

DATED

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CARE AND SUPPORT SPOT PURCHASE – DAY OPPORTUNITIES

between

NORTH SOMERSET DISTRICT COUNCIL

and

[] LIMITED

N P Brain
Head of Legal and Democratic Services
North Somerset District Council
Town Hall,
Walliscote Grove Road
Weston-super-Mare
BS23 1UJ
(Ref ACM/LS012106)

THIS CONTRACT is dated

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PARTIES

- (1) **North Somerset District Council** of Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ (**Council**); and
- (2) [] **Limited** a company incorporated and registered in England and Wales with Company Number [] whose registered office is at [](**Provider**)

1.1 In this Contract (which expression includes the recitals, the **Schedules** and any attachments hereto) the following words and phrases shall, unless the context otherwise requires, have the following meanings:

Commencement Date: [date when Provider joins the Framework] (subject to the provisions of **Clause 2.2**)

This Contract has been entered into on the date stated at the beginning of it.

Signed by []
Authorised Signatory
for and on behalf of
North Somerset Council

.....
Authorised Signatory

Signed by []
for and on behalf of [PROVIDER]

.....
Director

TERMS AND CONDITIONS OF CONTRACT

(Care and Support Spot Purchase – Day Opportunities)

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TERMS AND CONDITIONS OF CONTRACT

BACKGROUND

- (A) The Council has obligations as a local authority under various acts including inter alia the Care Act 2014 to provide care and support to Persons in its area. Working in partnership with health colleagues, the Council wishes to provide holistic high-quality home care services that enable Persons to receive responsive care and support in the environment of their choosing.
- (B) Provider hereby agrees with the Council to provide such services on the terms of this Contract.

AGREED TERMS

1. INTERPRETATION

- 1.1 In this Contract (which expression includes the recitals, the **Schedules** and any attachments hereto) the following words and phrases shall, unless the context otherwise requires, have the following meanings:

Achieved Service Levels: in respect of any Service in any measurement period means the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in **Schedule 6 Service Levels**).

Actual Care Provided: means the actual time spent by the Provider's Staff with the relevant Client (measured to the minute).

Authorised Representatives: the persons respectively designated as such by the Council and the Provider

Bank Holiday: any public holiday being a day other than a Saturday or a Sunday when banks in London, England are closed for business.

Care Staff: the Provider's staff used directly in the provision of care Services to Clients.

Caldicott Principles: the seven key safeguarding principles for keeping health and social care information secure as set out in **Clause 16**.

Catastrophic Failure: means either:

(a) An act or a failure of the Provider to provide the Services to the required Service Levels in such a way that, in the reasonable opinion of the Council, which brings the Council into disrepute so that the Council cannot reasonably continue to contract with the Provider to provide the Services;

(b) Save in cases of Force Majeure or where **Clause 3.2 (Disaster Recovery)** applies, if the Provider fails to provide more than 60% of

the Services required in any consecutive period of 3 days the Services to the standards required by **clause 4**

Change Control Procedure: the procedure set out in **Clause 11**.

Client(s): means a person or persons receiving the Services from the Provider this includes children aged from 0-13 years old, young people aged from 14-17 years old, and adults aged from 18 and over.

Consistent Failure: regular failure by the Provider (as reasonably so deemed by the Council) to provide the Services to the standards required by Schedule 6 and as further provided by **Clause 10**

Contract Term: the Initial Term and any extension of it.

Council Intellectual Property: the Intellectual Property belonging to the Council (or to other bodies working with the Council on the Contract).

CQC: the Care Quality Commission (or its successor in function from time to time)

CQC Fundamental Standards: the national standards, set by the CQC, designed to ensure that care provision is fit for purpose and meets the assessed needs of Clients using social care Services.

Disaster: an event defined as an Emergency Incident in the Disaster Recovery Plan as per **Schedule 9**.

Disaster Recovery Plan: a plan in accordance with **Schedule 9** which sets out the procedures to be adopted by the Provider in the event that there is a Provider Failure or event of Force Majeure or in the event of the Council being required to provide services in accordance with their statutory obligations under **Section 48 of the Care Act 2014** (including the procedures to be taken by the Provider in planning and providing for any such event.

Dispute Resolution Procedure: the procedure set out in **Clause 13**.

Documentation: a description of the Services, records, Plans, technical specifications, operating manuals, process definitions and procedures, all as required by the Council or any Provider to provide the Services, or services equivalent to the Services, on termination of this Contract.

Exit Management Plan: the plan set out in **Schedule 7**

Financial Reports: the reports to be prepared and presented by the Provider in accordance with **Clause 12 and Schedule 4**.

Force Majeure: as defined in **Clause 24**

Holding company: has the meaning given in **Clause 1.2**.

Initial Term: the period commencing on and including the Commencement Date to the 31 March 2023

Intellectual Property: property in which intellectual property rights of whatever nature (including but not limited to patents, trademarks, database

rights and present and future copyright) subsist and, where the context so admits, includes such intellectual property rights.

Law: means the laws of England and the European Union and any other statutes, statutory instruments, orders, regulations, directives, codes of practice, byelaws, or the like to be observed and performed in connection with the Services.

Liquidated Damages: liquidated damages payable by the Provider pursuant to **Clause 10**.

Management Reports: the reports to be prepared and presented by the Provider in accordance with **Clause 12 and Schedule 4** to include a comparison of Achieved Service Levels with contracted Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Management Team: Team appointed under **Clause 12 and Schedule 4**.

Month: a calendar month.

New Provider: has the meaning set out in **Schedule 7**.

Office Hours: means from 0900-1700 Monday to Friday excluding the usual bank holidays.

Order: has the meaning defined in **Schedule 1 – Specification**;

Package: means the Services delivered by the Provider to by a particular Client.

Professionals: means other healthcare professionals such as doctors, therapists, etc, not employed by the Provider.

Provider Failure: inability of the Provider temporarily or permanently to provide the Services, including pandemics, epidemics, flooding, snow or other adverse weather events.

Provider's Group: means and includes each and any subsidiary or holding company of the Provider and each and any subsidiary of a holding company of the Provider.

Relevant Policies: has the meaning set out in **Clause 21**.

Relevant Requirements: has the meaning set out in **Clause 21**

Review Date: means each 1st April during the Contract Term commencing on the 1st April 2020.

Service Charges: the charges levied by the Provider in accordance with the tariffs, scales, charges, invoicing methods and terms of payment set out in this Contract and **Schedule 2**

Service Levels: the performance standards measured against the Performance Indicators set out in **Schedule 6** in accordance with which the Provider is to provide the Services.

Service Managers: the designated representatives of the Council and the Provider from time to time who have day-to-day responsibility for the

performance of their appointor's obligations under this Contract and act as the principal point of contact between the parties.

Service Period: a period of 28 days starting from the 1st Monday of the week in which April commences in each year and including the final 13th Service Period in which may incorporate the additional days in each calendar year or such other invoicing period as the Council shall from time to time specify.

Service Year: the period of one Year starting from the 1st April.

Services: the services described in **Schedule 1 – Specification** to be provided by the Provider to the Council in accordance with the provisions of this Contract so as to meet the requirements set out in the Service Levels (as varied from time to time).

Staff: means the Provider's employees and other personnel including Care Staff.

Subsidiary: has the meaning given in **Clause 1.2**.

VAT: value added tax.

Year: any successive period of 12 calendar months measured from the 1st April 2019.

- 1.2 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.3 The headings in this Contract do not affect its interpretation. Save where the context otherwise requires, references to sub-Clauses, Clauses and Schedules are to sub-Clauses, Clauses and Schedules of this Contract.
- 1.4 Unless the context otherwise requires:
 - (a) References to the Council and the Provider include their permitted successors and assigns;
 - (b) References to statutory provisions include those statutory provisions as amended or re-enacted; and
 - (c) References to any gender include all genders and use of the singular includes the plural and vice versa.

- 1.5 In the case of conflict or ambiguity between any provision contained in the body of this Contract and any provision contained in any Schedule, the provision in the body of this Contract shall take precedence.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.8 Including means “including without limitation”.

2. TERM OF THIS CONTRACT

- 2.1 This Contract shall continue in full force and effect for the Initial Term unless either previously terminated by either party in accordance with the termination provisions set out below or the terms of **Clause 2.2** apply.
- 2.2 The Council may by service of a written notice to the Provider not less than six (6) months before the expiry of the Initial Term extend the Contract for a further period of 2 years (“the Additional Term” which shall be the Contract Term) If the Provider does not wish to continue to provide the Services it shall, within 21 days of receipt of the Council’s notice, serve notice on the Council refusing the proposed extension and the Contract will end at the expiry of the Initial Term.
- 2.3 For the avoidance of doubt the Service Charges shall be reviewed as per **Clause 8**.

3. SERVICES

- 3.1 Supply of Services -The Provider will provide the Services to Clients on behalf of the Council with effect from Commencement Date and for the duration of this Contract in accordance with the provisions of this Contract:
 - (a) Where any Service is stated in the **Schedule 1 – Specification or Schedule 6** to be subject to a specific Service Level, the Provider shall provide that Service in such a manner as will ensure that the Achieved Service Level [Performance Indicators] in respect of that Service is equal to or higher than such specific Service Level.
 - (b) As existing Services are varied and new Services are added, Service Levels for the same will be determined and included within **Schedule 6**.
 - (c) The Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in **Schedule 4**. In the event that any Achieved Service Level falls short

of the relevant Service Level the provisions of **Clause 10** shall prevail.

3.2 Disaster Recovery

- (a) The Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan set out in **Schedule 9**.
- (b) Following the declaration of a Disaster in respect of any of the Services, the Provider shall:
 - (i) Implement the Disaster Recovery Plan;
 - (ii) Continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and
 - (iii) Restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

4. STANDARDS

4.1 Council-specific standards

- (a) The Provider will provide or procure that the Services are provided, in accordance with the Council's Information Security Policy from time to time in force; and
- (b) The Provider will comply (and will procure that its employees, agents and sub-contractors comply) with the Council's Policies contained or referred to in **Schedule 5** in each case as the same are in force from time to time and are notified to the Provider and any other relevant policies reasonably requested by the Council from time to time.

5. STAFF ENGAGED IN THE PROVISION OF THE SERVICES

5.1 General standards

In the provision of the Services, the Provider shall use Staff who possess the skill and experience which is appropriate to the tasks to which they are allotted and the performance and Service Levels which they are required to achieve and who shall perform those tasks in a workmanlike and professional manner.

5.2 Training

- (a) The Provider shall ensure that:
 - (i) All Staff are supported, developed and trained to work using a Client-centred approach offering, where possible, flexibility and freedom in the way the Services are delivered.
 - (ii) All Staff and Managers receive as a minimum, training as detailed in the Council's Training Requirements **Schedule 8**.

- (iii) All Care Staff receive any specific training necessary to meet the needs of Clients.
- (iv) It complies with the requirements of the National Minimum Data Set for Social Care;
- (v) It requests a training competency assessment tool (such as “TGM Care Certificate Tool”) to assess the competency of each member of Care Staff (including the registered manager and/or responsible individual) and measure the effectiveness of its Care Staff training.
- (vi) It regularly reviews its assessment of Staff competence; and
 - (A) Ensures that any Staff found to not be competent in any area of Service delivery undertake further training until their supervisor is satisfied that they are competent; and
 - (B) The frequency of the reviews necessary to comply with the requirements of this **Clause** shall be determined based on the level of risk to the Clients and the relevance to the Services the relevant Care Staff member is undertaking at the time.
- (vii) It ensures that all Staff including office and on-call Care Staff receive work-based supervision relevant to their roles and tasks.
- (viii) It ensures that all Registered Managers receive regular supervision and have the opportunity to escalate problems to a senior manager in the organisation, proprietor or a mentor.
- (ix) It ensures that any Staff member whose role it is to make decisions (whether it is outside of office hours or in a working day situation) where a manager may not be present, receives regular audits and competency checks.

5.3 **Safeguarding**

- (a) The Provider shall work in partnership with the Council and other organisations to ensure that Clients who may be at risk of abuse or neglect are enabled to live as safely and independently as possible, making their own decisions and taking control of their own lives. The Council has a duty to make sure that the Services it commissions are provided safely and to a high standard. The Provider understands this duty and shall take action to ensure the Provider’s role in this is fulfilled.
- (b) All Staff have received satisfactory enhanced Disclosure and Barring Service (DBS) checks and in place for Staff, and the Provider ensures that portability and durability of DBS checks are in line with statutory requirements and the Provider ensures that it has received not less than

two satisfactory references for each Staff member prior to recruitment (including where possible that of the latest previous employer).

- (c) It is the Provider's responsibility as an employer to ensure that its Care Staff do not abuse or neglect a Client. However, if the Provider is made aware of abuse or neglect it shall immediately:
 - (i) Inform the Council via Care Connect or any other avenue as determined by the Council (**see Schedule 4**) (and the local CCG if the NHS is the commissioner) taking into account the Client's wishes, and
 - (ii) Take action to protect the Client from further harm (such as by removing the Care Staff involved, or by providing them with additional training or supervision); and
 - (iii) If requested, make enquiries carried out by an appropriate senior member of Care Staff and provide to the Council a report (proportionate to the enquiry) to confirm its findings.
- (d) The Provider must evidence that its Care Staff have received appropriate training in relation to Safeguarding adults that is commensurate with their role and responsibilities. All Care Staff must be aware of the appropriate local processes and policies around whistle-blowing and raising Safeguarding concerns.
- (e) Where the Safeguarding concern relates to the Provider or a member of Care Staff, Provider will ensure that its own policies and procedures are followed.
- (f) In addition to the requirements of **Schedule 4**, the Provider will send a responsible and relevant representative to any Safeguarding meeting they are requested to attend.
- (g) The Provider is responsible for ensuring that robust processes are in place to support all Care Staff in the accurate recording and keeping of information. The Provider acknowledges that it could be called upon at any time to evidence what actions it has or has not taken in keeping Clients safe and adequately supported.

6. THIRD PARTY PRODUCTS AND CONTRACTS

6.1 Licences

- (a) The Council hereby grants to the Provider, with effect from Commencement Date for the duration of this Contract, a non-exclusive royalty-free licence to use, operate, copy and modify the Council Intellectual Property for the purpose only of fulfilling the Provider's obligations under this Contract.
- (b) The parties shall co-operate to obtain the consents of third parties to the use by the Provider of any third party software, documentation

and other materials ("Third Party Products") (including, without limitation, software and know-how) which:

- (i) The Council is permitted to use; and
- (ii) Is required by the Provider for the provision of the Services.

If the Council fails to obtain such consent or if the Council determines that the cost of obtaining such consent is unreasonable, the parties shall co-operate to agree alternative Third Party Products which may replace those in respect of which consent has not been or cannot, except at unreasonable cost, be obtained.

- (c) The Provider shall assume all liability to third parties in respect of its use of any Third Party Products in accordance with **Clause 6.1(b)** as from Commencement Date and shall indemnify the Council against all costs, claims, damages or expenses arising from the Provider's failure to adhere to the terms and conditions of agreements between the Council and such third parties in respect of such Third Party Products.

7. SERVICE CHARGES AND PAYMENTS

Submission and Payment of Invoices

- 7.1 In consideration of the provision of the Services the Council shall pay to the Provider the Service Charges for Packages at the rate and/or in the amounts specified in **Schedule 2 Payment Schedule**.
- 7.2 At the end of each **Service Period** the Provider will submit to;
 - (i) the Charging and Monitoring Team for Adults 18+ Years old
 - (ii) the Personalised Commissioning Team for Children and Young People 0-17 years old

details of the Actual Care Provided to each Client as detailed on the Provider's records and in accordance **with paragraph 7 of Schedule 1 (Finance)**. The Charging and Monitoring Team or Personalised Commissioning (as defined in the **Schedule 1 Specification**) will check the information provided and either approve the Service Charges, or if the provisions of **Clause** Error! Reference source not found. apply, and in either case will notify the Provider.
- 7.3 Within 10 Working Days of receipt of the approved Service Charges under **Clause 7.2** the Provider shall submit to the Council's accounts payable a VAT invoice correctly rendered, together with all necessary substantiating documentation which is reasonably required by the Council, which invoice shall set out:

- (a) The Service Charges payable for Actual Services Provided in respect of the Service Period for which the invoice is rendered;
- (b) Any sums payable by the Provider to the Council in respect of Liquidated Damages incurred in respect of any preceding Service Period (to the extent the same have not been wholly satisfied by payment by the Provider or by deduction from previous invoices); and
- (c) The net amount (if any) owing by the Council to the Provider in respect of the above,

and the Council shall pay such invoice within 28 days of the date of receipt by the Council of (i) the said invoice or (ii) (if later) documentation substantiating the said invoice in such form as is reasonably required by the Council.

- 7.4 If the Council reasonably and properly believes that the information on the relevant Invoice is misleading or inaccurate it may withhold or refuse payment in whole or part.
- 7.5 Invoices submitted late may be subject to payment delay and the Council may in its absolute discretion refuse to accept any claim for payment submitted more 10 Working Days from the end of the relevant Service Period.
- 7.6 Within 10 days of termination of this Contract the Provider shall submit to the Council a VAT invoice or credit note correctly rendered, together with all substantiating documentation which is reasonably required by the Council, which invoice shall set out:
 - (a) A reconciliation of the actual Service Charges payable in respect of the final Month and the estimated Service Charges which were invoiced to the Council in respect of that final Month;
 - (b) Any sums payable by the Provider to the Council in respect of Liquidated Damages incurred in respect of the final Month or any preceding Month (to the extent the same have not been wholly satisfied by payment by the Provider or by deduction from previous invoices); and
 - (c) The net amount (if any) owing by the Council to the Provider or by the Provider to the Council in respect of the above.

The Council shall pay to the Provider the amount owing in respect of the said invoice, or (as the case may be) the Provider shall pay to the Council the amount owing in respect of the said credit note, within 28 days of the date of receipt by the Council of (i) the said invoice or credit note or (ii) (if later) documentation substantiating the said invoice or credit note in such form as is reasonably required by the Council.

7.7 VAT

All Service Charges and payments to be made by the Council under this Contract are stated exclusive of VAT which shall be paid by the Council at the rate and from time to time in the manner prescribed by law.

7.8 Interest

If a party fails to make any payment due to the other party under this Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.

7.9 Payment liability

Unless otherwise expressly agreed between the parties, the Service Charges and such other amounts expressed to be payable by the Council under this Contract shall constitute the Council's entire payment liability to the Provider under this Contract and the Provider hereby indemnifies the Council against any liability to any third party for costs or charges relating to the Services.

7.10 Audit

The Council shall have the right to examine the Provider's books and records relating to the Service Charges for the purposes of ascertaining that the information which is being provided to the Council has been provided accurately. For that purpose the Provider hereby grants to the Council and its professional advisers a right of access to the Provider's premises, system and information on the giving of reasonable notice during normal business hours. The Council and its professional advisers shall have the right to take copies of any financial books and records they reasonably require and the Provider shall provide all necessary facilities free of charge.

8. VARIATION IN THE BASIC PRICE

- 8.1 The Provider shall supply the Services from the Commencement Date until 31 March 2020 in consideration for the Service Charges as set out in **Schedule 2** which shall remain fixed until the first Review Date and thereafter the provisions of **clauses 8.2 to 8.5** shall apply.
- 8.2 Prior to the 21 December in each year of the Term, but not more than 5 months before any Review Date the Provider shall determine whether, and if so, what amendments or adjustments it proposes to make to the Service Charges for the next Service Year. The Provider will consult the Council for a period of not less than 28 days about its proposal(s) to amend or leave static the Service Charges for the next Service Year. In undertaking such consultation, the Provider shall give the Council promptly at the

beginning of the consultation period both its calculations giving rise to the proposal(s) and its reasons for its proposal(s) and the Parties shall, as part of the consultation exercise, compare the Council's proposal(s) with the Service Charges paid in the previous year. As part of the consultation process, the Provider is entitled (but not obliged) to provide the Council with evidence regarding:-

- (a) Any fluctuations in the Provider's costs incurred since the Commencement Date and/or the previous Review Date in providing the Services;
- (b) The current and future costs faced by the Provider in providing the Services;
- (c) Factors that affect those – e.g. local employment costs, insurance and regulatory costs and local land values and costs: and
- (d) The potential for improved performance and more cost-effective ways of working.

8.3 Such evidence, if provided, must include a full breakdown of the Provider's costs as they have been incurred in relation to a Client or category of Clients and shall be cross-referenced to the Provider's audited financial accounts and bank statements showing clearly in relation to the relevant Service(s) or category of Client what, why and by how much such fluctuations in costs have been incurred since the previous Review Date. The Council shall be obliged only to have due regard to any such evidence provided, but it shall be within the Council's sole discretion as to whether or not and if so by how much to adjust or amend the Service Charges in the light of that evidence.

8.4 At the end of the consultation period, the Council shall inform the Provider in writing as to whether or not and if so by how much the Service Charges are to be adjusted giving the Provider reasons for the Council's decision which shall include, in the light of local factors relevant to the Service Charges and any evidence provided by the Provider pursuant to **Clause 8.2** above, setting out the basis on which the Council reached its final decision. If applicable the Service Charges as set out in **Schedule 2** shall be amended accordingly for the next Service Year.

8.5 If the Provider does not wish to provide the Services at the Council's new Service Charges it shall within 5 days of receipt of the Council's notice pursuant to Clause 8.4 serve notice on the Council refusing the proposed Service Charges and the Contract will end at the expiry of the current Service Year.

9. PRICE REDUCTION

9.1 Notwithstanding **Clause 8** and subject to the provisions of this **Clause** the following principles shall apply:

- (a) the Provider shall at all times during this Contract use all reasonable endeavours to ensure that the Council receives the benefit of reduced third party costs and charges relevant to the provision of the Services;
- (b) Where the Provider identifies such a potential benefit, it shall promptly inform the Council and shall advise the Council whether, in the Provider's professional opinion, the implementation of any change necessary to enable the Council to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price).
- (c) If the Council shall conclude that the implementation of the necessary change is desirable, the Provider shall implement the change.
- (d) Where the achievement of the benefit by the Council would necessitate the making of a Change Request (as defined in **Clause 11.1**), the procedures in the Change Control Procedure shall apply but (for the avoidance of doubt) the Provider shall not be entitled to object to the proposed change.
- (e) Any benefits arising from any such change as is referred to in this Clause (including any consequent reductions in the Service Charges) shall accrue solely to the Council (subject to any costs reasonably incurred by the Provider in implementing the necessary change being taken into account).

10. LIQUIDATED DAMAGES

- 10.1 If the Provider fails to provide the Services in accordance with any individual Service Level measured on a monthly basis, the Provider will pay to the Council liquidated damages calculated as set out in this Clause.
- 10.2 The parties agree that any such liquidated damages have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Council.

Default Notices

- 10.3 If the Provider is in breach of its obligations under the Contract, the Council may in accordance with the provisions of this **clause** serve notices:
 - (a) ("Default Notice" and if applicable
 - (b) a "Remedy Notice")
 on the Provider specifying the breach and requiring it to be remedied within a stipulated period of time.
- 10.4 The Council is entitled to recover its costs in respect of the issuing of a Default Notice all losses which arise as a result of the deficient Services. In the case of direct losses these shall, where possible, be calculated accordance with the remaining provisions of this **Clause** and the Council will serve a Remedy Notice to recover these losses.

- 10.5 In the case of indirect or consequential losses which flow from the deficient Services (including but not restricted to any claims made by **Clients** or their Carers) or any contractual or other obligations which fall on the Council these shall be recoverable as a debt owing to the Council by the Provider.
- 10.6 For the avoidance of doubt, it is agreed and declared that the application of this **Clause** and its method of calculation represents a genuine pre-estimate by the Parties of the reduction in the value of the Services to the Council, resulting from the failure of the Provider to perform such Services strictly in accordance with the Contract.
- 10.7 It is recognised that certain deficiencies will only require the Council to expend administrative time for their rectification. Where remedial work is necessary the Council may issue a Remedy Notice, however, then the remaining provisions of this Clause may be applied in addition to this Sub-Clause or, if in the opinion of the Service Manager circumstances warrant it, in lieu of this Sub-Clause;
- (a) Where the Service Manager or any other officer responsible for monitoring has expended administrative time in investigating and organising the remedying of any deficient Services then the reduction in value shall be deemed to be £100 per incident. **This to be referred to as a Category 'A' Remedy Notice.**
 - (b) Where the Service Manager determines that it would cost the Council the equivalent of a single officer working for between 1 and 4 hours to rectify the deficient Services then the reduction in value shall be deemed to be £150 per incident. **This is to be referred to as a Category 'B' Remedy Notice.**
 - (c) Where the Service Manager determines that it would cost the Council the equivalent of a single officer working for between 4 hours and a Day to rectify the deficient Services then the reduction in value shall be deemed to be £300 per incident. **This is to be referred to as a Category 'C' Remedy Notice.**
 - (d) In the case of deficient Services which require 2 or more officers, or in the case that a single officer would take longer than a Day, then the rate for a single officer shall be doubled or otherwise appropriately increased.
- 10.8 The parties agree that the Council may reasonably deem the following to be a **Consistent Failure** for the purposes of this Agreement:
- (a) Service by the Council of more than 1 Category A Remedy Notice in a period of 1 month
 - (b) Service by the Council of more than 1 Category B Remedy Notice in a period of 3 months;

- (c) Service by the Council of more than 1 Category C Remedy Notice in a period of 3 months;
- (d) Service by the Council of more than 3 Default Notices and/or 3 Remedy Notices of any category in a period of 3 months

10.9 The existence of the above calculation for the reductions in the value of Services shall in no way limit the Council's power to terminate the Contract in accordance with **Clause 25** (Termination) of this Contract after any deficient performance of the Services nor to recover any unliquidated damages for losses which cannot be pre-estimated by the Parties in advance.

10.10 The pre-estimate of the reduction in the value of the Services to the Council under this Clause shall be final and may not be reviewed or revised in any arbitration proceedings **under Clause 13 (Dispute Resolution Procedure)** or otherwise

10.11 Notwithstanding the provisions of this **Clause**, no payment shall be due to the Provider by the Council in respect of any Services carried out during the Service Period included in the Invoice if the Service Manager certifies that in his/her opinion the Provider has not substantially performed its obligations to carry out the totality of the Services under the Contract during that period.

10.12 Without prejudice to the provisions of **Clause 10.1** and **Clause 10.2** or to any other remedy that the Council may have, the Council reserves the right in relation to performance of the Services to the standards required by the Service Levels of the Contract, excluding a Disaster, to remedy any defects in the provision of the Services itself relating to such critical functionality or to appoint third parties to do so on 24 hours' notice to the Provider, in each case at the Provider's risk and expense. The Provider will endeavour to correct the defects within the 24-hour notice period.

11. CHANGE CONTROL

11.1 For the purposes of this Contract a **Change Request** is:

- (a) A request to change (including to cease) any Service or add new services to the Services; or
- (b) A request to amend this Contract or any document attached to it or referred to in this Contract.

A Change Request shall become a "Change Order" when the requirements of the Change Control Procedure have been satisfied and the Change Request is signed by the Authorised Representatives of both parties to signify their approval to the change.

For the avoidance of doubt (and without prejudice to **Clause 9**), any improvements in performance standards achieved by the Provider in compliance with the progressive improvement requirements contained in **paragraph 5 of Schedule 1** or elsewhere in this Contract shall neither result in an increase in the Service Charges or be deemed to give rise to a Change Request.

11.2 Origin of Change Requests

- (a) Change Requests may be originated either by the Council or by the Provider.
- (b) Where the Provider originates a Change Request it shall provide, with the Change Request, details of the impact which the proposed change will have upon the Services; any system or operations of the Council which communicate with, or are otherwise affected by, the Services; the Service Charges; and the other terms of this Contract.
- (c) Where the Council originates a Change Request, the Provider shall provide the Council, within 14 days of receiving the Change Request, details of the impact which the proposed change will have upon the Services; any system or operations of the Council which communicate with, or are otherwise affected by, the Services; the Service Charges; and the other terms of this Contract.

11.3 Agreement of Change Orders

- (a) Save where otherwise stated herein, neither party shall be obliged to agree a Change Request originated by the other.
- (b) If either party is unwilling to accept a Change Request suggested by the other (or any term of any proposed Change Order) then the other party may require the disagreement to be dealt with in accordance with the Dispute Resolution Procedure.

11.4 Implementation costs

The costs of implementing a Change Order shall be borne as set out therein.

12. CO-OPERATION BETWEEN THE PARTIES

- 12.1 Each party will appoint a Service Manager and a Management Team to fulfil the functions set out in **Schedule 4**. The Provider will not change its Service Manager or alter the membership of its Management Team without prior consultation with the Council.
- 12.2 The Service Managers and Management Teams shall meet in accordance with the details set out in **Paragraph 4 of Schedule 4** and the Provider shall, at each meeting, present its previously circulated Management Reports and Financial Reports in the format set out in that **Schedule 4**.

13. DISPUTE RESOLUTION PROCEDURE

- 13.1 Either party may call an extraordinary meeting of the parties by service of not less than five days' written notice and each party agrees to procure that its Service Manager and at least one (1) other of its designated representatives from its Management Team shall attend all extraordinary meetings called in accordance with this **Clause**.
- 13.2 The members of the relevant meeting shall use reasonable endeavours to resolve disputes arising out of this Contract. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to the Council's Chief Executive and the Provider's Managing Director who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the Council's Chief Executive and the Provider's Managing Director fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.
- 13.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.
- 13.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. 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 either 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 until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 13.5 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 remain binding on the parties.
- 13.6 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.
- 13.7 While the Dispute Resolution Procedure referred to in this **Clause 13** is in progress and any party has an obligation to make a payment to another

party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this Contract. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

14. ASSIGNMENTS AND SUBCONTRACTING

- 14.1 Except as expressly set out in this Contract neither party shall be entitled to give, bargain, sell, assign, let or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other party.
- 14.2 The Provider may not except with the express prior written consent of the Council:
- (a) Assign the whole its obligations under this Contract, or
 - (b) Sub-contract any part/parts of its obligations (where such a sub-contract together with any previous sub-contracting) would result in more than 20% of the total Services (measured in number of hours) under this Contract being sub-contracted.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 General

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 subcontractor 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 upon creation.

15.2 Copyright

Where such Intellectual Property includes software, designs, documentation or other property subject to copyright, the Provider hereby assigns absolutely to the Council, with full title guarantee, the copyright and all other rights of a like nature conferred under the laws of the United Kingdom and all other countries of the world in such property, and all modifications, enhancements and amendments made by the Provider (or such employee, agent or

subcontractor) to such property for the Council, for the full term during which the copyright and any renewals or extensions shall subsist. The Provider shall procure that its employees, agents and subcontractors shall waive absolutely and irrevocably their moral rights granted under the Copyright, Designs and Patents Act 1988 or equivalent or analogous rights under laws of other jurisdictions in relation to such property.

15.3 Intellectual Property owned by the Provider

Where, in connection with the provision of the Services by the Provider, the Provider uses any Intellectual Property which does not fall within **Clause 15.1** to **Clause 15.2** and which is owned by the Provider or any company within the Provider's Group, the Provider shall grant to the Council, or shall procure that the Council is granted (without charge to the Council and for the benefit of the Council and all companies within the Council's Group) a perpetual, non-exclusive, royalty-free licence to use, adapt, maintain and support such Intellectual Property, which licence shall include the right for any Client providing services to the Council or any company within the Council's Group to use, adapt, maintain and support such Intellectual Property for the benefit of the Council or any such company.

15.4 Third Party Licences

The Provider shall use all reasonable endeavours to procure that any licences for Third Party Products (as defined in **Clause 6.1(b)**) reasonably necessary for the provision of the Services are perpetual and contain terms which will allow the Council on termination of this Contract to use, adapt, maintain and support such Third Party Products or to engage a new services provider to do so.

16. CALDICOTT PRINCIPLES:

16.1 Without prejudice to **clause 17**, the Provider shall, and ensure its Care Staff shall, comply with the following seven Caldicott Principles when processing Personal Data in the nature of health and/or social care information:

- (a) it can justify the purpose for which such data is being processed;
- (b) such data is used only as absolutely necessary;
- (c) only the Data Subject's Personal Data required for the delivery of the Services is recorded and processed;
- (d) access to such data is on a strict need-to-know basis;
- (e) ensure that everyone with access to Personal Data is aware of their responsibilities;
- (f) ensure that the safeguarding and use of Personal Data complies with the relevant Law; and

- (g) have confidence to share information in the best interests of clients within the framework set out by the Caldicott Principles.

17. Data Protection

In this clause the terms **Controller**, **Processor**, **Data Subject**, **Personal Data Breach**, **Data Protection Officer** take the meaning given in the GDPR.

Data Protection Legislation:

- (a) the GDPR, and any other applicable Law governing the processing of Personal Data and privacy and any subordinate or related legislation;
- (b) any guidance, codes of practice or instruction issued by the ICO (or any other relevant regulatory supervisory authority from time to time;
- (c) any replacement to, addition to, or amendment of, any of the foregoing including any national law or regulations constituting a replacement or successor data protection regime to that governed by GDPR; and
- (d) any other applicable Laws governing the processing of Personal Data and privacy which may come into force from time to time.

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

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 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.

Personal Data: any information which falls within the definition of “Personal data” under the GDPR supplied by the Council to the Provider or lawfully obtained by the Provider during the performance of the Services.

- 17.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is and will remain the Controller and the Provider is the Processor in respect of the processing of Personal Data under this Agreement. **Schedule 10 Schedule of Processing, Personal Data and Data** sets out the scope, nature and purpose of the processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 17.2 The Provider shall notify the Council immediately if it considers that any of the Council’s instructions infringes the Data Protection Legislation.
- 17.3 The Provider shall (and shall procure that any of its Care Staff involved in the processing of Personal Data shall) comply with its obligations under

the Data Protection Legislation which arise in connection with this Agreement.

- 17.4 Notwithstanding the general obligation in **clause 17.3**, where the Provider is processing Personal Data as a Processor for the Council:
- (a) The Provider shall only process the Personal Data in accordance with this Agreement, and in particular **Schedule 10**, and on documented instructions from the Council, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - (b) The Provider shall ensure that persons authorised to process the Personal Data;
 - (i) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (ii) 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 this Agreement;
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data and training is kept up-to-date; and
 - (iv) are aware of and comply with the Provider's duties under this **clause 17**.
 - (c) Taking into account the nature of the data to be protected, the harm that might result from a Data Loss Event, the state of technological development and the cost of implementation the Provider shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
 - (i) The pseudonymisation and encryption of Personal Data;
 - (ii) The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (iii) The ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
 - (iv) A process of regular testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
 - (d) In assessing the appropriate level of security referred to in **clause (c)** above, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful

destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed,

- 17.5 The Provider shall not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- (a) The Provider or the Council has provided appropriate safeguards in relation to such transfer;
 - (b) The Data Subject has enforceable rights and effective legal remedies;
 - (c) 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; and
 - (d) The Provider complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data.
- 17.6 Subject to **clause 17.7** the Provider shall notify the Council immediately if it:
- (a) Receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) Receives a request to rectify, block or erase any Personal Data;
 - (c) Receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - (d) Receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) becomes aware of a Personal Data breach;
 - (f) 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
 - (g) Becomes aware of a Data Loss Event.
- 17.7 The Provider's obligation to notify under **clause 17.6** shall include the provision of further information to the Council in phases, as details become available.
- 17.8 Taking into account the nature of the processing, the Provider shall provide the Council with full assistance and co-operation in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under **clause 17.6** (and insofar as possible within the timescales reasonably required by the Council including by promptly providing:
- (a) The Council with full details and copies of the complaint, communication or request:

- (b) 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;
 - (c) The Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) Assistance as requested by the Council following any Data Loss Event;
 - (e) 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.
- 17.9 The Provider shall maintain complete and accurate records and information to demonstrate compliance with **this clause 17** and allow for audits, including inspections, conducted by the Council or another auditor mandated by the Council.
- 17.10 The Council shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 17.11 The Council does not consent to the Provider appointing any third party processor of Personal Data under this Agreement.
- 17.12 At the choice of the Council, the Provider shall delete or return all the Personal Data to the Council at the end of Term and delete existing copies unless applicable Law requires storage of the Personal Data.
- 17.13 The Provider shall indemnify the Council in full in respect of all claims, demands, losses and liabilities of the Council which arise from any breach of the provisions of **this clause 17**.

18. COUNCIL DATA

- 18.1 The Provider shall take all necessary steps to ensure that data or information belonging to the Council which comes into its possession or control in the course of providing the Services is protected in accordance with the Council's IT security policy and in particular the Provider shall not:
- (a) Use the data or information nor reproduce the data or information in whole or in part in any form except as may be required by this Contract; or
 - (b) Disclose the data or information to any third party or **Clients** not authorised by the Council to receive it, except with the prior written consent of the Council; or
 - (c) Alter, delete, add to or otherwise interfere with the data or information (save where expressly required to do so by the terms of this Contract).

19. FREEDOM OF INFORMATION

- 19.1 The Provider acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and cooperate with its disclosure obligations.
- 19.2 The Provider shall provide all necessary information and assistance as reasonably requested by the Council to enable the Council to respond to any request for information within the time for compliance set out in FOIA or EIR.
- 19.3 The Council shall be responsible for determining in its absolute discretion whether the terms of this agreement or any other information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or EIR and save in the case of manifest error the Provider shall not challenge the Council's determination.
- 19.4 The Provider acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA, be obliged to disclose information without consulting or obtaining consent from the Provider, or having taken the Provider's views into account.

20. CONFIDENTIALITY

Except as required by Law both parties shall procure that all confidential information disclosed by one party to the other in accordance with this Contract or which may at any time until termination of this Contract come into the other party's knowledge, possession or control shall not be used for any purposes other than those required or permitted by this Contract and shall remain confidential and shall not be disclosed to any third party except insofar as this may be required for the proper operation of this Contract and then only under appropriate confidentiality provisions approved by the other party. For the purposes of this Contract information relating to the business of the Council, its business system, business processes and client and supplier lists are hereby deemed to be confidential information. These obligations of confidentiality shall cease to apply to any particular item of confidential information once it becomes public knowledge other than by any act or default of either party.

21. ANTI-BRIBERY

- 21.1 The Provider shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) Comply with the Council's Ethics, Anti-bribery and Anti-corruption Policies (referred to in **Schedule 5**), in each case as the Council or the relevant industry body may update them from time to time (**Relevant Policies**).
- (d) Have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and **Clause 21.1(b)**, and will enforce them where appropriate;
- (e) Promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Contract;
- (f) Immediately notify the Council (in writing) if a foreign public official becomes an officer or employee of the Provider **AND/OR** acquires a direct or indirect interest in the Provider (and the Provider warrants that it has no foreign public officials as officers or employees **AND/OR** direct or indirect owners at the date of this Contract);
- (g) Within 2 months of the date of this Contract, and annually thereafter, certify to the Council in writing signed by an officer of the Provider, compliance with this **Clause 21** by the Provider and all persons associated with it and all other **Clients** for whom the Provider is responsible under **Clause 21.1(d)**. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

21.2 Without prejudice to **Clause 14** the Provider shall ensure that any person associated with the Provider who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this **Clause 21 (Relevant Terms)**. The Provider shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms and shall in all circumstances be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

21.3 Breach of this **Clause 21** shall be deemed a breach of a material obligation under **Clause 25.1(d)**.

- 21.4 For the purpose of this **Clause 21**, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this **Clause 21** a person associated with the Provider includes but is not limited to any subcontractor of the Provider.

22. INSURANCE POLICIES

- 22.1 The Provider shall maintain in force the following insurance policies:
- (a) Public Liability Insurance Policy - limit **£10 million per claim**; and
 - (b) Professional Indemnity Insurance Policy - **limit £5 million per claim**,
- and shall ensure that the appropriate noting of the Council's interest has been recorded on the policies or a generic interest **Clause** has been included and shall on the written request of the Council from time to time provide the Council with copies. On the renewal of each policy, the Provider shall promptly send a copy of the premium receipt to the Council.
- 22.2 The Provider shall, during the term of this Contract, and for a period of six years thereafter:
- (a) Administer the insurance policies and the Provider's relationship with its insurers at all times to preserve the benefits for the Council set out in this Contract;
 - (b) Do nothing to invalidate any such insurance policy or to prejudice the Council's entitlement thereunder; and
 - (c) Procure that the terms of such policies shall not be altered in such a way as to diminish the benefit to the Council of the policies as provided at Commencement Date.

23. LIMITATION OF LIABILITY

- 23.1 Any limitation of liability set out in this Contract shall not apply so as to restrict either party's liability for death or Personal injury resulting from that party's negligence or the deliberate default or wilful misconduct of that party, its employees or agents or subcontractors.
- 23.2 Nothing in this **Clause 23** shall affect the Council's right to terminate this Contract in accordance with its terms.

24. FORCE MAJEURE

- 24.1 Subject to due compliance with **Clause 24.2** and **Clause 24.3**, neither party shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Contract arising from any cause

or causes beyond its reasonable control including, without limitation, any of the following: Act of God, governmental act, war, explosion or civil commotion ("Force Majeure").

- 24.2 In the event of either party being so delayed or prevented from performing its obligations 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 upon the performance of its obligations under this Contract; and
 - (c) Resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention including providing Services at an alternative location on a temporary or permanent basis in accordance with the Disaster Recovery Plan.
- 24.3 The Provider will not be entitled to claim if it is delayed or affected by a cause beyond its reasonable control if the cause in question is one which a reasonable Provider should have foreseen and provided for, nor shall it be so entitled unless it has performed, and continues to perform to the best of its ability, all its obligations under **Clause 3.2**.
- 24.4 If the Provider is prevented from performing its obligations by an event of Force Majeure for more than eight weeks, the Council may terminate this Contract by notice to the Provider and for the purposes of **Clause 25.2** such termination shall be deemed to be for cause.

25. TERMINATION FOR CAUSE

- 25.1 Subject to the **Clause 13** (Dispute Resolution) procedure this Contract may be terminated for cause in whole in the following circumstances:
- (a) By the Council with immediate effect:
 - (i) If a Consistent Failure has occurred and the Provider has failed to remedy such breach within 21 days of service of a notice so to do or such other longer period reasonably specified by the Council in the notice; or
 - (ii) From the date of service on the Provider of written notice if a Catastrophic Failure has occurred;
 - (b) By the Council with immediate effect if:
 - (i) The Provider is no longer registered with the CQC (or its successor in function) or

- (ii) If a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or
 - (iii) If the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property;
 - (iv) From the date of service on the Provider of written notice from the Council if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Provider to which the Council reasonably objects
- (c) By either party with immediate effect from the date of service on the other party of written notice if the other party ceases or threatens to cease to carry on business in the United Kingdom;
- (d) By the Provider with immediate effect from service on the Council of written notice if the Council is in breach of any material obligation under this Contract and, if the breach is capable of remedy, the Council has failed to remedy such breach within 28 days of receipt of notice so to do;
- 25.2 If this Contract is terminated for cause by the Council 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.

26. TERMINATION WITHOUT CAUSE

The Council may terminate this Contract at any time after the expiry of the first eighteen months of the Initial Term by giving six (6) months' written notice to the Provider.

27. CONSEQUENCES OF TERMINATION

- 27.1 If this Contract 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 new Provider. .
- 27.2 Unless expressly stated to the contrary, the service of a notice to terminate this Contract shall not operate as a notice to terminate any Order made under the Contract. Termination or expiry of the Contract shall not cause any Order to terminate automatically. For the avoidance of doubt, all Orders shall remain in force unless and until they are terminated or expire in accordance with their own terms.

27.3 On termination of this Contract and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council prior to such completion) the Provider shall procure that:

- (a) All Documentation; and
- (b) All data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council),

shall be delivered to the Council forthwith and the Provider's Authorised Representative or Chief Executive Officer shall certify full compliance with this **Clause**.

28. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this Contract, and for a period of one 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 Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party.

29. WAIVER

29.1 Failure or delay by a party to exercise any right or remedy provided under this Contract 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.

29.2 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 Contract.

30. RIGHTS AND REMEDIES

Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by Law.

31. SEVERANCE

- 31.1 If any provision or part-provision of this Contract 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 Contract.
- 31.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract 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.

32. NO PARTNERSHIP OR AGENCY

- 32.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 32.2 Each party confirms it is acting on its own behalf and not for the benefit of any other **Client**.
- 32.3 The Parties agree that the Council shall act as agent for the CCG in relation to the purchasing of community-based care services for **Clients** deemed as being eligible for funding from the CCG and for the avoidance of doubt the Parties agree that the provisions of **Clause 37 (Third Party Rights)** shall not apply in relation to this agency.

33. COUNCIL'S STATUS

- 33.1 Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract 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 Contract (howsoever arising) on the part of the Council to the Provider.

34. RIGHTS OF SET-OFF

If any sums are due to the Council from the Provider, the Council shall be entitled to exercise the right to set-off such sums against any Service Charges due to the Provider in relation to this Contract.

35. CURRENCY

All sums payable by either party under this Contract shall be paid in Pounds Sterling.

36. VAT AND INDEMNITIES

- 36.1 Subject to **Clause 36.2**, where one party to this Contract is obliged to indemnify the other party, such indemnity shall extend to any amount representing VAT to the extent that the other party has been unable to obtain credit or repayment of such VAT.
- 36.2 Neither party shall in any circumstances be required to pay to the other any sum representing interest, penalties, fines or charges which is due to the wilful default, omission or negligence of the party liable to account for the VAT to HM Revenue and Customs.

37. THIRD PARTY RIGHTS

Save as provided in **Clause 32**, no term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

38. NOTICES

- 38.1 A notice given to a party under or in connection with this Contract shall be in writing and sent to the party at the address given in this Contract or as otherwise notified in writing to the other party.
- 38.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of delivery.	11.00 am on the second working day after posting or at the time recorded by the delivery service.

- 38.3 For the purpose of **Clause 38.2** and calculating deemed receipt:
- (a) All references to time are to local time in the place of deemed receipt; and
 - (b) If deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a Bank Holiday, deemed receipt is deemed to

take place at 9.00 am on the day when business next starts in the place of receipt.

38.4 This **Clause** does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

38.5 A notice given under this Contract is not valid if sent by e-mail or fax.

39. ENTIRE AGREEMENT

39.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

39.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

39.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

39.4 Nothing in this **Clause** shall limit or exclude any liability for fraud.

40. GOVERNING LAW

This Contract 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.

41. JURISDICTION

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

42. COUNTERPARTS

42.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

42.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

43. INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that the Council may have, the Provider acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Contract by the Provider. Accordingly, the Council shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Contract.

44. ANNOUNCEMENTS

No party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

45. COSTS

Except as expressly provided in this Contract, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this Contract.

46. VARIATION

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives).

47. LANGUAGE

47.1 This Contract is drafted in the English language. If this Contract is translated into any other language, the English language version shall prevail.

47.2 Any notice given under or in connection with this Contract shall be in the English language. All other documents provided under or in connection with this Contract shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language version shall prevail unless the document is a constitutional, statutory or other official document.

48. FURTHER ASSURANCE

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Contract.

Schedule 1 Specification

SERVICES

1. DEFINED TERMS

In this Schedule, the following words and phrases shall, unless the context otherwise requires, have the following meanings:-

“ACP”	An Advanced Care Plan produced between a Client and his/her care providers irrespective of discipline, making clear the Client’s wishes based on an anticipated deterioration in the Client’s condition in the future with attendant loss of capacity to make decisions and/or ability to communicate wishes to others.
“Assessment”	The community care assessment undertaken by the Department to determine a Client’s needs and whether a service will be provided under the Council’s eligibility criteria.
“AWP”	Avon and Wiltshire Mental Health Partnership NHS Trust is a significant provider of high-quality mental health services across a core catchment area covering Bath and North East Somerset (B&NES), Bristol, North Somerset, South Gloucestershire, Swindon and Wiltshire. The Trust also provides specialist services for a wider catchment extending throughout the south west. The Mental Health Teams in North Somerset are made up of professionals who work for AWP and the Council. For the purposes of this Contract they will be included in the definition of and reference to the Department.
“CCG”	The Bristol, North Somerset and South Gloucester Clinical Commissioning Group, being the health body responsible for the provision and commissioning of health services including GP’s, hospitals and community health services in North Somerset.
“Care and Support Plan”	The document produced by the Department following a full assessment of a Client’s needs. The Care and Support Plans will detail the Services to be provided to that Client to include the level of support required, the Outcomes and the timescale for achieving the Outcomes.
“Care Manager”	The person within the Department responsible for completing the Community Care Assessment and managing the Client’s care and support.
“Community Nurse”	A nurse based within a GP surgery delivering health services in the community.
“Contracts and Commissioning Team”	The Team within People and Communities Directorate with the responsibility of managing the Contract. The Personalised Commissioning Team and Contract

	Compliance Team sit within the Contracts and Commissioning Team.
“Contract Compliance Team”	The Contract Compliance Team is responsible for monitoring compliance of the Terms and Conditions of the Contract and accompanying Schedules and Appendices.
“Cost/balance”	The Council’s internal process for considering the actual costs for an individual between providing a Package in the community and a care home. Decisions as to the most cost effective setting will be made based on individual circumstance and via the Department’s panel process.
“Direct Payment Personal Budget”	<ul style="list-style-type: none"> • Personal Budget taken as a cash payment in order for a Client to purchase his/her own care package.
“Eligibility Criteria”	The criteria used for determining Client’s eligibility to receive a service as set out in Paragraph Error! Reference source not found. of this Schedule
“Key Worker”	A member of Staff who takes a lead role in overseeing the well-being of a Client they visit, as allocated to them by the Provider.
“Managed Personal Budget”	A Personal Budget arranged and managed for a Client by a support agency. For the purposes of this contract the support agency will be the Council’s Personalised Commissioning Team.
“Plan”	The Plan to be completed by the Provider specifying the Services to be provided in accordance with the Care and Support Plan. The Plan will be completed using a Person-centred approach and focus on achieving any outcomes set and the expression “Planning” shall be interpreted accordingly.
“Positive Social Interaction”	<p>All or any of the following (as defined by © Dementia Care Matters) :</p> <ul style="list-style-type: none"> • Beneficial conversation • Positive, active companionship • Increased feelings of well being • Where a task is turned into an opportunity to connect with someone • A time of fun and pleasure • An opportunity to reminisce • Being involved in domestic activity • Receiving sensory comfort or stimulation • Being physically close, hugs, hand holding or comforted • Real choices being offered

	<ul style="list-style-type: none"> • Being offered encouragement, comfort and support greater than is necessary to carry out a task <p>Being praised, valued, validated, helped to feel positive about oneself</p>
“Prevention”	The action of stopping something from happening or arising. For the purposes of this contract, the deterioration of a situation that may lead to Persons needing a Package from the Council.
“Reablement”	Relearning the skills necessary for daily living following illness, usually with guidance and support from health professionals, so that there is an improvement in function and increased independence.
“Team”	A term to define the team responsible for commissioning the Service, which could be a team from adult social care, AWP or the CCG.
“User”	A resident of North Somerset who accesses the Service including but not limited to Clients as defined in the Care and Support Spot Purchase Framework Agreement.
“Wellbeing”	<p>Care Act 2014 definition</p> <p>Wellbeing’ is a broad concept, and it is described as relating to the following areas in particular:</p> <ul style="list-style-type: none"> • personal dignity (including treatment of the individual with respect) • physical and mental health and emotional wellbeing • protection from abuse and neglect • control by the individual over day-to-day life (including over care and support provided and the way it is provided) • participation in work, education, training or recreation • social and economic wellbeing • domestic, family and personal • suitability of living accommodation • the individual’s contribution to society

2. INTRODUCTION

2.1. In partnership with CCG, the Council is committed to commissioning high-quality personalised care and support services for people who are assessed as needing support to remain living in their own homes.

2.2. The wellbeing of North Somerset residents is paramount and the Council’s vision for the future of community-based support is one of holistic, integrated

and joined-up provision whereby Providers work collaboratively to achieve the optimum physical and emotional wellbeing of Users and carers.

- 2.3. Care and support services will be delivered according to best practice and relevant local and national strategies including the most current North Somerset Council Corporate Plan and the Social Isolation and Loneliness Strategy 2019.
- 2.4. Strong partnerships and effective commissioning are essential to achieving our objectives. This will include improving integration between health and social care, building community capacity, shaping the market to ensure that when people do need services sufficient choice and quality is available locally, and working with social care providers as partners. Our approach to commissioning will be evidence based and user-centred and we will ensure we are ambitious in supporting innovation and transformation in service delivery.

3. WIDER SERVICE PRIORITIES

The wellbeing of North Somerset residents is paramount and at the heart of all services that we commission. We wish for our commissioned services to achieve improved or sustained physical and mental wellbeing of all Clients and their carers.

Underpinning that is;

- 3.1. **Secure Provision** - The Council wishes to ensure that all Clients currently receiving a Service and those needing Services in the future have security in that provision, thus the Provider shall proactively work with the Council to ensure that it has sufficient current and future capacity to meet the required Services throughout the Contract Term taking into consideration demographic changes. The Provider must use recruitment campaigns that change and develop to reach target audiences and that positively promote working in social care, including the proactive advertising of any funded initiatives offered by the Council to support this.
- 3.2. **Strategic Partnerships and Strategic Aims** - The Council wishes to facilitate workforce development by working in partnership with providers to improve terms and conditions of employment and to develop career pathways for Staff that supports recruitment, retention, flexibility and quality. The Provider shall work in partnership the Council to achieve strategic aims and those of partner organisations such as the CCG. These aims include;
 - 3.2.1. **Resilience Planning** - the Provider will pro-actively engage with the Council and other providers of services if there is a requirement to implement the Disaster Recovery Plan or Exit Management Plan (see **Schedule 4**). If required by the Council the Provider will attend any resilience planning meetings whether they are of a planned or urgent nature. The Provider will ensure it Staff are fully aware of risks relating to hot and cold weather and will act accordingly within the boundaries of the Provider's own policies and processes. The provider will actively promote and support staff to take up the offer of free vaccinations for

staff identified in high risk groups for flu, convey hand hygiene messages throughout the flu season, for example by adding a hand hygiene footnote to all communication e.g. Clients/staff letters, emails and so forth and utilise the free Flu Fighters campaign resource (or any such campaign which may replace it) to raise awareness and improve uptake and any national campaign resource.

- 3.2.2. **Health related services** – the Provider may be asked to undertake tasks on behalf of the CCG that may not necessarily be delivered under this Contract, but that will support the Provider to improve terms and conditions of employment and to develop a career pathway for Staff.

3.3. **Cost Reduction**

The Council's focus is on quality, safety, accountability and market sufficiency and aims to achieve a balance between price competition (that drives innovation and value for money) and securing a price range that aids market stability and development. The Provider will understand the requirement for the Council to achieve cost/balance in the level of Services. The Provider will work actively to achieve optimum Outcomes for Clients and in doing so.

3.4. **Social value**

The Social Value Act 2012 requires that when buying services commissioners to consider securing economic, social, and environmental benefits. To that end the Council requires the Provider to work in line with the Council's social value policy.

4. **THE SERVICE**

- 4.1. This Schedule describes the expectations of the Council of day opportunities to residents of North Somerset who meet the criteria set out in Paragraph 4.5 that promotes good health, wellbeing and engagement. Although this Schedule will largely refer to expectations in relation to Clients, it is expected that all Users of the Service will be supported to the same standards.

- 4.2. This Specification recognises that day opportunities consists of two broad areas;

4.3. **Buildings Based Service**

- 4.2.1. Activities that are delivered from an identified building but can include some activities delivered in the community.
- 4.2.2. Half day and full day Sessions available.
- 4.2.3. Buildings are fully risk assessed and are accessible and safe for the User.

4.3. **Community Based Activities**

- 4.3.1. Activities provided in a building or in the community and;
 - a. Typically between 1 - 3hours in length
 - b. Delivered flexibly within the hours of 9am-10pm

- c. Available up to 7 days per week
 - d. Available at full cost to Users and
 - e. Clients as part of their care and support plan, should the Council deem appropriate
- 4.3.2. The Provider will be responsible for identifying the final program of activities that they offer ensuring the following Ethos and Aims are met.
- 4.4. Ethos and Aims of the Service**
- 4.4.1. The Service will be vibrant, interesting and offer variety and choice to Users. The aim of the Service will be to provide activities that contribute to improving Users physical and emotional health and wellbeing. The environment of any buildings based Service will be stimulating and a nice place to be. Users will feel comfortable and want to spend time there. The Provider must follow best practice in relation to environments for people with dementia and associated conditions.
- 4.4.2. The provider cannot work in isolation of other commissioned services. The Provider shall work co-operatively with other social care providers supporting the User, the district nursing teams, specialist nurses such as diabetes, respiratory, tissue viability, continence advisors, Marie Curie nurses, general practitioners, health professionals such as physiotherapists, Occupational Therapists, speech and language therapists, and podiatrists and Operational Teams to offer joint initiatives that offer Added Value to the Service by having professionals available that can offer advice and guidance around health and wellbeing to all Users.
- 4.4.3. The Service will give opportunities for Users to act and think independently, including being able to incur a degree of calculated risk. Users will retain and enjoy maximum independence (compatible with such limitations due to any physical disability and/or mental health condition). Where applicable, the Provider shall provide the proper and appropriate level of care to protect the User's health, safety and quality of life.
- 4.4.4. A focus must be given to Prevention and Reablement as a way of ensuring Users retain their independence. The Provider should recognise that partnership working with the voluntary sector, including any Council run initiatives is vital to the success of preventing dependency on long term services.
- 4.5.1. The Provider must provide stimulation for Users regardless of their needs and abilities. The Provider must recognise the link between emotional and physical health and nourish both aspects. The Provider will be expected to evidence that they offer a high standard of quality in these areas and have an internal quality assurance process to benchmark and monitor that high standard of quality.

4.5.2. The Provider will ensure that activities offered within the Service meet Client's Care and Support Plan Outcomes. Consideration must be given to activities for Users with different needs and the Provider will take into consideration that Users in differing stages of their dementia should be supported separately in line with best practice guidance.

4.4.5. The Provider must be able to evidence that they are working in line with the Service ethos and aims.

4.5. **Eligibility and Access**

Under this contract, the Council will purchase the Service for Clients;

4.5.3. With a diagnosis of dementia or associated condition, including those who might exhibit behaviour that can challenge the Service.

4.5.4. Who are socially isolated and are predominantly over the age of 60 without specialist care and support needs e.g. an acquired brain injury, learning disability or mental health diagnosis. However acceptance to the Service will fundamentally be based on whether the Provider feels they can successfully support the Client alongside the other Users of the Service.

4.5.5. Carers of 4.5.3-4.5.4.

4.5.6. The Provider will operate a waiting list for the Service giving priority to Clients with the greatest need.

4.5.7. Access into the Service for Clients will be via the Brokerage Team.

4.5.8. The Provider must set out in writing clear eligibility criteria for their Service offer, including;

- a. The cost of the Service or a menu of activity costs
- b. What is included in the cost and what is not included in the cost
- c. The type of Users the Service will support
- d. limitations of the Service for example when Users may be required to find alternative provision

6. KEY AREAS OF SERVICE DELIVERY

6.1. Care and Support

6.1.1. Clients with continence issues will be supported appropriately to effectively maintain skin integrity. The Provider will ensure risks associated with tissue viability are assessed, documented, adhered to and reviewed to minimise the risk of developing a pressure sore or a pressure sore getting worse.

6.1.2. Any changes or concerns regarding the Clients Care and Support needs, including mental capacity, must be addressed and discussed with any professional involved in the Clients wider care and support, including

domiciliary care Providers. Staff must be able to recognise signs of well-being and ill-being and take any appropriate action necessary.

6.2. Care and Support Planning

- 6.2.1. The Provider must produce a Plan for all Clients. This may be a proportionate Plan for Clients attending shorter activities to meet their assessed needs. Care and Support should be provided to Clients in accordance with the Care and Support Plan provided by the Department or AWP.
- 6.2.2. Clients and, if appropriate their Carers or family, must be involved in all aspects of their Planning, including reviews. Where the Client does not fully understand the process or lacks capacity, the Provider must make provision for an advocate to be involved. The advocate may be a Carer, interpreter or someone especially engaged to act as an advocate. Clients should be encouraged and where necessary empowered with the assistance of an advocate to make decisions and participate in discussions about Plan. These decisions will be respected.
- 6.2.3. The Plan will be the key to how the Client's outcomes will be considered, recorded and worked towards. The Plan must be adapted for Clients with communication difficulties and/or who lack capacity and presented in a way that ensures Staff are able to provide Care and Support effectively. Clients will be assessed using a strengths-based approach, in line with the Council's Vision of Adult Social Care from time to time adopted. The Plan will capture the tasks of daily living that the Client is able to do independently, and Staff will only support the tasks of daily living that Clients are unable to do safely for themselves. As best practice, Staff must be aware of the NDTI Inclusion Traffic Lights which supports with understanding places Clients go and the people they connect with.
- 6.2.4. Plans must include any equipment needs and will need to be explicit about who will fund and maintain this equipment.
- 6.2.5. The Provider will carry out a risk assessment for all Clients and any activities that are undertaken both within any building used to deliver the services, its grounds and the local community. The risk assessment will be proportionate to the Client and type of activity being undertaken.
- 6.2.6. When Clients have complex manual handling needs with respect to their mobility or seating, a risk assessment will be completed by a competent person in compliance with the good practice and legislation. If specialist assessment or review is required, Staff will request a specialist assessment/review through Care Connect.
- 6.2.7. In order to be able to provide a Service that can have a positive impact on the Client's quality of life, Staff must take the time to get to know each Client, their history, likes and dislikes and engage them regularly in conversations that take all of these into consideration.

- 6.2.8. Any requests for additional funding to support Client must be supported by a clear rationale as to why the Provider believes that additional Staff are required, for how long and a risk assessment as evidence.
- 6.2.9. The Council consider it good practice for the Provider to comply with paragraph 6.2 for all Users of the Service, not just Clients.

6.3. Activities

- 6.3.1. The Council, in having its own agenda to support the wellbeing of North Somerset residents, is interested in the activities on offer to Users and wishes to be considered a partner in Service development. The Provider will review their Service offer at least annually and share their plans and ideas with the Council, being open to collaborative working with other agencies in the interest of having the best Service offer possible.
- 6.3.2. The Provider will offer activities that have been developed in co-production with Users. The knowledge and skills of Users must be identified through the Planning process and woven into the day to day operation of the Service. Wherever possible Users should be engaged physically and mentally and encouraged to take positive risks that will benefit their wellbeing. Consideration must be given as best practice to making links with local the community e.g. intergenerational working with schools and existing community projects.
- 6.3.3. The Provider should ensure that engaging Clients in activity is part of every staff members role. The Council will consider it best practice for the Provider to conduct ad hoc observations on the support that is provided both individually and in group activities at varying times of the day. Staffing ratios and/or the Staffing model of the Service must be managed in a way that ensures all Users receive Positive Social Interaction. Any time spent without Positive Social Interaction must be due to absolute necessity. If group Positive Social Interaction is unachievable due to individual User's needs, then the Provider must re-evaluate the Staffing ratios and/or the Staffing model.
- 6.3.4. The Provider must discuss with the Council any concerns around its ability to manage the behaviour of, or meet the Staffing demands of Clients. One to one Care and Support may be considered by the Council for a Client, if in doing so it continues to support the Client to remain at home and does not impact on the wellbeing of the other Users. If unable to provide one to one Care and Support, the Provider will work with other care and support providers to facilitate one to one Care and Support where appropriate.
- 6.3.5. The Services on offer should be attractive to Carers of Users attending the Service so that they may benefit from them simultaneously and/or at other times offering respite. The activities can vary in length, type and cost, as an example; accessible keep fit, singing, trips out or coffee and a natter.

- 6.3.6. The Provider shall ensure that written details of any charges for Services including the costs and payment arrangements are available to the User prior to the User participating in the activity. The Department will not be liable for any payment for these Services due by a Client to the Provider unless the activity has been commissioned by the Brokerage Team.

6.4. Nutrition and Hydration

- 6.4.1. This paragraph applies to the Provider directly or if applicable any subcontracted catering provider.
- 6.4.2. Not only must the Provider provide all meals and refreshments in accordance with the provisions of all food hygiene legislation (including reference to good practice catering standards, i.e. National Association of Care Catering), but they must see food as contributing to the emotional and physical wellbeing of Users. Menus will be developed with Users, containing choices that cater for individual needs but that promote healthy eating. Consideration must be given to locally sources food. A range of options must be available based on the activity being attended such as;
- a. Packed lunch and refreshment bought in by the User.
 - b. Meals/refreshments prepared by the Users attending the service either as group activity or one to one;
 - c. A lunch provided by the Provider at an agreed cost.
- 6.4.3. Users will be able to choose when they eat (within reasonable parameters) and who they eat their meals with. The Provider's Staff will see meal times as an opportunity to socialise with Users and join them in eating.
- 6.4.4. Outside of meal times, the Provider shall have a selection of refreshments and snacks available and will provide facilities for Users to make their own refreshments and snacks should they wish, which will be encouraged.
- 6.4.5. The cost of meals is not included in the rates paid by the Council for a Client and the Client must be re-charged separately.

6.5. Dementia Care

- 6.6.1. The Provider must be able to demonstrate consistent efforts being made to align their service delivery with up to date best practice guidance on delivering dementia services. The Provider must understand that in providing quality dementia services, the look, sounds and feel of the environment is key to physical and emotional wellbeing of people living with dementia. Therefore, the decoration and furnishing of any building used to deliver the Service should be in line with industry best practice recommendations for dementia care.

- 6.6.2. Staff must have a passion for supporting people with dementia to have the best quality of life possible. Users living with dementia will be supported in the reality that they are in at any one time and place. Staff must be willing to problem solve when experiencing difficulties with behaviours displayed, considering that adapting their approach may be the answer and acknowledge that this may happen frequently and be prepared to adapt accordingly.
- 6.6.3. The skills and interests of Users living with dementia will be identified and built into daily routines and wherever possible. Users living with dementia will be actively encouraged to engage in undertaking daily activities such as laying the table and other domestic tasks to retain skills, independence and to feel needed. The Provider must ensure that Users living with dementia are able to feel safe and secure in their environment, which includes being able to identify with their reality.
- 6.6.4. In line with NICE guidance the Provider will provide all Staff with training in person-centred and outcome-focused care for Users living with dementia, which should include:
- i. understanding the signs and symptoms of dementia, and the changes to expect as the condition progresses.
 - ii. understanding the person as an individual, and their life story.
 - iii. respecting the person's individual identity, sexuality and culture.
 - iv. understanding the needs of the person and their family members or carers.
 - v. the principles of the [Mental Capacity Act 2005](#) and the [Care Act 2014](#).
- 6.6.5. The Provider will provide additional face-to-face training and mentoring to staff who deliver care and support to Users living with dementia. This should include:
- i. understanding the organisation's model of dementia care and how it provides care and support.
 - ii. how to monitor and respond to the lived experience of people living with dementia, including adapting communication styles.
 - iii. initial training on understanding, reacting to and helping people living with dementia who experience agitation, aggression, pain, or other behaviours indicating distress.
 - iv. follow-up sessions where Staff can receive additional feedback and discuss particular situations.
 - v. advice on interventions that reduce the need for antipsychotics and allow doses to be safely reduced.
 - vi. promoting freedom of movement and minimising the use of restraint.

- vii. consideration given to Carers and/or family members the opportunity to attend and take part in Staff dementia training sessions.
- viii. consideration given to training Staff to provide multi-sensory stimulation for people with moderate to severe dementia and communication difficulties.
- ix. improving and developing the Service including Users and family/carers in planning and shaping future services.

6.6.6. The Provider will have in place quality assurance systems that reflect person centred outcomes and experiences of those with Dementia. The Provider will appoint a member of Staff who is recognised as the Dementia Champion. The Provider will have a local strategy/philosophy for the management and care of people with Dementia which will be led by the Dementia Champion.

6.6. Technology Enabled Care

6.6.1. The Provider should endeavour to maximise the use of technology to support delivery of quality and cost-effective services to improve health and wellbeing outcomes for Users. The Provider may be asked to work with the CCG and the Council to deliver on pilot projects that may maximise independence of Users. TEC should be considered as part of the Provider's business planning. Staff should have a good working knowledge of technology to support effectiveness in their job and Users to be independent and have fun.

7. GENERAL REQUIREMENTS

7.1. Equipment and Consumables

- 7.1.1. The Council and the CCG have a local agreement for the CCG to provide Clients with continence products. Where such need is identified the Provider warrants that under no circumstances will Clients be charged by the Provider for such products.
- 7.1.2. The Provider must provide all equipment needed to support the provision of care for Clients.
- 7.1.3. Under exceptional circumstances the Council may provide equipment for an individual Client however, this is typically only as a specialist provision and would only be considered as part of a Client's Care and Support Plan.

7.2. Transport

- 7.2.1. The Provider may choose to offer transport to Users however, payment for this will not be funded under this contract unless agreed and stated in a Client's Care and Support Plan.

- 7.2.2. Where applicable, any transport must meet Disabled Persons Transport Advisory Committee standards and must be as accessible as is practicably possible for the persons utilising it.

8. MONITORING

- 8.1. The Council expects the Provider to self audit and have its own quality assurance process that incorporates the requirements set out in the Performance Indicators Schedule 6. The Provider will provide an annual summary report to the Council which the Council will use to monitor the Contract to ensure it is satisfied that the Provider is working in the spirit of the agreement.
- 8.2. The annual summary report will detail the following;
- 8.3.1. Evidence of achievement of the Performance Indicators – **Schedule 6**
- 8.3.2. Complaints and Compliments Log. The complaints log will capture as a minimum;
- i. the nature of the complaint
 - ii. the action taken
 - iii. any outcomes
- The Provider will be expected to provide an action plan for any common themes identified in each quarter.
- 8.3.3. Examples of engagement with other community projects, schools and the Voluntary Sector.

9. FINANCE

- 9.1. The Provider will produce a Menu of Charges for the activities available to Clients on joining the contract and as a minimum, by the 1st April every year.
- 9.2. The Menu of Charges will be sent to the Council by 1st April every year or upon any changes to the activities available and must also be made available to Users.
- 9.3. The Menu of Charges will be adopted as the Schedule 2 Table of Rates.
- 9.4. The rates will be commissioned by the Council as a sessional rate (i.e. £60 per day or £4.50 for an activity).
- 9.5. The charges for half day or full day sessions and additional hourly one to one rates on the Menu of Charges, will be set for Clients when the Provider joins the contract and will be uplifted in accordance with the contract and not determined by the Provider annually inline with paragraph 9.1-9.3.

- 9.6. The charges for activity sessions may be set and reviewed by the Provider.
- 9.7. Rates will be paid by the Council to the Provider for the delivery of those Services when presented to the Council in accordance the below.
- 9.8. At the end of the Service Period, the Provider will provide the Council with a spreadsheet, called a Monthly Summary Report detailing;
 - i. The Name of the Client
 - ii. The LAS number if a Client
 - iv. The days of the week Monday through Sunday, across the relevant 4 week Service Period
 - v. The sessions attended for each Client

9.6. Variations to Service Delivery

- 9.6.1. The Council will only fund sessions not attended, where the Client has given less than 24 hours' notice of non-attendance, for any reason.
- 9.6.2. The Provider shall submit a log to the Home Care Charging Team detailing changes in a Client's circumstance and cancellations and/or absences that may affect the Provider's invoice. Each log will detail any or all of the following circumstances: -
- 9.6.3. Any temporary cancellations of the Service and the reason, stating whether 24 hours' notice of the cancellation was given - the Provider must state the time of the cancellation on the log stating "non-attendance, no cancellation notice" to ensure payment is made.
- 9.6.4. Any absence, planned or unplanned, of the Person, including respite care, hospital admissions and holidays.

10. COMPLAINTS

- 10.1. The Department will monitor complaints received about the Provider. This includes;
 - 10.1.1. Complaints received by the Provider about the Provider;
 - 10.1.2. Complaints received by the Council about the Provider;
 - 10.1.3. Monitoring forms;
 - 10.1.4. Poor Practice alerts; and
 - 10.1.5. Serious Incident forms.
- 10.2. The Council will encourage complainants to use the Provider's complaints procedure in the first instance.

- 10.3. Should the complainant be dissatisfied with the Provider's response or not wish to use the Provider's procedure, the Department may become involved, in which case, the Council's complaints procedure will be followed.
- 10.4. Issues regarding the provision of CHC funded care will be directed to the Provider and any complaints and untoward incidents must be reported as soon as possible within a 24 hour period to the Funded Healthcare Team (acting as case managers regarding clinical issues rather than as compliance /quality monitors).

End of Schedule 1

Schedule 2 Payment Schedule (Table of Rates)

The agreed rates for the Services are in accordance with the Provider's Menu of Charges inline with **paragraph 9 of Schedule 1**.

The charges will be broken down into rates per Session and shall be inclusive of:

1. Management costs
2. Staff costs
3. Administration costs
4. Direct Service delivery costs
5. Other costs associated with running the Service

Indicative Pricing Schedule as at:

Name of Company:

	Service Description	Service Delivery Time	Initial Rates per Hour (subject to review in accordance with Clause 8)
1	Session price for half day	Flexible	Menu of Charges - to be entered at contract award and uplifted annually in line with the contract
2	Session price for whole day	Flexible	Menu of Charges - to be entered at contract award and uplifted annually in line with the contract
3	Hourly 1 to 1 rate	Flexible	Menu of Charges - to be entered at contract award and uplifted annually in line with the contract
4	Activity Session	Flexible	Menu of Charges - to be entered at contract award and at least annually thereafter

Notes:

Care and Support Day Service Provision includes the elements as set out in **Schedule 1 Service Specification** - range of provision of the agreement.

Additional costs

Occasionally, the Council may, in its absolute discretion, agree to pay the Provider extra costs, for example if the Provider is delivering the Service outside of North Somerset, or for costs associated with the management of the Client's mileage costs, specific Staff training, etc, please note this list is not exhaustive. These costs must be submitted and clearly detailed in **Schedule 2**.

Schedule 3 SCHEDULE 3 - Processes for Accessing the Service

1. New Service Provision

- 1.1.1. The Brokerage Team will contact that Provider to ask if there is a place within the Service suitable to what is required for the Client.
- 1.1.2. If there is a place, and following confirmation of acceptance by the Client, the Brokerage Team will send the Provider the Care and Support Plan and the Home Care Charging Team will send an Order for the Service.
- 1.1.3. If there are no places currently available or no suitable days/times and the Client only wishes to access that particular Service, the Brokerage Team will provide details of the Client to the Provider over the phone who will record this information on a waiting list.
- 1.1.4. The Provider will contact the Care Manager on a place becoming available.
- 1.1.5. The Care Manager will inform the Brokerage Team and paragraph 1.1.2 will be followed.

1.2. Changes to Service Provision

The Provider

- 1.2.1. The Provider may vary the day and/or time of a Client's Service at the request of the Client and/or Carer as long as it is the same Service that is being provided and within the same week. It is up to the Provider to determine how much notice they need to respond to these requests and to make Clients using the Service and/or their Carers aware of these requirements via their Service documentation.
- 1.2.2. If the Provider receives any requests for additional Services to be paid for by the Council it will promptly refer these to the Care Manager.
- 1.2.3. In the event that the Care Manager agrees the change, it will confirm this by sending an amended Care and Support Plan to the Brokerage Team.

- 1.2.4. The Brokerage Team will send the Provider the amended Care and Support Plan and the Homecare Charging Team will send an amended order.
- 1.2.5. The Provider will amend their Care and Support Plan to reflect the change.
- 1.2.6. The Provider may increase the Services being provided if the Client and/or Carer would like to pay for the Services privately.

The Council

- 1.2.7. To request a permanent change to the Order the Care Manager will first contact the Provider to discuss the change if the Provider is not already aware, and If the Provider can accept the change, the Care Manager will send an amended Care and Support to the Brokerage Team.
- 1.2.8. The Brokerage Team will send the Provider the amended Care and Support Plan and the Homecare Charging Team will send an amended order.
- 1.2.9. The Provider will amend their Care and Support Plan to reflect the change.
- 1.2.10. If the Provider cannot accept the change, Paragraphs 1.1.3 to 1.1.5 will apply.
- 1.2.11. If the Department reassesses a Client and this results in a decrease of needs, the Care Manager may decrease or withdraw Services giving the Provider one weeks' notice.

1.3. Client Cancellations of Service

- 1.3.1. The Provider will inform the Team if a Client frequently cancels their Service. If the Care Manager deems that the Client no longer requires the level of Service commissioned, the Care Manager will either send an amended Care and Support to the Brokerage Team or will serve notice on the Provider.
- 1.3.2. The Brokerage Team will either send the Provider the amended Care and Support Plan and the Homecare Charging Team will send an amended order or a notice letter.
- 1.3.3. If the change is a decrease in service, the Provider will amend their Care and Support Plan to reflect the change.

Temporary Cancellations

- 1.3.4. Where the Department or the Provider is aware of circumstances that will require the temporary cancellation of Services they will endeavour to inform one another within 24 hours.
- 1.3.5. Where the Client has not given 24 hours' notice to the Provider, the Council will pay the Provider and re-charge the Client. The Provider must also re-charge any self-funding Clients.
- 1.3.6. All cancellations shall be recorded in accordance with **Paragraph 9.6 of Schedule 1.**

1.4. Absences

- 1.4.1. The Provider will not receive payment for breaks in Service arising from the Client being in hospital or receiving a respite break, aside from **Paragraphs 1.3.5 and 1.3.6.**
- 1.4.2. The Provider will hold the hours of Services available for a period of up to 28 calendar days.
- 1.4.3. If following the 28 calendar day period, the Provider wishes to allocate a Clients hours of Service to someone else, the Provider will contact the Care Manager for confirmation of whether the Client will be returning to the Service.
- 1.4.4. If this is likely the Provider will endeavour to accommodate any re-start of Service wherever possible.

1.5. Permanent Cancellations

The Provider

- 1.5.1. If the Provider believes that the Service is no longer benefitting the Client or that their behaviour can no longer be managed in the environment, they must contact the Care Manager (and Carer if applicable) to arrange a meeting to decide what is in the Clients best interest.
- 1.5.2. Where a member of Staff has been abused or it appears to the Provider that may be at risk or there is a health and safety risk, the Provider may suspend the Service forthwith.
 - 1.5.2.1. The Provider must be able to evidence their concerns in the form of a risk assessment.
 - 1.5.2.2. The Risk Assessment must be sent to the Brokerage Team for their record.
- 1.5.3. Immediately following the suspension, the Provider will verbally notify the Team and the Brokerage Team.
- 1.5.4. The Department will undertake a review within 5 working days.

- 1.5.5. The risk to Staff and/or health and safety risk shall be managed by the Provider and the Care Manager using a separate risk management plan. In some circumstances this may be managed via the Council's safeguarding adults' process.
- 1.5.6. Both the Provider and the Care Manager must in agreement that the situation has been suitably addressed before the Service is recommenced and, if they cannot reach an agreement, then the situation will be escalated to the Team Manager and a meeting will be arranged with the Provider, Care Manager, Team Manager, Contracts and Commissioning Officer and if applicable the Safeguarding Adults Officer.
- 1.5.7. Should the Provider reach a point where the Service has broken down irrevocably, the Department will consider alternative provision based on the knowledge that to get to that point, all avenues with the Provider will have been exhausted.

The Client receiving the Service

- 1.5.8. If a Client notifies the Department of their wish to cancel the Service with the Provider because they no longer want the Service, then a notice period of 28 days, or such other period as may be agreed between the Parties, will be applied from the date of notification to the Provider by the Brokerage Team.
- 1.5.9. The Provider will not cease all, or any part of a Service if requested to do so by the Client and/or their carer until confirmation has been received from the Teams and, where appropriate, an amended Support Plan and Care and Order has been issued.
- 1.5.10. If the Client wishes to cancel their entire Service because they are not satisfied with the Service delivered by the Provider then the Care Manager will inform the Contracts and Commissioning Team.
- 1.5.11. Steps will be taken between the Contracts and Commissioning Team and the Provider to resolve any concerns the Client has prior to the Package being permitted to cease.
- 1.5.12. On the death of a Client or permanent admission to a Care Home or other establishment the Service will cease immediately.
- 1.5.13. Other than the aforementioned occasions, a Notification Form shall be completed by the Provider and sent to the Brokerage

Team within 24 hours of becoming aware of any of the following:-

- 1.5.13.1. A Client dying; or
- 1.5.13.2. If the Client has permanently cancelled the Service as he/she no longer requires it and the cancellation has been authorised by the Team.

END OF SCHEDULE

SCHEDULE 4 – NOT USED

SCHEDULE 5 – POLICIES

1. The Council and Partner Organisations

- 1.1 The Provider will ensure where appropriate that their policies are in line with and reflect Council and partner organisation policies and strategies, specifically;
- 1.1.1 The Council's Anti-Bribery policy
 - 1.1.2 The Council's Counter Fraud Strategy
 - 1.1.3 The Council's Equality and Diversity policy
 - 1.1.4 The Council's Information Security policy
 - 1.1.5 BANES, Bristol City, North Somerset, South Gloucestershire and Somerset County Safeguarding Adults Multi Agency policy
 - 1.1.6 The Council's Extra Care Housing policy
- 1.2 North Somerset Council policies can be obtained from North Somerset Council..

2. The Provider

- 2.1 The Provider will have the following policies and procedures in place and the Provider's Care Staff and other Staff are expected to comply with them at all times. These may be looked at as part of the Contract Monitoring process at any time. Policies must be reviewed regularly and updated in accordance with changes in legislation, etc. The list is based on minimum requirements and is not exhaustive:
- 2.1.1 Current brochure with clear terms and conditions of service
 - 2.1.2 Risk assessment - incorporating the encouragement of positive risk taking, including manual handling
 - 2.1.3 Health and safety including infection control
 - 2.1.4 Lone working
 - 2.1.5 No replies
 - 2.1.6 Equality and Diversity - including the requirements for annual completion of an equality impact assessment
 - 2.1.7 Compliments and complaints procedure
 - 2.1.8 Dealing with challenging behaviour
 - 2.1.9 Disciplinary procedure
 - 2.1.10 Grievance procedure
 - 2.1.11 Harassment and bullying
 - 2.1.12 Medication - reflecting the expected practise of the Care Quality Commission's medication policy
 - 2.1.13 Safeguarding adults, whistle blowing and DBS - reflecting the BANES, Bristol City, North Somerset, South Gloucestershire and Somerset County Safeguarding Adults Multi Agency policy
 - 2.1.14 Recruitment – including DBS renewals
 - 2.1.15 Confidentiality
 - 2.1.16 Supervision and appraisal
 - 2.1.17 Training and continuing professional development including how to assess Staff competencies

- 2.1.18 Business continuity/Resilience plan
- 2.1.19 Gifts and bequests
- 2.1.20 Key holding
- 2.1.21 Handling of Clients' money
- 2.1.22 Information Security/GDPR including coverage of alignment or certification with the Government's recommended Cyber Essentials Scheme (or any other such scheme that replaces it from time to time) or other standards instead of, or in additional to Cyber Essentials.

END OF SCHEDULE

SCHEDULE 6 – PERFORMANCE INDICATORS

SCHEDULE 7 – EXIT MANAGEMENT PLAN

1. GENERAL OBLIGATION

On termination of this Contract for any reason, the Provider will provide all reasonable assistance to the Council to facilitate the orderly transfer of the Services back to the Council or to enable another party chosen by the Council (in this **Schedule**, a **New Provider**) to take over the provision of all or part of the Services. The remaining provisions of this **Schedule** will not prejudice or restrict the generality of this obligation.

2. PLANS AND PROCEDURES

On signature of this Contract, the Provider will produce and maintain plans and procedures demonstrating the manner in which it will fulfil its obligations under this **Schedule**, which plans and procedures shall be subject to the reasonable approval of the Council from time to time.

3. CONTINUATION OF THE PROVISION OF SERVICES

- 3.1 When a new provider has been commissioned to deliver the Client's care and support the (exiting) Provider shall make arrangements for a handover meeting in respect of each Call-Off, between the relevant Client, Staff member delivering the Services to the relevant Client(s) and the replacement new provider.
- 3.2 The Provider will ensure that all information and data concerning the provision of the Services under the Call-Off is provided to the relevant new Provider as soon as practicable, and in any case, no later than 2 days business days prior to the commencement of the replacement services and will ensure that such transmission is fully compliant with the requirements of the Data Protection Legislation.
- 3.3 The Provider shall make sure that each Client is kept fully informed and involved with the handover process at all times

4. DUTY TO DOCUMENT THE SERVICES

- 4.1 The Provider shall prepare the Documentation within 1 month of Commencement Date and shall thereafter ensure that it is kept up to date.
- 4.2 The Provider shall promptly and fully answer all reasonable questions about the Services which may be asked by the Council for the purpose of adequately understanding the manner in which the Services have been provided or for the purpose of allowing any New Provider (or potential New Provider) to conduct 'due diligence'.

5. CONTRACTS, SOFTWARE, AND KNOW-HOW

- 5.1 Upon the Provider ceasing to provide the Services its rights and obligations in respect of the Support Contracts shall cease (but without prejudice to any liability accrued at the date of such cessation) and it will, at the request of the Council, do all acts and things necessary so to notify the other parties to the Support Contracts. Where contracts similar to the Support Contracts have been entered into by the Provider for the sole purpose of providing the Services to the Council, the Council may require the Provider to use all reasonable endeavours to procure that those contracts are assigned to the Council or a New Provider.
- 5.2 The Provider shall, to the extent that it has not done so prior to termination, fully comply with the provisions of this Contract as to the licensing of Intellectual Property and the delivery of source code and Documentation.
- 5.3 The Council shall be entitled to use (and to authorise any New Provider to use), free of charge but on a non-exclusive basis, all know-how and other information acquired by the Provider in the course of providing the Services or otherwise used by the Provider in the provision of the Services, whether or not such know-how or information was produced specifically or used exclusively to provide the Services.

6. PERSONNEL

- 6.1 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Provider for any reason and where all or part of the Services continue to be provided by the Council and/or the New Provider, there may be a relevant transfer of the Returning Employees to the Council and/or the New Provider for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to the Council and/or the New Provider in accordance with TUPE with effect from the Subsequent Transfer Date.
- 6.2 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Council and/or the New Provider.

END OF SCHEDULE

SCHEDULE 8 – TRAINING MATRIX

SCHEDULE 9 – DISASTER RECOVERY PLAN

1. DEFINITIONS

1.1 The following words and phrases shall; unless the context otherwise requires, have the following meanings.

“Emergency Incident”	A situation that poses an immediate risk to health, life, property, or environment (Extreme Weather). Most emergencies require urgent intervention to prevent a worsening of the situation, although in some situations, mitigation may not be possible and agencies may only be able to offer palliative care for the aftermath.
“Extreme Weather”	Including extreme cold and hot weather, snow and ice, flooding and storms.
“Influenza” (Flu)	Influenza is a viral infection that attacks your respiratory system — your nose, throat and lungs. Influenza, commonly called the flu, is not the same as stomach "flu" viruses that cause diarrhoea and vomiting. For most people, influenza resolves on its own, but sometimes, influenza and its complications can be deadly
“Norovirus”	A group of viruses that are a common cause of food poisoning and acute gastroenteritis ("stomach flu") that can strike quickly with force and make a person feel very sick but which typically resolves within 2-3 days. The characteristic symptoms are nausea, vomiting, diarrhoea, and abdominal cramping.
“Rest Centre”	A place of safety set up by the Council to look after Person effected by an “Emergency Incident”. This can be for a few hours or days depending on the severity of the incident.

2. INTRODUCTION

- 2.1 This plan describes the actions to be taken by the Provider and the Council in the event of an emergency incident as defined in this Schedule. The plan will work alongside both parties existing Policies and Procedures.
- 2.2 The Provider will have their own business continuity/resilience plan. The Provider and their Staff will comply with this policy at all times.
- 2.3 The Provider’s business continuity/resilience plan will include consideration and planning for determining the vulnerability of Client taking into consideration the event that may occur. This will be referred to as a Vulnerability Matrix. The Provider must be able to determine:

- 2.3.1 Whether the Client lives alone, has domiciliary care or has neighbours who can offer support.
 - 2.3.2 If the Client does not require their normal day service as an absolute necessity, how long can they or their Carers survive with a scaled down version.
 - 2.3.3 The specific risks to the area of Service delivery.
 - 2.3.4 Where Care Staff live and how best they can be deployed in the event of an emergency. This includes mechanisms for office and on call Staff to be able to work remotely whilst retaining control over operations.
 - 2.3.5 How they can work with other care providers to support Clients in North Somerset by utilising Staff effectively.
- 2.4 The Provider will have their own Health and Safety policy in accordance with **Schedule 5** which details Infection Control measures. The Provider and their Staff will comply with this policy at all times.
- 2.5 Staff will receive training in infection control in accordance with **Schedule 8**.

3. CATEGORIES RELATING TO DISASTER RECOVERY

- 3.1 Infection control including Flu pandemics and other viruses that can be passed from Client to Care Staff and vice versa.**
- 3.1.1 The Provider will be proactive at times of the year where air borne viruses such as Flu and Norovirus are prevalent, with promotion around prevention of spreading such viruses.
 - 3.1.2 The Provider will recognise their duty as an employer to keep their workforce and client base protected and will actively promote the annual take up of the Flu vaccination with both Care Staff and Clients.
 - 3.1.3 The Council will support the Provider in achieving this by providing promotional material and other such resources available from time to time.
 - 3.1.4 The Provider will recognise their duty as an employer to cover the cost of such vaccination to front line Care Staff.
 - 3.1.5 The Provider will record data on and provide to the Council on request;
 - (a) Care Staff sickness (e.g. the number of Care Staff recorded as sick with Norovirus and Flu per annum) and use this data to forward plan year on year.
 - (b) Care Staff take up of the Flu vaccine to support with Public Health planning

3.2 Extreme Weather and Emergency Incidents

- 3.2.1 It is recognised that the Service may not run in the event of extreme weather or emergency incidents however, the Provider is required to support the Council wherever possible. The Provider may be asked to;
- (a) Communicate events with all Staff including any information that will effect service delivery.
 - (b) Assist with the running of any rest centre.
 - (c) Divert Staff where possible to support with looking after Clients at a rest centre.
 - (d) Where the incident is considered to be Force Majeure, Clause 24 of the Contract will apply.

3.3 Provider Failure

- 3.3.1 In addition to **Paragraph 5.1 of Schedule 4**, the Provider must inform the Council at the earliest opportunity should it believe that the Provider is in difficulties that will impact on its ability to meet part or all of the contractual obligations.
- 3.3.2 Should the Provider consider itself to no longer be financially viable to the point where it must terminate or abandon the contract, the Provider will give the Council as much notice as possible with a view to ensuring that Clients using the Service are safeguarded.
- 3.3.3 The Council and Provider shall work together to ensure that any transfer of Services is completed in the best interest of the Client using the Service and in accordance with **Schedule 7 Exit Management Plan**.

4 CONTINGENCY PLANNING

- 4.1 The Provider will have a documented process included in their business continuity/resilience Policy to address Staff shortages. These shortages could be either due to a high level of Staff sickness (ref Infection Control para) or due to Staff retention issues and/or mass walk out.

4.2 Care Staff Sickness

- 4.2.1 The Provider's Health and Safety policy should detail measures that will be taken in order to keep the Service running should a large number of the Provider's Care Staff suffer from illness and be unable to work. It should also stipulate;
- (a) Timeframes for Care Staff being off work with certain viruses in order to prevent the spreading of the illness
 - (b) The process for Care Staff should a member of their immediate family be ill with an airborne virus
 - (c) The process if Care Staff are visiting Clients ill with an airborne virus.

4.3 Staff Retention

- 4.3.1 The Provider must have a Recruitment and Retention Policy in accordance with **Schedule 5** which addresses ways in which the Provider will seek to retain Care Staff.

- 4.3.2 The Provider will have established relationships with other providers and will seek to draw on support to ensure minimal disruption.
- 4.3.3 The Provider must inform the Council immediately should they believe that they will have to implement their Vulnerability Matrix due to Staff shortages.
- 4.3.4 The Provider will consult with a Care Manager should they believe that any individual is at risk.
- 4.3.5 The Provider will ensure that there is appropriate plans in place to cover Staff shortages at popular holiday times. Care Staff contracts and recruitment initiatives to support this will be built into the Provider's Recruitment and Retention Policy.

5 SERVICE LEVELS

- 5.1 In the event of this Disaster Recovery Plan being implemented, the Provider will be expected to comply with **Clause 3.2**.
- 5.2 **Appendix 1** reflects the Performance Indicators from **Schedule 6** that will be applicable for the length of the Disaster Recovery Plan having to be implemented.

Appendix 1
SERVICE LEVELS (PERFORMANCE INDICATORS) IN CASE OF DISASTER

In the event of a Disaster, the Performance Indicators detailed in **Schedule 6** may not be applicable for the duration of the Disaster Recovery Plan implementation in which case the following will apply for the duration of the Disaster Recovery Plan implementation.

Success Area	Performance Indicators	Targets
1. There are adequate resources to meet Persons needs.	1.1 The Provider has enough capacity to deliver the contract, over the length of the contract.	1.2.1 Where the Service remains open, the Provider has maintained the level of core Service on a priority basis for the duration of the Disaster Recovery Plan implementation..
4. Risk is managed and Persons are safeguarded.	<p>4.1 The Provider has policies and process in place and staff understand and follow these processes.</p> <p>4.2 Staff are competent in their role and to work with the persons they support.</p>	<p>4.1.3 Every Person has a risk assessment that covers environmental and personal risks that is signed and dated.</p> <p>4.1.4 Monitoring forms, incident forms, complaints and partially or fully substantiated safeguarding enquires have not highlighted a failure in the Provider or their Staff not following process or policy.</p> <p>4.2.1 Where applicable the Provider is compliant with the Care Quality Commission Essential Standards.</p>
9. Persons with long term conditions have a well-planned service with appropriately trained Staff to	9.2 Staff are trained and competent to deliver services to those with long term conditions.	3.1.1 Feedback from the Teams confirms that the Provider maintained appropriate Staffing throughout the implementation of the Disaster Recovery Plan.

meet their health and social care needs.		
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END OF SCHEDULE

SCHEDULE 10: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

DESCRIPTION	DETAILS
Subject matter of the processing	<p>Providing care and support to vulnerable adults or children in their own home and/or the community which will include:</p> <ul style="list-style-type: none"> • Assessment of need • Risk assessment • Giving details of other organisations and agencies that may be able to assist and making referrals
Duration of the processing	During the term of the Contract Agreement
Nature and purpose of the processing	The collection, recording, storage, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction of Personal Data for the Objectives
Personal Data	Name, address, date of birth, gender, email, telephone number, next of kin
Special Categories of Data	<ul style="list-style-type: none"> • Ethnicity/Nationality • Social care needs • Health conditions • Health needs • Behavioural history • Accommodation history and current living arrangements, including home ownership and tenure • Information relating to personal circumstance.
Categories of Data Subject	<ul style="list-style-type: none"> • Adults (18+) • Children (0-17) • Other persons with involvement (professional or otherwise) with adults and children noted above.
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	Provided as part of the Contract Agreement between the Funder and the Recipient

END OF SCHEDULE

SCHEDULE 11 – NOT USED

SCHEDULE 12 – TUPE

1. INTERPRETATION

The definitions and rules of interpretation in this paragraph apply in this **Schedule 12.**

Employee Liability Information: in respect of each of the Employees:

- (a) the identity and age of the Employee;
- (b) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
- (c) information about any disciplinary procedure taken against the Employee and any grievances raised by the Employee within the previous two years, where 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 or any other applicable code or statutory procedure applied;
- (d) information about any court or tribunal case, claim or action either brought by the Employee against the Council within the previous two years or where the Council has reasonable grounds to believe that such action may be brought against the Provider arising out of the Employee's employment with the Council; and
- (e) information about any collective agreement which will have effect after the Commencement Date in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.

Staffing Information: in relation to all persons detailed on the Provider's Provisional Staff List, such information as the Council may reasonably request (subject to the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) the identity of their employer or relevant contracting party;
- (d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and Council car schemes applicable to them;

- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- (i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

Service Transfer Date: the date on which the Services (or any part of the Services), for whatever reason transfer from the Provider to the Council or any Replacement Provider.

Provider's Final Staff List: the list of all the Provider'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: a list prepared and updated by the Provider of all the Provider'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 preparation of the list.

2. EMPLOYMENT EXIT PROVISIONS

2.1 This agreement envisages that subsequent to the commencement of this agreement, 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 (**Service Transfer**). If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations then, in such event, the Council or a Replacement Provider would inherit liabilities in respect of the Transferring Employees. Accordingly if the Employment Regulations apply on a Service Transfer the provisions in **Paragraph 2.6 to Paragraph 2.10 of this Schedule** shall apply. **Paragraph 2.13 of this Schedule** shall apply to a Service Transfer which is not a relevant transfer for the purposes of the Employment Regulations. For the avoidance of doubt, all other paragraphs in this **Paragraph 2 of this Schedule** shall apply to all Service Transfers, whether or not the Employment Regulations apply.

2.2 The Provider agrees that, subject to compliance with the Data Protection Legislation:

- (a) within 20 days of the earliest of:
 - (i) receipt of a notification from the Council of a Service Transfer or intended Service Transfer; or
 - (ii) receipt of the giving of notice of early termination of this agreement or any part thereof; or

- (iii) the date which is 12 months before the expiry of the Initial Term or any renewal term,

and, in any event, on receipt of a written request of the Council at any time, it shall provide the Provider's Provisional Staff List and the Staffing Information to the Council or, at the direction of the Council, to a Replacement Provider and it shall provide an updated Provider's Provisional Staff List when reasonably requested by the Council or, any Replacement Provider;

- (b) at least 28 days before the Service Transfer Date, the Provider 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 personnel named are Transferring Employees;
- (c) 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 which are substantially the same type of services (or any part thereof) as the Services; and
- (d) on reasonable request by the Council the Provider shall provide the Council or at the request of the Council, the Replacement Provider, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Council reasonably requests.

2.3 The Provider warrants that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information will be true and accurate in all material respects.

2.4 From the date of the earliest event referred to in **Paragraph 2.2** of this **Schedule**, the Provider agrees that it shall not without the prior written consent of the Council, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Provider's Provisional Staff List and shall not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed):

- (a) increase the total number of employees listed on the Provider's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Council;
- (b) make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Provider's Provisional Staff List;
- (c) increase the proportion of working time spent on the Services (or the relevant part) by any of the Provider's personnel save for fulfilling

assignments and projects previously Scheduled and agreed with the Council;

- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Staff List; and
- (e) replace any of the Provider's personnel listed on the Provider's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Staff List.

The Provider will promptly notify the Council or, at the direction of the Council, the Replacement Provider of any notice to terminate employment received from any persons listed on the Provider's Provisional Staff List regardless of when such notice takes effect.

2.5 At least 21 days before the expected Service Transfer Date, the Provider shall provide to the Council or any Replacement Provider, in respect of each person (subject to compliance with Data Protection Legislation) on the Provider's Final Staff List who is a Transferring Employee, their:

- (a) pay slip data for the most recent month;
- (b) cumulative pay for tax and pension purposes;
- (c) cumulative tax paid;
- (d) tax code;
- (e) voluntary deductions from pay; and
- (f) bank or building society account details for payroll purposes.

2.6 In connection with a relevant transfer to which the Employment Regulations apply, the parties agree that:

- (a) the Provider shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date. The Provider shall indemnify the Council and any Replacement Provider in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Council or any Replacement Provider including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - (i) the Provider's failure to perform and discharge any such obligation;
 - (ii) any act or omission by the Provider on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;

- (iii) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;
- (iv) any claim arising out of the provision of, or proposal by the Provider to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;
- (v) any claim made by or in respect of any person employed or formerly employed by the Provider other than a Transferring Employee for which it is alleged the Council or any Replacement Provider may be liable by virtue of this agreement and/or the Employment Regulations;
- (vi) any act or omission of the Provider in relation to its obligations under Regulation 11 of the Employment Regulations, or in respect of an award of compensation under Regulation 12 of the Employment Regulations except to the extent that the liability arises from the Council or Replacement Provider's failure to comply with Regulation 11 of the Employment Regulations;
- (vii) any statement communicated to or action done by the Provider or in respect of, any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Council in writing; and

2.7 The Provider shall indemnify the Council and any Replacement Provider in respect of any claims arising from any act or omission of the Provider in relation to any other Provider's personnel who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.

2.8 The Council shall indemnify the Provider against all claims arising from the Council's or the Replacement Provider's failure to perform and discharge any obligation and against any claims in respect of any Transferring Employees arising from or as a result of:

- (a) any act or omission by the Council or the Replacement Provider relating to a Transferring Employee occurring on or after the Service Transfer Date; and
- (b) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.

- 2.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled. The Provider agrees that it will consent to, and co-operate with, pre-transfer consultation by any Replacement Provider under Part IV of TULRCA.
- 2.10 The Council shall assume (or shall procure that the Replacement Provider shall assume) the outstanding obligations of the Provider in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration prior to the Service Transfer Date.
- 2.11 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to **Paragraph 2.2, Paragraph 2.3, Paragraph 2.4, Paragraph 2.5, Paragraph 2.6, Paragraph 2.7, Paragraph 2.8, Paragraph 2.9 and Paragraph 2.10 of this Schedule** 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 to the Provider under **Paragraph 2.2, Paragraph 2.3, Paragraph 2.4, Paragraph 2.5, Paragraph 2.6, Paragraph 2.7, Paragraph 2.8, Paragraph 2.9 and Paragraph 2.10** in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.12 Notwithstanding **Paragraph 2.11**, it is expressly agreed that the parties may by agreement rescind or vary this **Schedule** or any term of this **Schedule** without the consent of any other person who has the right to enforce the terms of this **Schedule** or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.
- 2.13 If, in the event of a Service Transfer to which the Employment Regulations do not apply the following provisions shall apply:
- (a) the Council or the Replacement Provider can, at its discretion, make to any of the employees listed on the Provider's Provisional Staff List or any Provider's personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
 - (b) when the offer has been made by the Council or Replacement Provider and accepted by any employee or worker, the Provider shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Provider which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
 - (c) if the employee does not accept an offer of employment made by the Council or Replacement Provider, the employee shall remain

employed by the Provider and all claims in relation to the employee shall remain with the Provider; and

- (d) if the Council or the Replacement Provider does not make an offer to any employee on the Provider's Provisional Staff List or any Provider's personnel, then that employee and all claims in relation to that employee remains with the Provider.

END OF SCHEDULE

