant with the Modern Slavery Act 2015. For further information please refer to <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

7.3 Complaints and Compliments

7.3.1 The Provider must have a robust complaints process, ensuring that all who use the Service know how to raise concerns and the process the Provider uses to review and respond to complaints.

7.3.2 The Provider shall have a written formal complaints policy and procedure that is fully explained and accessible to all Service Users in the way that they understand.

7.3.3 The Provider shall have appropriate channels for families, carers and advocates to raise issues both confidentially and in collaboration with Service Users. Records of all complaints and compliments shall be made available to Buckinghamshire Council as part of Buckinghamshire Council's Agreement management arrangements and the Integrated Commissioning Service Concerns and Serious Concerns procedure.

7.3.4 If Buckinghamshire Council are investigating a complaint, the Provider must work with Buckinghamshire Council to provide any information requested that is relevant to the complaint in a timely manner.

7.4 Whistleblowing

7.4.1 The Provider must have a Whistleblowing Procedure and make this available to Buckinghamshire Council. The Provider must ensure that all staff are aware of how to raise any issues, through such procedure, that may be of concern about the organisation and/or its staff such as:

- alleged, suspected, or observed misconduct
- unethical conduct or possible illegal acts
- assessed, identified or potential risks that may affect the safety of Service Users risks

7.4.2 The Provider should encourage staff to raise their concern verbally or in writing with their immediate manager, or, if the concern involves the direct line manager, their superior. Wherever possible, concerns should be made in writing direct by the person raising the concerns.

7.4.3 In certain circumstances, staff may feel unable, or it may not be appropriate, to raise their concerns with management due to the seriousness and sensitivity of the issues involved and who is suspected of the misconduct. In this instance staff should be aware of Buckinghamshire Council's Whistleblowing Hotline on [01296 382237](tel:01296382237) (accessible 24 hours a day) or email investigations@buckinghamshire.gov.uk. All calls and emails will be treated in the strictest confidence¹³. Staff can also report concerns through CQC whistle blowing process¹⁴.

7.4.4 Concerns raised through Whistleblowing may trigger a higher level of monitoring and the Council may undertake an announced or unannounced visit to any of the Establishments forming any part(s) of the Service, in line with Buckinghamshire Council's Quality Monitoring Framework for Commissioned Providers. If Buckinghamshire Council are investigating the matter further, the Provider should work with Buckinghamshire Council to provide information requested that is relevant to the inquiry in a timely manner.

7.5 Health and Safety

7.5.1 The Provider must comply with all relevant Health and Safety legislation, regulations, and directives. The Provider must supply the Agreement manager with a copy of its Health and Safety policy and guidelines. These shall be maintained and updated as required by changes in legislation, operation, or specific tasks. Specifically, the Provider must ensure they have in place systems and polices to ensure that:

- Risk of infection is reduced through achievement of high standards of cleanliness and hygiene
- Skin viability is maintained e.g. pressure area care
- Medicines are stored safely in accordance with clear and auditable medicine management protocols and New Medicines Services (NMS) Specification¹⁵

¹³ <https://www.buckinghamshire.gov.uk/your-council/our-policies/whistleblowing-policy-and-procedure/>

¹⁴ <https://www.cqc.org.uk/contact-us/report-concern/report-concern-if-you-are-member-staff>

¹⁵ [New Medicine Service \(NMS\) – Drug Lists | NHSBSA](#)

- The prevention, segregation, handling and disposal of waste is properly managed so as to minimise risks to the health and safety of staff, Service Users relatives and the safety of the environment
- Risk of falls are considered and managed through innovation where possible e.g. fall alert technology
- Easy access to required therapy services e.g. Speech Therapy, Physiotherapy.

7.6 Infection Control Measures – Including COVID-19

7.6.1 The Provider shall meet the requirements detailed in the CQC Health and Social Care Act (2008) and ensure all policies and procedures relating to Infection Prevention and Control are written in line with current NICE guidelines and that this is referenced within the Establishment's policies and procedures.

7.6.2 The Provider shall ensure all the staff and members working within the Establishment have had infection prevention and control training on induction and in line with infection, prevention and control education framework¹⁶. The training must include:

- Hand hygiene
- Appropriate use of personal protective equipment
- Decontamination of equipment
- What puts Service Users at risk of infection
- The main ways in which infection is spread
- How to minimise spread within a care Establishment environment.

7.6.2 Each care Establishment manager must have a clear policy for managing infections. The policy must state who to contact in the event of an outbreak and where to obtain further advice in relation to the management and treatment of infections. Each care Establishment must have sourced occupational health advice for staff and the Establishment must have a list of which staff have been appropriately immunised against Flu and COVID-19.

7.6.3 Each Establishment must participate in root cause analysis investigations and collaborate with the contract manager and other Providers to ensure information is shared appropriately to establish the root causes of infection incidents and to minimise the chances of recurrence.

7.6.4 The Provider must have appropriate infection control measures in place in line with national guidance which must be documented within their Risk Assessment and Management Policy and their Business Continuity Plan.

7.6.5 All staff and volunteers must be adequately trained in the correct use of Personal Protective Equipment (PPE) and be given an adequate supply of PPE stock. The Provider must ensure they keep abreast of the latest national guidance on infection prevention and control in relation to all infectious illnesses and be able to adapt their policies and procedures to reflect any changes. Information must be communicated regularly to their staff and volunteers to ensure they are following the correct operating procedures.

¹⁶ [NHS England » Infection prevention and control education framework](#)

7.7 Equality and Diversity

- 7.7.1 The Provider must comply with the requirements set out within the Equality Act (2010) and deliver the Services in a way that is culturally inclusive and responsive to the needs of people with protected characteristics, including those from BAME and LGBTQ+ communities, and should be able to show how they proactively demonstrate this. The Provider will work within an equal opportunities framework in line with Buckinghamshire Council's Community Cohesion and Equalities Scheme.
- 7.7.2 Where a Service User and their carer require additional communication support e.g. where English is not their first language or they require information in a different format, unless for an assessment, the Provider will ensure those communication needs are addressed. For assessments taking place, the local authority or health Provider will fund any interpreter required.

7.8 Data Sharing and Data Protection

- 7.8.1 The Provider shall ensure that all Service Users' and associated personal data will be managed in line with Data Protection Legislation and comply with CQC Fundamental Standards Regulation 10 and 20, NMC record keeping requirements and other legal obligations concerning record keeping.
- 7.8.2 The Provider shall ensure that all records are kept in accordance with the Data Protection Legislation as outlined in the Terms and Conditions of this Agreement.
- 7.8.3 Emails sent to and from health and social care organisations must meet the secure email standard (DCB1596) so that everyone can be sure that sensitive and confidential information is kept secure.
- 7.8.4 The Provider is required to complete the Data Security and Protection Toolkit (DSPT) annually to provide assurance that they are practising good data security, and that personal information is handled correctly.
- 7.8.5 The Department of Health and Social Care (DHSC) has mandated that all CQC regulated providers must submit a subset of data through the Capacity Tracker^[1]. The Provider must provide and update their data in line with the prevailing guidance on data collection (currently monthly)^[2] and within the time window specified, currently from 8th – 14th each month.
- 7.8.7 Enforcement guidance^[3] sets out what will happen if Providers do not update their data in line with submission requirements. This focuses on supporting providers to comply, with financial penalties issued by the Department of Health and Social Care only as a last resort. This obligation will apply to the Provider for as long as the DHSC requires it. Any changes or updates to this guidance will apply and the Provider shall be required to deliver the Services in line with such changed or updated guidance.

7.9 Information Sharing Requests

- 7.9.1 Providers will work with Buckinghamshire Council in a proactive way when information sharing requests are made in relation to the Services. Providers will also co-operate with Buckinghamshire Council regarding any request for information about the Service.

^[1] [Home - Capacity Tracker](#)

^[2] [Adult social care provider information provisions: data collection - GOV.UK \(www.gov.uk\)](#)

^[3] [Adult social care provider information provisions: data enforcement - GOV.UK \(www.gov.uk\)](#)

7.9.2 Information requests may come from other bodies, for example the Care Quality Commission. Providers will be expected to comply with these requests. Providers will ensure they respond to information sharing requests in the requested format, within the time frames set by Buckinghamshire Council.

7.9.3 All information shared through information sharing requests should be done so in accordance with the Data Protection Legislation as set out in the Terms and Conditions of this Agreement.

7.10 Contingency Planning

7.10.1 The Provider will be required to meet and implement the frontline staffing requirements within the Agreement and deliver to capacity. Consistent staffing should be supplied to support the overall continuity and quality of the Services. Effective communications systems must be in place to alert Buckinghamshire Council of any sudden or planned shortfalls in staff or to any other issue that disrupts or threatens to disrupt service delivery or continuity. Temporary staff must only be used to cover unplanned or temporary shortfalls in staffing levels and there should be sufficient staff to cover staff sickness or absence or other unforeseen events.

7.10.2 Should there be any capacity or Service delivery issues, the Provider will alert the Contract Manager in a timely and appropriate way. The Provider must inform the Contract Manager of any urgent issues that arise and will work with commissioners to agree and implement solutions.

7.10.3 The Provider shall have a robust Business Continuity Plan (BCP) in place to minimise any potential disruption to the delivery of the Services. The Provider's BCP should be reviewed at a minimum annually and able to cover all eventualities but at a minimum cover significant events including a pandemic, ICT outage, Cyber-attack, data leakage and adverse weather conditions. A copy of the Provider's Business Continuity Plan and any reviews where changes are made must be provided to Buckinghamshire Council.

7.11 Social Value

7.11.1 The Public Services (Social Value) Act 2012 places an obligation on public sector bodies to consider how the procurement of services will improve the economic, social, and environmental well-being of the local community. Social Value is in addition to the core service deliverables which the Council pay for.

7.11.2 The Provider shall seek to add additional social value through, but not limited to, the following:

- Offering volunteering opportunities to the local community
- Offering graduate roles and apprenticeship schemes to encourage people to enter the social care workforce
- Promoting job and volunteering opportunities to Service Users
- Taking all reasonable steps to minimise any adverse impacts the Service may have on the environment

7.11.3 The Provider should, wherever possible, deliver the Services in an environmentally responsible way. The Provider shall actively consider how delivery of the Service can be made more sustainable. This shall include:

- Sourcing supplies locally
- Encouraging staff to use more sustainable transport and offering training, safety awareness and information in this regard
- Monitor and reduce carbon emissions within their supply chain
- Exploring options to offer a 'Cycle to Work' scheme for staff to purchase bikes through salary sacrifice.
- Taking all reasonable steps to minimise any adverse impacts on the environment. e.g. minimising the use of single-use plastics such as plastic drinking cups, cutlery and care sharing where possible.

7.11.4 The Provider should be able to evidence how they are delivering social value and delivering the Services in an environmentally responsible way as part of routine Contract monitoring.

8 Development and Innovation

- 8.1 Buckinghamshire Council and the Provider will work together to continue to develop outcome-based commissioning.
- 8.2 The Provider will work in with Buckinghamshire Council in analysing the market and the Council's response to changes in landscape and delivery of care and support services. The Provider will support the Council in future procurement strategies which enhance provision, meet demand, and support vulnerable adults to receive timely, safe, and supportive packages of care.
- 8.3 The Provider will be innovative in the delivery of care and support services and engage Service Users in co-producing new projects and ideas to enhance their experiences within their home these should include but not be limited to:
- Strong links with the resident's community including friends and family where they previously resided
 - Activities that enable residents and tenants to use and share their knowledge and skills learnt from previous life experiences both personally and professionally
 - Opportunities for residents and tenants to observe their faith and religion and activities that enhance their ability to engage.

9. Appendices

Appendix 1- Requirements of the Delivery of Extra Care

1. Context

1.1 This Appendix covers the requirements of the Provider in the delivery of care and support in the extra care units. The Provider will be registered with CQC to deliver care to individuals residing in the extra care units in the following services:

- Willowmead Court, Aylesbury
- Swan Court, Winslow
- St James Court, High Wycombe

1.2 Each of the above services has 12 1-bedroom self-contained units, all of which are included within the block Contract. There is no provision for self-funders within the Extra Care Units and all nominations will be made by Buckinghamshire Council.

1.3 The following sections of the Service Specification are relevant to the delivery of extra care and are deemed to be incorporated here and should therefore be read in conjunction with this Appendix.

- Section 1
- Section 2
- Section 4.7
- Section 5
- Section 6
- Section 7
- Section 8
- Appendix 1
- Appendix 2

2. General Principles

- 2.1 The Extra Care Housing offers accommodation for people aged 55 and over with assessed care and support needs. It enables older people to retain an independent lifestyle in their own home whilst receiving the care they need. The Provider will provide care to the Service Users who reside at the Extra care Accommodation.
- 2.2 Care and support services will be delivered in ways that maximise dignity, choice, independence, respect for, and autonomy of Service Users. Service Users have a right to confidentiality and their privacy must be safeguarded. Services should enhance the quality of life of individuals, supporting people in doing the things they find difficult, whilst preserving and developing abilities and skills. The Provider will support people to maintain family and social networks whilst residing in the extra care units.
- 2.3 Extra care accommodation will be offered to people with a range of needs, including those with restricted mobility (hoists can be accommodated but not tracking hoists on admission), or people with mental health needs, including depression and dementia where this is not their primary care reason.

3. Responsibilities

- 3.1 The landlord and freeholder of the Extra Care Units is Riverside Group, and they will provide the following:
- Tenancies - all service users will have a tenancy agreement with the Landlord. All Tenancies must be signed in accordance with the requirements of the Mental Capacity Act
 - Provision and maintenance of a secure door entry system, emergency alarm and emergency call system to help maintain the safety and security of the Establishment
 - Advice and support to tenants to help them maintain their tenancies
- 3.2 The Provider will provide the following:
- Flexible care and support that can be adjusted in accordance with the needs of individuals (More information in section 5 of this Appendix 5)
 - Laundry facilities
 - Cleaning service; as part of the service charge tenants can have their flats cleaned as well as the communal areas
 - Access to visiting hairdresser, and other services such as podiatrist, optician etc. within their own flats if tenants so wish (any costs for such services are the responsibility of the individual).

4. Eligibility

- 4.1 A needs assessment and risk assessment will be carried out by Buckinghamshire's Adult Social Care Team (ASC) to establish if an individual is eligible for Extra Care housing. All individuals that are assessed must meet the following eligibility criteria to be considered for Extra Care Housing:
- 55+ years old
 - Adults with a mental health need and / or Learning Disability and assessed by Buckinghamshire Council as needing a low level of care and support which enables them to live alone
 - Ordinarily a resident of Buckinghamshire
 - Have a qualifying care need (which is funded directly by Buckinghamshire Council)
 - Current accommodation is not suitable to meet ongoing or future care needs (e.g. house is not appropriate for adaptation; location of house makes provision of care services difficult).
 - Tenants who are living with the early stage of dementia, and can form relationships, function within a daily routine, have some knowledge of their surroundings and/or be in a supportive relationship within the scheme may be eligible.
 - Be able to pay their own rent and any property related service charges via their own income or available benefits
- 4.2 The Provider must demonstrate sound knowledge of the support needs of Service Users within their service including:
- Older people (65+) including those with dementia
 - Adults with a learning disability
 - Adults with physical disabilities
 - Adults with sensory disabilities
 - Adults with mental health needs
 - Adults with Autism
 - Adults with substance dependency needs
 - End of life care services
- 4.3 The Provider must also support Service Users who may have a combination of the above needs. Buckinghamshire Council reserves the right to alter the eligibility criteria when considering future requirements.
- 4.4 Nominated Extra Care housing tenants currently experiencing health problems that may pose risks to others in the form of violent or severely challenging behaviour will not be eligible.
- 4.5 Tenants can retain their own General Practitioner (GP) where this is practicable, unless the GP is out of area.

- 4.6 If the individual's assessed physical or mental health needs change to the extent that they require residential or nursing care, or they have a severe behavioural problem (antisocial or cognitive related) that impacts upon the quality of life of other tenants, a referral should be made without delay for Buckinghamshire Council to carry out an urgent reassessment of need. In such circumstances, a risk assessment would be completed in the short term to support both the individual and other tenants until Buckinghamshire Council Adult Social Care are able to reassess.
- 5. Service Availability and response times**
- 5.1 The Provider is required to deliver care and support services to tenants at the extra care setting at a minimum of 10 hours per week per person, with staff available 24 hours per day and in line with Service User support plans/assessed level of need.
- 5.2 If a Service User's Individual assessed care and support needs exceed 10 hours, the Provider is required to deliver the additional care and support hours, and the Council will pay a fixed hourly rate of £20 (exclusive of VAT) in addition to the agreed bed price for every hour exceeding 10 hours. The hourly rate will be subject to an annual review as set out in SC1.4 of the Contract.
- 5.3 The Provider shall ensure Service User nominations are processed seven days per week and responded to within 48 hours. Admissions will be received seven days a week including weekends and bank holidays in line with the Service User's needs. Weekends should not impact on the Provider's ability to accept a new nomination.
- 5.4 All nominations for extra care will come via the Buckinghamshire Council Commissioning and Procurement Hub. The Provider will ensure that a contact point is always available within the core operating hours of 8am to 8pm, including a designated person responsible for agreeing nominations.
- 5.5 The Commissioning and Procurement Hub will review each Service User referral prior to sharing with the Provider to ensure it meets the eligibility criteria for a block bed. Block bed vacancies are always considered first before considering other procurement approaches (e.g. spot). Block beds are not considered for Twelve Week Disregards and cannot be used for self-funders.
- 5.6 The Provider will use the referral information to consider if they are able to meet the needs of the Service User. If the Provider feels they can meet the needs and outcomes of the Service User, they will undertake an assessment to determine if the person is suitable for their service. This will often include family/next of kin formally viewing the Home.
- 6. Care and support services**

- 6.1 The Provider will deliver services in accordance with each Service User's Care Plan. The types of tasks that could be included are outlined below. This list is not exhaustive. The Provider is expected to adopt a strengths-based and enabling approach to care and support, with emphasis on 'supporting to' rather than 'doing for'. Individuals should be supported to do as much as is possible within their ability and potential, to reduce their dependency on others. The Provider will support people with any primary support reasons (e.g. Mental Health, Physical & Learning Disabilities).
- 6.2 **Care and Support Tasks** includes but is not limited to Personal Care and support as defined by the CQC as meaning physical assistance given to a person, and could include, but is not limited to, the following:
- Maintaining personal hygiene:**
- Promotion of personal hygiene through encouraging regular washing and change of clothes
 - Caring for and monitoring the skin for any signs of pressure ulcers and reporting any concerns
 - Supporting with oral hygiene
 - Washing, showering or bathing, in accordance with Individual's Care Plan
- Being appropriately clothed:**
- Assistance with dressing/undressing
 - Selecting suitable clothing (e.g., based on the weather conditions)
- Managing toilet needs and continence management including but not restrictive to:**
- Assisting with toileting
 - Support with emptying and changing catheter bags
 - Changing of and disposing of continence products e.g., pads
 - Emptying, cleaning, and disinfecting commodes/chemical toilets
- Managing and maintaining nutrition:**
- Preparation of drinks
 - Preparing of simple meals and snacks
 - Considering dietary needs and/or ethnic, cultural and religious requirements as outlined in the Individual's Care Plan
 - Safe re-heating of previously prepared food/frozen meals
 - Assistance with feeding
 - Cleaning and changing of non-complex Percutaneous Endoscopic Gastrostomy (PEGs) (including monitoring for infection)
 - Cleaning and changing of non-complex Stoma bags (including monitoring for infection)

- Rotation of foods/checking use by dates

Mobility and transfers:

- Assistance with mobility, moving and handling (in line with safe manual handling procedures/training)
- Assisting with transfers from or to bed/chair/toilet/bath including hoisting where required

Medication

- Prompting and assisting
- Routine administration of medication in line with the CQC guidance

6.3 Social Interaction and Community Inclusion: Where stipulated in the Care Plan, supporting and facilitating Individuals to maintain relationships and make use of facilities or services within the local community. This may include but is not limited to:

- Assisting the individual with preparation for trips or visits within the local community
- Support with online shopping and/or accompaniment or escorting on shopping trip
- Collection of prescriptions
- Signposting and introducing to services to support independent living and community inclusion e.g.
 - Technology Enabled Care
 - Meal delivery services/lunch clubs
 - Services that support interaction and community inclusion
 - Services that support cultural and faith needs
 - Services to support safety in the home (e.g., fire safety risks assessment)
 - Accessing information on health-related matters e.g., vaccinations
- Liaising with the Individual's network of informal carers, family and friends
- Liaising with other services and professionals

6.4 Maintaining a Safe and Habitable Home Environment: Where stipulated in the Care Plan that there is a need for cleaning and domestic support around the home in order for the Individual to maintain a safe, habitable environment, the Provider can deliver or support the Individual to do so. Tasks include but are not limited to the following:

- Undertaking reasonable checks of the safety and security of the Individual's home when attending/leaving e.g., doors, windows, heating and cooking appliances
- Changing and making beds

- Disposing of household rubbish and recycling, including the disposal of continence products in appropriate containers
 - Assistance with laundry
 - Bagging items for collection (and unpacking returned items) where an external laundry service is provided
 - General light cleaning/tidying of the home, which may include:
 - Wiping work surfaces to maintain a hygienic environment
 - Cleaning of bathroom and toilet area
 - Emptying and cleaning commodes/chemical toilets
 - Assisting with home correspondence
 - Heating/temperature maintenance within the property (e.g., operating heating systems)
 - Pet care (only where it directly links to an identified care need)
- 6.5 The Provider will ensure that there is sufficient staff to cover the care and support within the extra care setting and residential care home at all times. Flexible care and support will be provided in accordance with individual care assessments and the care and support needs of Service Users. The staff team will maintain regular links with local health services and Adult Social Care to further support access to these services should the tenant require it.
- 6.6 The number of staff on duty at any given time will reflect the number of care hours required by Service Users, as identified in assessed needs. The Provider will provide opportunities to shape the day to day running of the scheme by attending Service User meetings and through regular opportunities for feedback.

Appendix 2- Service Outcomes

Standard	Assessment, Care Planning & Review	Service User Experience	Staff Knowledge & Understanding	Staff Training & Recruitment	Environment, Equipment & General Safety	Leadership, Quality Assurance & Management
1 Respecting and Involving Service Users	The care plan should be individually tailored, person centred, include appropriate information on the SU's preferences and views and clearly evidence that they were involved in the decisions about how their care and support is to be delivered	SU's are not discriminated against, are treated as an individual and their diversity is respected and their privacy, dignity and independence is maintained and upheld at all times. SU's are treated with kindness, compassion and empathy. SU's choices and preferences in regards the way their care and support is delivered are supported	Staff treat service users with dignity and respect			
2 Consent	Appropriate capacity assessments are carried out and reviewed regularly, best interest decisions making documented and advanced decisions are both recorded and followed in line with the MCA, and that any restrictions are taken into account in line with DoLS when providing care and support. Care plans contain the date of the expiry of any authorised DoLS. POA is clearly documented and evidenced across the care plan where relevant.	Staff understand when to obtain consent, when to take verbal or implied consent and how to document records of consent	Staff are able to describe how they ensure that the principles of the MCA are put into practice in their daily work.			
3 Care and Welfare of service users	SU's needs, together with any risks to their health and wellbeing, have been taken into account through the assessment process to ensure that the SU remains safe, their needs are adequately met and their welfare is protected. Care and support plans are regularly reviewed and maintained to reflect the current needs of the individual, including reviews of risks and they are effectively managed to keep the SU safe Daily records are maintained with up to date information to reflect the current needs of the individual	Service users are involved in their assessment and care & support planning, they are supported in setting goals to maximise their independence that meets their needs and preferences. If a key worker system is in place then service users are aware of who their named care worker is. Service users remain safe; their needs are adequately met and their welfare is protected and that delivery of care is effective, enabling and maximising the SU's independence and quality of life.				
4 Meeting Nutritional Needs	Dietary restrictions, choices, allergies as well as likes and dislikes are taken in to account Care plans document nutritional assessment information and the use of a 'MUST' if indicated and required Where appropriate support to access any specialist services that are required is given and or referrals are made on the behalf of the service user.	Appropriate access to food and drink is provided in environments that promote service users dignity and they have a choice about whether to eat alone or with company Service users are provided with information about food choices, supported to eat a healthy and balanced diet and are offered a choice of food and portion size that meets their preferences.				

5	Co-operation with other providers	Where the responsibility for the service user's care and support is shared with other providers, the care and support plans evidence this co-operation. Where a named service user is transferred to one or more services, records reflect this appropriately.	Staff support service users to access other social care or health services as and if required	Staff understand how to identify and prevent abuse that may have occurred, including the responsibilities under the local Authority's safeguarding and whistle-blowing policy (and procedures) and who to report concerns to, both within and outside of the organisation	Staff receive appropriate mandatory training about safeguarding adults from abuse, MCA & DOLS.	Appropriate safeguarding information is on display in the Home	
6	Safeguarding from abuse	Assessments and care/support plans effectively maintain people's safety and DOLS are only used when in the best interests of the service user (where possible).	Service users are safe and supported where a safeguarding is raised	Staff understand how to identify and prevent abuse that may have occurred, including the responsibilities under the local Authority's safeguarding and whistle-blowing policy (and procedures) and who to report concerns to, both within and outside of the organisation	There are effective arrangements in place to maintain appropriate standards of cleanliness and hygiene for the prevention, management and control of infection as identified in The Health & Social Care Act 2008 Code of Practice for health and adult social care on the prevention and control of infections and related guidance.	Appropriate safeguarding information is on display in the Home	
7	Cleanliness and infection control	Staff follow good practice in relation to cleanliness & infection control	Appropriate training in respect to infection control is offered to staff to enable them to understand how to prevent infection. Waste and clinical waste is disposed of appropriately	Appropriate training in respect to infection control is offered to staff to enable them to understand how to prevent infection. Waste and clinical waste is disposed of appropriately	Sufficient information is provided to service users, staff and visitors about infection prevention and control matters.	There are effective arrangements in place to maintain appropriate standards of cleanliness and hygiene for the prevention, management and control of infection as identified in The Health & Social Care Act 2008 Code of Practice for health and adult social care on the prevention and control of infections and related guidance.	
8	Management of Medicines	Service users are involved in all decisions regarding their medications (where they have capacity to do so), if medication is administered covertly an assessment of capacity and best interest decision making is completed and signed agreements from the GP and pharmacy provider.	Staff handle medicines safely, securely and appropriately. Service users are involved in decisions regarding their medication	Appropriate mandatory training on medications is provided to staff and competency assessments are undertaken in line the training requirements local requirements under the contract	Medicines are stored and administered safely including any homeily remedies and covert medication	Appropriate records are maintained around the prescribing, administration, monitoring and review of medications.	
9	Safety and suitability of Premises				The premises are safe and ensure people, staff and others are protected against the risks of unsafe or unavailable premises The use of the premises ensures that service users, with specific needs are taken into account, appropriate changes are made and that effective risk management is in place to reduce identified risks There are appropriate security arrangements in place to address the risk of unauthorised access to protect the people who use the premises Equipment is suitable for its purpose, available, properly tested and maintained, used correctly and safely, is comfortable and promotes independence and is stored safely		
10	Safety availability and suitability of equipment		Staff receive appropriate training on how to use equipment, safely and that they are confident to do so and that support is available if required.				

<p>11 Requirements relating to staff recruitment</p>				<p>All relevant employment checks are completed before the start of work. (This includes but is not limited to) ensuring that all staff has suitable DBS check before starting work, that the member of staff has the right to work in the UK and that they are registered with any relevant professional body and, where necessary, are allowed to work by that body.</p> <p>When staff are provided by an external organisation those staff, whether agency or otherwise, are subject to the same level of checks and similar selection criteria as employed staff. Agency staff are provided with an in house induction</p> <p>Appropriate procedures and guidance is in place to help ensure that all staff, including temporary and agency staff, students and trainees, have a clear understanding of their role and responsibilities.</p>		
<p>12 Staffing and Staff deployment</p>	<p>Sufficient numbers of staff on duty with the right knowledge, experience, qualifications and skills to provide effective care and support</p> <p>Staff are able to communicate effectively and appropriately with service users who may have a variety of needs.</p>		<p>Staffing levels are appropriate and sufficient and there are robust mechanisms in place to manage both expected and unexpected changes in the service in order to maintain safe, effective and consistent care (for example to cover sickness, vacancies, absences and emergencies)</p> <p>Appropriate induction at the start of their employment in line with the Skills for Care – Care Certificate</p> <p>Staff confirm that they receive appropriate and regular supervision that is in line with the contract of employment and that they receive an annual review.</p> <p>Where appropriate and when asked agency staff confirm that they have been inducted to the service appropriately.</p> <p>Care workers confirm that they feel supported and are aware of the mechanisms in place to prevent and manage bullying, harassment and violence at work</p>			<p>Records and records show that there are sufficient staff on duty with the right knowledge, experience, qualifications and skills to provide effective care and support</p> <p>The provider has robust mechanisms in place to manage both expected and unexpected changes in the service in order to maintain safe, effective and consistent care (for example to cover sickness, vacancies, absences and emergencies).</p>
<p>13 Staff Support</p>				<p>The provider maintains records to evidence that all staff receive appropriate in-house induction at the start of their employment and those new to care receive an induction in line with the Skills for Care – Care Certificate.</p> <p>The provider maintains records to evidence that all staff receive appropriate supervision (as set out in the contract standards), that their performance is appraised and that they receive an annual review.</p> <p>The provider maintains records to evidence that all staff undertake both core training and mandatory training, and this is refreshed and updated as required</p>		
<p>14 Assessing and Monitoring the Quality of service provision</p>						<p>Records show that the provider continually gathers and evaluates information about the quality of services delivered to ensure that people receive safe and effective care and support and uses this to improve services by learning from, and acting on, any information including, but not limited to, comments and complaints, incidents, adverse events, errors or near misses, audits and local or national reviews.</p> <p>The provider has clear mechanisms in place to enable people, including staff, to raise concerns about risks to people and poor performance openly and to provide information about the quality of the service to people who use the service</p>

<p>15 Using Information and Dealing with Complaints</p>		<p>Service users are supplied with information about how to complain and how to contact the provider, LA / LGD.</p> <p>Service users are supported if they have had cause to complain and, if they have had cause to make a complaint, are kept informed of the outcome in a timely manner and that the service learnt from the complaint.</p>	<p>Staff feel listened to and have the opportunity to raise issues and ideas through organised meetings, their views are taken into account and feedback provided</p>			<p>Complaints are responded to appropriately and resolved in a timely manner. Feedback is shared and learning from the feedback is used to continuously improve the experience of the service user. Adequate records are kept about complaints, including any relevant and factual information about the investigation, responses, outcome and actions taken</p> <p>Regular, organised meetings are held where service users, relatives and staff can provide feedback and this is listened to, acted upon appropriately and people are kept informed of the outcome.</p> <p>Appropriate details of complaints and the outcomes should be shared with the Local Authority.</p>
<p>16 Records</p>						<p>Personal records of service users are clear, accurate, factual, complete, personalised, fit for purpose, up-to-date, held securely and remain confidential.</p> <p>The manager maintains a log to evidence the applications made for authorisation under DoLS, including the date sent, the outcome, the date of the outcome and date of expiry, if authorised the log records that COC is notified.</p> <p>A range of appropriate and effective audits are analysed with senior management oversight and action plans developed. That action plans include time lines, the staff responsible and that any progress / completion of the actions is clearly recorded. Audits have clear robust criteria to ensure consistent best practice for the provider to use external auditors to</p>

Appendix 3- Key Performance Indicators

Key Performance Indicator	Bed type	Reporting Period	Target
% of occupied block beds	Nursing	Weekly	95%
	Residential		95%
	Extra Care		95%
% of Void Block beds	Nursing	Weekly	<5%
	Residential		<5%
	Extra Care		<5%
% of temporary staff	Nursing (Hazlemere only)	Monthly	<10%
	Care workers		<10%
	Senior staff		<10%
	Management		<10%
	Ancillary staff		<10%
% referrals assessed within 48 Hours		Monthly	95%
% of staff completing mandatory training		Monthly	95%
% staff completed Safeguarding training		Monthly	100%
% complaints received resolved within agreed response time		Monthly	90%
% of admissions with a completed care plan within 48 hours of admission		Monthly	95%
% staff supervisions completed within the last 6 weeks		Rolling	95%
% staff reporting feeling supported from effective supervision		Quarterly	95%
Finance			
Number of referrals declined by the Provider		Monthly	
Number of Safeguarding referrals		Monthly	
Number of CQC reportable incidents		Monthly	
Number of people who have had an unplanned	a) Hospital admission	Monthly	
Number of falls	b) A&E attendance	Monthly	
Number of falls resulting in injury		Monthly	
Number of falls resulting in A&E attendance or hospital admission		Monthly	
Number of CQC reportable medication errors		Monthly	
Number of medication errors not reportable to CQC		Monthly	
Number of compliments (<i>please provide an anonymised compliment</i>)		Monthly	
Number of complaints		Monthly	
Finance			
Submission of management accounts		Quarterly	
Submission of Cash flow forecast		Quarterly	

Appendix 4- 'I' Statements

Standard	'I' statements
1 Respecting and Involving Service Users	<p>I am treated with respect and dignity</p> <p>I can keep in touch and meet up with people who are important to me including family, friends and people who share my interests identity and culture</p> <p>I am in control of planning my care and support. If I need help with this, people who know and care about me are involved.</p>
2 Consent	<p>I can choose who supports me, and how, when and where my care and support is provided.</p> <p>I am supported to make decisions by people who see things from my point of view, with concern for what matters to me, my wellbeing and health.</p>
3 Care and Welfare of service users	<p>I am supported by people who see me as a unique person with strengths, abilities and aspirations</p> <p>I know what my rights are and can get information and advice on all the options for my health, care</p> <p>I have care and support that enables me to live as I want to, seeing me as a unique person with skills, strengths and personal goals</p>
4 Meeting Nutritional Needs	<p>I have choice about what I eat</p> <p>I am offered food and drink regularly</p>
5 Co-operation with other providers	<p>I have care and support that is coordinated and everyone works well together and with me</p> <p>When I move between services, settings or areas, there is a plan for what happens next and who will do what, and all the practical arrangements are in place before change happens</p>
6 Safeguarding from abuse	<p>I know what to do and who I can contact when I realise that things might be at risk of going wrong or my health condition may be worsening</p> <p>I feel safe and am supported to understand and manage any risks.</p>
7 Cleanliness and Infection control	<p>I am able to manage my own personal care or with support</p> <p>I live in an environment which is kept clean</p>
8 Management of Medicines	<p>If my medication has to change, I know why and am involved in the decision.</p> <p>I am supported to manage my health in a way that makes sense to me.</p>
9 Safety and suitability of Premises	<p>I have a place I can call home, not just a 'bed' or somewhere that provides me with care</p> <p>I feel safe and secure where I live</p>
10 Safety availability and suitability of equipment	<p>I live in a home which is accessible and designed so that I can be as independent as possible</p>
15 Using information and Dealing with Complaints	<p>I know what my rights are and can get information and advice on all the options for my health and care.</p> <p>I can plan ahead and stay in control in emergencies. I know who to contact and how to contact them and people follow my advance wishes and decisions as much as possible.</p>
16 Records	<p>I know how to access my health and care records and decide which personal information can be shared with other people, including my family and care staff</p>

Appendix 4- Description of services

Residential care

The Service is required for adults over the age of 65 and for whom the continuous availability of qualified care staff is necessary for the period of their stay. The Service is regulated by the CQC, described as accommodation for persons who require nursing or personal care.

The care needs of these Service Users may include, but is not restricted to, some of the following:

- Mobility needs requiring the regular assistance/prompting and/or supervision by one or more members of staff
- Mobility needs requiring the use of standard lifting aids
- Dressing needs requiring constant supervision and/or assistance/ prompting
- Feeding needs requiring regular supervision or support/encouragement, requiring ongoing assessment
- Personal hygiene requiring regular and frequent supervision/assistance/encouragement
- Toileting needs requiring regular or frequent prompting, encouragement and faecal or urinary incontinence requiring regular assistance
- Medication requiring constant monitoring
- Communication needs due to sensory impairment
- High anxiety levels
- Cognitive impairment
- Developing and maintaining family or other personal relationships
- Assistance/prompting or supervision to enable them to maintain their dignity
- Facilitating appropriate opportunities for social contact
- Opportunities to attend religious and cultural needs
- Monitoring of physical health, providing access to health services in a timely way
- Reassurance and support at intervals overnight where required

Nursing Care

The Service is required for adults over the age of 65 years requiring nursing care as regulated by CQC. Nursing care and supervision is necessary for those Service Users who require care as for residential care with **additional/enhanced** needs which may include some or all of the following:

- Extreme mobility needs requiring the regular assistance of two or more staff
- Extreme mobility needs requiring lifting aids including non-standard equipment
- Specialised feeding needs requiring use of specialised aids and regular nursing supervision
- Faecal or urinary incontinence requiring significant staff assistance

- Complex wound care management or is at high risk of pressure sores
- Chronic disease management
- PEG care
- Supporting Service User who need Oxygen
- Regular/ frequent supervision / assistance with aspects of care
- Cognitive impairment
- Distressed behaviour

Appendix 5- Referral Screening and Acceptance Tool

Referral Screening & Acceptance Tool

Persons Name :		AIS identifier :	
Name of Establishment			
Establishment address			
Request for:	Residential care		
	Nursing care		

BCC Placement Team	
Does the detail in the assessment support the requested service type	

Does the Social Care assessment indicate that the person has any of the following?

1	Complex & Fluctuating health conditions	
2	Exhibits a significant level of active physical aggression	
3	Exhibits inappropriate active sexualised behaviours	
4	Is actively self-harming and displaying suicidal intention	

Provider Response

1	Has the Social Care assessment been completed within the past 3 months
2	Does the Social Care Assessment & Care plan clearly detail the persons care needs
3	Does the referral comply with the Service Specification for the type of care requested
Resources or Actions required to facilitate this placement:	

Name :	Date:
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Tender for the Provision of Block Residential, Nursing and Extra Care Services for Adults in Buckinghamshire
Ref: 23_24 665

SCHEDULE 3: SERVICE LEVELS

Part 1. Service Levels

1. THE SERVICE LEVELS

The Service Levels are as set out in the Specification.

Part 2. Service credits

Not Used

SCHEDULE 4: PROVIDER'S TENDER

Tender for the Provision of Block Residential, Nursing and Extra Care Services for Adults in Buckinghamshire

Ref: 23_24 655

Annex 8



BUCKINGHAMSHIRE COUNCIL

**INVITATION TO TENDER FOR THE PROVISION OF BLOCK
RESIDENTIAL, NURSING & EXTRA CARE SERVICES FOR ADULTS IN
BUCKINGHAMSHIRE**

METHOD STATEMENT REQUIREMENTS

REF:23_24 655

1. Introduction

- 1.1 This document sets out the responses that are required from Bidders. Please address the overall requirements of the Service Specification when responding to each question.
- 1.2 There are 5 scored sections within this document and there may be more than one question in each section.
- 1.3 Bidders must provide a response to each question and section. Failure to do so will lead to the Bidder failing to comply with the procurement documents and therefore being excluded from further participation in the procurement process.
- 1.4 Assessors will not refer to other Method Statement (MS) responses when assessing a response e.g. information provided to answer MS1 must be contained in the response to MS1.
- 1.5 The award criteria and weighting for each Section and subsection are clearly shown. Bidders should also refer to the Award Criteria and Assessment Methodology document issued as Annex 5 of this ITT.
- 1.6 The Council is looking for comprehensive proposals that address Buckinghamshire Council's specific requirements. Please include examples and evidence where appropriate.

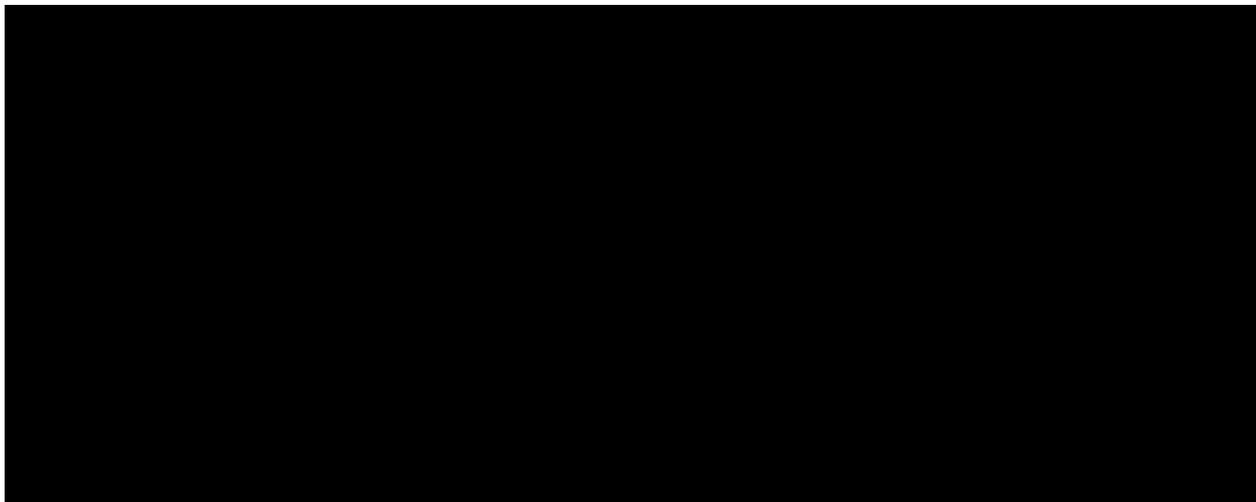
2. Format of the Responses

- 2.1 Bidders are required, other than for charts and diagrams, to provide their responses in a readable format.
- 2.2 Bidders must follow the numbering of the sections to assist the assessors.
- 2.3 Where appendices are allowed and identified as such in the MS question, they can be used to support a response e.g. a flow chart may be used to illustrate a process outlined within a method statement response. They must not be used instead of the response. Where appendices are allowed and used, they must clearly show which section / question they relate to. If the Council is unaware of which section they relate to, it reserves the right not to consider the appendix.
- 2.4 Bidders must keep each Method Statement within the relevant word count allowance. Bidders to note:
 - 2.4.1 Excluded from the word count allowance:

- figure and table headings , provided these are not excessive in length;
 - individual Method Statement headings and title pages;
 - words as legends on diagrams, maps and plans.
 - Copies of requested policies
- 2.4.2 Included in the word count allowance:
- paragraph headings;
 - words in tables.
- 2.4.3 Bidders should note that the word count limits specified for Method Statements should not be exceeded as the Council will assess only up to the word count limits. Any text above the word count limit for a Method Statement will be disregarded and will not be considered as part of the assessment.
- 2.4.4 Bidders must include their word count at the end of each Method Statement.
- 2.4.5 The Council reserves the right to disregard any information which it considers has been submitted to circumvent the word count limit e.g. detailed wording on a diagram or wording within forward slashes where the use of forward slashes is assessed as excessive or unnecessary by the Council.
- 2.5 Proposals must be returned as consolidated documents i.e. please do not send in separate response documents to each question.
- 2.6 If the Bidder is made up of a consortium or if sub-contractors are to be used it must be clear which consortium member or members or sub-contractors will deliver which element(s).
- 2.7 The Council reserves the right to disqualify any Bidder that does not achieve a minimum score of 36 % of the available 60% allocated to quality.
- 2.8 The Council reserves the right to disqualify any organisation that does not achieve a minimum score of “2” on any question.
- 2.9 Unless a MS question asks for price and/or any pricing information (including but not limited to, prices, discounts, or free-of-charge services), the Bidder must not include such information in their MS responses. Doing so may lead to the Bidder being excluded from further participation in the procurement process.

SCHEDULE 5: CHARGES AND PAYMENT

1. CHARGES BASED ON A FIXED PRICE (AS FURTHER DETAILED IN ANNEX 9 (PRICING SCHEDULE) OF THE SERVICE PROVIDER'S TENDER).



2. PAYMENT PLAN

2.1 Payments for the Services will be made to the Provider four weekly, 2 weeks in advance and 2 weeks in arrears. The payment will be made automatically through the Council's schedular payment system. The payments will be Net of Service User Contribution. Payments in one 4 weekly period may contain adjustments for previous periods if the occupancy recorded on the Council system has been amended. In addition, adjustments required in connection with the payment for the Block Beds will be made in accordance with SC3 (Void Payments).

2.2 All payments to the Provider will be made in accordance with the terms of clause 11 (Charges and Payment), the Supplementary Conditions (Schedule 1) and this Schedule 5 (Charges).

2.3 Once the calculation of any adjustment has been agreed pursuant to SC3 (Void Payments) and/or any other sums due to the Council pursuant to this Agreement, the Council will send an invoice to the Provider for this sum. The Provider shall process and pay any invoice issued to the Provider by the Council pursuant to this Agreement in accordance with any terms as set out in the invoice or as notified by the Council.

3. TERMINATION PAYMENT DEFAULT

Subject to clause 11.2 (Charges and Payment) in the event that at any time an amount equal to three undisputed scheduled payments have been overdue for payment for a period of 60 days or more, the Council will have committed a Termination Payment Default.

SCHEDULE 6: CONTRACT MANAGEMENT

1. AUTHORISED REPRESENTATIVES

- 1.1 The Council's initial Authorised Representative: Erica Taylor, erica.taylor@buckinghamshire.gov.uk, 01296 674969
- 1.2 The Provider's initial Authorised Representative: Raina Summerson, (Group CEO) raina.summerson@agincare.com 07843336181

2. KEY PERSONNEL

Not applicable

The Council will undertake contract management and monitoring in accordance with the Specification.

The provisions of the Policies shall apply in respect of any contract management and reporting activities imposed on the Provider, and the Provider shall provide all cooperation and assistance, at its own cost, to the Council in complying with such contract management and reporting activities, as may be prescribed in those Policies.

SCHEDULE 7: BUSINESS CONTINUITY

A Business Continuity Plan shall be agreed between the parties in accordance with the terms of the Agreement.

SCHEDULE 8: CHANGE CONTROL

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Provider sees a need to change this Agreement, the Council may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 8.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Provider shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any work undertaken by the Provider and the Provider's Staff which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 8, shall be undertaken entirely at the expense and liability of the Provider.

2. PROCEDURE

- 2.1 Discussion between the Council and the Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken;
 - (b) a request to change this Agreement by the Council; or
 - (c) a recommendation to change this Agreement by the Provider.
- 2.2 Where a written request for an amendment is received from the Council, the Provider shall, unless otherwise agreed, submit two (2) copies of a Change Control Note signed by the Provider to the Council within three (3) weeks of the date of the request.
- 2.3 A recommendation to amend this Agreement by the Provider shall be submitted directly to the Council in the form of two (2) copies of a Change Control Note signed by the Provider at the time of such recommendation. The Council shall give its response to the Change Control Note within three (3) weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;

- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Council and the Provider and
- (k) details of how the costs that would be incurred by the Parties if the Change subsequently results in the termination of this Agreement under clause 30.1(g) (Termination for breach) will be apportioned.

2.5 For each Change Control Note submitted by the Provider the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two (2) copies of the Change Control Note to be signed by or on behalf of the Council and return one (1) copy to the Provider; or
 - (iii) notify the Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Council and by the Provider shall constitute an amendment to this Agreement.

2.7 No Change shall have effect unless agreed between the Parties and recorded in writing and signed on behalf of the Council and the Provider.

SCHEDULE 9: EXIT

1. INTRODUCTION

- 1.1 The Provider is required to ensure the orderly transition of the Services to the Council or any Replacement Provider in the event of any termination (including a partial termination) or expiry of this Agreement. This Schedule 9 sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.
- 1.2 For the avoidance of doubt the Provider is responsible for the overall management of the exit and the transfer arrangements for the delivery of the Services.

2. EXIT MANAGERS

- 2.1 The Provider and the Council shall each appoint an exit manager and shall provide written notification of such appointment to each other on request.
- 2.2 The Provider's exit manager shall be responsible for ensuring that the Provider and the Provider's Staff comply with this Schedule 9. The Provider shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Provider as are reasonably necessary to enable the Provider to comply with the requirements set out in this Schedule 9.
- 2.3 The exit managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 9 and each Party's compliance with it.

3. EXIT PLAN

- 3.1 The Provider shall, within three (3) months of the Commencement Date, deliver to the Council the Exit Plan which complies with the requirements of paragraphs 3.2 and 3.3. The Parties shall agree the Exit Plan in accordance with the terms of the Agreement and this Schedule 9.
- 3.2 The Exit Plan shall:
 - 3.2.1 address each of the issues set out in this Schedule 9 to facilitate the transition of the delivery of the Services from the Provider to the Replacement Provider and/or the Council and shall ensure that there is no disruption in the delivery of the Services and no deterioration in the quality of the Services;
 - 3.2.2 detail how the Services will transfer to the Replacement Provider and/or the Council including details of the processes, documentation, data transfer, systems migration and security (where applicable);
 - 3.2.3 provide a timetable for handover to any Replacement Provider and/or the Council and identify critical issues for carrying out any transfer arrangements and including so far as reasonably practicable any period of parallel running of operations as may reasonably be required to ensure the business continuity of the Council;
 - 3.2.4 set out the management structure to be put in place and employed during the expiry / termination period;

- 3.2.5 set out the respective responsibilities of the Parties (to a level of detail consistent with Best Industry Practice);
- 3.2.6 set out details of work volumes and staffing over the preceding twelve (12) months including the numbers and grades of all Staff employed in the provision of the Services;
- 3.2.7 provide for the planning and execution of any necessary training of any of the Council's or the Replacement Provider's staff at the Provider's entire cost and which shall be at a level equivalent to the training the Provider would use to train its own personnel to provide the Services in accordance with this Agreement;
- 3.2.8 differentiate the activities that are to be carried out on early termination and on expiry; and
- 3.2.9 document in an annex to the Exit Plan, in accordance with Best Industry Practice:
 - 3.2.9.1 a list of all assets required to perform the Services, detailing their ownership status, whether they are used exclusively for the Agreement, physical location, condition and their fair market value;
 - 3.2.9.2 a list of all Sub-Contracts and third party agreements (including all software licences, equipment leases/rental agreements, maintenance agreements and any other support or service agreements which relate to the provision of the Services) which relate wholly or substantially to the Services and which the Parties agree are to be transferred to the Council or Replacement Provider (as applicable), together with details of the relevant lessors, licensors and/or contractors and any applicable charges and payment terms, expiry dates and termination provisions contained in such agreements;
 - 3.2.9.3 a list of any property, documentation, data or other items belonging to one Party but in the possession of the other together with plans for the return (or, if agreed in writing between the Parties, the destruction) of any such property, documentation, data or other items on the expiry or termination of this Agreement;
 - 3.2.9.4 to the extent that such have not been provided as part of the Services, and are available specifications of any technical and/or administrative interfaces between the Provider's system and any external systems and/or data sources together with a definition of the responsibilities of the various system owners and records of the past performance of such external systems and/or data sources.
- 3.3 At the request of the Council the Provider shall provide such assistance as may be necessary to help the Council and/or the Replacement Provider to identify which assets, Sub-Contracts or software licences are required for the continued provision of the Services.
- 3.4 Where the Council and/or Replacement Provider requires continued use of any software licences, the Provider shall procure a non-exclusive, perpetual,

royalty free licence (or licence on such other terms that have been agreed with the Council) for the Council and/or Replacement Provider to use such software (with a right of sub-licence or assignment on the same terms).

- 3.5 The Exit Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services.
- 3.6 The Provider shall comply with all of its obligations contained in the Exit Plan and in accordance with the timetable specified in the agreed Exit Plan.

4. OBLIGATIONS DURING THE TERM

- 4.1 Without prejudice to the terms of the Agreement on reasonable notice, the Provider shall provide, at no additional cost, to the Council and/or to the Replacement Provider (subject to the Replacement Provider entering into reasonable written confidentiality undertakings with the Provider), all knowledge, materials and information as the Council shall reasonably require and agrees to answer all reasonable questions in order to facilitate the preparation by the Council of any invitation to tender and/or to facilitate any potential Replacement Provider undertaking due diligence (including in relation to the Services, assets, the Service User data, and any transferring employees by virtue of the application of TUPE).
- 4.2 The Provider shall continue to provide the Services (or the relevant part of them) during the expiry / termination notice period in accordance with the Specification and Service Levels.
- 4.3 From the date twelve (12) months before expiry of the Agreement, or on service by either Party of any notice of termination (whichever is the earlier), the Provider shall not terminate, enter into or vary in any way any Sub-Contract, licenses for the Provider’s software, licences for any third party software or other agreements which are necessary to enable the Council and/or any Replacement Provider to perform the Services or the Replacement Services, without the Council’s prior written consent, such consent not to be unreasonably withheld or delayed.
- 4.4 During the expiry / termination period, the Provider shall, in addition to providing the Services and the Exit Plan, provide to the Council any reasonable assistance requested by the Council to allow the Services to continue without interruption and to facilitate the orderly transfer of the Services. The Provider shall use all reasonable endeavours to reallocate resources to provide these transitional services at its own expense.
- 4.5 The Council shall, if applicable, at the Provider’s reasonable request, require the Replacement Provider and any agent or personnel of the Replacement Provider, to enter into an appropriate confidentiality undertaking with the Provider.
- 4.6 Within fourteen (14) Working Days of a written request from the Council at any time during the Initial Term or at any time up until six (6) months after the expiry or termination of this Agreement, provide to the Council without further charge, and in the format stipulated by the Council, which may include a generic archive file, a copy of all Council data retained in accordance with

this Agreement. The Council shall be entitled to transfer and migrate the Council data onto another system.

5. UPON EXPIRY OR TERMINATION

- 5.1 Upon termination or expiry (as the case may be) of this Agreement:
- 5.1.1 the Provider shall cease to use the Council data or Service User data, and at the direction of the Council either:
 - 5.1.1.1 provide the Council or Replacement Provider with a complete and uncorrupted version of the Council data and/or Service User data in electronic form or such other format stipulated by the Council or Replacement Provider, and a generic archive file for loading onto another system;
 - 5.1.1.2 destroy (including removal from any hard disk) or return (at the Council's option) all copies of the Council Data and/or Service User data (save where it is required to be retained or maintained by law, regulation or any competent judicial, governmental or regulatory authority) and confirm in writing that such destruction has taken place;
 - 5.1.2 the Provider shall erase from any computers, storage devices and storage media that are to be retained by the Provider any software containing any Intellectual Property owned by the Council;
 - 5.1.3 each Party shall return to the other Party all confidential information of the other Party and shall certify that it does not retain the other Party's confidential information; and
 - 5.1.4 except where expressly stated otherwise, any and all licences or authorisations granted by the Council to the Provider in relation to the Services shall terminate on the date of expiry or termination (as the case may be).
- 5.2 The Provider shall at the Council's request and with the co-operation of the Council procure the novation or assignment to the Council and/or Replacement Provider of the third party contracts, licences or other agreements identified pursuant to paragraph 3.2.9.
- 5.3 The Provider shall indemnify the Council (or the Replacement Provider, as applicable) against each loss, liability and cost arising out of any claims made by a party to a contract or licence which is assigned or novated to the Council (or Replacement Provider) pursuant to paragraph 5.2 in relation to any matters arising prior to the effective date of such assignment or novation.

SCHEDULE 10: TUPE

Part 1. Transfer of employees

1. DEFINITIONS

The definitions in this paragraph apply in this Schedule:

Admission Agreement: means an admission agreement entered into in accordance with Part 3 Schedule 2 of the LGPS 2013 Regulations by the Council, in its capacity as a scheme employer under the LGPS and the Administering Authority, and the Provider or a Sub-Contractor and which is in the Council's standard form.

Appropriate Pension Provision: in respect of:

- (a) Eligible Employees, either:
 - (i) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or
 - (ii) pension scheme, which is certified by the Government Actuary's Department (**GAD**) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.

Bond: the bond to be executed in the Council's standard form to the value as required by the Administering Authority or Council under paragraph 5.3 of this Schedule 10.

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from the Council or any Third Party Employer to the Provider or Sub-Contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-Contractor.

Eligible Employees: the Transferring Employees or employees of Third Party Employers who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or

a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two (2) years; and

- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

LGPS: the Local Government Pension Scheme established pursuant to regulations made in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 (as amended from time to time).

LGPS 2013 Regulations: The Local Government Pension Scheme Regulations 2013 (as amended from time to time).

LGPS Regulations: the LGPS 2013 Regulations and the LGPS Transitional Regulations.

LGPS Transitional Regulations: the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

NHS Pension Scheme: the National Health Service Pension Scheme for England and Wales established under the Superannuation Act 1972, governed by subsequent regulations under that Act including the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), and the National Health Service Pension Scheme Regulations 2015 (SI 2015/94).

Redundancy Costs: statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Provider to the

Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

Redundant Transferring Employees: Transferring Employees whom the Provider has dismissed following a lawful redundancy within six (6) months of the Effective Date.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Provider by virtue of the application of TUPE.

Provider's Final Staff List: the list of all the Provider's Staff and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Provider's Provisional Staff List: the list prepared and updated by the Provider of all the Provider's Staff and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Provider or Sub-Contractor to the Council or any Replacement Provider.

Staffing Information: in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Provider or Sub-Contractor by virtue of the application of TUPE.

Third Party Employer: a Provider engaged by the Council to provide the Services to the Council and whose employees will transfer to the Provider on the Effective Date.

Transferring Employees: employees of the Council whose contracts of employment transfer with effect from the Effective Date to the Provider by virtue of the application of TUPE.

2. TRANSFER OF EMPLOYEES TO THE PROVIDER

- 2.1 The Council and the Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Provider or Sub-Contractor. The Provider shall comply and shall procure that each Sub-Contractor shall comply with their

obligations under TUPE. The first Relevant Transfer shall occur on the Effective Date.

- 2.2 The Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date. The Council shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Provider, as required by TUPE. The Council shall warrant that such information is complete and accurate as it is aware or should reasonably have been aware as at the date it is disclosed.
- 2.3 Subject to paragraph 2.4, the Council shall indemnify and keep indemnified the Provider against any losses, except indirect losses incurred by the Provider or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Council in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Provider or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.
- 2.4 The Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against Employment Liabilities arising from or as a consequence of any:
 - (a) proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider taking on or after the Effective Date;
 - (b) of the employees informing the Council and any Third Party Employer that they object to being employed by the Provider or Sub-Contractor; and
 - (c) change in identity of the Transferring Employees' and Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Commencement Date.
- 2.5 The Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, the Third Party Employees, and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses,

commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.

- 2.6 The Provider shall immediately on request by the Council and/or the Third Party Employer provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Transferring Employees and the employees of any Third Party Employer including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact, and shall indemnify the Council and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Provider shall notify the Council of any material changes to this information as and when they occur.
- 3.3 At least twenty-eight (28) days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's Staff and Sub-Contractor's personnel named are Relevant Employees.
- 3.4 The Council shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as the Services (or any part thereof).

- 3.5 The Provider warrants to the Council and the Replacement Provider that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.
- 3.6 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 Any change to the TUPE Information which would increase the total employment costs of the Staff in the six (6) months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by Law. The Provider shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.8 Subject to paragraph 3.9 the Provider shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Provider against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services; or
 - (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor),
- arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.9 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.10 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8 (inclusive), to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.11 Despite paragraph 3.10, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

4. PENSIONS

4.1 The Provider shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this Agreement.

4.2 The provisions of paragraph 4 and paragraph 5 all be directly enforceable by an affected employee against the Provider or any relevant Sub-Contractors.

5. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

5.1 Where the Provider or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Provider shall or shall procure that it and/or each relevant Sub-Contractor(s) shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate or Bond value in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Date.

5.2 The Provider shall indemnify and keep indemnified the Council and/or any Replacement Provider and, in each case, their service providers, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Provider or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Agreement.

5.3 The Provider shall, and shall procure that it and any Sub-Contractor shall, prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or Bond required in accordance with the Admission Agreement.

5.4 The Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council. The

Provider shall be responsible for meeting all costs associated with the award of such benefits.

6. PROVIDER PENSION SCHEME

6.1 Where the Provider or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS or such other broadly comparable scheme, the Provider shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

- (a) established no later than three (3) months prior to the date of the Relevant Transfer; and
- (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the LGPS,

and the Provider shall produce evidence of compliance with this paragraph to the Council prior to the date of the Relevant Transfer.

6.2 The Council's actuary shall determine the terms for bulk transfers from the LGPS to the Provider's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this Agreement.

Part 2. Not used

Part 3. Admission Agreement and Bond (for use in transfers of members of LGPS only)

In the form as required by the Administering Body and/or Council.

SCHEDULE 11: COMMERCIALY SENSITIVE INFORMATION

The Provider considers that the information detailed in Annex 11 (Confidential Information) of the Provider's Tender is Commercially Sensitive Information.

For the avoidance of doubt the Provider acknowledges and accepts that the Council is required to comply with the FOIA and EIR and that the information referred to in this Schedule 11 as Commercially Sensitive Information may in accordance with the terms of the Agreement be disclosable by the Council.

The Provider further acknowledges and accepts that the Council is required to publish information in relation to value of contracts and contract spending.

SCHEDULE 12: THE ESTABLISHMENTS

PART 1 – NOT USED

PART 2 – THE LEASES

SCHEDULE 14: BRANDING PRINCIPLES

Not used

SCHEDULE 15: AGREED INFORMATION AVAILABLE FOR PUBLICATION

The Parties acknowledge and accept that the Council has a statutory duty to publish information regarding all contracts entered into by the Council.

SCHEDULE 16: PARENT COMPANY GUARANTEE

Not Used

SCHEDULE 17: PERFORMANCE BOND

Not Used

SCHEDULE 18: DATA PROTECTION

1. Where the activities carried out by the Parties in complying with their respective obligations under this Agreement are such that, as a matter of fact, the Parties are Joint Controllers of Personal Data, then the following shall apply:
 - a) Where the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall comply and act in accordance with the terms set out in Annex 1 to this Schedule 18 (Joint Controller Agreement).
 - b) Where the Provider purports to collect or otherwise process any Personal Data of a Service User or associated Data Subject for the purposes of this Agreement or in connection with the provision of the Services but such Personal Data is not so required or is excessive with regard to the information required for provision of such purposes and/or the Services the Provider will be an Independent Controller of that Personal Data.
2. Where the activities carried out by the Parties in complying with their respective obligations under this Agreement are such that one Party is, as a matter of fact, the Controller and the other Party its Processor, then the following shall apply:
 - a) Where the Council as a Controller provides specific processing instructions for Personal Data to the Provider in relation to the processing activities described in Annex 2 to this Schedule 18 the Provider is the Processor of that Personal Data. The only processing that the Provider is authorised to do by the Council is listed in Schedule 18, Annex 2 (Processing, Personal Data and Data Subjects) to this Agreement and may not be determined by the Provider.
 - b) The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
 - c) The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
 - i) a systematic description of the envisaged processing operations and the purpose of the processing;
 - ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - iv) the measures envisaged to address the risks, including safeguards, security

measures and mechanisms to ensure the protection of Personal Data.

- d) The Provider shall, in relation to any Personal Data processed as a Processor in connection with its obligations under this Agreement:
- i) process that Personal Data only in accordance with Schedule 18, Annex 2 (Processing, Personal Data and Data Subjects) to this Agreement, unless the Provider is required to do otherwise in accordance with the Agreement or as required by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - ii) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures), having taken account of the:
 - 1. nature of the data to be protected;
 - 2. harm that might result from a Data Loss Event;
 - 3. state of technological development; and
 - 4. cost of implementing any measures.
 - iii) ensure that:
 - 1. the Provider Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 18, Annex 2 (Processing, Personal Data and Data Subjects)) to this Agreement);
 - 2. it takes all reasonable steps to ensure the reliability and integrity of any Provider Staff who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Provider's duties under this Schedule 18 paragraphs 2(a) – 2(n); and
 - (b) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third

party unless directed in writing to do so by the Council or as otherwise permitted by the Agreement; and

- (d) have undergone adequate training in the use, care, protection and handling of Personal Data;
- iv) not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - 1. the Council or the Provider has provided appropriate safeguards in relation to the transfer (in accordance with Data Protection Legislation) as determined by the Council;
 - 2. the Data Subject has enforceable rights and effective legal remedies;
 - 3. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - 4. the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- v) at the written direction of the Council, delete or return all Personal Data (and any and all copies of it) to the Council on termination of this Agreement unless the Provider is required by Law or authorised under this Agreement to retain the Personal Data.
- e) Subject to paragraph 2(f) of this Schedule 18, the Provider shall notify the Council immediately if it:
 - i) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - ii) receives a request to rectify, block or erase any Personal Data;
 - iii) receives any other request, complaint or communication relating to either Party's obligations or a Data Subject's rights under the Data Protection Legislation;

- iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - v) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - vi) becomes aware of a Data Loss Event.
- f) The Provider's obligation to notify under paragraph 2(e) above shall include the provision of further information to the Council in phases, as details become available.
- g) Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 2(e) above (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- i) the Council with full details and copies of the complaint, communication or request;
 - ii) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - iii) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - iv) assistance as requested by the Council following any Data Loss Event;
 - v) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- h) The Provider shall maintain complete and accurate records and information to demonstrate its compliance with Data Protection Legislation and this Schedule 18, paragraphs 2(a)–(n). This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- i) the Council determines that the processing is not occasional;
 - ii) the Council determines the processing includes special categories of data

as referred to in Data Protection Legislation or Personal Data relating to criminal convictions and offences referred to in Data Protection Legislation; and

- iii) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- i) The Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- j) The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- k) Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:
 - i) notify the Council in writing of the intended Sub-processor and processing;
 - ii) obtain the written consent of the Council;
 - iii) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 18, paragraphs 2(a) – (n) (such that they apply to the Sub-processor); and
 - iv) provide the Council with such information regarding the Sub processor as the Council may reasonably require.
- l) The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- m) The Council may, at any time on not less than 30 Working Days' notice, revise this Schedule 18, paragraphs 2(a) – (n) and Annex 2 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- n) The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the Provider amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

3. Where the activities of the Parties in complying with their respective obligations under this Agreement, or otherwise, are such that, as a matter of fact, they are each Independent Controllers of Personal Data, then the following shall apply:

- a) With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the joint control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller and not to do anything to cause the other Party to be in breach of it unless required by Law.
- b) Where a Party has provided Personal Data to the other Party in accordance with paragraph 3(a) above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- c) The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the processing of Personal Data for the purposes of this Agreement except as detailed in Annex 3 (Data Sharing Arrangements).
- d) The Parties shall only provide Personal Data to each other:
 - a. to the extent necessary to perform the respective obligations under this Agreement; and
 - b. in respect of Personal Data shared by the Provider with the Council for the purposes of safeguarding, auditing or contract management in accordance with Schedule 18 Annex 3 (Data Sharing Arrangements).
- e) The Provider sharing Personal Data as an Independent Controller for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 UK GDPR and shall make the record available to the Council upon reasonable request.
- f) Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (“**the Request Recipient**”):
 - i. the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - ii. where the request or correspondence is directed to the other Party and/or relates to the other Party's Processing of the Personal Data, the Request Recipient will:
 - i. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other

Party that it has received the same and shall forward such request or correspondence to the other Party; and

- II. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- g) Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to this Agreement and shall:
 - a. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
 - b. implement any measures necessary to restore the security of any compromised Personal Data;
 - c. work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - d. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
 - h) Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement
 - i) Notwithstanding the general application of this Schedule 18 paragraphs 3(a) -3(i) to Personal Data, where the Provider is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Schedule 18, paragraph 1(a) and paragraphs 3(a) – 3(i)

SCHEDULE 18, ANNEX 1 - JOINT CONTROLLER AGREEMENT

1. JOINT CONTROLLER STATUS AND ALLOCATION OF RESPONSIBILITIES

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 1 (Joint Controller Agreement). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that in respect of the receipt of a request from a Data Subject to exercise their rights under the UK GDPR the responsibilities will be as follows:
 - (a) The Party which receives the request is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
 - (b) Both Parties shall direct Data Subjects to their respective Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - (c) both Parties will comply with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR in respect of Personal Data which they collect;
 - (d) the Party carrying out the processing is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
 - (e) the Parties shall make available to Data Subjects the essence of this Annex 1 (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Privacy Notice or other information provided to the Service User as part of, or any other Data Subject whose Personal Data is processed in connection with, the Services.
- 1.3 Notwithstanding the terms of paragraph 1.2 above, the Parties acknowledge that a Data Subject has the right to exercise their legal

rights under the Data Protection Legislation as against the relevant party as Controller.

2. UNDERTAKINGS OF BOTH PARTIES

2.1 The Provider and the Council each undertake that they shall:

- (a) report to the other Party as a minimum annually on:
 - (i) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
 - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the Agreement during that period;

- (b) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in paragraph 2.1(a)(iii)-(v) above to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (c) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under the Agreement or is required by Law. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex 1 where they are also acting as a Joint Controller;

- (d) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- (e) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (f) take all reasonable steps to ensure the reliability and integrity of any of its Staff who have access to the Personal Data and ensure that its Staff:
 - (i) are aware of and comply with their duties under this Annex 1 (Joint Controller Agreement) and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that party would not be permitted to do so;
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (g) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Personal Data Breach;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (h) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Provider holds; and
- (i) ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.

- 2.2 The Provider will notify the Council if it receives any request, complaint or communication made as referred to in paragraphs 2.1(a)(i)-(v) above and the Council will notify the Provider if it receives any similar request, complaint or communication insofar as it relates to and may affect the Provider and/or the provisions of the Services.
- 2.3 Each Joint Controller shall use its reasonable endeavours to assist the other Joint Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex 1 in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations unless required by Law.

3. DATA PROTECTION BREACH

- 3.1 Without prejudice to paragraph 3.2 of this Annex 1, each Party shall notify the other Party promptly and without undue delay, and in any event within forty-eight (48) hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:
- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
 - (b) all reasonable assistance, including:
 - (i) co-operation with the other Party and if applicable the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
 - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete

information relating to the Personal Data Breach, including, without limitation, the information and assistance set out in paragraph 3.2 below.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach by that Party at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within forty-eight (48) hours of the Personal Data Breach such details relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

4. AUDIT

4.1 Without prejudice to the provisions of clause 28 (Audit) the Agreement, the Provider shall permit:

- (a) the Council, or a third-party auditor acting under the Council's direction, to conduct, data privacy and security audits, assessments and inspections concerning the Provider's data security and privacy procedures relating to Personal Data, its compliance with this Annex 1 and the Data Protection Legislation; and/or
- (b) the Council, or a third-party auditor acting under the Council's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Provider so far as relevant to the Agreement, and procedures, including premises under the control of any third party appointed by the Provider to assist in the provision of the Services.

- 4.2 The Council may, in its sole discretion, require the Provider to provide evidence of the Provider's compliance with Schedule 18 Annex 1 paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

5. IMPACT ASSESSMENTS

5.1 The Parties shall each:

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Agreement in accordance with the terms of Article 30 UK GDPR.

6. ICO GUIDANCE

6.1 The Parties agree to take account of any guidance issued by the Information Commissioner. The Council may on not less than thirty (30) Working Days' notice to the Provider amend the Agreement to ensure that it complies with any guidance issued by the Information Commissioner.

7. LIABILITIES FOR DATA PROTECTION BREACH

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Council or the Provider for a Personal Data Breach ("**Financial Penalties**") then subject to the total aggregate liability as set out in the Contract Particulars of the Agreement the following shall occur:
- (a) if in the view of the Information Commissioner, the Council is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Council, its employees, agents, contractors (other than the Provider) or systems and procedures controlled by the Council, then the Council shall be responsible for the payment of such Financial Penalties. In this case, the Council will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Provider shall provide to the Council and its third party investigators and auditors, on request and at the

Provider's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

- (b) if in the view of the Information Commissioner, the Provider is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Council is responsible for, then the Provider shall be responsible for the payment of these Financial Penalties. The Provider will provide to the Council and its auditors, on request and at the Provider's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- (c) if no view as to responsibility is expressed by the Information Commissioner, then the Council and the Provider shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 20 (Dispute Resolution) of the Agreement.

7.2 If either the Council or the Provider is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "**Claim Losses**"):

- (a) if the Council is responsible for the relevant Personal Data Breach, then the Council shall be responsible for the Claim Losses;
- (b) if the Provider is responsible for the relevant Personal Data Breach, then the Provider shall be responsible for the Claim Losses; and
- (c) if responsibility for the relevant Personal Data Breach is unclear after the Dispute Resolution Procedure has taken place, then the Council and the Provider shall be responsible for the Claim Losses equally.

7.4 Nothing in either Schedule 18, Annex 1 paragraph 7.2 or paragraph 7.3 shall preclude the Council and the Provider reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial

responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Council.

Schedule 18 Annex 2 - Processing, Personal Data And Data Subjects

1. The Provider shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule 18, Annex 2.

Description	Details
Subject matter of the processing:	The provision of social care and support for, adults including older people and people with a learning disability, a physical and/or sensory disability, autism and/or a mental health condition and/or an acquired brain injury.
Duration of the processing:	For the duration of the Term and for any further duration required in accordance with this Agreement or as required by Law.
Nature and purposes of the processing:	The collection, recording, adaptation, storage, retrieval and other support of Personal Data as necessary for the provision of health and social care and support for adults including older people and people with a learning disability, a physical and/or sensory disability, autism and /or a mental health condition and/or an acquired brain injury.
Type of Personal Data:	Personal Data (including sensitive data), including (without limitation), a Service User’s name, date of birth, postal address, e-mail address, telephone number, mobile phone number, next of kin details, LAS, NHS number, legal status offending history, details about their disability and / or any associated health condition, financial information, information about any benefit claims together with any other information relevant to their health and social care and support.

<p>Categories of Data Subject:</p>	<p>Service Users being, adults (including older people) and people with a learning disability, a physical and/or sensory disability, autism and /or a mental health condition and/or acquired brain injury in receipt of statutorily funded social care and support.</p> <p>Service Users’ carers, family members, representatives and / or advocates.</p> <p>Members of Staff.</p> <p>Professionals who are included in the Service Users Support Plan and/or Care Plan.</p>
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data:”</p>	<p>In accordance with Clause 25 (Freedom of Information), Clause 26 (Data Protection), and Schedule 18, paragraphs 2(a) -2(n) of this Agreement and as further required by Law.</p>

Schedule 18 Annex 3 – Data Sharing Arrangements

1. Purpose

(a) This Annex 3 (Data Sharing Arrangements) sets out the further requirements for the disclosure and sharing of Personal Data pursuant to Schedule 18 paragraph 3 and the obligations in the Agreement including but not limited to Clause 28 (Audit) and to otherwise ensure compliance with Law as it relates to any Personal Data held by the Provider. This Annex 3 will apply in relation to the sharing of such Personal Data under the Agreement for those purposes and the Provider as discloser and the Council as receiver will each be a Data Controller.

2. Lawful Fair and Transparent Processing

(a) Each Party will shall ensure that it processes the Personal Data fairly and lawfully in accordance with Data Protection Legislation and that it has legitimate grounds under the Data Protection Legislation for the processing of Shared Personal Data however it is expected that the lawful basis for sharing will be legitimate interest, public task, substantial public interest and health and social care.

(b) The Provider will be responsible for compliance with any required notification to Data Subjects under Data Protection Legislation

3. Personal Data

(a) The Personal Data to be shared will be all information relating to the Staff, volunteers, temporary or casual workers or other persons providing the Services under this Agreement being all information normally held on a personnel or Staff file by an employer including but not limited to recruitment, identification information, DBS or equivalent checks, references, health records, training and qualifications, employment history, hours worked, rotas, disciplinary procedures, absences, appraisals, promotions and any other information which may be relevant to the fitness for such person to carry out or be involved in the Services in respect of the Service Users as may be required by Clause 28 (Audit) of the Agreement.

4. Procedure

(a) Access to the Provider's records and the Personal Data will be in accordance with Clause 28 (Audit) of the Agreement.

(b) The Council will only process the Personal Data for the purposes detailed for as long as necessary and will be a Data Controller of any Personal Data viewed, accessed or received until any Personal Data held by the Council is destroyed, returned or deleted.

- (c) The procedures for dealing with Personal Data Breaches and Data Subject Access Requests are set out in Schedule 18 paragraph 3.
- (d) Without prejudice to the provisions of clauses 28 (Audit) and clause 18 (Monitoring) of the Agreement, the Provider agrees to permit:
 - i. the Council, or a third-party auditor acting under the Council's direction, to conduct, data privacy and security audits, assessments and inspections concerning the Provider's data security and privacy procedures relating to Personal Data, its compliance with the Agreement and the Data Protection Legislation; and/or
 - ii. the Council, or a third-party auditor acting under the Council's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Provider so far as relevant to the Agreement, and procedures, including premises under the control of any third party appointed by the Provider to assist in the provision of the Services.
- (e) The Council may, in its sole discretion, require the Provider to provide evidence of the Provider's compliance with paragraph 4(d) above in lieu of conducting such an audit, assessment or inspection.

5. Security

- (a) In relation to the sharing of Personal Data all appropriate Protective Measures will be taken by both Parties to ensure the safety and security of the Personal Data both during sharing and any subsequent processing as further detailed or required within Schedule 18 and the Agreement. This will include, but not be limited to, Egress secure email, email encryption, password protection for email attachments, registered post, and read only Sharepoint links.

6. Retention and deletion

- (a) Unless consideration of the Personal Data indicates that there is or may be any non-compliance with the Council's Contract Management Procedure, Serious Concerns and Suspension's Procedure, any terms of the Agreement or there are any suspected safeguarding issues or suspected, potential or actual criminal or illegal activity, once the data has been considered it will be destroyed, returned or deleted as appropriate.
- (b) If consideration of the Personal Data does raise any of the concerns or indications set out in paragraph 6(a) above, the data will be copied or retained by the Council in order to carry out further investigations, refer to appropriate Regulatory Bodies or organisations or the Police or take legal or regulatory action itself against the Provider or other legal person as may be deemed appropriate.

7. Review

- (a) This Annex 3 will be regularly reviewed as part of the contract management of the Agreement to ensure it remains applicable and relevant to the Services and is in compliance with current Law and in particular Data Protection Legislation and any guidance issued by the Information Commissioner's Office.
- (b) If changes to this Annex 3 are required as a result of a review under paragraph 7(a) above the Parties agree to amend this Annex 3 to ensure it complies with any such Law or guidance.