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IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Adult Respite Support Services Specification”	means the description of the scope of care home and nursing care home services as set out in Part B of Schedule 1 of this Contract;
“Annual Return”	has the meaning ascribed to it in Schedule 2;
“Approval”	means the prior written consent of an authorised representative of the Council;
“Bank Holidays”	means any public holiday in England when the Bank of England is not open for business;
“Best Value”	means the duty imposed on the Council by Section 3 of the Local Government Act 1999 in relation to the Services;
“Business Continuity Plan”	means a plan which sets out the procedures to be adopted by the Service Provider in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Service Provider in planning and providing for any such event);
“Caldicott Principles”	means those principles identified in the Department of Health report on the review of Patient Identifiable Information December 1997 (or as updated from time to time);
“Care Home”	means the Service Provider’s care home set out in the Particulars at which any Services which are awarded to the Service Provider are performed;
“Change of Control”	has the meaning ascribed to it in clause 33.9 of this Contract;
“Charging Period”	means the relevant period for submission of the Service Return as determined by the Council from time to time;

“Code”	has the meaning ascribed to it in clause 20.4 of this Contract;
“Commencement Date”	means the date of this Contract;
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including any information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, including (without limitation) any trade secrets, Intellectual Property Rights, personal data, sensitive personal data within the meaning of data protection legislation and know-how of either Party;
“Contract”	means the terms and conditions of this contract including its schedules, annexures and appendices;
“Contracts and Quality Manager”	means the person appointed or nominated from time to time by the Council to oversee and supervise the management of this Contract;
“Contract Review Meeting”	means a meeting between the Council and the Service Provider pursuant to Schedule 2 to this Contract for the purposes of reviewing the Service Provider's performance under this Contract;
“Contract Period”	means the period during which the Services are supplied during the Service Periods.
“Contract Price”	means the price payable to the Service Provider by the Council pursuant to the applicable provisions of Schedule 3 to this Contract for the performance of any Services;
“Contracting Authorities”	has the meaning ascribed to it in the Regulations and the term “Contracting Authority” shall be construed; accordingly,

“Crown”, “Crown Body” or “Crown Bodies”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“CQC”	means the Care Quality Commission being the independent regulator of health and social care services in England or any successor body thereto;
“CQC Regulations”	means the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and the Care Quality Commission (Registration) Regulations 2009 (as amended from time to time);
“DBS”	means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012;
“Default Notice”	means a notice which sets out the nature of the Service Provider Default committed, whether or not it is a Serious Default what remedial action is required and the timescale within which the remedial action must take place
“Disaster”	means an event defined as such in the Business Continuity Plan;
“Dispute Resolution Process”	means the process set out in clause 42 of this Contract;
“Employment Checks”	means the pre-appointment checks that are required by Law and/or any applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
“Enhanced DBS & Barred List Check”	means an Enhanced DBS & Barred List Check (Child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) as appropriate;
“Enhanced DBS & Barred List Check (Child)”	means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list;
“Enhanced DBS & Barred List Check (Adult)”	means a disclosure of information comprised in an Enhanced DBS Check together with information from DBS adult's barred list;

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“Enhanced DBS & Barred List Check (Child & Adult)”	means a disclosure of information comprised in an Enhanced DBS check together with information from the DBS children’s and adult’s barred list;
“Enhanced DBS Check”	means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for;
“Enhanced DBS Position”	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) which also meets the criteria set out in The Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted;
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
“E-Brokerage”	means the electronic means by which the Council requests and manages Referrals through a competitive process in order to select a service provider based on specified criteria;
“ESRP”	means the Electronic Service return Portal through which the Service provider shall submit the Service Return or any other means by which the Council will collect Service Returns
“Expiry Date”	means the earlier of either (i) the expiry date of the Term or (ii) the date of any termination of this Contract;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Force Majeure Event”	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including any fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <p>(a) any industrial action occurring within the Service Provider’s organisation; or</p> <p>(b) any failure on the part of the Service Provider’s supply chain to comply with their applicable obligations to the Service Provider under any third-party contract relating to any of the Services;</p>
“Fundamental Standards”	<p>means the fundamental standards set out in the Social Care and Health Act 2008 (Regulated Activities) Regulations 2014 (as amended from time to time);</p>
“Good Industry Practice”	<p>means the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected from a leading and expert supplier of services similar to the Services to a customer like the Council;</p>
“High Level Support Plan and Assessment”	<p>means the plan and risk assessment (as amended from time to time) which comprises the Services which the Service Provider shall deliver to the Council;</p>
“Information”	<p>has the meaning given under section 84 of the FOIA;</p>

“Insolvency Event”

means the occurrence of any one of more of the following:

- (i) the Service Provider suspends, or threatens to suspend, payment of its debts as they fall due or admits any inability to pay its debts or (being a limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words “it is proved to the satisfaction of the court” did not appear in sections 123(1) or 123(2) of the insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing applies to;
- (ii) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors (other than being a company) for the sole purpose of a scheme for a sole amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;
- (iii) a petition is filed, a notice is given, a resolution is passed, or an order is made for or in connection with the winding up of the Service Provider (being a company, a limited liability partnership or a partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider.
- (iv) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company).
- (v) an application is made to the court of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed

an administrative receiver.

- (vi) a person becomes entitled to appoint a receiver over all or any of the assets of the Service Provider or a receiver is appointed over all or any of the assets of the Service Provider.
- (vii) the Service Provider (being an individual) is the subject of a bankruptcy petition, application or order.
- (viii) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied on enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days.
- (ix) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to the events mentioned in (iv) to (viii) above.
- (x) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (xi) the Service Provider enters into a company voluntary arrangement pursuant to section 233(A) of the Insolvency Act 1986;

“Intellectual Property Rights”

means all patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of any court of competent jurisdiction, or directives or requirements or any Regulatory Body of which the Service Provider is bound to comply;
“Large Scale Enquiry”	means an enquiry which is instigated by the Cheshire East Borough Council Adult Partnership Board in accordance with Adult Safeguarding Enquiry Procedures (as amended from time to time).
“Letter of Intent”	means a letter from the CQC notifying the Service Provider of its intention to take urgent enforcement action under section 31 of the Health and Social Care Act 2008 (as amended from time to time);
“Local Healthwatch”	means the local independent consumer champion for health and social care in England;
“Losses”	means all damages, losses, liabilities, claims, actions, costs, expenses (including all legal and/or other professional expenses) proceedings, demands and charges whether arising under statute, contract, tort (including negligence), at common law or otherwise;
“Mediator”	has the meaning ascribed to it in clause 41.5.1 of this Contract;
“NICE”	means National Institute for Health and Care Excellence being the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of all ill health (or any successor body);
“Needs Assessment”	means the document used by the Council to summarize the Council’s initial Support Plan and Assessment.
NMC	means the Nursing and Midwifery Council;

“Nominated Partners”	means either Cheshire East Borough Council, Eastern Cheshire Clinical Commissioning Group or South Cheshire Clinical Commissioning Group who may assess the needs of the Service User on behalf of the Council, and the term “Nominated Partners” shall be construed; accordingly,
“Notice of Decision”	means decision by the CQC which is notified to the Service Provider to impose a condition on its registration under section 31 of the Health and Social Care Act 2008 (as amended from time to time);
“Notice of Proposal”	means either a proposal by the CQC: <ul style="list-style-type: none"> (i) to vary a condition of the Service Provider’s location pursuant to section 12(5)(a) of the Health and Social Care Act 2008 (as amended from time to time); or (ii) to cancel, suspend, vary, remove or impose registration conditions on the Service Provider under section 26 of the Health and Social Care Act 2008 (as amended from time to time);
“Nursing Care”	means any nursing care Services provided by a registered nurse in relation to the Service User at the Care Home;
“Occupancy Level”	a monthly minimum occupancy level that is to be met by the Service Provider.
“OJEU Notice”	means the notice in the Official Journal of the European Union
“Out of Hours”	means (i) any times outside of the hours of 09:00 hours and 17:00 hours Monday to Thursday inclusive or 09:00 hours and 16:30 hours on Fridays (excluding any Bank Holidays) or (ii) at any time during a non-Working Day;
“Particulars”	means the specific details of the Service Provider pertaining to this Contract and substantially in the form set out in Part A of Schedule 1 of this Contract;
“Place” “Placed” or “Placement”	means the admission of a Service User into the Care Home for receipt of Services in accordance with the terms of this Contract;

“Procurement Documents”	has the same meaning ascribed to it as in the Public Contracts Regulations 2015;
“Prohibited Act”	<p>means:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity. (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract. (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010. (ii) under legislation creating offences concerning fraudulent acts. (iii) at common law concerning fraudulent acts relating to this Contract, or any other contract with the Council; or (iv) defrauding, attempting to defraud or conspiring to defraud the Council;
“Quality Assurance Visit”	means a quality assurance visit performed by the Council in accordance with Schedule 2 of this Contract;
Referral	means an official referral sent by the Council to the Service Provider in respect of the Services detailing the requirements of a particular individual and a needs assessment.

“Registered Manager”	means the member of the Service Provider’s Staff referred to in the Particulars (as amended from time to time) who manages the Care Home and is registered with the CQC (or any other applicable regulator);
“Regulated Activity”	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;
“Regulated Activity Provider”	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 (as amended from time to time);
“Regulations”	means the Public Contracts Regulations 2015, (as amended from time to time);
“Regulatory Body”	means a body established by those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council and the term “Regulatory Bodies” shall be construed accordingly;
“Relevant Convictions”	means any conviction that is relevant to the nature of the Services or as notified by the Council to the Service Provider from time to time;
“Replacement Provider”	means any third party Service Provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry or termination of this Contract;
“Request for Information”	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term request shall apply).

Requirements	means the applicable Requirements(s) which the Service Provider has been appointed to under this Contract and is eligible to submit Tenders in relation to (subject always to any suspension rights of the Council) and such requirements are set out in Schedule 4 of this Contract.
“Room”	means an applicable room within the Care Home which is allocated to or chosen by a Service User upon their Placement in the Care Home;
“Safeguarding Adult Review”	means a review of the same name carried out pursuant to section 44 of the Care Act 2014 (as amended from time to time);
“Schedule”	means any schedule attached to, and forming part of, this Contract;
“Serious Default”	means a Service Provider Default which either (a) the Service Provider commits on two or more occasions during any consecutive period of 6 months even if the Service Provider rectifies the Service Provider Default each time; or which (b) amounts to a material breach by the Service Provider of its obligations under this Agreement or which (c) in the Council’s reasonable opinion materially prejudices the health, safety and/or welfare of a Service User
“Services” or “Service”	means any service or services supplied by the Service Provider as more particularly described in the Adult Respite Support Services Specification in respect of Requirements 1-8
“Service Period”	Means the period of each of the Services as set out in Clause 2
“Service Provider”	means provider/s contracted under the terms of this Agreement to deliver the Services and who will, subject to conditions, receive a regular minimum payment.

Service Provider Default	means any breach of the Service Provider's obligations (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Service Provider, its employees, agents or Sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which the Service Provider is liable to the Council;
"Service Provider's Representative"	means the individual described as such in the Particulars;
"Service Return"	means a return containing the information required for payment as the Council may from time to time set out;
"Service User"	means any individual who is currently residing in the Care Home or will be residing in the Care Home who is receiving or shall receive the benefit of the Services;
"Staff"	means all persons employed or engaged by the Service Provider in order to perform the Service Provider's obligations under this Contract, including (without limitation) all of its employees, servants, agents, suppliers, permitted Sub-Contractors and assignees and any other representatives;
"Standard DBS Check"	means a disclosure of information which contains certain details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions;
"Standard DBS Position"	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted;
"Standard Equipment"	means any equipment, plant or materials to be provided by the Service Provider pursuant to the provisions of the Adult Respite Support Services Specification to perform the Services;
"Term"	has the meaning ascribed to it in clause 2 of this Contract;

“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) or any amendment to or replacement thereof;
“Transferee”	has the meaning ascribed to it in clause 23.2 of this Contract;
“VAT”	means any value added tax pursuant to the Value Added Tax Act 1994 (as amended from time to time);
“Warning Notice”	means any warning notice served by the CQC under Section 29 of the Health and Social Care Act 2008 (as amended from time to time); and
“Working Day”	means Monday to Friday (inclusive) excluding any Bank Holiday.

- 1.2 The interpretation and construction of this Contract shall be subject to the following provisions:
- 1.2.1 any words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
 - 1.2.2 any words importing the masculine shall include the feminine and the neuter.
 - 1.2.3 any reference to a clause or paragraph shall be a reference to the whole of that clause or paragraph unless stated otherwise.
 - 1.2.4 any reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument.
 - 1.2.5 any reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees, Sub-contractors and/or transferees.
 - 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - 1.2.7 all headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of this Contract; and
 - 1.2.8 save where expressly stated otherwise in this Contract, the terms and conditions of this Contract and its schedules are to be read as mutually explanatory of one another. In the event that there is a conflict or inconsistency between the clauses and the schedules of this Contract, such conflict or inconsistency shall be resolved in accordance with the following order of precedence:
 - (a) the clauses of this Contract.
 - (b) The Adult Respite Support Services Specification at Schedule 1, Part B of this Contract.

- (c) The Monitoring Schedule at Schedule 2 to this Contract.
- (d) The Pricing Schedule at Schedule 3 to this Contract.
- (e) The Provider's Tender Response Document at Schedule 7
- (f) the remaining Schedules equally.

2. SERVICE PERIODS

The period of each of the Services supplied under this Contract shall be as follows:

Services supplied in respect of Requirements 1-8 shall commence on 1st December 2023 and shall automatically expire on 30th November 2024, unless provision of the Service is terminated earlier by either Party pursuant to the terms of this Contract or by operation of Law or extended by the Council in which case the terms and conditions of the Contract shall apply throughout any such extended period.

3. SERVICE PROVIDER'S STATUS

3.1 At all times during the Contract Period the Service Provider shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

3.2 The Parties hereby acknowledge and agree that nothing in this Contract shall create or be deemed to create any relationship of landlord and tenant in respect of any accommodation, Care Home and/or Room which is provided as part of any Services, whether between the Council and the Service Provider, the Council and the Service User, the Service Provider and the Service User or otherwise.

4. NO VOLUME GUARANTEE

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

4.2 Save where expressly stated otherwise herein, in entering into this Contract the Council hereby appoints the Service Provider as a provider of the Services under the applicable Requirement(s) during the Contract Period in accordance with this clause 4.

4.3 The Service Provider acknowledges and agrees that, in entering into this Contract, no form of exclusivity or volume guarantee has or shall be granted by the Council for any Services to be awarded to or delivered by the Service Provider and that nothing in this Contract shall prohibit or fetter the Council's unequivocal right to enter into other contracts and arrangements with other service providers for the provision of any or all services which are the same as or similar to the Services hereunder. The Provider further acknowledges that it is not appointed on an exclusive basis and that the Council has appointed third parties to carry out services of a kind similar to or the same as the Services (and that nothing in this Agreement

prevents the Council from appointing more third parties or from carrying out such activities on an in-house basis).

5. NOTICES

5.1 Except as otherwise expressly provided within this Contract no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned in accordance with clause 5.2 of this Contract.

5.2 Any notice which is to be served by either Party to the other under this Contract shall either be served in the form of an email or letter and such letter shall either be delivered in person or posted by first class post. Such notices shall be addressed to the other Party in the manner referred to in clause 5.3, and shall be deemed to be served immediately if successfully delivered in person or by email or two (2) Working Days after the day on which the notice was sent by first class post, provided always that any such notice is not returned as undelivered.

5.3 For the purposes of clause 5.2, all notices shall be addressed as follows:

5.3.1 on behalf of the Council:

For the attention of: The Contracts and Quality Manager

Cheshire East Borough Council
Middlewich Road
Westfields
CW11 1HZ

5.3.2 on behalf of the Service Provider:

For the attention of [**insert appropriate representative**]

[**insert address details**]

[**insert email address details**]

5.4 Either Party may change its address details and/or its recipient for the service of notices by serving a notice in accordance with the provisions of clause 5 of this Contract.

6. MISTAKES IN INFORMATION

The Service Provider shall be responsible for the accuracy of all documentation and information supplied to the Council by the Service Provider in connection with this Contract, including (but not limited to) the information supplier in its Tender.

7. CONFLICTS OF INTEREST

7.1 The Service Provider shall ensure and shall procure that all of its Staff shall ensure, that neither it nor they are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual or potential conflict between the pecuniary or personal interests of the Service Provider and/or any of its Staff and the duties owed to the Council under the provisions of this Contract. The Service Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

7.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps as it deems necessary where, in the reasonable opinion of the Council, there is or may be any such conflict referred to in clause 7.1 of this Contract.

7.3 The actions of the Council pursuant to clause 7.2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council and where the Council exercises its right to terminate in clause 7.2 of this Contract it shall be entitled to recover any Losses which it suffers or incurs as a result of having to terminate this Contract.

8. THE SERVICES

8.1 The Service Provider warrants, represents and undertakes that it will provide any and all of the Services which may be awarded to it by the Council from time to time at all times during the Contract Period with all due skill, care and diligence and in accordance with:

8.1.1 the provisions of Schedule 1 Part B of this Contract.

8.1.2 Good Industry Practice.

8.1.3 all applicable Laws.

8.1.4 Not used

8.1.5 the Procurement Documents.

8.1.6 the terms of this Contract; and

8.1.7 the Caldicott Principles to the extent that these are applicable to the provision of the Services.

8.2 The Service Provider shall at all times during the Contract Period comply with its staffing and Equipment obligations set out in the Specification.

8.3 The Service Provider shall, and shall procure that all of its Staff shall:

8.3.1 do nothing nor omit to do anything which shall cause the Council to be in breach of any of statutory duties with respect to the Services or any of the Council's obligations under this Contract or pursuant to any Law; and

8.3.2 act in good faith when complying with all of its obligations under this Contract and shall promptly provide all such reasonable co-operation and assistance to the Council as is requested from time to time to enable the Council to perform its obligations under this Contract or pursuant to any Law.

8.4 The Service Provider shall ensure that it enters into all agreements and arrangements with the Service User as are required by Law (including, without limitation, pursuant to the CQC Regulations).

9. QUALITY, PERFORMANCE AND CONTRACT MONITORING

The Service Provider shall ensure that it complies with all of its obligations under Schedule 2 of this Contract and with any additional quality performance and contract monitoring requirements set out in the Specification at all times during the Service Period.

10. STAFF AND SAFEGUARDING VULNERABLE ADULTS

- 10.1 The Service Provider shall procure at all times during the Contract Period that all of its Staff comply with all of their applicable legal and regulatory obligations when performing any Services on behalf of the Service Provider, including (without limitation) any obligations and/or requirements which are prescribed by the CQC (or any other applicable regulator) from time to time.
- 10.2 Not used.
- 10.3 At all times during the performance of any Services the Service Provider shall ensure that:
- 10.3.1 all of its Staff are suitably qualified and experienced, adequately trained and supervised and capable of providing the applicable Services in respect of which they are engaged, including (without limitation) receiving all of the training which is set out in the Specification.
 - 10.3.2 there is an adequate number of Staff to provide the Services properly (having due regard to the needs of the other individuals residing in the Care Home).
 - 10.3.3 where applicable, Staff are registered with the appropriate Regulatory Body; and
 - 10.3.4 all of its Staff are aware of and respect the equality and human rights of colleagues and each Service User.
- 10.4 The Service Provider must have in place processes for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:
- 10.4.1 proper and sufficient continuous professional and personal development, training and instruction; and
 - 10.4.2 full and detailed appraisals (in terms of performance and on-going education and training), each in accordance with Good Industry Practice and the standards of any applicable relevant professional body and/or Regulatory Body.
- 10.5 Subject to clause 10.6 of this Contract, before the Service Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of such Services, the Service Provider must without limitation, promptly complete:
- 10.5.1 the Employment Checks; and
 - 10.5.2 such other checks as required by the DBS.
- 10.6 Subject to clauses 10.5 and 10.7 of this Contract, the Service Provider may only engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate).

- 10.7 Where clause 10.6 above applies, the Service Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
- 10.7.1 an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff.
 - 10.7.2 this supervisor is on duty at the same time as the new member of Staff or is available to be consulted.
 - 10.7.3 the new member of Staff is accompanied at all times by another member of Staff, preferably the appointed supervisor, whilst providing any Services.
 - 10.7.4 the Service Provider shall (and shall procure that all of its Staff) comply with any additional reasonable requirements of the Council which the Council notifies to the Service Provider from time to time.
- 10.8 The Service Provider shall undertake checks to ensure that any of its potential Staff members who are likely to be in a position where they are providing any Services to a Service User has a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom. The Service Provider shall not employ or engage any Staff prior to receipt of a satisfactory Employment Check, and should the Employment Check disclose information about Staff which indicates that the person does not have a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom then that person shall not be so employed or engaged in connection with such Services.
- 10.9 The Service Provider shall ensure that the employment or involvement of young Staff complies with all applicable Laws and in particular the Children and Young Persons Act 1933 (as amended) and the Children Act 1989.
- 10.10 The Service Provider shall ensure that any concerns relating to the abuse or neglect of a child are reported to the relevant local authority in accordance with the Cheshire East Borough Council Safeguarding Children Board Policy and Procedures.
- 10.11 The Service Provider must have policies and procedures which acknowledge and provide for on-going monitoring of its Staff including undertaking further DBS disclosures if required and the Service Provider shall comply with such policies at all times when performing any Services.
- 10.12 The Service Provider must keep and must procure that the Council is kept advised at all times of any Staff who subsequent to their commencement of employment or engagement with the Service Provider receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Service Provider or any member of its Staff and the Service Provider must immediately notify the Council where a referral is made to the DBS in relation to future barring of any member of its Staff.

- 10.13 The Service Provider shall comply and shall ensure that all Staff comply with the Cheshire East Borough Council Adult Safeguarding Enquiry Procedures (as amended from time to time) and the Service Provider's own policies and procedures concerning adult protection and/or safeguarding.
- 10.14 The Service Provider's above policies and procedures shall include safeguarding adults and children from any form of abuse or exploitation which includes physical, financial, psychological or sexual abuse, neglect, discriminatory, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance.
- 10.15 The Service Provider shall have in place robust procedures for responding to suspicion or evidence of abuse and/or neglect to ensure the safety and protection of the Service User. The procedures shall reflect local multi-agency policies, protocols and guidance, including informing the CQC and the Nursing and Midwifery Council (NMC) (or any other applicable regulator) and where appropriate involving the police in accordance with the Public Interest Disclosure Act 1998.
- 10.16 The Service Provider's safeguarding policy and procedures must ensure that all allegations and incidents of abuse are followed up in a prompt, specified timeframe. All details and actions taken are recorded in a special record/electronic file kept specifically for the purpose, and on the personal file of the Service User.
- 10.17 The Service Provider will undertake safeguarding enquiries under section 42 of the Care Act 2014 when caused to do so by the Council including (but not limited to) producing an enquiry report in compliance with local procedures.
- 10.18 The Service Provider will immediately co-operate with any safeguarding enquiry undertaken by the Council and/or its Nominated Partners under section 42 of the Care Act 2014 and will provide any information and documentation that is relevant to that enquiry.
- 10.19 The Service Provider shall have a Public Interest Disclosure Act 1998 (Whistleblowing) policy which will include procedures under which Staff can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way. These can include situations when Staff believe that:
- 10.19.1 a criminal offence has been committed.
 - 10.19.2 someone has failed to comply with a legal obligation.
 - 10.19.3 a miscarriage of justice has occurred.
 - 10.19.4 the health and safety of an individual is being endangered; and
 - 10.19.5 there are or may be financial irregularities.
- 10.20 The Service Provider shall have in place policies and procedures for Staff regarding the Service User's will and bequests. The policies and procedures shall prevent the involvement of any Staff, or family members of Staff, in the making of, or benefiting from, the Service User's will, soliciting any other form of bequest or legacy, acting as a witness or executor, and being involved in any way with any other legal arrangement.

- 10.21 The Service Provider shall ensure that all Staff shall receive training on the prevention of abuse promptly following their employment or engagement and that such training must be updated and delivered to such Staff annually thereafter. Adult Safeguarding training is the minimum requirement for all Staff and levels 1 and 2 for managers.

Safeguarding and Safeguarding Adult Reviews

- 10.22 The Service Provider shall (at no additional cost to the Council) assist the Council by providing such information as the Council and/or the Safeguarding Adult Board may request in relation to a Safeguarding Adult Review within 10 Working Days of receipt. If for any reason, the Service Provider cannot assist they must inform the Council in writing within 48 hours of request. The Service Provider must also stipulate why they cannot assist with the request.

Safeguarding Adults

- 10.23 Not used.
- 10.24 The Service Provider acknowledges that they shall at all times have regard to the health and safety of all those accessing the Care Home, including all Staff, the Service User, the Service User's duly authorised representative, visitors and all other third parties.
- 10.25 The Service Provider shall be responsible for the observance of the health and safety legal and policy requirements by all of its Staff at the Care Home.
- 10.26 The Service Provider shall ensure that full traceability is available in relation to all Services, products and facilities supplied to any Service User.

11. TUPE

The Provider will provide the Council on demand, at no cost to the Council and within such reasonable time which the Council may stipulate, with such information regarding the terms and conditions of its Staff involved in the provision of the Services as the Council may reasonably require in order for the Council to decide whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) (or as may be amended) apply upon expiry or termination of this Contract and/or so that the Council can make appropriate provision in any future tender documentation for the Services and or related services. Information disclosed to the Council pursuant to the clause shall not be used for any other purpose without the consent of the Provider.

12. CONTRACT PRICE

- 12.1 The Council shall pay the Contract Price to the Service Provider in accordance with the applicable provisions of Schedule 3 of this Contract in consideration of the Service Provider performing all of its obligations under this Contract.
- 12.2 The Price will be fixed from the Commencement Date. The Council will, at its discretion, consider whether the Price will be varied. Any such variation will be in accordance with the mechanism set out in Schedule 3 and any such variation will be made in accordance with Clause 25.
- 12.3 The Provider will raise invoices in accordance with Schedule 3. It shall be the

Provider's responsibility to ensure that invoices are sent to the Council as the Council will not make payment to the Provider without receipt of a valid invoice and any supporting information required by the Council to verify the accuracy and validity of the invoice including but not limited to the information set out in Schedule 3.

- 12.4 Where under clause 12.3 the Provider submits to the Council a properly raised invoice in compliance with the payment provisions of this Agreement the Council shall pay the Provider any sums due under that invoice no later than 30 days from the date on which the Council has determined it to be valid and undisputed. When the Council determines whether such an invoice is valid and undisputed, it will do so in accordance with the timescale set out within the Pricing Schedule.
- 12.5 Where an invoice is disputed by the Council, it will make payment equal to the sum not in dispute, and the dispute as to the sum that remains unpaid shall be referred to the dispute resolution procedure in clause 42 without undue delay for resolution.
- 12.6 All amounts stated in this Agreement are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Provider a sum equal to the VAT chargeable in respect of the Services.
- 12.7 Where an invoiced sum is in dispute pursuant to clause 12.5 the Provider shall not be permitted to suspend the supply of the Services, except if it has acquired the right to terminate this Agreement for a failure to pay undisputed sums pursuant to clause 34.2.

13. RECOVERY OF SUMS DUE

13.1 Wherever under this Contract, any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of this Contract, the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider or under any other agreement or contract which the Council has entered into with the Service Provider.

- 13.2 Any overpayment by either Party, whether of the Contract Price or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 13.3 The Service Provider shall be entitled to deduct, whether by way of set-off, counterclaim, discount, abatement or otherwise, any amount(s) which it is owed by the Council under this Contract from any amount that it owes to the Council.

14. PREVENTION OF BRIBERY AND CORRUPTION

14.1 The Service Provider:

14.1.1 shall not, and shall procure that all of its Staff shall not, in connection with this Contract commit a Prohibited Act during the Contract Period; and

14.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before the execution of this Contract.

14.2 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any member of Staff from committing a Prohibited Act and shall enforce it where appropriate

- 14.3 If any breach of clause 14.1 is suspected or known the Service Provider must notify the Council immediately
- 14.4 If the Service Provider provides notice to the Council in accordance with clause 14.3 the Provider shall respond promptly to any enquiries made and cooperate with any investigation carried out by the Council and allow the Council access to audit books, records and any other relevant documentation. This obligation shall continue for the later of six (6) years following the Expiry Date entered into between the Parties hereunder.
- 14.5 The Council may terminate this Contract by written notice with immediate effect if the Service Provider or its Staff (whether or not acting with the Service Provider's knowledge) breaches this clause 14
- 14.6 If this Contract is terminated under clause 14.5 the Council may recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the provision of the Service and any other loss sustained by the Council in consequence of any breach of this clause 14 whether or not this Contract has been terminated.

15. EQUALITY, DIVERSITY AND NON-DISCRIMINATION

At all times during the Contract Period the Parties shall comply with their respective obligations under the Equality Act 2010 and any subordinate legislation thereunder.

16. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 16.1 Unless expressly stated in this Contract, a person who is not a Party to this Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on them, without the prior written agreement of the authorised representatives of each Party. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- 16.2 For the avoidance of doubt, each Service User shall have the benefit of any Services awarded to the Service Provider, but nothing in this Contract shall entitle the Service User to terminate this Contract relating to the Services which they are a third party beneficiary of.

17. HEALTH AND SAFETY

- 17.1 Each Party shall perform its obligations under this Contract in accordance with the applicable requirements of the Health and Safety at Work etc. Act 1974 and any other applicable acts, orders, regulations and codes of practice relating to health and safety.
- 17.2 The Service Provider will immediately report to the Council all accidents which concerns or relates to the Service(s) being delivered and which ordinarily require reporting in accordance with the Health and Safety at Work Act 1974.
- 17.3 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request

18. DATA SECURITY AND DATA PROTECTION LAWS

18.1 The Service Provider shall comply with the provisions of Schedule 6 which shall apply to this Contract.

18.2 The Service Provider shall enter into a Data Sharing Agreement with the Council. Until such time as there is a valid/completed Data Sharing Agreement in place the Council will not commission any services from the Service Provider under this Contract.

Commented [IP1]: Will this apply?

Commented [CJ2R1]: As this sits under the overarching AWC I would say not - as I would have thought there was a Data Sharing Agreement in place for AWC

18.3 The provisions of this clause 18 shall apply during the Contract Period and indefinitely after expiry or termination of the same.

19. CONFIDENTIAL INFORMATION

19.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

19.1.1 treat the other Party's Confidential Information as confidential and safeguard it; accordingly, and

19.1.2 not disclose the other Party's Confidential Information to any third party without the owner's prior written consent.

19.2 Clause 19.1 of this Contract shall not apply to the extent that:

19.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 20 of this Contract.

19.2.2 such Confidential Information which was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner.

19.2.3 such Confidential Information was obtained from a third party without any obligation of confidentiality.

19.2.4 such Confidential Information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

19.2.5 it is independently developed without access to the other Party's Confidential Information.

19.3 The Service Provider may only disclose the Council's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know such Confidential Information and shall ensure that such Staff are aware of and shall comply with the obligations set out in this clause 19 of this Contract.

19.4 The Service Provider shall not, and shall procure that its Staff shall not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

19.5 At the written notification of the Council, the Service Provider shall procure that those members of its Staff identified in the Council's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

19.6 Nothing in this Contract shall prevent the Council from disclosing the Service Provider's Confidential Information:

- 19.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority.
- 19.6.2 to any consultant, professional advisor employee, agent or any other person engaged by the Council in relation to this Contract or any person conducting an Office of Government Commerce gateway review.
- 19.6.3 for the purpose of the examination and certification of the Council's accounts; or
- 19.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 19.7 The Council shall use its reasonable endeavours to ensure that any third party to whom the Service Provider's Confidential Information is disclosed pursuant to clause 19.6 of this Contract is made aware of the Council's obligations of confidentiality hereunder.
- 19.8 Nothing in this clause 19 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 19.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement the Service Provider undertakes to maintain systems which are secure. In the event of unauthorised access or where deficiencies are identified, the Council may require the Service Provider to alter any security systems at any time during the Contract Period at the Service Provider's expense.
- 19.10 The Service Provider will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Service Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Service Provider will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

20. FREEDOM OF INFORMATION

- 20.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 20.2 The Service Provider shall, and shall procure that all of its Staff shall, transfer to the Council all Requests for Information that it receives without delay and in any event within two Working Days of receiving a Request for Information and shall:

20.2.1 provide the Council with a copy of all Information in its or their possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and

20.2.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

20.3 Notwithstanding any other provision in this Contract, the Council shall be entitled to determine, in its absolute discretion, whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

20.4 The Service Provider acknowledges that (notwithstanding the provisions of this clause 20) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Service Provider or the Services in certain circumstances:

20.4.1 without consulting the Service Provider; or

20.4.2 following consultation with the Service Provider and having taken their views into account.

provided always that where this clause 20.5 applies, the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

20.5 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

Electronic Communications

20.6 The Service Provider shall ensure that prior to the Commencement Date and at all times during the Contract Period it will provide the Council with its applicable up-to-date email address and all other relevant contact details from time to time (and in the event of any change), so that the Council can notify it of any Referrals and that the Service Provider shall have access to continuous internet connectivity, subject to any unforeseen downtime.

20.7 The Service Provider shall check its emails as frequently as practicable during each day during the Contract Period for the submissions by the Council of any new Referral.

20A INFORMATION GOVERNANCE

20A.1 Without prejudice to the Service Provider's obligations under clause 18 or Schedule 6 of this Contract, at all times during the Contract Period or during the term the Service Provider shall (and shall procure that its Staff shall):

20A.3.1 remember that the data protection legislation is not a barrier to sharing information but provides them with a framework to ensure that personal information about living persons is shared appropriately.

20A.3.2 be open and honest with any Service User (and/or their duly authorised representative or family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement (or that of their duly authorised representative), unless it is unsafe or inappropriate to do so.

20A.3.3 seek advice if they are in any doubt, without disclosing the identity of the Service User where possible.

20A.3.5 consider the safety and well-being of each Service User and any others who may be affected by their actions when making any information sharing decisions; and

20A.3.6 keep records of their decisions and the reasons for them regarding whether to share any information or not, with whom and for what purpose.

20A.4 The Service Provider shall fully indemnify the Council and keep it fully indemnified against all charges, losses, damages, costs, actions, claims, proceedings, judgments, expenses (including legal and other professional expenses) and all other liabilities incurred by, awarded against or agreed to be paid by the Council arising from or in connection with any breach of the Service Provider's obligations under clauses 18 and/or 20A, except and to the extent that the same have resulted directly from the Council's instructions.

21. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

21.1 The Service Provider shall not make reference to the Council on its correspondence letterhead or otherwise published materials other than in the course of the performance of their obligations hereunder and this Agreement shall not operate as a licence to permit the display or otherwise use of the Council's names or of any mark that vests with the Council other than in the course of the performance of the Service Provider's obligations hereunder without prior Approval

21.2 The Service Provider shall not at any time (either before or after the expiry or termination of this Agreement) issue or publish nor cause to be issued or published any comment or statement in connection with the activities of the Council or the content of the Service without first obtaining Approval.

21.3 The provisions of this clause shall apply during the continuance of the Agreement and for a reasonable time after its expiry or termination

22. AUDIT AND INSPECTION

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- 22.1 The Service Provider shall, and shall procure that all of its Staff shall, keep and maintain for the period of six years following the expiry or termination of this Contract full and accurate records of any Services supplied to the Council, including (but not limited to) all expenditure reimbursed to the Council, all payments made by the Council (if any) and any payments made by the Service User and/or the Sponsor. The Service Provider shall, and shall procure that any permitted Sub-Contractor shall, promptly afford the Council and the Council's authorised representatives such access to those records for audit purposes.
- 22.2 Without prejudice to the Service Provider's obligations under Schedule 2 of this Contract, the Service Provider must comply with all reasonable written requests made by the CQC (or any other applicable regulator), the National Audit Office, the authorised representatives of the Local HealthWatch and any other Regulatory Body for entry to the Care Home or the Service Provider's (or any permitted Sub-Contractor's) premises for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for auditing any information relating to the provision of the Services. The Service Provider may refuse such request to enter the Care Home where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User, subject always to the Service Provider subsequently providing or procuring such access as soon as reasonably practicable thereafter.
- 22.3 Subject to any applicable Law and notwithstanding clause 22.2, the Contracts and Quality Manager and/or the Council's nominated representatives may either:
- 22.3.1 enter the Care Home without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, and subject to any applicable Law and Good Industry Practice (also taking into consideration the nature of the Services and the effect of the visit on any Service User), the Service Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Contracts and Quality Manager and/or the Council's other nominated representatives; or
- 22.3.2 oblige the Service Provider to provide to the Council hard or electronic copies of any such records, documentation, or other materials which the Council reasonably requests within five (5) Working Days of the date of such request.
- 22.4 Within ten (10) Working Days of the Council's reasonable request, the Service Provider shall (and shall procure that all of its Staff shall) send the Council a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Service Provider, to which the Service Provider has access to and which it can disclose in accordance with the Law.
- 22.5 The Council shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 22.6 During any audit undertaken under clauses 22.2 and 22.3 of this Contract, the Service Provider shall (and shall procure that all of its Staff shall) provide the Council with all reasonable co-operation and assistance in relation to that audit, including:

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- 22.6.1 all reasonable information requested within the scope of the audit.
- 22.6.2 reasonable access to the Care Home; and
- 22.6.3 access to the Staff.

23. TRANSFER AND SUB-CONTRACTING

- 23.1 To the fullest extent permitted by Law, the Service Provider shall not assign novate, transfer, sub-contract, charge or in any other way dispose of its rights and/or obligations under this Contract to any third party without the prior written consent of the authorised representatives of the Council. The Council expects that save in exceptional circumstances, the Service Provider shall not sub-contract to or allow any other person to perform any part of the Services. In any event the Service Provider shall not sub-contract or allow any other person to perform any part of the Services without obtaining prior Approval.
- 23.2 The Council may assign, novate, transfer or otherwise dispose of any of its rights and obligations under this Contract to :
 - 23.2.1 any Contracting Authority; or
 - 23.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
 - 23.2.3 private sector body which substantially performs the functions of the Council, (the "**Transferee**"),provided that any such assignment, novation, transfer or other disposal shall not increase the burden of the Service Provider's obligations under this Contract
- 23.3 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, the terms of this Contract shall bind and inure to the benefit of any successor body to the Council.
- 23.4 The Council may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under this Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 23.5 If the Council provides its written consent pursuant to clause 23.1 of this Contract then the Service Provider shall reimburse in full any reasonable costs and expenses which are incurred by the Council in relation to any assignment, novation, transfer, sub-contract or any other disposal of the Service Provider's rights within 14 days of the date of any invoice which the Council submits to the Service Provider in relation to such costs and expenses.
- 23.6 Where the Service Provider is permitted to sub-contact any of its rights under this

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clause 23, then the Service Provider shall be directly liable for any acts or omissions committed by any applicable Sub-contractor as if the Service Provider had committed such acts or omissions itself. Any such sub-contracting shall not in any way relieve the Service Provider from its liabilities hereunder and the Service Provider shall be and shall remain fully responsible in respect of the Service notwithstanding such sub-contracting. The Service Provider shall ensure that any sub-contractor meets the standards and performance levels required of the Service Provider under this Agreement.

- 23.7 If the Service Provider has requested and obtained from the Council prior Approval, the Service Provider shall be entitled to novate this Agreement where:
- (a) the specific change in contractor was provided for in the procurement process for the award of this Agreement.
 - (b) there has been a universal or partial succession into the position of the Service Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.

24. WAIVER

- 24.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 24.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 5 (Notices).
- 24.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

25. VARIATION

- 25.1 This Agreement shall not be varied except by instrument in writing signed by the authorised representatives of the Parties. The Provider acknowledges and agrees that the Council may wish to make variations to this Contract during the Contract Period in order to:
- 25.1.1 provide for any applicable changes to the Law, the common law or any regulatory requirements.
 - 25.1.2 amend the Price in accordance with clause 12 and Schedule 3; and/or
 - 25.1.3 further develop the provisions of Schedule 2 (Quality, Performance and Contract Monitoring) hereto.

26. SEVERABILITY

If any provision of this Contract is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and

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

27. REMEDIES CUMULATIVE

Except as otherwise expressly stated in this Contract, all rights and remedies available to either Party under this Contract, at Law or under equity are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

28. ENTIRE AGREEMENT

This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matters dealt with therein. This Contract shall supersede all prior negotiations between the Parties and all representations and undertakings made by one Party to the other in relation to its subject matter, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

29. NOT USED

30. LIABILITY

30.1 Neither Party excludes or limits its liability to the other Party under this Contract for any:

- 30.1.1 death or personal injury caused by its negligence.
- 30.1.2 Prohibited Act.
- 30.1.3 fraudulent misrepresentation.
- 30.1.4 breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982,
- 30.1.5 other act or omission which is not capable or being limited or excluded under Law; or
- 30.1.6 any indemnity provided herein which shall include but is not limited to the Service Provider's liability in respect of the indemnities given by the Service Provider in Schedule 6 (data protection indemnity) and clause 32 (intellectual property rights indemnity).

30.2 Subject to clauses 30.1 and 30.3 of this Contract, neither Party shall in any circumstances be liable to the other Party under this Contract for any:

- 30.2.1 any special or consequential loss or damage; or
- 30.2.2 any loss of profits,
- 30.2.3 loss of business opportunities,
- 30.2.4 loss of revenue; or
- 30.2.5 loss of goodwill, whether direct or indirect.

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For the purposes of this clause 30.2, the following shall not be treated as indirect or consequential losses or damages: -

- (a) any additional operational and/or administrative expenses arising from a Service Provider Default.
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from a Service Provider Default.
- (c) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of this Agreement in whole or in part as a result of a Service Provider Default; and
- (d) liabilities, costs and/or expenses (including legal expenses) incurred by the Council in connection with a claim from a third party arising out of a Service Provider Default.

30.3 The provisions of clause 30.2 shall not limit or exclude the Council's right to recover any of the following from the Service Provider:

- 30.3.1 any additional operational and administrative costs and expenses which the Council suffers or incurs as a result of or in connection with any act or omission of the Service Provider or any its Staff under this Contract.
- 30.3.2 any wasted expenditure or charges rendered unnecessary which are suffered or incurred by the Council arising from any act or omission of the Service Provider or any of its Staff under this Contract.
- 30.3.3 any additional cost of procuring and implementing replacement services as a result of any act or omission of the Service Provider or any of its Staff under this Contract.
- 30.3.4 any loss of corruption or damage to or alteration of any of the data (including any Personal Data or Sensitive Personal Data as defined in Schedule 6) which the Council or any of its Nominated Partners provides to the Service Provider or any of its Staff under this Contract.
- 30.3.5 any fines, expenses or other Losses which the Council suffers or incurs as a result of or in connection with any breach by the Service Provider or any of its Staff of any applicable Laws in connection with this Contract; or
- 30.3.6 any loss of anticipated savings which is suffered or incurred by the Council as a result of any act or omission by the Service Provider or any of its Staff in relation to this Contract.

30.4 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 30 of this Contract is held to be invalid under any applicable statute or rule of Law, it shall, to that extent, be deemed omitted from this Contract, and if any Party becomes liable for any Losses which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this clause 30.

31. **INSURANCE**

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- 31.1 The Service Provider shall maintain and effect the policies of insurance with the minimum amounts of cover as set out in clause 31.6 of this Contract with reputable insurers at all times during the Contract Period and the Service Provider shall ensure that all of its obligations and all potential Losses of the Council under this Contract are insured by the terms of such insurance policies.
- 31.2 The Service Provider shall promptly provide to the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 31.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of this Contract the Council may make alternative arrangements to protect its interests and may recover all of the costs of such arrangements from the Service Provider in full.
- 31.4 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any of its obligations or liabilities under this Contract.
- 31.5 The Service Provider shall (and shall procure that all of its Staff shall) do nothing nor omit to do anything during the Contract Period which shall invalidate, nullify or exclude any of the cover under the insurance policies set out in clause 31.1 of this Contract.
- 31.6 The Service Provider shall maintain insurance with the following limits of indemnity for any one occurrence or series of occurrences arising out of any one event: -
- 31.6.1 Employers' Liability Insurance in respect of the Service Provider's Staff in compliance with the Employers' Liability (Compulsory Insurance) Act 1969 and any Order thereunder or amendment thereto to a limit of not less than £10,000,000 (ten) million pounds for each and every claim; and
 - 31.6.2 Public Liability Insurance in respect of any liability damage loss expense cost claim or proceedings in respect of personal injury to or death of any person (including any employee of the Council or the Service Provider) or injury or damage to any property arising out of or in connection with the performance of the Service for a limit of indemnity of not less than £10,000,000 (ten) million pounds for each and every claim with no abuse exclusion/inner limit;
 - 31.6.3 Medical Malpractice Insurance in respect of any liability damage loss expense cost claim or proceedings in respect of personal injury to or death of any person arising out of or in connection with the performance of the Service for a limit of indemnity of not less than £10,000,000 (ten) million pounds for each and every claim; and
 - 31.6.4 Professional Indemnity Insurance covering the Service Provider's liability hereunder and including without prejudice to the generality of the following any act of negligence or contractual default or omission on the Service Provider's part or the part of its sub-contractors and their respective employees for a limit of indemnity of not less than £2,000,000 (two) million pounds each and every claim and in the aggregate.
 - 31.6.5 Building and Contents. And
 - 31.6.6 any other insurance policies required under the Specification.

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- 31.7 Such insurance cover is to be maintained throughout the Contract Period (and, in the case of the Professional Indemnity Insurance, also for a period of 6 years thereafter) with a well-established insurance provider or underwriter of good repute. The Service Provider shall promptly produce for inspection documentary evidence as and when required by the Council that the insurance so required is properly maintained.
- 31.8 The Service Provider shall immediately upon receipt of a claim made against it under this Agreement notify its insurer of the claim.
- 31.9 The Service Provider shall give immediate written notice to the Council in the event of the cancellation, or a material change in the terms of any of the required insurance policies.

32. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 32.1 The Service Provider warrants, represents and undertakes that:
- 32.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of any applicable parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by the duly authorised representatives of the Service Provider.
- 32.1.2 in entering into this Contract neither the Service Provider nor any of its Staff have not committed any Prohibited Act.
- 32.1.3 prior to the Commencement Date and at all times during the Contract Period, all information provided by the Service Provider to the Council remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the execution of this Contract.
- 32.1.4 all information contained in or provided with the Service Provider's tender remains true, accurate and not misleading as at the Commencement Date, save as may have been specifically disclosing in writing to the Council prior to the execution of this Agreement.
- 32.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Contract.
- 32.1.6 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract.
- 32.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator, or similar officer in relation to any of the Service Provider's assets or revenue.
- 32.1.8 it owns, has obtained or is able to obtain, valid licenses for all Intellectual Property Rights that are necessary for the performance of its obligations

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under this Contract.

32.1.9 in the three (3) years prior to the date of the Commencement Date:

- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts.
- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

33. TERMINATION ON DEFAULT INSOLVENCY AND CHANGE OF CONTROL

Improvement Notice

33.1 Without prejudice to other right or remedy which may be available to the Council either under this Agreement or at law, if in its reasonable opinion the Council believes that there has been a Service Provider Default, including but not limited to service failure, safeguarding concerns or quality standard issues, which is capable of remedy, the Council may, at its discretion, serve a notice ("Improvement Notice") which:

- 33.1.1 specifies the type and nature of the Service Provider Default (including details of any underlying strategic issues) or breach that has occurred giving reasonable details.
- 33.1.2 requires that the Service Provider put forward a rectification programme reasonably acceptable to the Council in a format to be specified by the Council ("Service Improvement Action Plan") within the time set out by the Council in the Improvement Notice; and
- 33.1.3 requires that the Service Provider rectify the Service Provider Default or breach within a period to be specified by the Council.

33.2 If the Service Provider fails to:

- 33.2.1 put forward a Service Improvement Action Plan reasonably acceptable to the Council within the time specified by the Council; or
 - 33.2.2 rectify the Service Provider Default or breach within the time specified by the Council.
- or
- 33.2.3 implement the Service Improvement Action Plan within the time specified by the Council

then, without prejudice to any other right or remedy which may be available to the Council either under this Agreement or at law, the Council may serve a Default Notice in accordance with clause 33.3.

Default Notice

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- 33.3 If in its reasonable opinion the Council believes that there has been a Service Provider Default, then the Council shall be entitled to serve a Default Notice upon the Service Provider. This will be without prejudice to any other right or remedy which may be available to the Council either under this Agreement or at law.
- 33.4 When the Council serves a Default Notice the Service Provider shall take such remedial action as is specified in the Default Notice within the timescale set out and at the Service Provider's sole cost.
- 33.5 If the Service Provider fails to complete the remedial action within the specified time detailed in the Default Notice, then the Council shall be entitled to:
- 33.5.1 apply clause 33.7.1; or
- 33.5.2 suspend the Service in whole or in part.
- 33.6 If within a period of 10 Working Days from the date of the Service being suspended, the Service Provider has still failed to complete the remedial action, then the Council shall be entitled to apply clause 33.7.2.
- 33.7 The Council may terminate this Contract in whole or in part immediately by notice in writing if:
- 33.7.1 The Service Provider fails to remedy a Provider Default in accordance with a Default Notice service under clause 33.3.
- 33.7.2 The Service Provider fails to remedy a Provider Default following a period of suspension under clause 33.5.2.
- 33.7.3 The Service Provider commits a Provider Default which is not capable of being remedied.
- 33.7.4 The Service Provider commits a Serious Default.
- 33.7.5 The Service Provider materially breaches any other contract that it may have with the Council.
- 33.8 An Insolvency Event occurs with respect to the Service Provider at any time during the Contract Period.
- 33.9 The Service Provider shall notify the Council immediately if the Service Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**").
- 33.10 The Council may terminate this Contract by notice in writing with immediate effect if:
- 33.10.1 it has been notified that a Change of Control has occurred; or
- 33.10.2 where no notification has been made, the date that the Council becomes aware that such Change of Control has occurred,
- but shall not be permitted to terminate where an Approval was granted prior to the change of control.
- 34. OTHER TERMINATION AND SUSPENSION RIGHTS**
- 34.1 The Council may terminate this Contract by written notice to the Service Provider if:
- 34.1.1 the Service Provider or any of its Staff commits a breach of clauses

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4.35, 7 or 14 of this Contract; or

34.1.2 the Care Home has to close either on a temporary or permanent basis.

34.2 If the Council fails to pay the Service Provider any undisputed sums of money when due, the Service Provider shall notify the Council in writing of any such failure to pay. If the Council fails to pay such undisputed sums within sixty (60) days of the date of such written notice, then the Service Provider shall not be entitled to terminate this Contract but instead it shall be entitled to invoke the Dispute Resolution Process, save that such right shall not apply where the failure to pay is due to the Council exercising its rights under clause 13 of this Contract.

34.3 The Council may also terminate this Contract if:

34.3.1 it has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Regulations.

34.3.2 any of the mandatory or discretionary exclusions set out in regulation 57 of the Regulations either applied or apply (as the case may be) to the Service Provider at the time when this Contract was awarded or throughout the Contract Period.

34.3.3 any competent court makes an award for ineffectiveness of this Contract under the Regulations; or

34.3.4 this Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations of the Treaty on European Union (TFEU) or the Public Contracts Directive 2014 that has been declared by the Court of Justice of the European Union under a procedure under Article 258 of the TFEU.

35. BREAK CLAUSE

The Council shall have the right to terminate this Contract for convenience by giving three (3) months' written notice to the Service Provider | at any time

36. CONSEQUENCES OF EXPIRY OR TERMINATION

36.1 Where the Council terminates this Contract due to the default of the Service Provider or any of its Staff pursuant to any of their applicable terms:

36.1.1 the Council may recover from the Service Provider any Losses which it suffers or incurs as a result of or in connection with any such termination (including, but not limited to, the costs reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period, subject always to the Council taking reasonable steps to mitigate such additional expenditure.

36.1.2 no further payments shall be payable by the Council to the Service Provider for Services supplied by the Service Provider prior to the date of termination until the Council has established the final cost of making the other arrangements envisaged under clause 36.1.1 of this Contract.

36.2 Save as otherwise expressly provided in this Contract, any termination or expiry of this Contract:

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36.2.1 shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

36.2.2 shall not affect the continuing rights, remedies or obligations of the Council or the Service Provider under clauses 13, 14, 18, 19, 20, 22, 27, 30, 31, 36, 40 or any other provision of this Contract which is either expressly or impliedly intended to survive its termination or expiry.

37. DISRUPTION

37.1 The Service Provider shall use all of its best endeavours to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Council, its staff or any other service provider engaged by the Council under any other contract.

37.2 The Service Provider shall immediately inform the Council of any actual or potential industrial action, whether such action is by their own Employees or others which affects or might affect its ability at any time to perform its obligations under the Agreement

37.3 In the event of industrial action by the Staff or the Service Provider's suppliers the Service Provider shall seek Approval to its proposals for the continuance of the performance of the Service in accordance with its obligations under the Agreement.

38. If the Service Provider's proposals referred to in clause 37.3 are considered insufficient or unacceptable by the Council, then the Agreement may be terminated by the Council by notice in writing with immediate effect.

39. FORCE MAJEURE EVENTS

39.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Notwithstanding the foregoing, each Party shall use their reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure Event. However, if such a Force Majeure Event prevents either Party from performing its material obligations under this Contract for a period in excess of three (3) months, either Party may terminate this Contract with immediate effect by notice in writing.

39.2 If either Party becomes aware of a Force Majeure Event which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 38.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

40. BUSINESS CONTINUITY PLAN

40.1 In accordance with the Civil Contingencies Act 2004 the Council is required to continue providing essential services such as the Services at all times regardless of emergencies or business interruptions.

40.2 The Service Provider shall ensure that it develops a Business Continuity Plan which complies with the applicable provisions of the Civil Contingencies Act 2004

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and all of the Service Provider's regulatory obligations prescribed by the CQC (or any other applicable regulator) from time to time prior to the delivery of any Services on behalf of the Council and that it updates the same every 12 months during the Contract Period.

- 40.3 Following the occurrence of a Disaster with respect to any of the Services, the Service Provider shall immediately:
- 40.3.1 implement and comply with the provisions of the Business Continuity Plan.
 - 40.3.2 continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and
 - 40.3.3 restore the affected Services to normal within the period laid out in the Business Continuity Plan.
- 40.4 The Council shall have the right (acting reasonably) to notify the Service Provider in writing that it wishes to inspect the current iteration of the Business Continuity Plan and the Service Provider shall promptly afford the Council or its representative's access to such Service Continuity Plan.
- 40.5 The Service Provider shall (at its own cost) test the effectiveness of its Business Continuity Plan from time to time during the Contract Period to see whether it is fit for purpose and inform the Council of the result of such tests and promptly rectify any material issues or errors in such Business Continuity Plan following the outcome of the tests.

41. GOVERNING LAW AND JURISDICTION

Subject to the provisions of clause 41, this Contract shall be subject to the exclusive jurisdiction of the English courts and the Parties agree that any disputes arising from or in connection with this Contract shall be governed and construed according to English Law.

42. DISPUTE RESOLUTION PROCESS

- 42.1 The Council's Commissioning Lead and the Service Provider's Representative shall attempt in good faith to negotiate the resolution to any dispute between them arising out of or in connection with this Contract within twenty (20) Working Days of either Party referring the dispute to the above representatives.
- 42.2 If the dispute cannot be resolved by the representatives referred to in clause 41.1 then the dispute shall be referred to the Council's Director of Adults Services (or such other senior officer of the Council as specified by the Director) and a director within the Service Provider's organisation in order for them to attempt to resolve such dispute.
- 42.3 If any dispute cannot be resolved by the Parties pursuant to clause 41.2 the Parties shall refer it to mediation pursuant to the procedure set out in clause 41.5 unless.
- 42.4 (a) the Council considers that the dispute is not suitable for resolution by mediation;
or

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- 42.5 (b) the Service Provider does not agree to mediation in which case each Party may refer such dispute to the courts for determination.
- 42.6 The obligations of the Parties under the Contract shall not cease or be suspended or delayed by the referral of any dispute to mediation or the courts for determination and the Service Provider and the Staff shall comply fully with the requirements of this Contract at all times.
- 42.7 The procedure for any referral of a dispute shall be as follows:
- 42.7.1 a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or if they are unable to agree upon a Mediator then shall be appointed by the Centre for Effective Dispute Resolution.
- 42.7.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 42.7.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 42.7.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 42.7.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties; and
- 42.7.6 if the Parties fail to reach agreement in the structured negotiations within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed by the authorised representatives of the Parties, then any dispute or difference between them may be referred to the courts for determination.
- 42.8 Nothing in this Dispute Resolution Process shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

43. CONTINUOUS IMPROVEMENT

- 43.1 The Service Provider acknowledges and agrees that the Council is under a duty regarding Best Value and the provisions of this clause are intended to assist the Council in complying with such duty.
- 43.2 The Service Provider shall have an ongoing obligation during the Contract Period to identify new or potential improvements to the Services.

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- 43.3 As part of its obligations the Service Provider shall identify and notify to the Contracts and Quality Manager as and when it has:
- 43.3.1 adopted any new or emerging technological or product / service developments that can be used to improve the Services and deliver increased benefits to each Service User, the Service Provider and the Council; and
 - 43.3.2 made any improvements to the Service Provider's service offering in areas such as people skills, support, knowledge, quality, individual satisfaction and contract performance, in areas such as leadership and management.
- 43.4 The provisions of clause 42.3 provides an indicative list, not an exhaustive one.
- 43.5 In undertaking the Services, the Service Provider shall be under a duty to secure demonstrable, measurable continuous improvement (having regard to efficiency, economy and effectiveness) in the achievement of the delivery of its contractual obligations and of the Services as a whole, including specifically the cost of the Services, the time, cost, quality and health and safety standards of the various processes involved in delivery of the Services and generally to provide Best Value outcomes to the Council as are set out in the Specification, and further the Service Provider shall co-operate with the Council and others to the extent required so that the Council can keep under review the performance required under this Contract and this clause 42 in particular.

44. MODERN SLAVERY ACT 2015

In performing its obligations under this Contract or any applicable Call Off Contract, the Service Provider shall comply with all applicable anti-slavery and human trafficking Laws (including, but not limited to, the Modern Slavery Act 2015).

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Schedule 1

Part A – The Particulars

1. For the purposes of this Contract and for any applicable Call Off Contract, the Service Provider's particulars are as follows:

Service Provider	
Name of Service Provider	
Registered Office Address	
Registered Website Address <i>(Enter N/A if not applicable)</i>	
Trading Status	
	<input type="checkbox"/> <i>public limited company</i>
	<input type="checkbox"/> <i>limited company</i>
	<input type="checkbox"/> <i>limited liability partnership</i>
	<input type="checkbox"/> <i>other partnership</i>
	<input type="checkbox"/> <i>sole trader</i>
	<input type="checkbox"/> <i>third sector</i>
	<i>If other, please specify:</i>
Company Registration <i>(Enter N/A if not applicable)</i>	
Charity Registration N° <i>(Enter N/A if not applicable)</i>	
Head Office DUNS N° <i>(Enter N/A if not applicable)</i>	
Registered VAT N° <i>(Enter N/A if not applicable)</i>	
CQC Registration N° (or equivalent)	
Details of Immediate Parent Company <i>(Enter N/A in EVERY box if not applicable)</i>	
Full Name	
Registered Office Address	
Registration N°	
Head Office DUNS N°	

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Head Office VAT N°	
Details of Ultimate Parent Company (Enter N/A in EVERY box if not applicable)	
Full Name	
Registered Office Address	
Registration N°	
Head Office DUNS N°	
Head Office VAT N°	

Care Home	
Trading Name	
Trading Address	
Registered Manager Name	
- Telephone N°	
- Email Address (Enter N/A if not applicable)	
Responsible Individual Name	
- Telephone N°	
- Email Address Enter N/A if not applicable)	<i>k)</i>
QC Location ID	<i>m)</i>
Interest in the Premises of the Care Home	Freehold
	Leasehold or Licence
Landlord / Licensor Name Enter N/A if not applicable)	<i>u)</i>
- Address Enter N/A if not applicable)	<i>w)</i>
	<i>x)</i>
	<i>y)</i>
- Email Address (Enter N/A if not applicable)	
- Telephone N° (Enter N/A if not applicable)	

	<input type="checkbox"/>	Requirement 1 – Residential / Older People	<input type="checkbox"/>	Requirement 7 – Residential / Nursing / Dementia Emergency Bed / Older People
<i>(Enter the Requirements set out in Schedule 4 of this Contract in respect of which the Service Provider has been successfully appointed to under the DPS)</i>	<input type="checkbox"/>	Requirement 2 – Residential Dementia / Older People (North)	<input type="checkbox"/>	Requirement 8 – Residential Physical Disability Support
	<input type="checkbox"/>	Requirement 3 – Residential Dementia / Older People (South)		
	<input type="checkbox"/>	Requirement 4 – Nursing / Older People		
	<input type="checkbox"/>	Requirement 5 – Nursing / Dementia / Older People		
	<input type="checkbox"/>	Requirement 6 - Residential Emergency Bed / Older People		

Schedule 1 Part B

Adult Respite Support (Residential) Service Specification

01/12/23 – 30/11/24

(12 months with an option to extend for 6 months)

(Requirements 1-8) Specification for the provision of Adult Respite Support (Residential) for Adults and Older People in Cheshire East, in a range of environments appropriately designed to meet the wide range of needs of service users, including residential, nursing, dementia, and those with a physical disability.

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Section 1.0

1.1 Introduction - The Service to be Commissioned.

Cheshire East Council is committed through its statutory obligations and policies to continuously improve the quality of care and support services provided to adult service users. The Adult Respite Support (Residential) Service is being commissioned by Cheshire East Council, hereafter known as The Council.

The service specification for Requirements 1 – 8 is for the provision of residential overnight adult respite support, within the Cheshire East area. The service will provide short term respite for carers or respite away from the family home for adults and older people in an appropriate environment suitable to meet the needs of older people (65+) or adults (18 to 65) including those with a mental health condition or physical disability. Some service users may display challenging behaviour and the service should be capable of meeting their needs.

This Adult Respite Support (Residential) model focuses on providing modern and flexible respite support.

The Provider(s) will be responsible for delivering residential respite provision which includes accommodation, meals, staffing, management, and all other items or services necessary to provide the level of care required to service users whilst they are resident in the service. The aim is to provide a safe, homely, and personalised environment. Adult respite support also provides an opportunity for the service user to access specialist support, have new experiences and develop new skills. Additionally, services can be used in times of crisis or potential crisis as a place where people can go for a short period and reduce the need of going into a hospital setting. Having 'time out' in a safe environment can help to dissipate developing tensions and frustrations.

Providers must: -

- Foster a culture of enablement and integration into mainstream activities wherever possible.
- Deliver a high quality of care.
- Respond appropriately to the diverse and changing needs and outcomes of service users.
- Recruit motivated employees.
- Provide appropriate training to ensure employees have the required skills and are able to communicate effectively.
- Ensure employees are appropriately trained to treat service users with Dignity and Respect.

Providers will be expected to deliver services within this context to service users. For the purpose of this specification the generic term "service user" will be used rather than customer, client or resident.

Some individuals may require a high level of support.

Scope of the Contract(s)

Please note that payment for each one of the requirements detailed below, will be paid on a block arrangement to ensure that provision is available as and when required.

Requirement 1 – Residential – Older People (65+)

1 x residential bed for older people – must be located within easy access of Sandbach, Holmes Chapel, Middlewich, and surrounding areas*.

This Requirement sits under "Lot 1 Residential Care" of the Cheshire East (CE) Accommodation with Care Dynamic Purchasing System (DPS).

Requirement 2 – Residential Dementia – (North) Older People

1 x residential dementia bed for older people – must be located within easy access of Macclesfield, Knutsford, Wilmslow Poynton, and surrounding areas*.
This Requirement sits under “Lot 2 Residential / Dementia Care” of the CE Accommodation with Care (DPS)

Requirement 3– Residential Dementia (South) – Older People (65+)

1 x residential dementia beds for older people – must be located within easy access of Sandbach, Holmes Chapel, Middlewich, and surrounding areas*.
This Requirement sits under “Lot 2 Residential /Dementia Care” of the CE Accommodation with Care DPS.

Requirement 4 – Nursing – Older People (65+)

1 x nursing bed for older people – must be located within easy access of Macclesfield, Knutsford, Wilmslow, Poynton, and surrounding areas*.
This Requirement sits under “Lot 6 Nursing Care” of the CE Accommodation with Care DPS.

Requirement 5 – Nursing/Dementia – Older People (65+)

1 x nursing dementia bed for older people – must be located within easy access of Congleton, Sandbach, Alsager, Holmes Chapel, Middlewich, and surrounding areas*.
This Requirement sits under “Lot 7 Nursing / Dementia care” of the Accommodation with Care DPS.

Requirement 6 – Residential – Emergency bed – Older People (65+)

1 x emergency residential bed for older people – must be located within easy access of Macclesfield, Knutsford, Wilmslow, Poynton, and surrounding areas*.
This Requirement sits under “Lot 1 Residential Care” of the CE Accommodation with Care DPS.

Requirement 7 – Residential / Nursing / Dementia– Emergency bed – Older People (65+)

1 x emergency residential bed for older people – must be located within easy access of Crewe, Nantwich, Audlem and surrounding areas*.
This Requirement sits under “Lots 1, 6 and 7 Residential / Nursing Care / Nursing Dementia” of the Accommodation with Care DPS.

Requirement 8 – Residential – Physical Disability Support (18- 65 and 65+)

1 x bed for adults with a physical disability – must be located within easy access of Crewe, Nantwich, Audlem and surrounding areas*.
This Requirement sits under “Lot 3 Residential / Physical Disabilities” of the Accommodation with Care DPS.

****Please see appendix 1 for details of the areas each Requirement is intended to serve.***

For Requirements 1 – 8, in circumstances where a service user has been assessed as having multiple care needs, their primary need will determine the Requirement within which we would expect them to be placed.

Not in Scope of this Contract for Requirements 1 – 8

The following services which are **not** within scope of this specification include:

- Support Plans consisting of unregulated community based support.
- Circumstances where someone is recovering from a temporary illness or injury (e.g., a fracture) where they may be supported through NHS funded Discharge to Assess (D2A) or Intermediate Care Services.

- Intermediate Care defined as short-term care that is provided free of charge for people who no longer need to be in hospital but may need extra support to help them recover.
- Highly specialised care requiring the clinical oversight of an NHS professional for example where an individual has acute health needs at point of referral.

1.2 Service Vision

The service must focus on providing timely and appropriate support to the cared for person ensuring this promotes their independence and wellbeing.

The bed based respite support is for those with the greatest level of need and where eligible needs can only be met in a residential setting.

This support can only be accessed following appropriate assessments via Adult Social Care professionals which clearly identify an eligible need.

Cheshire East Council will work closely with the successful Providers in delivering holistic, high quality residential respite service to service users. It is essential for the success of this way of working for all parties to be clear about their roles and responsibilities. By agreeing to work closely together, the Council and the Provider are making a commitment to:

- recognise and support the role and contribution of Carers,
- value the workforce and create an environment in which skills can be developed and career opportunities accessed,
- share key objectives,
- promote independence and reduce dependency,
- collaborate for mutual benefit,
- communicate with each other clearly and regularly,
- be open, honest, and transparent with each other and treat each other with respect,
- listen to, and understand, each other's point of view,
- share relevant information, expertise, and plans,
- monitor the performance of both parties,
- work together to plan and shape the social care workforce to deliver on new types of services.

A person shall not be an eligible adult and therefore shall not be entitled to access services if:

- they are aged under eighteen (18) years of age, provided that this exclusion shall not apply to young adults in transition from the Council's children's services department to Social Care and Health, who may be referred to the Provider from Sixteen (16) years of age as part of their transition plan,
- they have been admitted to hospital, or require admission to hospital,
- they do not qualify for Adult Social Care support as identified through an Assessment of need.

The Service provided is only for adults who have been assessed as having eligible needs under the Care Act 2014 and the Care and Support (Eligibility Criteria). Regulations 2014 and who are ordinarily resident within the Cheshire East area.

Under the Care Act, carers are entitled to a carers assessment. This means carers may be able to access more support to help them in their caring role, which may include carer respite.

Furthermore, the Council will access the beds to enable a break for the cared for person in times when there is no Carer or family support, but the service user requires a period of residential support.

1.3 Service demand/Evidence base

The key aims and objectives of the service are to:

- support service users who are accessing the Adult Respite Support Service to sustain and whenever possible improve their independence,
- provide a high quality environment in a safe and secure building,
- support and enable service users to engage in activities which bring them pleasure, purpose and enhance their quality of life,
- promote and support the use of Aids for Daily Living including the use of Assistive Technology to support independence and reduce risks to safety,
- enable individuals to exercise choice and control within the service setting,
- safely manage the care and support of people who are known to exhibit complex and/or behaviours which may challenge.

Section 2.0

2.0 Service Requirements and Deliverables

2.1 Service Model

The Respite Service for Requirements 1 – 8 will comprise of:

- Bed based residential services located in main towns and villages across the borough of Cheshire East. The service will provide short term respite for carers or respite away from the family home for adults and older people in an appropriate environment suitable to meet the needs of older people and adults including those with a physical disability.
- Providers must be CQC registered. Providers that have a “Requires Improvement” rating from CQC must evidence an effective improvement action plan is in place and that improvements against the action plan are being made and sustained.
- The Adult Respite Support Service will provide planned and unplanned (emergency) breaks for Carers from their caring responsibilities by offering a residential provision to the cared for person.
- Carer Respite allocations can be used flexibly. Stays can vary in length from 3 days to 2 weeks. As a guide, the minimum stay for an individual is usually 3 days.

Meals

The Provider shall ensure that:

- an assessment of a service users nutritional needs is completed on the commencement of their respite support stay using the Malnutrition Universal Screening Tool (MUST) (or equivalent tool) and thereafter monitor and review as appropriate, including implementing a food first approach, with adequate fluids, to the management of malnutrition.
- a policy is in place which ensures that any change in a service users' weight or dietary intake is responded to appropriately and in a timely manner and is recorded in their Care Plan.
- fortified/modified texture and therapeutic diets are made available for service users where required and where clinically indicated.
- thickened fluids are made available to service users where appropriate.
- a Fluid Intake Chart is in place for service users where appropriate.

Engaging with other parties involved with the service user

The Provider will be required to register the service user with a local GP if necessary for the duration of the respite support stay.

2.2 Mobilisation

For Requirements 1 – 8, Providers will be required to have the capacity and infrastructure in place to be able to accept bookings and complete the relevant service user assessments to confirm if respite stays can go ahead from **1st November 2023** in preparation for when the contract(s) launches, and respite stays commence on **1st December 2023**. This will allow carers and service users to be able to plan and book ahead in advance of the contract(s) commencement date.

The service will be required to be fully operational from 1st December 2023.

2.3 Award Criteria

Carers are given a list of Care Homes that support with the bed based carer support service. Once a Care Home bed has been identified by the Carer they must book their stay via the Council's Brokerage Team directly.

The Care Brokers will then send over the Adults Needs Assessment and the stay will be provisionally marked in the respite calendars.

Section 3.0

3.0 Service Standards and Delivery

3.1 Availability of Service (Requirements 1 – 8)

The **residential respite support** will be available 365 days of the year and 366 days in a leap year. The pre-bookable service will have administrative support to receive/confirm bookings Monday – Friday between the hours of 9.00am – 5.00pm.

The **emergency residential respite support** will be available 365 days of the year and 366 days in a leap year. The service will have the appropriate administrative support to receive and confirm admissions at all times and admissions will be expected to be confirmed within 2 hours of the initial contact from the Council.

3.2 Assessment and Support Planning (Requirements 1 – 8)

Prior to the provision of a respite stay service the Provider must ensure that they complete a full assessment of the individual service user's needs. This should be undertaken as detailed in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (or any other successor regulations/standards).

With the appropriate consent, each Provider must ensure that prospective and current service users, relatives, advocates, and any relevant professional are provided with a Statement of Purpose (as detailed in the Care Quality Commission (Registration) Regulations 2009 (or any other successor regulations / standards) and service users guide for the Provider.

A detailed risk assessment, as detailed in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (or any other successor regulations / standards), should be completed and clearly be documented in the service users Care Plan / documentation. Risk assessments should also be reviewed on a consistent and comprehensive basis. This should also include instances, where there has been a change in need or individual circumstances of the service user

Providers must ensure that there is a process for planning, implementation and evaluation of Care Plans, which must be regularly reviewed and monitored. The Care Plan must be recorded in writing or in an electronic format and show how much the service user is involved and should be reviewed as required. Care Plans must include all details of needs of the individual service user as detailed in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (or any other successor regulations/ standards).

3.3 Referral, Accessibility and Acceptance Criteria (Requirements 1 – 8)

The Provider shall only accept referrals from:

- The Brokerage Team
- The Authorised Officer (also verbally from the Authorised Officer in an Emergency situation)
- The EDT Social Worker in emergency situations outside of normal working hours. (Emergency beds only)

Referrals outside of the routes outlined above must not be accepted.

Emergency Beds only - When the referral comes from the Council's Emergency Duty Team (EDT) Out of Hours, such referrals will be made verbally by telephone, by an authorised officer on behalf of the Council.

The EDT will only arrange Services up until the next working day. If Services are required beyond the next working day this will be picked up by the Brokerage Team and Social Work Team and arranged by the Brokerage Team or Authorised Officer(s).

Providers will need to have the capacity and infrastructure in place to be able to accept bookings and complete the relevant service user assessments to confirm if respite stays can go ahead from **1st November 2023** in preparation for when the contract(s) launches, and respite stays commence on **1st December 2023**. This will allow carers and service users to be able to plan and book ahead in advance of the contract(s) commencement date. Emergency respite stays will be communicated by telephone and email.

Providers shall confirm details of all respite stays to the Council every 4 weeks.

3.4 Location and Access to Services (Requirements 1 – 8)

The provider/s will be required to deliver the service from a range of suitable locations in Cheshire East.

The Provider will provide a safe, secure environment for service users by ensuring that:

National Required Standards shall be met or exceeded in respect of:

- Single room occupancy
- Rooms to be fitted with a fully working television set
- Accessible toilet provision in communal areas
- Level access within the building
- All areas of the service are clean, odour free, well maintained and well lit at all times
- Bedrooms are furnished to a good standard and there is adequate secure storage
- Décor theme needs to avoid bold patterns and high contrasting borders, stripes or wallpaper to be conducive to the needs of sensory impaired service users
- There is effective record keeping in respect of people visiting/accessing the building
- There is a clear and effective procedure for dealing with unforeseen emergencies
- Security alarms are tested regularly
- Fire exits are clearly marked and obstruction free

- Weekly fire tests are undertaken and recorded
- Fire extinguishers are in place, serviced and encased
- All staff are trained in fire evacuation procedures and there are nominated Fire Wardens
- There are adequate accident reporting procedures, and all staff are trained in accident reporting
- Hazardous substances are stored safely and are subject to regular audits/risk assessments
- All relevant staff are trained in COSHH
- There is an inventory of electrical equipment within the location and all testing frequencies are adhered to
- Kitchen areas are clean, uncluttered and well ventilated
- The location has an adequate food management system in place

The service will be provided in an agreed room within the residential setting. Any changes to the allocated respite/short stay room must be communicated with and agreed by the Council with immediate effect. The agreed room will only be used for the Commissioned Service.

It is expected that the room is turned around within the same day of a service user exiting and entering the respite bed.

3.5 Waiting Times and Prioritisation (Requirements 1 – 8)

Providers will be required to acknowledge electronic communication within 24 hours of receipt. If booking requests require a quicker turnaround, the Councils Brokerage Team will communicate this by telephone to the provider.

Emergency respite support requests will require a response within 2 hours of the initial telephone call and receipt of the service users' Needs Assessment.

Access to the residential respite beds will be co-ordinated by the Councils Brokerage Team and nominated Contract and Quality Manager.

3.6 Communications, Marketing and Branding (Requirements 1 – 8)

Promotion and marketing of the Adult Respite Support Service will remain the responsibility of the Council. Providers will be required to provide logos and general marketing materials to assist the Council.

3.7 Service Interdependencies

Provider/s are required to note that there may well be other significant interdependencies in place for some service users. It is expected that providers take reasonable steps to maintain these relationships if they have a significant impact on the service user.

Section 4.0

Workforce

4.1 Workforce

The Council recognises that for many service users, Adult Respite provides an important opportunity for social contact, the Provider should; therefore, ensure that conversation with the service user is a normal part of the Worker's duties. Such conversations should focus on the interests of the service user.

Providers are often the most regular point of contact with service users. This means Employees may be able to identify significant changes in the service user's behaviour, abilities, condition and needs.

Section 5.0

5.1 Service Feedback, Engagement and Co-production

The Provider shall invite service users and/or next of kin/representatives to complete a feedback survey(s) relating to their respite stay and to report this feedback to the Council as requested through quality assurance processes. The feedback surveys to be completed, as a minimum, annually. All feedback gathered, whether in person, by telephone or writing must be recorded in writing or electronically and will be made available as requested by the Council.

Section 6.0

6.1 Performance Management

The Council is committed to setting very clear expectations of high quality care and support services provided across the borough. These expectations are based upon the principles of good care. Standards are already in place for care Services through the regulatory regime of the Care Quality Commission (CQC) and these form the foundation of Cheshire East quality expectations.

6.1.1 Underperformance by Provider

Should the Council identify that a Provider is underperforming against the terms of the Agreement:

- a) The Provider must produce a Service Improvement Action Plan which will be agreed with the Council and the Council may specify additional actions or requirements proportionate to any underperformance.
- b) Suspension of referrals to the Service Provider will be initiated where any monitoring or feedback obtained exposes performance issues or incidents relating to breaches in Service delivery, which may also include safeguarding incidents.
- c) Suspension of referrals to the Provider will be initiated whereby an active informal Improvement Notice or formal Default Notice is in place or the Provider is under Large Scale Safeguarding Enquiry (LSE) procedures.

- d) Where there has been a serious breach or multiples breaches which may affect service user safety and wellbeing, the Council retains the right to move existing Provider business to alternative Providers. This may be via a staggered approach or moving the business as a whole and is at the Councils discretion.
- e) **Suspension of payments** - If the respite room within the home becomes unavailable to accept service users for whatever reason and at any point during the lifetime of the contract(s)(whether bookings have been made or not) then, unless a suitable alternative room can be made available within 24 hours, all payments will be suspended until such time as the respite room is fully accessible to and suitable to be occupied by service users. Such issues and circumstances must be communicated to the Brokerage Team immediately that they occur to prevent disruption to existing/future bookings and to enable the Brokerage Team to try to source alternative provision (should it be necessary).
- f) **Under occupancy (Requirements 1 – 8)** – the Council anticipates that occupancy rates of the respite support beds should not fall below 85%. Should occupancy rates fall below this level for a continuous period of 8 weeks, the Councils nominated Contract and Quality Manager will discuss this with the Provider and a clawback of fees may be implemented to reflect the under occupancy levels.

Where improvements are evidenced and the required standard reached, referrals will be resumed to the Provider, initially with a phased approach which will be decided and closely monitored, by the Council and the nominated Contract and Quality Manager.

Section 7

7. Appendices

Appendix 1 – Map of Cheshire East relating to specific Requirement areas.



Please note that Carers and service users have expressed that they would prefer not to travel over 10 miles to access Adult Respite (Residential) Support. This may not always be possible, but it is something that the Council would like to achieve for as many residents as possible.

SCHEDULE 2

Adult Respite Support

Performance Monitoring Framework

For the provision of Adult Respite Support (Residential) for Adults and Older People in Cheshire East, in a range of environments appropriately designed to meet the wide range of needs of Service Users.

Contract Management and Quality Assurance Schedule Performance and Quality Assurance Standards

Providers will be monitored against a number of predetermined performance and quality standards which are highlighted in the Schedule.

The objectives of the Key Performance Indicators and Quality Assurance standards are to:

- ensure that the Services are of a consistently high quality and meet the requirements of the Council and outcomes of the service user.
- provide a mechanism whereby the Council can attain meaningful recognition of inconvenience and/or loss resulting from the Provider's failure to deliver the level of service for which it has contracted to deliver; and
- the Provider to comply with and to expeditiously remedy any failure to comply with the Key Performance Indicators.
- respond to the referral of a placement/request for services. The Provider shall, at all times, provide the Services in such a manner that the Key Performance Indicators are achieved.

1.1 Quality Specific Standards

The Provider is expected to have in place robust governance framework and supporting processes, which ensure that it is compliant with appropriate legal requirements and standards. We expect the governance framework to include but not be limited to the following:

- Communication between Service Users, families, parents, carers and staff (including Managers and Clinicians).
- Communication between staff across wider services, including Clinicians and Managerial staff.
- Effective reporting and monitoring mechanisms for issues of concern whether relating to the Service Users, or people connected with Service Users or employees.
- Service Users recording.
- Working with families and carers.
- Service IT / data recording and storage systems.
- Incident reporting and health and safety matters.
- Adult Protection – Safeguarding, MCA.
- Reporting and monitoring of incidents and accidents to staff, volunteers and Service Users [including the management of violence and domestic violence].
- Health & Safety Inspection, and Fire Safety.
- Infection Control; Risk Management and Contingency Planning
- Inspections by CQC, Local Healthwatch or Authorised Officers.
- Complaints and Compliments management for paid staff, volunteers, and Residents.
- Service User engagement and co-production.
- Records Management.
- Equality of opportunity in service provision, recruitment and employment.
- Occupational Health.

- Information sharing and Information Security.
- Policies relating to confidentiality of information.
- Codes of conduct for staff and Service Users.
- Reporting of Care Concerns, First Accounts and Large Scale Enquiries

All appropriate policies and protocols as detailed in Section 7.6 of the Accommodation with Care Service Specification must be in place following contract award and prior to the service mobilisation phase being completed. The Authorised Officer would expect to receive information and assurance that these are current and in place. Clear and routine review arrangements to maintain effective governance would also be expected. Service Users must be made aware of the range of policies which may impact upon their support and be given access to them should they wish.

1.1.2 Quality Assurance

The Provider is required to complete quality assurance checks in relation to Service delivery to ensure that outcomes are being met and that contract compliance is achieved.

- a) The Provider will have quality assurance processes which clearly include the standards and indicators to be achieved and monitored on a continuous basis by the Provider to ensure that the Service is delivered in accordance with the best interests of the Service User.
- b) The quality assurance processes will include the standards required, the method of attaining the standards and the audit procedure. The population of action plans (where applicable), with timescales and outcomes.
- c) The quality assurance processes will analyse feedback and measure the success of the Service in meeting the requirements set out in this Service Specification and the Monitoring Schedule.
- d) A quality assurance report summary will be made available to Service Users and the Council upon request.
- e) There must be various means for Service Users to supply feedback with regards to Service delivery and outcomes being met. These methods need to take into account Residents and their preferences as to the mechanism of feedback (questionnaire, interview, phone call, Service review etc.) and the most appropriate format (i.e., language, pictorial, font size).
- f) When negative written feedback is received by the Provider, either formally or informally, a formal written response from the Provider will be supplied noting its receipt and the action that will follow. This feedback will be copied to the Council.
- g) The Provider will be committed to continuous service development.

2.1 Performance Management

2.1.1 Performance Management Reporting

The Provider[s] must ensure that a dedicated 'Performance Management Function' is established as part of the contract to provide system wide reporting on the Adult

Respite Support (Residential). The Provider[s] will ensure the effectiveness of such reporting, demonstrating assurance processes for systems and procedures to Commissioners and other key stakeholders, and support the continued development of both output and outcome monitoring for the service.

The Provider is required to complete performance checks in relation to service delivery to ensure that outcomes and contract compliance are being met.

- a) The Provider is responsible for having performance and quality assurance processes that are capable of providing evidence of achieving outcomes, quality of service and Key Performance Indicators using an appropriate tool.
- b) It is the Providers' responsibility to submit performance and quality information and failure to complete and return the required information will be dealt with under Service failure and contractual action.
- c) The Council may choose to further verify submitted claims through feedback from Service Users, Council Staff, Provider staff interviews and/or feedback as required.
- d) The Provider must have robust business continuity and contingency plans in place with regards to all levels of Service interruption or disruption. If Service interruption or disruption occurs, the Provider is to notify the Council immediately and ensure that alternative provision is sought. The Council will seek to recoup any charges incurred.
- e) The Provider will need to evidence ongoing business viability in order that risks or threats to Service delivery are minimised and any threat to the Service User, the overall organisation or the Council is highlighted well in advance to the Council of any potential or actual incident.
- f) The Provider will allow inspection (insofar as it is relevant to the provision of care and the financial stability of the Provider) of financial records upon being given reasonable notice in writing. This shall include details of rates of pay for staff to ensure legal compliance and any other information deemed necessary by the Council to ascertain the stability of The Provider workforce or business.
- g) The Provider must ensure that their nominated managers attend reviews, multi-disciplinary meetings and submit monitoring information to the Council.
- h) The Council reserves the right to review or amend the contract management and quality assurance process during the contract term with one months' notice.

Reporting requirements may change over the lifetime of this contract to embrace wider governance reporting structure requirements. Authorised Officers will hold biannually contract monitoring meetings with annual performance reviews. The Provider[s] will also be required to attend provider forums and work in partnership with service user forums. Authorised Officers will co-produce user contract metrics with the Supplier[s] in instances when required e.g., a change in Legislation, a change in contract etc.

Performance reporting requirements:

- Service Provision/Quality and Delivery

- Workforce/HR
- Complaints, Compliments and Comments
- Safeguarding Incidents; Health and Safety
- Care Planning/Personal Outcomes
- Finance and Insurance
- Policies and Procedures
- Care Concerns, First Accounts and Large Scale Enquiries
- CQC ratings and associated outcomes

2.2 Performance Indicators

2.2.1 Key performance Indicators (KPI's)

The Council has set the following Key Performance Indicators (KPI's) and targets which will be used as part of the service evaluation. Providers must submit their KPIs in their Annual returns and the Council will conduct various validation spot checks to determine the accuracy of the data submitted and the quality of the service delivered to Service Users.

Providers who fail to reach the relevant KPI targets, or do not adhere to specified timescales for submitting KPI information, will be subject to performance improvement measures.

Outcomes KPI

a) Outcomes Reviews

At least 25% of all CEC funded Service Users will have an Outcomes Review completed and documented biannually (every 6 months), with each review evidencing at least one or more outcomes achieved.

Target: 95%

b) Continuity of Care Workers

Service Users will receive care delivery from a consistent number of staff who are familiar with Service Users needs and their care plans.

Target: 85%

c) Rostering / Rotas

Providers will adhere to a recognised Dependency Tool and evidence that rotas cover staffing requirements fully.

Target: 90%

d) Occupancy Target

Providers will achieve a minimum of 85% occupancy per calendar month.

Target: 100%

2.2.2 Critical Performance Indicators

A Critical Performance Failure shall include:

- any failure to attain (as detailed in Key Performance Indicator and Quality Framework):

- Safe
 - Caring
 - Responsive
 - Effective
 - Well led
 - Overall CQC rating of 'inadequate'
- b) in the opinion of the Authority the provider is persistently inputting the incorrect data/ submitting inaccurate data as evidenced in the Annual Monitoring Return.
- c) any other delay or deficit on the part of the Provider without good cause in delivering the services that could reasonably be considered by the Council as being inconsistent with the Provider performing its obligations under the contract agreement and in accordance with the service specification.

2.3 Outcomes

Outcomes can be defined as what a person wishes to achieve in order to lead their day-to-day life in a way that maintains or improves their health and wellbeing. These outcomes will vary from one person to another because each individual Service User will have different interests, preferences, relationships, demands and circumstances within their lives.

The Provider must deliver a service to meet individual Service User Outcomes and the service is to be delivered in line with the ethos and standards as detailed in the Service Specification.

2.3.1 High Level Service Outcomes

High level Outcomes are represented in the diagram below:



High level Service Resident Outcomes are to be achieved as follows (list not exhaustive):

Person Centred Care

- a) Service Users are recognised and supported as an individual whilst receiving a personalised Accommodation with Care Service to maintain their health, wellbeing and independence.

Choices and Preferences

- a) Service Users to receive high quality care provision that recognises their choices and preferences in relation to how the service is delivered.

Respecting & Involving Service Users

- a) Service Users understand the care and support choices available to them. They are encouraged to express their views and are always involved in making decisions about the way their care and support is delivered.
- b) Their privacy, dignity and independence are respected and their (or their carer's) views and experience are taken into account in the way in which the Services is provided.

Care & Welfare of Service Users

- a) Service Users experience appropriate, effective, care and support that safely meets their needs, protects their rights and maximises their independence, health and wellbeing and agreed outcomes.

Safeguards from Abuse or Risk of Abuse

- a) Service Users are protected from abuse or the risk of abuse at all times, and their human rights are respected and upheld.
- b) Service Users are protected from the risk of reoccurrence of harm or risk of harm.
- c) First Account Alerts are to be submitted in a timely manner.
- d) The Provider should provide Basic Safeguarding Awareness Training to all staff and more in-depth training for staff who would be involved in completing any investigations/enquiries.
- e) All staff must have a basic understanding/training in Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS).
- f) Provider's will prepare for the Liberty Protection Safeguards (LPS) and implement necessary changes when the new LPS starts.

Appropriate Workforce to Meet Needs

- a) Service Users and their health and welfare needs are met by sufficient numbers of appropriate staff (as detailed in the dependency tool) with the right qualifications, training (as detailed in Section 5.4 Core Training in the Accommodation with Care service specification), knowledge, skills, approach and experience.
- b) Service Users are safe, and their health and welfare needs are met by staff who are appropriately trained, well supervised, and receive the development opportunities they need to carry out their role effectively whilst keeping their skills and training up to date as detailed in a training matrix and training is reflective to the residents and their changing needs.

Access to a Quality Service

- a) Service Users benefit from safe, quality care due to effective decision making and management of risks to their health, welfare and safety because lessons are learned, and the quality of services is effectively monitored

Right to Complain

- a) Service Users and / or their nominated representative can be sure that the Service Provider listens to and acts on their complaints, concerns and comments.
- b) They know that they will not be discriminated against for making a complaint or raising an issue.
- c) They will receive a full response to their concerns / complaints, including what actions have been taken to resolve any issues in line with the Providers policy.

Record Keeping

- a) Service Users are confident that the records kept by the Service Provider about their care and support (including those that are required to protect their safety and wellbeing) are accurate, fit for purpose, held securely and remain confidential and contemporaneous.
- b) Providers should ensure that they comply with the European General Data Protection Rules (GDPR) legislation.

Individual Service Users Outcomes

Individual Service User Outcomes may be associated with multiple of the high level Service User Outcomes listed above.

The Provider is required to meet individual Service Users outcomes using a person centred assessment, support planning and service delivery approach as detailed in their individual care plan. Every Service User should have their own outcomes documented and delivered in relation to their own personal needs, preferences, likes, dislikes, choices and preferred method of communication, as detailed in their Council assessment and support planning.

Examples of Outcomes and how Providers can document and meet those Outcomes are as follows:

Example	High Level Outcomes	Individual Service User Outcome	Comment
1	Person Centred Care Choices and Preferences Care & Welfare of Service Users	For the Service User to remain hydrated	These Outcomes may be achieved by: Supporting a Service User to make a drink of their choice, i.e., a cup of tea with extra milk and one sugar
2	Person Centred Care Choices and Preferences Care & Welfare of Service Users	For the Service User to remain nourished	These Outcomes may be achieved by: Making a meal of the Service Users choice, e.g., one poached egg (doesn't like scrambled egg) on well done brown toast with butter
3	Person Centred Care Respecting & Involving Service Users Care & Welfare of Service Users	For the Service Users to remain clean and retain their independence	These Outcomes may be achieved by: Supporting the Service Users with their personal care in the way they like it, e.g., assisting the Service Users to have a shower at their desired water temperature (doesn't

			like to have a bath) and Care Worker only to support with cleansing the bottom half of the body. The Care Worker is to allow the Service User to wash their top half of the body to retain independence.
4	Respecting & Involving Service Users Choices and Preferences Access to a Quality Service	For the Service Users to be involved and made aware of any change to care arrangements which affect them	These Outcomes may be achieved by: Communicating effectively with Service Users via a method and format that they like, e.g., a face to face conversation, something in writing they can refer back to (Pecs/Makaton).
5	Person Centred Care Respecting & Involving Service Users Choices and Preferences	For the Service Users to retain their pride in their appearance and have a choice in what they are wearing	These Outcomes may be achieved by: Asking the Service Users what they would like to wear each day, understanding that a clean and colour co-ordinated outfit is important to the Service User.

2.3.3 Outcome Reviews

It is the Provider's responsibility to identify and develop individual Service User outcomes through face to face discussions directly with the Service User (and /or their representatives where appropriate). Providers have the choice of whether to incorporate this within the Care Plan review process or to arrange separate discussions relating purely to Outcome Reviews.

It is the Provider's responsibility to measure and present outcomes to Service Users and the Council. It is a requirement of the Provider to do this via Outcome Reviews and spot checks which are completed quarterly for at least 25% of all current Service Users. This will ensure that all Residents and/or their representatives have a face to face discussion with their Provider regarding their personal outcomes at least once per year. Any discussion with Service Users regarding their outcomes should be done during face to face reviews, unless the Service User requests otherwise.

Providers are not to conduct Outcome Reviews for the same 25% of Service Users

each quarter, as all Residents need an Outcome Review at least annually. Service Users are able to have discussions throughout the year regarding their Outcomes when one of the following occurs, these are to be detailed in a review matrix:

- The Service User has requested further conversations.
- The Provider is happy to conduct in excess of the required 25%.
- If the Service User needs have changed and their outcomes need to be revisited.
- The Council have requested that an additional Outcome Review is completed.

The format and method for conducting each Outcomes Review will be at the discretion of the Provider; however, the Council reserves the right to request the Provider to alter the format, method or content of the Outcomes Reviews in order to ensure that the relevant information is obtained and documented such as but not limited to the following:

- Establish how far the services provided have achieved the outcomes, set out in the care plan.
- Re-assess the needs and circumstances of individual Service Users.
- Confirm or amend the current care plan to reflect current need.

As soon as possible following the completion of each Outcomes Review and in any event within one (1) month of completing each Outcomes Review, the Provider shall make available the Outcomes Review, its results and details of action taken in response to the review to the Council. If the Outcomes Review has determined an urgent change of care needs, the Provider must contact the Council immediately.

The Council retain the right to verify or validate whether outcomes have been effectively developed, documented, delivered, and reviewed via any route that the Council deems appropriate, i.e., by speaking to Service Users, viewing Outcome Reviews, auditing care delivery documentation or Service User Satisfaction Surveys. The Provider will submit detailed monitoring returns to the Council in relation to both the high level outcomes and individual Service User outcomes as detailed within this Monitoring Schedule.

The Provider will present performance and quality information as per the schedule and failure to complete and return the required information will be dealt with under service failure and contractual action will be taken.

2.4 Service User Satisfaction Surveys

This is one way of the Provider determining and evidencing that outcomes have been supported and achieved.

The Provider will collate all feedback centred around Service Users detailing information on service improvements, the quality of provision and whether outcomes are being achieved, and report/make this available to the Council upon request as specified within the monitoring schedule.

As a minimum the annual satisfaction survey will measure the following outcomes:

- If Service Users feel listened to.
- If the Service Users feel involved in the planning of their support.
- If Service Users feel that the support is built around their strengths, preferences, likes and dislikes (person centred care planning and delivery).
- If Service Users are satisfied with their care staff and the consistency of those staff.
- If Service Users feel that staff have the correct skills and training to meet their needs.
- If Service Users are satisfied with the way that they are communicated with (by any staff employed by the Provider, including management staff).
- If Service Users are satisfied that they can contact the service successfully.
- If Service Users feel that you as the Provider are flexible when required.
- If Service Users are aware of how to raise concerns or complaints when needed.
- If the Service Users feel that the service can be improved in any way.
- If the Service Users feels safe and free from harm or risk of harm.
- If the Service Users outcomes are being met.

In order for the Council to ensure that the Provider is actively seeking Service Users feedback and to identify areas of good practice, the Provider shall conduct a Service Users Satisfaction Survey each calendar year, the results of which will be sent to all Service Users, Council funded or otherwise, or their appropriate representative. The Provider will also hold Relatives/Carers Meetings to seek their views (at least quarterly).

The Council may also conduct routine Service Users Satisfaction Surveys to directly obtain thoughts and views about the service delivered by the Provider. These satisfaction surveys by the Council have no minimum or maximum frequency and can be completed at any time during the duration of the Agreement.

The format and method for conducting each Service Users Satisfaction Survey will be at the discretion of the Provider; however, the Council reserves the right to request the Provider to alter the format, method or content of the Satisfaction Surveys in order to ensure that the relevant information is obtained.

As soon as possible following the completion of each satisfaction survey and in any event within two (2) months of completing each Satisfaction Survey, the Provider shall make available the survey, its results and details of action taken in response to the survey.

The Provider shall permit the Council to use the information which is generated by the satisfaction surveys to assist it in future commissioning and procurement activities.

The Council may at its discretion gather Service Users insight information. The Council may ask the Provider to address any issues which are highlighted through this insight information. The Provider will take steps to address the issues raised by the Council within the timescales set out.

The results must be available to the Council by 30th April every year. Failure to comply will result in Service failure and will be dealt with via contractual action.

3.0 Monitoring submission requirements

3.1 Monitoring Returns

The Provider is required to collate and return the following monitoring information to the Council using the templates provided by the Council. The Council retains the right to amend or update the templates in if required, and Providers will be notified if any changes are made.

The Provider will strictly adhere to the timescales set out in this Schedule for returning monitoring information and failure to do so will result in service failure and / or contractual action being taken.

The Provider will comply with contract monitoring arrangements including sample checks of monitoring record (electronic or otherwise) and monitoring return validation. The Provider will be informed and consulted on changes to contract management arrangements as and when they occur.

The Council reserves the right to conduct random checks on Service Users and Staff documentation and any other files or records in relation to care planned or delivered to Service Users.

3.1.1 Monthly Monitoring Return

The Care Provider shall provide biannually (every 6 months) return to the Council giving the following information in relation to the reporting period:

- Service Delivery
- Performance (linked to KPI's)
- Staff rotas
- Workforce
- Complaints, Compliments and Comments
- Safeguarding, Incidents and Accidents
- Number of hospital admissions
- Additional information

3.1.2 Annual Monitoring Return

In addition to the information required at the monthly return, the Provider will submit quarterly return to the Council with the following information:

- Human Resources
- Care Plans
- Health and Safety

- Service Quality
- Outcomes Reviews
- Staff Retention

3.1.3 Annual Monitoring Return

The Provider shall make an annual return to the Council which shall provide evidence of each of the areas identified in the table below. This information is to be submitted annually by no later than 30 April and will include the following key areas:

- Financial and Insurance
- Workforce Development
- Service Delivery
- Health and Safety
- Policies and Procedures

3.2 Submission of Returns

The Council is committed to simplifying the collection and analysis of monitoring information and will implement a process which will require submission of information electronically either by email or a secure portal. The Provider is required to have the facility to undertake this.

In the event that the Provider fails to submit accurate monitoring information in accordance with this schedule, this shall constitute a Service Failure.

3.3 Low Level Incident/Concern Forms

Any comment or concern made by a Service User to the Council on the quality and delivery of the service will be recorded as a "low level incident / concern". These are defined as issues or concerns as detailed within the Care Concern Threshold Framework which do not meet the threshold for safeguarding and are not being treated as a formal complaint.

Providers will respond to and resolve any incidents to the satisfaction of the Service User and the Council within the timescale stipulated by the Council.

Any concerns or comments being made in relation to the quality of the service can result in increased monitoring of the Provider, either with regards to individual Service Users or to evaluate themes and trends which have developed.

3.4 Underperformance by Provider[s]

3.4.1 Under performance of Key Performance Indicators or Quality Standards

Should the Council identify that a Provider[s] is underperforming against the terms of the Agreement:

- g) The Provider[s] must produce a Service Improvement Action Plan which will be agreed with the Council and the Council may specify additional actions or requirements proportionate to any underperformance, including timescales.
- h) Suspension of referrals/placements to the Provider will be initiated where any monitoring or feedback obtained exposes performance issues or incidents relating to breaches in Service delivery, which may also include safeguarding incidents.
- i) Suspension of referrals to the Provider[s] will be initiated whereby an active informal Improvement Notice or formal Default Notice is in place or the Provider[s] is under Large Scale Safeguarding Enquiry (LSE) procedures.
- j) Where there has been a serious breach or multiples breaches which may affect Service User safety and wellbeing, the Council retains the right to move existing Provider[s] business to alternative Provider[s]s. This may be via a staggered approach or moving the business as a whole and is at the Councils discretion.

Where improvements are evidenced and the required standard reached, referrals will be resumed to The Provider, initially with a phased approach which will be decided by the Council.

3.4.2 Underperformance of Critical Performance Indicators

If the level of any and all Critical Performance indicators/ Failure to meet identified critical indicators levels are breached during the contract term, the Provider shall immediately notify the Council in writing and the Council, in its absolute discretion and without prejudice to any other of its rights to the Service under this Schedule howsoever arising, may:

- a) require the Provider to immediately take all remedial action that is reasonable to mitigate the impact of the Contracting Body and to rectify or prevent a Performance Failure or a Critical Performance Failure from taking place or recurring; and
- b) if the action taken is not already prevented or remedied the Performance Failure or Critical Performance Failure, the Council shall be entitled to instruct the Provider to comply with the Improvement Process; or
- c) if a Critical Performance Failure has occurred, exercise its right to Compensation for Critical Performance Failure in accordance with Section 6 of the Service Specification Underperformance by Providers (Service Standard/Delivery).
- d) the Council may without prejudice to its other rights and remedies including initiate one or more of the following: a Quality Assurance Form, Quality Assurance Visit or Contract Review Meeting.

3.4.3 Implementation of Improvement Action Plan

Approval and implementation by the Council of any Improvement Action Plan shall not relieve the Provider of any continuing responsibility to achieve the Key Performance Indicators, or remedy any failure to do so, and no estoppels or waiver

shall arise from any such Approval and/or implementation by the Council.

3.5 Inspection Reports

The Provider shall provide the Council with copies of any inspection reports (including regulatory feedback or reports such as CQC action plans) affecting the Service on request within 2 working days.

3.6 Data Submission KPI's

The below KPI's are relevant to any information or data which the Provider is contractually obliged to submit to the Council, including finance data, monitoring returns and any other information as detailed within the Monitoring Schedule or Service Specification.

a) Timeliness of data and information submissions

Providers are to submit the required data and information to the Council as per the stated timescales e.g., monthly, quarterly, annually

Target: 95%

b) Accuracy of data and information submissions

Providers are to submit accurate data and information to the Council (and are to ensure that any checking processes put in place by the Council is adhered to prior to submitting the data or information)

Target: 95%

If data or information is not submitted to the Council as per the required timescales for three consecutive periods, then this will result in service failure and contractual or improvement action being taken.

The three periods are proportionate to the set timescales in place within this agreement, e.g., if a data submission is required on a monthly basis and the data has not been submitted for three months this will result in service failure.

The accuracy of data will be spot checked and verified by the Council using various methods including checks of care documentation such as care plans, timesheets, staff rotas, cross referencing invoice and variations data and speaking with stakeholders.

4. Contract Management and Quality Assurance Governance and Validation

4.1 Contract Management and Quality Assurance Meetings

The Provider/Care Home Manager will be required to attend regular contract management and quality assurance meetings chaired by representatives of the Council. These meetings will be set by the Council from the contract commencement date and will usually be in three monthly intervals.

The Council will arrange to meet with the Provider annually to review its performance against the provisions of this Specification and to discuss its plans for Service improvement. The Council reserves the right to alter the frequency of these meetings. Wherever possible, the meetings will be arranged by the Council in such a way that they do not impede the Provider in the delivery of the Service.

From time to time, officers from the Council will visit the Provider to verify evidence of service activity and compliance with the requirements of the agreement and the specification.

The Council will decide which Council representatives are to be in attendance at the meetings which may include Council staff from teams other than Commissioning/ Contract Management and Quality Assurance.

4.2 Monitoring and Quality Assurance Visits / Audits

Monitoring, quality assurance, inspection or audit visits can be announced or unannounced and will be carried out by Council representatives. Monitoring and quality assurance visits can be carried out as part of a routine monitoring schedule for Providers to ascertain contract compliance or in response to general or specific concerns. The visits have no set duration and will depend on what aspects of the service are being monitored and quality assured. In extenuating circumstances an announced visit can be cancelled.

The Provider may be subject to monitoring, quality assurance or audit visits and service reviews by the Council at any time during the duration of the Agreement. The Provider and staff must co-operate and engage in the process.

The visits or audits can include on-site visits to the Providers offices and Council representatives have the right to access all information in relation to the care planned for or provided to Residents, including:

- a) Full staff records (including DBS checks, insurance details, references, application forms, supervisions / appraisal frequency tracker, disciplinary records, training records)
- b) Full Service User records (including Care Plans, risk assessments, reviews, referrals to other professionals) via visits to the Providers Office.
- c) Full Service User MAR charts / medication records.
- d) Full complaints records (including details of complaints, investigation, responses to complainants, actions taken).
- e) Full safeguarding records (including details of safeguarding alerts and concerns, enquiries, responses to safeguarding allegations, actions taken.
- f) Full staff and Service User rota schedules, or any other system or format which evidences or details how care is planned or delivered.
- g) Full CQC documentation and certificates, including copies of notifications and pending applications.
- h) All levels of insurance certificates.
- i) Any other documentation deemed relevant by the Council to a Service User care needs, care delivery, wellbeing, health, or Care Plan evidencing personal outcomes.
- j) Fire Safety documentation.

The Council may also undertake announced or unannounced spot checks to satisfy itself as to the ongoing quality of service delivery and to validate performance data. Should any issues be identified, the Provider will ensure that remedial action is taken

as per the Councils feedback and within the timescale specified at the time of notification or discussion.

Additional or more in-depth inspections or monitoring will be triggered by any of the following:

- a) Whereby an active informal Improvement Notice or formal Default Notice is in place.
- b) Whereby the Provider is under Large Scale Safeguarding Enquiry (LSE) procedures.
- c) An increase in safeguarding incidents, or receipt of a serious safeguarding referral which may indicate risk to Service Users.
- d) Failure to meet required Key Performance Indicators or Best Practice elements.
- e) Concerns arising from previous inspections and reviews.
- f) Concerns arising from Service User or representative feedback.
- g) Social Care reviews, concerns or feedback.
- h) CQC Statutory Notice or intelligence shared with the Council.
- i) Complaints (including verbal, written, formal and informal).
- j) Whistle blowing.
- k) Changes in local branch / local management for this contract without adequate contingencies, handover or not informing the Council.
- l) Any other issues deemed to be a risk.

Quality and Performance Monitoring Frameworks

Biannually (every 6 months) Monitoring Return

Deliverable/ Area	Measure
Service Provision	<ul style="list-style-type: none"> a) The total number of active CEC Funded Service Users. b) The total number of completed reviews. c) Number of new CEC referrals/new placements. d) Number of referrals/new placements accepted. e) Number of refused referrals and reasons for refusal. f) The number of new placements commenced. g) Details of Outcomes achieved.
Workforce	<ul style="list-style-type: none"> a) Number of Staff employed by the Provider, including breakdown of full and part time. b) Number of Staff on long term leave or absent. c) Number of new Staff who have been recruited and commenced employment. d) Number of Staff who have left and reason (e.g., retirement, new job). e) Number of nursing/care staff vacancies. f) Number of Staff undergoing/completed induction training. g) Number of suspensions/disciplinary investigations initiated/concluded. h) Number of dismissals and reason for dismissal. i) Number of Staff on an active Risk Assessment. j) Details of any Staff referred to the Independent Safeguarding Authority Vulnerable Adults List.

Complaints, Compliments and Comments	<ul style="list-style-type: none"> a) Number of complaints received directly by the Provider. b) Number of complaints of which the Council has been informed. c) Number of upheld or partially upheld complaints. d) Details of all complaints received including resolution actions resolved/not resolved within 28 days. e) Details of progress on ongoing investigations. f) Details of comments registered about the Service through the Provider’s formal feedback mechanism(s). g) Compliments registered about the Service made through the Provider’s formal feedback mechanism(s). h) Number of compliments received by the Provider. i) Actions the Provider has implemented or plans to implement to improve the Service as a result of complaints, compliments and comments. j) Details of any good news stories.
Safeguarding, Incidents and Accidents	<ul style="list-style-type: none"> a) Number of First Accounts/Care Concerns raised. b) Enquiries commenced/submitted in the reporting period. c) Enquiries ongoing in the reporting period. d) Enquiries concluded in the reporting period. e) Number upheld/ substantiated. f) Number partially upheld/partially substantiated. g) Number not upheld / not substantiated and no further action. h) Number of DBS checks initiated. i) Number of DBS checks ongoing. j) Number of DBS checks completed. k) Actions the Provider has implemented or plans to implement, to improve the service as a result of safeguarding issues. l) A summary of incidents: the date, type of incident, action taken for each incident. m) A summary of accidents: the date, nature of accident, action taken for each accident. n) Details of actions taken or plans to improve the service as a result of accidents and incidents.

Additional information	<ul style="list-style-type: none"> a) Notification of any regulatory inspections due or completed. b) Any recommendations made as part of regulatory inspections. c) Progress of corrective action/improvements made as part of a response to recommendations made as a result of regulatory inspections. d) Action taken or planned to improve the service as a result of the Provider's internal customer feedback mechanisms.
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Deliverable/ Area	Measure
Human Resources	<ul style="list-style-type: none"> a) Number of supervisions planned, held, rearranged. b) Number of staff appraisals planned, held, rearranged. c) Number of staff who have received a spot check during the provision of support during the reporting period. d) Review of progress of the workforce development plan.
Care Plans	<ul style="list-style-type: none"> a) The number of Care Plans in place. b) The number of Care Plans reviewed. c) Individual outcomes which the Provider wishes to bring to the Council's attention.
Health and Safety	<ul style="list-style-type: none"> a) Changes/improvements made to Health and Safety policies and procedures. b) Any HSE breaches or investigations. c) Any Infection Control measures/outbreaks. d) Last Fire Inspection Report and any actions.
Service Quality	<ul style="list-style-type: none"> a) Details of any audits planned for the forthcoming reporting period. b) The number and type of audits undertaken and outcomes from the previous reporting period.

	c) Changes made to organisational policy and procedures and how this has been implemented (to be agreed by the appropriate Authorised Officer at the Council to ensure it does not represent a fundamental change to the Agreement).
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Annual Monitoring Return

Area	Information Required
Financial and Insurance	<ul style="list-style-type: none"> Evidence of insurance certificate (detailing the specified insurance levels for public liability, Employers Liability and Professional Indemnity).
Workforce Development	<ul style="list-style-type: none"> Workforce development plan. Electronic training matrix for all Staff (this should state the employment start date, the scheduled completion date and the actual completion date for each core training requirement). Number of staff who have completed a Level 2 Diploma in Health and Social Care. Number of staff currently undertaking or have achieved the Care Certificate. Staff turnover. Recruitment plans and proposals. Staff vacancy levels. Staffing Structure. Management Structure and cover arrangements. Staff Surveys. Emergency Contact rota.
Service Delivery	<ul style="list-style-type: none"> Results of Service User surveys. Key findings of CQC inspection reports. Details of safeguarding enquiries.

	<ul style="list-style-type: none"> • Numbers of safeguarding referrals (with data available for individual safeguarding cases upon request by the Council). • Numbers of complaints/comments (with data available for individual complaints upon request by the Council). • Numbers of complaints/comments (with data available for individual complaints upon request by the Council). • Number of referrals made by the Council: <ul style="list-style-type: none"> (a) Number accepted (b) Number refused • Reviews planned and undertaken. • Unplanned reviews. • Improvement initiatives/development of expertise and specialist knowledge. • Work undertaken to involve community. • Work undertaken to involve Health and Third Sector partners. • Details of awards/accolades. • Business Continuity Plan.
Health and Safety	<ul style="list-style-type: none"> • Health and Safety incidents. • Any changes to Health and Safety policies or procedures. • Continued compliance with HSE, and any other relevant legislation. • Providers should maintain vaccination records for staff. This should include date of vaccination and site where this was administered (i.e., pharmacy, GP Practice etc.). The Provider should supply statistics on number of staff who have received a vaccination for the new flu season (the new flu season would be classified as beginning in September of each year) against total staff. This should be provided both to the Local Authority and the Infection Prevention Control Service.
Policies and Procedures	<ul style="list-style-type: none"> • All new or updated policies and procedures to be submitted, as detailed in Section 7.6 of the Accommodation with Care Specification including the Statement of Purpose and any changes.

Key Performance Indicator and Quality Framework

Key Line of Enquiry Domain	Overarching KPI metric	KPI's (contributors)	Measure	Target	Critical KPI (Y/N)	Consequence of breach	Frequency/timing
Safe Serious Incidents and accidents Increased Safeguarding alerts Significant Event Adequate staffing levels	Ensure there are systems and processes in place to assure that the provider can discharge its responsibilities.	Competent, skilled workforce i.e., staff supervision, competency assessments. Staff training completed. Substantiated safeguarding. Levels of staffing. % Audits of MAR sheets completed'	Competent, skilled workforce i.e., staff supervision, competency assessments. Staff training completed. Substantiated safeguarding. Levels of staffing. % Audits of MAR sheets completed.	95%	Y	Suspension of referrals to the Provider will be initiated whereby an active informal Improvement Notice or formal Default Notice is in place or the Provider is under Large Scale Safeguarding Enquiry (LSE) procedures	4 weekly contract and quality review meetings or more regular if required.
Effective	Outcomes KPI	Outcomes Reviews	At least 25% of all Service Users will have an Outcomes Review completed and documented per	95%	Y	Service Action Plan with clear timescales will be implemented to address the	4 weekly contract and quality review meetings or

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			quarter (every 3 months).			shortfall of reviews.	more regular if required.
Caring	Staff work in an inclusive way and treat you with compassion, kindness, dignity, and respect.	Service Users Satisfaction, Support improvement of care (for example, by general practices).	Service Users who report they are satisfied or very satisfied. Resident involvement linked to outcomes Coproduction of service development	95%	Y	Increased monitoring of contractual quality and performance requirements with providers	4 weekly contract and quality review meetings, or more regular if required.
Well Led	Visible Leadership Governance of the organisation	Rostering / Rota Planning Safe systems of work that provide	Effective rotas that provide safe staffing levels that meet the needs of Service Users 24/7 days per week. Effective processes that provide safe working and operating practices. Make sure the service is providing high-quality care.	95%	Y	Increased monitoring of quality and Performance, using quality assurance Processes.	4 weekly contract and quality review meetings, or more regular if required.

Schedule 3

Pricing Schedule

1. Price

1.1 The Price is as specified in clause 1.3 of this Schedule 3 and shall remain fixed for the Contract Period subject to any inflationary increase that the Council may apply in accordance with clause 8 of this Schedule 3.

1.3 The Price is as follows:

Requirement Number	Price (£)
1 Residential – Older People (65+) – must be located within easy access of Sandbach, Holmes Chapel, Middlewich, and surrounding areas	
2 Residential Dementia – (North) Older People (65+) – must be located within easy access of Macclesfield, Knutsford, Wilmslow, Poynton and surrounding areas	
3 Residential Dementia – (South) Older People (65+) - must be located within easy access of Sandbach, Holmes Chapel, Middlewich and surrounding areas	
4 Nursing – Older People (65+) - must be located within easy access of Macclesfield, Knutsford, Wilmslow, Poynton and surrounding areas	
5 Nursing/Dementia – Older People (65+) - must be located within easy access of Congleton, Sandbach, Alsager, Holmes Chapel. Middlewich and surrounding areas	
6 Residential – Emergency bed – Older People (65+) - must be located within easy access of Macclesfield, Knutsford, Wilmslow, Poynton and surrounding areas	
7 Residential / Nursing / Dementia– Emergency bed – Older People (65+) - must be located within easy access of Crewe, Nantwich, Audlem and surrounding areas	
8 Residential – Physical Disability Support (18 – 65 and 65+) must be located within easy access of Crewe, Nantwich, Audlem and surrounding areas	

2. Invoicing and Payment

2.1 The Provider will submit a valid invoice on a four (4) weekly basis confirming the respite

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duration (in nights) delivered in arrears.

- 2.2 The Provider will submit invoices in a format specified by the Council, and the Council retains the right to amend this format without consultation.
- 2.3 The invoice will be submitted within 14 days of the end of a billing period for the preceding 4 week period (Saturday to Friday)
- 2.4 Invoices are used to ensure both accurate payments to the Provider and correct charging to Service Users (by the Council) and so therefore need to be factually correct at the point of submission to the Council.
- 2.5 Invoices will be processed upon receipt and validation of the invoice for the relevant period.
- 2.6 Failure to provide all the relevant documentation will deem the invoice invalid.
- 2.7 It is the Providers' responsibility to ensure that accurate invoices are sent to the Council within specified timescales.
- 2.8 All details on every invoice submitted to the Council must be certified by a responsible person in the relevant department for the Provider (e.g. Director, Accounts) as correct and in accordance with records maintained by the Provider. The invoice will contain all appropriate references; a detailed breakdown of the Service provided and will be supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 2.9 If the Provider believes that any of the data held by the Council is inaccurate then the Provider must inform the Council's nominated key contact immediately. The Council finance team will be unable to pay invoices until the information held by the Council mirrors the information held by the Provider and vice versa.
- 2.10 The accuracy of invoices and supporting information will be checked and verified by the Council within 14 days of the receipt of a valid invoice from the Provider, subject to the Providers' full compliance in responding to queries or supplying further required information as requested by the Council.
- 2.11 Payment will be in arrears by BACs transfer and by reference to invoice number commencing on dates nominated by the Council.
- 2.12 Failure by the Provider to comply with the Payment Instructions may at the reasonable discretion of the Council result in any financial loss to the Council being deducted from the payment made to the Provider.
- 2.13 Where the Service Returns are submitted more than three (3) months from the due date the Council will at its sole discretion accept or reject such submission or process them for payment.

3 Reporting Information

- 3.1 The Provider will submit data to the Council, in a format specified by the Council, which will identify at least the following:
 - Periods in which the Room was occupied by a Service User
 - Periods in which the Room was vacant (as a percentage of the time it was occupied)
 - Any periods in which the Room (or an agreed suitable alternative) was unavailable (see paragraph 6.2.2 and 6.2.3 of this Schedule 3)
 - Any bookings which the Provider refused (and the period of that proposed booking) and the reasons why
 - Cancelled stays (specifying whether cancelled by the Provider or the Service User)

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and the Council retains the right to amend this format without consultation.

- 3.2 The data must be factually correct at the point of submission to the Council.
- 3.3 It is the Provider's responsibility to ensure that accurate data are sent to the Council within specified timescales.
- 3.4 This data will be used in the assessment of any variation of delivery when compared against the MOL (see paragraph 6 of this Schedule 3).

4. Financial Assessments

- 4.1 The Provider shall not carry out a financial assessment of the Service User in any circumstances.
- 4.2 The Provider shall not make any charge to the Service User or Carer for the provision of their care unless directed by the Council. The Provider may provide additional services at the request of the Service User under a private arrangement; however this must be notified in advance by the Provider to the Council.

5. Accounts and Audit

- 6.1 The Provider shall make those accounts, and any receipts or other supporting documentation available for inspection by the Council's auditors (or other officers nominated by the Director of Adult Social Care) within reasonable timescales.
- 5.2 If requested by the Council the Provider shall supply free of charge to the Council copies of these accounts and of any supporting documentation within reasonable timescales.
- 5.3 Information provided to the Council should be clear and accessible.

6. Occupancy Level

- 6.1 Subject to the provisions of this Agreement, the Provider is required to maintain a minimum occupancy level of 85% ("MOL"), as specified in section 6.1.1 of the Service Specification, and the Price for maintaining MOL is as at set out in paragraph 1.3 of this Schedule 3 .
- 6.2 The Provider may invoice for the MOL in accordance with paragraph 2 of this Schedule 3 and the Council will pay the MOL (the regular minimum payment RMP) regardless of whether the MOL have been delivered SUBJECT TO the following conditions:
 - 6.2.1 If the occupancy level maintained by the Provider falls below the MOL for more than a total of 4 consecutive weeks, the Council is entitled to decrease the level of MOL (and so the RMP) by a sum equal to the difference between the MOL (85%) and the actual occupancy level by giving 7 days' notice in writing to the Provider;

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6.2.2 If the Provider is unable to deliver Services from the Room for whatever reason (including but not limited to a Force Majeure event) then, regardless of whether bookings have been made or not, unless a suitable alternative Room can be made available within 24 hours of the Room becoming unavailable, all payments will be suspended until such time as the Room is fully accessible to and suitable to be occupied by service users. (Such circumstances to be communicated to the Brokerage Team immediately);

6.2.3 If the Provider, regardless of the MOL, refuses to accept Service Users, then in such circumstances the Council will discuss the circumstances of the refusal on a case by case basis, and, where the Council considers the Provider has unreasonably refused to accept a Service User it will consider a reduction in the RMP to reflect the period in which the Room could have been occupied by the Service User who was turned away.

7. Provider Portal

7.1 The Council requires that Providers submit all invoices and supporting information via the electronic provider portal

7.2 The Provider will submit information to the provider portal in a format specified by the Council

7.3 When the information is submitted to the Council via the provider portal by the Provider, the electronic stamp will be of equivalent importance to a 'wet ink' signature.

8. Discretionary Price Increases

8.1 The Price (as detailed at 1.3) is fixed for the Contract Period.

8.2 The Council will determine, at its sole discretion, whether it will uplift the Price to allow for cost pressures, taking into account the Council's budget.

SCHEDULE 4

THE REQUIREMENTS

1. For the purposes of this Contract, the Services shall be split into the following Requirements:

Requirement 1 – Residential / Older People	Requirement 2 – Residential Dementia / Older People (North)
Requirement 3 – Residential Dementia / Older People (South)	Requirement 4 – Nursing / Older People
Requirement 5 – Nursing / Dementia / Older People	Requirement 6 – Residential Emergency Bed / Older People
Requirement 7 – Residential / Nursing / Dementia Emergency Bed / Older People	Requirement 8 – Residential Physical Disability Support

The scope of each of the Requirements shall be as set out in the Specification.

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Schedule

5 Part A

Standard Variation

1. Pursuant to clause 25.1.1 of this Contract, if either Party wishes to vary this Contract using the Standard Variation Procedure it shall submit such a Standard Variation to the other in the form substantially set out below.
2. The provisions of any Standard Variation shall only become effective when such Standard Variation is executed by the authorised representatives of both Parties.

STANDARD VARIATION FORM

This Agreement has been entered into on

2023

[] BETWEEN

- (1) **CHESHIRE EAST BOROUGH COUNCIL** Westfields, Middlewich Road, Sandbach, CW11 1HZ (the "**Council**" and "Lead Commissioner"); and
- (2) **[**INSERT THE NAME OF THE SERVICE PROVIDER**]** of **[**insert correct legal entity registration and address details of the service provider here**]** (the "**Service Provider**"),

referred to herein as a "**Party**" and collectively as the "**Parties**".

BACKGROUND

- (A) The Parties have entered into an agreement entitled "The Dynamic Purchasing System Agreement for the Provision of Residential and Nursing Care Home Services at the **[**insert name of care home**]**" dated **[**insert**]**, as amended from time to time (the "**Contract**").
- (B) The Parties hereby wish to vary the provisions of the Contract in accordance with the terms of this Standard Variation.

IT IS HEREBY AGREED

1. In consideration of the mutual rights and obligations contained herein and with effect from **[**the date upon which an authorised representative of the second Party**

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executes this Standard Variation**] [**or insert a alternative date**], the existing terms of the [**Contract**] shall be varied as follows:

1.1 [**insert details of the variation which you wish to make**]

2. Any defined terms used in this Standard Variation whose meanings are not expressly defined herein shall have the same meanings given to them in the Contract.
3. When executed, this Standard Variation and the [**Contract**] shall constitute and be construed as one and the same document and any references in the [**Contract**] shall be read and construed as references to the [**Contract**] as varied by this Standard Variation.
4. This Standard Variation is supplemental to the [**Contract**] whose provisions shall remain in full force and effect save and to the extent and in the manner provided herein.
5. Save as expressly stated otherwise herein, if there are any conflicts or inconsistencies between the terms of the [**Contract**] terms of this Standard Variation, the terms of this Standard Variation shall prevail.
6. If any provision of this Standard Variation is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Standard Variation shall continue in full force and effect as if this Standard Variation had been executed with the invalid, illegal or unenforceable provision deleted.
7. Save as otherwise expressly stated herein, the Parties do not intend any third party to acquire any rights under this Standard Variation by virtue of the Contracts (Rights of Third Parties) Act 1999.
8. Any dispute between the Parties arising from or in connection with this Standard Variation shall be governed by the laws of England and determined by the English courts.
9. This Standard Variation can be executed in a number of counterparts, each of which will constitute an original but which will together constitute one agreement.

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IN WITNESS where of the authorised representatives of the Parties have executed this Standard Variation as follows:

Signed for and on behalf
of Cheshire East Borough
Council

Signed.....

.....

Name.....

.....

Title.....

.....

Date.....

.....

Signed for and on behalf
of

[**insert the name of the Service
Provider**]

Signed.....

.....

Name.....

.....

Title.....

.....

Date.....

.....

Part B

Unilateral Notice

1. Pursuant to clause 25.1.2 of this Contract, where the Council has an express unilateral right in this Contract to vary the terms of this Contract it shall be entitled to do so by serving a Unilateral Notice on the Service Provider which shall be substantially in the following form:

Unilateral Notice Form

[On CEBC Headed
Paper**]**

[Insert name of the [**Service Provider's Representative**][**Registered Manager**]**

*

*

]

[Insert the name of the Care Home**]**

Dear

[**insert**]

I refer to the Contract relating to [**insert the name of the Resident] at [**insert name of the Care Home**] dated [**insert date**].

In accordance with the terms of the Contract the Council has a unilateral right to vary the terms of the Contract . Accordingly, the Council hereby serves notice that with effect from [**insert date**] of this Unilateral Notice, the terms of the Contract shall be unilaterally varied as follows:

[**insert the details of the unilateral variation here. For example:

In accordance with paragraph 8 of Schedule 3 of the Contract the Council hereby wishes to increase the Contract Price from £xxx per week (or part thereof) to £xxx per week (or part thereof).

When executed, this Unilateral Notice and the Contract shall constitute and be construed as one and the same document as varied by this Unilateral Notice.

This Unilateral Notice is supplemental to the Contract whose provisions shall remain in full force and effect save and to the extent and in the manner herein provided herein.

Save as expressly stated otherwise herein, if there are any conflicts or

inconsistencies between the terms of the Contract and the terms of this Unilateral Notice, the terms of this Unilateral Notice shall prevail.

If any provision of this Unilateral Notice is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Unilateral Notice shall continue in full force and effect as if this Unilateral Notice had been signed with the invalid, illegal or unenforceable provision deleted.

Save as otherwise expressly stated herein, the Parties do not intend any third party to acquire any rights under this Unilateral Notice by virtue of the Contracts (Rights of Third Parties) Act 1999.

Any dispute between the Parties arising from or in connection with this Unilateral Notice shall be governed by the laws of England and determined by the English courts.

SCHEDULE 6
DATA PROTECTION

Definitions

"Affiliates" any entity that is owned or controlled by the Council, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise

"Applicable Laws" means (a) European Union or Member State laws with respect to any Council Personal Data in respect of which the Council is subject to Data Protection Laws; and (b) any other applicable law with respect to any Council Personal Data in respect of which the Council is subject to any other Data Protection Laws;

"Council" means Cheshire East Borough Council and its Affiliates and/or b) Cheshire East Borough Council and East Cheshire Community Commissioning Group and South Cheshire Community Commissioning Group (the "CCGs");

"

"

1. **"Data Breach"**: has the meaning given to it in the Information Governance Review 2013.

2. **"Data Controller"**: has the meaning given to it in the DPA

3. **"Data Processor"**: shall have the same meaning as set out in the Data Protection Act 2018.

"Data Protection Laws" means (i) the UK GDPR, the LED and any applicable national implementing (i) the UK GDPR, the LED and any applicable national implementing Laws , as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy (iii) all applicable Law about the processing of personal data and privacy;

4. **"Data Security Protection Toolkit ("DSPT")"** an online system which allows NHS organisations and partners to assess themselves against Department of Health information governance policies and standards (<https://www.dsptoolkit.nhs.uk/>)

"Delete / Deletion" means deletion, removal of the Council Personal Data from the Provider's system using software certified to recognised international standards, including but not limited to, CESG HMG Infosec. Standard No: 5 Secure Sanitisation (Baseline and Enhanced);

"DPA 2018" Data Protection Act 2018;

5. **“European Economic Area”**: the European Economic Area (EEA) which consists of the European Union and all the European Free Trade Association (EFTA) countries except Switzerland.

"EEA" means the European Economic Area;

6. **“UK GDPR”**: means EU General Data Protection Regulation EU 2016/679 as adopted by the UK following its departure from the European Union.

7. **“Governing Body”**: in respect of any party, the board of directors, governing body, executive team or other body having overall responsibility for the actions of that party.

8. **“Information Governance Lead”**: an employee of the Provider who is responsible for information governance.

“LED” means the Law Enforcement Directive (Directive (EU) 2016/680)C

9. **“Personal Data”**: shall have the same meaning as set out in the Data Protection Act 2018.

10. **“Senior Information Risk Owner”**: the Supplier’s nominated person, being an executive or senior manager on the Governing Body of the Supplier, whose role it is to take ownership of the organisation’s information risk policy, act as champion for information risk on the Governing Body of the Supplier and provide written advice to the accounting officer on the content of the organisation’s statement of internal control in regard to information risk.

“Services” means the services and other activities to be supplied to or carried out by or on behalf of the Provider for the Council pursuant to this Contract;

"

The terms, **“Commission”**, **“Controller”**, **“Data Subject”**, **“Member State”**, **“Personal Data”**, **“Personal Data Breach”**, **“Processing”** and **“Supervisory Authority”** shall have the same meaning as in the GDPR.

DATA SHARING AGREEMENTS

The Provider will enter into such data sharing agreements with the Council as it requires in such form as it requires and in accordance with any provisions set out in Schedule 1.

THE PROVIDER AS DATA CONTROLLER

The parties acknowledge that:

In relation to Personal Data processed for the purpose of this Contract each party will be an independent Data Controller

3.2 The Provider must ensure that all Personal Data processed by the Provider in the course of delivering the Services is processed in accordance with the relevant parties’ obligations under the UK GDPR and DPA.

THE PROVIDER AS DATA PROCESSOR

Where the Provider acts as a Data Processor on behalf of the Council, the Provider must:

Process relevant Personal Data only to the extent necessary to perform its obligations under this Contract, and only in accordance with instructions given by the Council;

Take appropriate technical and organisational measures against any unauthorised or unlawful processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the state of technological development, the nature of the data to be protected and the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;

Take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedure identified in clause 3.2; and

Not cause or allow Personal Data to be transferred outside the United Kingdom or the EEA.

INFORMATION GOVERNANCE

The Provider must complete and publish an annual information governance assessment using the DSPT

The Provider must

(a) nominate an Information Governance Lead, to be responsible for information governance and for providing the Provider's Governing Body with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;

(b) nominate a Senior Information Risk Owner, each of whom must be a member of the Provider's Governing Body;

(c) ensure that the Council is kept informed at all times of the identities of the Information Governance Lead and the Senior Information Risk Owner;

The Provider must meet all standards as set out under the latest version of the DSPT Requirements .

The Provider must report and publish any Data Breach and any Information Governance Breach in accordance with DSPT Guidance .

Data processed by the Provider in the course of delivering the Services include:

- Publishing, maintaining and operating policies relating to confidentiality, data protection and information disclosures that comply with the Law and Good Practice;
- 5.5.2 Publishing, maintaining and operating policies that describe the personal responsibilities of Staff for handling Personal Data and applying those policies conscientiously;
- 5.5.3 Publishing, maintaining and operating a policy that supports the Provider's obligations under the NHS Care Records Guarantee;
- 5.2.4 Publishing, maintaining and operating agreed protocols to govern the disclosure of Personal Data;
- 5.5.5 Where appropriate having a system in place and a policy in relation to the recording of any telephone calls or other telehealth consultations in relation to the Services, including the retention and disposal of those recordings.
- 5.6 The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, the information specified in Data Protection Laws.
- 5.7 Where the Council requires information for the purposes of quality management, the Provider must provide anonymised, pseudonymised or aggregated data, and must not disclose that Personal Data to the Council for those purposes without written consent or some other lawful basis for disclosure.
- 10.8 The Provider must (unless it can lawfully justify non-disclosure) disclose defined or specified confidential patient information to or at the request of the Council where support has been provided under the s251 Regulations, respecting any individual Service User's objections and complying with other conditions of the relevant approval.

NOT USED