DATED                                                    2024

|  |  |
| --- | --- |
| (1) | CORNWALL COUNCIL |
| (2) | [PARTY 2] |

|  |  |  |
| --- | --- | --- |
|  | Individual Service Provider Agreement in respect of the Delivery of Home Care Services In [Geographical Zone] |  |



|  |  |
| --- | --- |
| **DATE OF CONTRACT** | **[Date to be added once signed/sealed]** |
| **SERVICE COMMENCEMENT DATE** | **[INSERT]** |
| **CONTRACT TERM** | **The period set out in special condition 2 of Schedule 2G.** |
| **CO-ORDINATING COMMISSIONER or COMMISSIONER** | **Cornwall Council**  |
| **PROVIDER** | **[ ] (ODS [ ])****Principal and/or registered office address:** **[ ]****[Company number: [ ]** |

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**CONTRACT**

**Contract title:** Individual Service Provider Agreement in respect of the Delivery of Home Care Services in [Geographical Zone]

**Contract ref:** ……………………………………………………..….

This Contract records the agreement between the Co-Ordinating Commissioner and the Provider.

The terms of this Contract are set out in these Particulars which incorporate the provisions of the NHS Terms and Conditions, as amended in these Particulars. The Parties acknowledge and agree that in the event of a conflict between the provisions of these Particulars and the provisions of the NHS Terms and Conditions, the terms of these Particulars will take precedence.

1. **Amendments to the NHS Terms and Conditions:**

The following amendments to the NHS Terms and Conditions form part of this Contract:

|  |  |
| --- | --- |
| **Condition** | **Amendment** |
| GC1 | Condition 1.2 shall not apply to this Contract. |
| GC10 | Condition 10.1 shall not apply to this Contract. |
| GC11 | Condition 11.1 shall not apply to this Contract and the provisions of special condition 20 (Liability) in Schedule 2G below shall apply.  |
| GC12 | Condition 12 shall not apply to this Contract and the provisions of special condition 23 (Subcontracting and Transfer Restrictions) in Schedule 2G below shall apply.  |
| GC13 | Condition 13 shall not apply to this Contract. The provisions in special conditions 26 (Changes) and 27 (Change in Law) shall apply.  |
| GC17.1 and 17.2 | Conditions 17.1 and 17.2 shall not apply to this Contract.  |
| GC17.4 |  Condition 17.4.1 shall be amended to read:“If at any time the aggregate undisputed amount properly due to the Provider from any Commissioner exceeds £100,000 and full payment is not made within one hundred and twenty (120) Operational Days of receipt of written notice from the Provider referring to this GC17.4 and requiring payment to be made.”Condition 17.4.2 shall be amended to read:“if the Provider has terminated its role under the Alliance Agreement under the provisions of Clause 12.6 of the Alliance Agreement in accordance with its terms.” |
| GC26 | Condition GC26 shall not apply to this Contract. The provisions in special condition 10 (Prevention Against Bribery and Corruption) shall apply.  |
| GC30 | Condition 30.1 shall be amended to read: “This Contract and the Alliance Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Contract, except for any contract entered into between the Co-Ordinating Commissioner and the Provider to the extent that it relates to the same or similar services and is designed to remain effective until the Service Commencement Date.”  |
| Event of Force Majeure | The definition of Event of Force Majeure shall be replaced with the following wording: “means the occurrence after the Effective Date of:1. war, civil war, armed conflict, rebellion or terrorism;
2. nuclear, chemical or biological contamination unless in any case the Party claiming the benefit of relief (or a Provider Related Party or a Co-Ordinating Commissioner Related Party as the case may be) is the source or cause of the contamination;
3. lightning, earthquake, fire, explosions, flood, storm or extreme weather conditions; or
4. pandemic or epidemic,

which directly causes any Party to be unable to comply with all or a material part of its obligations under this Contract, unless occurrence of any of the events listed in paragraphs (a)-(c) (above) are caused by the act or omission of any of the Parties.” |
| SC6 | Condition 6 shall not apply to this Contract. |
| SC36 | Condition 36.22 shall not apply under this Contract. The provisions set out in Schedule 3 of these Particulars shall apply to Services provided to the Co-Ordinating Commissioner. |

In witness whereof this Contract has been signed by the Parties hereto and is intended to be and is hereby delivered as a Deed on the day and year first above written.

***[Execution blocks to be inserted]***

|  |
| --- |
| **SERVICE COMMENCEMENT AND CONTRACT TERM** |
| **Effective Date***See GC2.1* | **The date of this Contract** |
| **Expected Service Commencement Date***See GC3.1* | **[INSERT]** |
| **Longstop Date***See GC4.1* | **[INSERT]** |
| **Geographical Zone** | means [●] which covers those areas in Cornwall with the following post codes: [●]; |
| **Contract Term** | means, subject to the earlier termination of this Contract in accordance with its terms, a period of three (3) years from the Service Commencement Date. |
| **Co-Ordinating Commissioner option to extend Contract Term***See Schedule 1C, which applies only if YES is indicated here* | **Yes** |
| **Not Used.** |  |
| **SERVICES** |
| **Service Categories** | **Indicate all categories of service which the Provider is commissioned to provide under this Contract.** *Note that certain provisions of the Service Conditions and Annex A to the Service Conditions apply in respect of some service categories but not others.* |
| **Continuing Healthcare Services (including continuing care for children) (CHC)** |  |
| **Community Services (CS)** | YES |
| **Diagnostic, Screening and/or Pathology Services (D)** |  |
| **End of Life Care Services (ELC)** | YES |
| **Mental Health and Learning Disability Services (MH)** | YES |
| **Patient Transport Services (non-emergency) (PT)** |  |
| **GOVERNANCE AND REGULATORY** |
| **Provider’s Nominated Individual** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Information Governance Lead** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Data Protection Officer (if required by Data Protection Legislation)** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Caldicott Guardian** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Senior Information Risk Owner** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Accountable Emergency Officer** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Safeguarding Lead (children) / named professional for safeguarding children** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Safeguarding Lead (adults) / named professional for safeguarding adults** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Child Sexual Abuse and Exploitation Lead** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Mental Capacity and Liberty Protection Safeguards Lead** | **[ ]****Email: [ ]****Tel: [ ]** |
| **Provider’s Freedom To Speak Up Guardian(s)** | **[ ]****Email: [ ]****Tel: [ ]** |
| **CONTRACT MANAGEMENT** |
| **Addresses for service of Notices***See GC36* | **Co-Ordinating Commissioner: [ ]****Address: [ ]****Email: [ ]****Commissioner: [ ]****Address: [ ]****Email: [ ]****Provider: [ ]****Address: [ ]****Email: [ ]** |
| **Commissioner Representative(s)***See GC10.2* | **[ ]****Address: [ ]****Email: [ ]****Tel: [ ]** |
| **Provider Representative***See GC10.2* | **[ ]****Address: [ ]****Email: [ ]****Tel: [ ]** |

# SCHEDULE 1 – SERVICE COMMENCEMENT

**AND CONTRACT TERM**

1. **Conditions Precedent**

The Provider must provide the Co-Ordinating Commissioner with the following documents and complete the following actions:

| 1. Evidence of appropriate Indemnity Arrangements.
2. If the Provider is providing Regulated Care during the Contract Term under this Contract, evidence of registration from the Provider with CQC for Regulated Care.
3. If the Provider is providing Regulated Care during the Contract Term under this Contract, evidence of registration from the Provider of an office in Cornwall with CQC.
4. Delivery of an executed Alliance Agreement with the Provider covering the Services in the Geographical Zone.
5. Evidence from the Provider’s board of directors, or other governing body of the Provider (certified as true and accurate) approving the execution, delivery and performance of this Contract and in each case authorising a named person or persons or class of persons to execute and deliver each such document and any documents to be delivered pursuant to them.
6. Evidence of registration from the Provider with the Information Commissioner as a data controller in accordance with the Data Protection Legislation.
7. A completed NHS Data Security and Protection Toolkit self-assessment.
8. Evidence of the Provider Licence.
9. If the Provider is employing or engaging or intends to employ or engage overseas workers in the provision of the Services evidence of having a UK Sponsor Licence Rating, rated A by the Government.
 |
| --- |

1. **Extension of Contract Term**

In the event that the Alliance Agreement is extended pursuant to its terms, this Contract shall automatically extend for the same period, and the definition of Contract Term shall be interpreted accordingly.

# SCHEDULE 2 – THE SERVICES

1. **Service Specifications**

| **The Provider shall provide the Services in the Services Specification set out below, within the Geographical Zone.*****[Note to Tenderers: The Care Services Specification will be inserted here.]*** |
| --- |

**SCHEDULE 2 – THE SERVICES**

**Ai. Service Specifications – Enhanced Health in Care Homes**

Not applicable.

**SCHEDULE 2 – THE SERVICES**

1. **Indicative Activity Plan**

| Not applicable |
| --- |

1. **Essential Services (NHS Trusts only)**

| Not applicable |
| --- |

1. **Other Local Agreements, Policies and Procedures**

**2G.1 SPECIAL CONDITIONS**

1. **DEFINITIONS**
	1. The following definitions shall apply throughout the Particulars. Any defined terms not set out here, shall have the meanings set out in the General Conditions.

|  |  |
| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Action Plan”** | has the meaning given to it in special condition 30.3; |
| **“Actual Cost”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Actual Hours”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Additional Payment”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Adjustment Date”**  | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Admin Fee”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Adult Social Care Workforce Data Set”** | has the meaning given to it in the Service Specification;  |
| **“Affiliate”** | means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and “holding company” and “subsidiary” shall have the meaning given to them in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one (1) entity is an Affiliate of another, any transfer of shares by way of security or to a nominee of the transferor shall be disregarded; |
| **“Agency Staff”** | means those individuals registered with a staffing agency and engaged by the Provider to deliver the Services on a temporary basis and for the avoidance of doubt, the term “Staff” in this Contract shall also include “Agency Staff”; |
| **“Alleged New Employer”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Alliance Agreement”** | means the agreement between Cornwall Council, the Provider, [insert names] dated [INSERT] for the provision of an alliance for the delivery of home care services; |
| **“Alliance Providers”** | has the meaning given to it in the Alliance Agreement; |
| **“Alliance Tender”** | has the meaning given to it in the Alliance Agreement; |
| **“Allocated Care Packages”** | has the meaning given to it in the Alliance Agreement; |
| **“Alternative Provider”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Announcement Date”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Anti-Slavery Laws”**  | has the meaning given to it in special condition 8.2.1; |
| **“Assigned Employees”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Associated With”** | shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 and guidance published under it; |
| **“Bill”** | has the meaning given to it in the Alliance Agreement; |
| **“Care and Support Plan”** | means a Person’s Care Act 2014 compliant care and support plan which details the extent of the Services required to be delivered to meet that Person’s needs and outcomes provided by the Co-Ordinating Commissioner; |
| **“Care and Support Plan”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Care Package Change”** | means any change to the nature, extent or frequency of the Services to a Person under a Provider Care Package; |
| **“Care Package End Date”** | means the date a Provider Care Package expires as notified to the Provider by the Co-Ordinating Commissioner from time to time; |
| **“Care Package Payment”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Care Package”** | means the package of Services to be provided to an individual Person to meet the needs and outcomes set out in their Care and Support Plan; |
| **“Change Authorisation Notice”** | means the form used by the Parties to set out the agreed Change and which shall be substantially in the form of Appendix 3 to these special conditions which is signed by both the Parties; |
| **“Change Control Procedure”** | means the procedure for agreeing and implementing Changes as set out in special condition 26 (Changes); |
| **“Change in Law”** | means the coming into effect after the date of this Contract of:1. any new Law, other than any law which on the date of this Contract has been published:
	1. in a draft Bill as part of a Governmental Departmental Consultation Paper;
	2. in a Bill;
	3. in a draft statutory instrument;
2. any new Guidance; or
3. any applicable judgment of a relevant court of law which substantially and materially changes a binding precedent;
 |
| **“Change Request”** | means a written request for a Change which shall be substantially in the form of Appendix 2 to these special conditions; |
| **“Change”** | means any change to this Contract and/or the Services and/or the arrangements constituted by it but does not include a Care Package Change; |
| **“Charging Policy”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Code of Practice for International Recruitment”** | means the United Kingdom’s Code of Practice for International Recruitment which can be accessed at: [Code of practice for the international recruitment of health and social care personnel in England - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/code-of-practice-for-the-international-recruitment-of-health-and-social-care-personnel/code-of-practice-for-the-international-recruitment-of-health-and-social-care-personnel-in-england); |
| **“Commissioned Cost”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Commissioned Hours”** | means the number of hours the Co-Ordinating Commissioner reasonably expects it would take for a Provider to deliver the Services in respect of a Service Visit as set out in the Service Request and the Care and Support Plan; |
| **“Competition”** | has the meaning given to it in Clause 1.1. of the Alliance Agreement; |
| **“Continuing Care Package”** | means any Provider Care Package under which the Provider continues to deliver the Services after the expiry or earlier termination of the Contract; |
| **“Co-Ordinating Commissioner Safeguarding Policies”** | means the Co-Ordinating Commissioner’s internal standards, documents, guidance, policies and procedures in force or issued to the Provider from time to time; |
| **“Co-Ordinating Commissioner’s Policies”** | shall have the same meaning as the Council Policies in the Alliance Agreement; |
| **“Core Hourly Rate”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Corporate Payments Policy”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“CQC Inspector”** | means an inspector appointed by the CQC; |
| **“CQC”** | means the Care Quality Commission and any replacement thereof or successor thereof; |
| **“Crown”** | means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies; |
| **“DBS”** | has the meaning given to it in special condition 6.13.2.1; |
| **“Default Notice”** | has the meaning given to it in special condition 30.1; |
| **“Default”** | means any of the following:1. persistent breach of the Provider’s contractual obligations which, in the Co-Commissioner’s reasonable opinion, is capable of remedy; and/or
2. material breach of the Provider’s contractual obligations which, in the Co-Commissioner’s reasonable opinion, is capable of remedy;
 |
| **“ECM Data”**  | has the meaning given to it in special condition 17.1.1;  |
| **“ECM System”** | means the system implemented by the Provider for the purpose of recording ECM Data;  |
| **“ECM Visit Report”**  | means an evidence report of services delivered and recorded on the ECM System, generated by the ECM System; |
| **“ECM”** | means electronic call monitoring;  |
| **“Employee Information”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Employee Liability Information”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Employee List”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“E-referral Platform”** | has the meaning given to it in Clause 1.1. of the Alliance Agreement; |
| **“Ethical Recruiters List”** | means the list maintained by the National Health Service of those organisations which operate in accordance with the Code of Practice for International Recruitment which can be accessed at: <https://www.nhsemployers.org/articles/ethical-recruiters-list>;  |
| **“Exception Service Visit”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Exceptional Circumstance”** | means the occurrence during the Payment Period of an emergency change in circumstances including but not limited to; 1. attendance by medical professional, such as a general practitioner or paramedics;
2. a medical emergency; or
3. any other circumstances where additional tasks are undertaken to meet needs outside of the Care and Support Plan to safeguard the health and safety of the Person;
 |
| **“Final Employee List”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Financial Year”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“First Employee List”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Foreign Tax Evasion Offence”** | shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 and guidance published under it; |
| **“General Change in Law”** | means a Change in Law which is not a Specific Change in Law; |
| **“Health and Safety Accreditation”** | means [Health and Safety accreditation submitted by the Provider in its Tender to be inserted here.] |
| **“Impact Assessment”** | means a written assessment prepared by the Provider setting out the information required by special condition 26.7;  |
| **“Index”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“IPR Claim”** | means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided by the Provider (or to which the Provider has provided access) to the Co-Ordinating Commissioner in the fulfilment of its obligations; |
| **“ISP Expiry Date”** | means the Care Package End Date of the last remaining Continuing Care Package; |
| **“Modern Slavery Policy”** | means the Co-Ordinating Commissioner’s anti-slavery and human trafficking policy as updated by the Co-Ordinating Commissioner and notified to the Provider from time to time; |
| **“MSA Offence”** | has the meaning given to it in special condition 8.1.1.2; |
| **“New Care Package”** | has the meaning given to it in the Alliance Agreement; |
| **“New Provider”** | has the meaning given to it in the Alliance Agreement; |
| **“NHS Terms and Conditions”** | means the documents titled NHS Standard Contract 2023/24 General Conditions (Shorter Form) Version 1 March 2023 and NHS Standard Contract 2023/24 Service Conditions (Shorter Form) Version 1 March 2023 as shall be amended by the provisions of this Contract;  |
| **“Non-ECM Service Visit”** | has the meaning given to it in special condition 17.4.1;  |
| **“Operating Device”** | means any mobile device operating the ECM System;  |
| **“Operational Provider of Last Resort”** | has the meaning given to it in the Alliance Agreement; |
| **“Payment Period”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Payment Period”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Payment Request”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Performance Monitoring Workbook”** | means the Quarterly report completed by the Provider detailing the Provider’s performance of meeting the Provider KPIs, Provider KPI Targets and Performance Measures, the form of which shall be provided by the Co-Ordinating Commissioner prior to the Service Commencement Date; |
| **“Persistent Provider Performance Failure”** | means the failure of the Provider to implement any Provider Rectification Plan in accordance with its terms pursuant to special condition 24.11;  |
| **“Person Identifiable Data”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Persons”** | means a patient or service user for whom the Co-Ordinating Commissioner has a statutory responsibility and who receives Services commissioned pursuant to this Contract and all references to “Service Users” in the NHS Terms and Conditions shall be read as Persons; |
| **“Prevention Procedures”** | shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 and guidance published under it; |
| **“Prohibited Act”** | means:1. to directly or indirectly offer, promise or give any person working for or engaged by the Co-Ordinating Commissioner or a Co-Ordinating Commissioner’s Affiliates a financial or other advantage to:
	1. induce that person to perform improperly a relevant function or activity; or
	2. reward that person for improper performance of a relevant function or activity; or
2. committing any offence:
	1. under the Bribery Act 2010; or
	2. under legislation creating offences concerning fraudulent acts; or
	3. at common law concerning fraudulent acts,

in relation to this Contract or any other contract with the Co-Ordinating Commissioner or the Co-Ordinating Commissioner’s Affiliates; or1. defrauding, attempting to defraud or conspiring to defraud the Co-Ordinating Commissioner, the Co-Ordinating Commissioner’s Affiliates and/or the Crown;
 |
| **“Provider Associated Person”** | means all or any of the following:1. persons Associated With any of the Alliance Providers (“**Provider Associates**”); or
2. persons Associated With the Provider Associates,

in each case, involved in performing the Services for or on behalf of the Provider in connection with the Services, this Contract and the Alliance Agreement; |
| **“Provider Care Package”** | means those Allocated Care Packages which have been allocated to the Provider pursuant to Schedule 5 (Ordering Procedure) of the Alliance Agreement; |
| **“Provider Compliance Certificate”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Provider Fragility”** | has the meaning given to it Clause 1.1. of the Alliance Agreement; |
| **“Provider KPI Targets”** | means the minimum level of performance for a Provider KPI which is required by the Co-Ordinating Commissioner as set out against the relevant Provider KPI in Appendix 1 to these special conditions; |
| **“Provider KPIs”** | means the key performance indicators annexed at Appendix 1 of these special conditions; |
| **“Provider Led Review”**  | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Provider Payment Failure”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Provider Payment Portal Date”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Provider Payment Portal”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Provider Performance Failure”** | has the meaning given to it in special condition 24.4; |
| **“Provider Performance Measures”** | means the performance measures annexed at Appendix 1 of these special conditions; |
| **“Provider Rectification Notice”** | has the meaning given to it in special condition 24.11; |
| **“Provider Rectification Plan”** | has the meaning given to it in special condition 24.11; |
| **“Provider Related Party”** | means the Provider’s Affiliates, any sub-contractors and agents and its or their directors, officers, employees and workmen in relation to the provision of the Services and “**Provider Related Parties**” shall be interpreted accordingly; |
| **“Provider’s Safeguarding Policy”** | has the meaning given to it in special condition 6.10; |
| **“QAR Action Plan”** | has the meaning given to it in special condition 29.2;  |
| **“Quality Assurance Review”** | has the meaning given to it in the Service Specification;  |
| **“Quarter”** | means every three (3) calendar months ending on 30 June, 30 September, 31 December and 31 March, and “**Quarterly**” shall be interpreted accordingly; |
| **“Real Living Wage”** | the rate for the basic hourly wage as updated and published annually by the Living Wage Foundation, Citizens UK registered charity number 1107264 (or any relevant replacement organisation) on its website ([www.livingwage.org.uk](http://www.livingwage.org.uk)); |
| **“Real Time”** | means, in relation to recording the time taken to deliver or perform the Services during a Service Visit, that such time recording is inputted onto the ECM System at the time the Services are being delivered or performed; |
| **“Registered Manager”** | has the meaning given to it in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; |
| **“Regulated Activity Provider”** | has the meaning given to it in the SVGA 2006; |
| **“Regulated Activity”** | has the meaning given to it in the SVGA 2006; |
| **“Regulated Care”** | has the meaning given to it in the Alliance Agreement; |
| **“Regulations”** | means the Public Contracts Regulations 2015 (as amended); |
| **“Relevant Person”** | means any employee, agent, servant, or representative of the Co-Ordinating Commissioner or the Co-Ordinating Commissioner’s Affiliates; |
| **“Relevant Transfer”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Remedial Period”** | has the meaning given to it in special condition 30.1.3; |
| **“Repeat Provider Performance Failure”** | means where the same Provider Performance Failure occurs in two (2) consecutive Quarters (and, for clarity, the Provider Performance Failure occurring in the second (2nd) consecutive Quarter shall be deemed a Repeat Provider Performance Failure; |
| **“Replacement Provider”** | has the meaning given to it in the Alliance Agreement; |
| **“Retainer Fee”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Retainer Period”** | means the period during which the Provider is required to keep open a Care Package where a Person has an unplanned admittance to hospital or unplanned respite in order to be entitled to a Retainer Fee, such periods being set out in paragraph 8.2 of Schedule 3C (Local Prices) of the Particulars. |
| **“Return Date”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Returning Employees”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Service Provision Change”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Service Request”** | has the meaning given to it in Schedule 5 (Ordering Process) of the Alliance Agreement; |
| **“Service Request”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“Service Visit”** | means a visit by a Staff member to a Person’s home for the purposes of delivering the Services;  |
| **“Specific Change in Law”** | means any Change in Law which specifically refers to the provision of services the same or similar to the Services and which was not foreseeable at the date of this Contract; |
| **“SpoLR”** | has the meaning given to it in the Alliance Agreement; |
| **“Step-In Action”** | has the meaning given to it in the Alliance Agreement; |
| **“Strategic Meeting”** | has the meaning given to it in Schedule 10 (Monitoring and Reporting) of the Alliance Agreement; |
| **“Strategic Provider”** | has the meaning given to it in the Alliance Agreement; |
| **“Subcontracting”** | has the meaning given to it in Clause 49 (Subcontracting) of the Alliance Agreement; |
| **“Support Plan”** | has the meaning given to it in the Service Specification; |
| **“Suspension Notice”** | has the meaning given to it in special condition 30.6; |
| **“Suspension”** | means the suspension of the Provider from receiving any New Care Packages pursuant to the Alliance Agreement; |
| **“SVGA”** | means the Safeguarding Vulnerable Groups Act 2006; |
| **“Terminated Service”** | has the meaning given to it in Schedule 8 (TUPE) of the Particulars; |
| **“Time Critical Service Visit”**  | means a Service Visit where there is risk to the health, safety or welfare of any person if the time critical nature of any matter or action is not undertaken, or otherwise satisfied by the specified time; |
| **“UK Sponsor Licence”** | means the applicable licence granted by UK Visas and Immigration for employing individuals from outside the UK, as further detailed in the UK Government guidance below and as amended from time to time;<https://www.gov.uk/uk-visa-sponsorship-employers>  |
| **“UK Sponsorship Licence Rating”** | means the rating allocated to the UK Sponsor Licence by UK Visas and Immigration, as further detailed in the UK Government guidance below and amended from time to time;<https://www.gov.uk/uk-visa-sponsorship-employers> |
| **“UK Tax Evasion Offence”** | shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 and guidance published under it;  |
| **“UK Visas and Immigration”** | means the UK visas and immigration department that forms part of the Home Office; |
| **“UNISON Ethical Care Charter”** | means the charter published by UNISON and accessible at: <https://www.unison.org.uk/care-workers-your-rights/the-ethical-care-charter/>; |
| **“Urgent Default”** | means any of the following:1. persistent breach of the Provider’s contractual obligations which, in the Co-Commissioner’s reasonable opinion, is not capable of remedy;
2. material breach of the Provider’s contractual obligations which, in the Co-Commissioner’s reasonable opinion, is not capable of remedy;
3. if a Provider is in Business Failure;
4. the Provider has been issued with a CQC warning notice;
5. the Provider is employing or engaging overseas workers in the provision of the Services and its UK Sponsor Licence is downgraded from A-Rating to B-Rating by the Government;
6. the Provider’s CQC rating is inadequate; and
7. the Provider does not have a Registered Manager in post for more than twenty eight (28) days;
 |
| **“Variable Travel Rate”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“VAT”** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; |
| **“Week”** | has the meaning given to it in Schedule 3C (Local Prices) of the Particulars; |
| **“WHO Global Code of Practice on the International Recruitment of Health Personnel”** | means the World Health Organisation’s Global Code of Practice on the International Recruitment of Health Personnel which can be accessed here: <https://www.who.int/publications/i/item/wha68.32>; and |
| **“Workforce Strategy”** | means the Co-Ordinating Commissioner’s workforce strategy for 2023-2027 and as updated from time to time which shall assess and analyse factors impacting on the care sector, understand requirements and concerns, and provide a framework for meeting those challenges. |

* 1. References to special conditions are to the special conditions set out in this section 2G.1 (Special Conditions) of Schedule 2 (Services) of the Particulars.
1. **TERM AND EXPIRY**
	1. The Contract Term shall be, subject to the earlier termination of this Contract in accordance with its terms and extension pursuant to Schedule 1C of these Particulars, a period of three (3) years from the Effective Date.
	2. The Expiry Date for the purposes of GC2.2 shall be the ISP Expiry Date as defined in special condition 2.1 above.
2. **DELIVERY OF THE SERVICES**
	1. This Contract governs the provision of the Services by the Provider under each Provider Care Package.
	2. The Provider shall provide and perform the Services under each Provider Care Package in compliance with the requirements of the Alliance Agreement and this Contract.
	3. The Provider shall comply with its obligations under this Contract for the duration of the Contract Term, including (without limitation):
		1. compliance with the requirements of the Service Specifications;
		2. the Provider shall be responsible for obtaining and maintaining all Consents in relation to the performance of the Services and this Contract.
	4. The Provider shall:
		1. provide or procure all resources required in connection with and for the purposes of performing the Services, whether of a temporary or permanent nature;
		2. ensure that all activities, operations and other things done, all equipment used, and all methods adopted in connection with and for the purposes of performing the Services are sufficient, safe and fit for purpose; and
		3. ensure, where any time period or deadline is specified in this Contract for the provision of the Services or any part thereof, that all reasonable endeavours are used by the Provider to ensure that such time period is complied with or such deadline is met.
	5. The Provider shall perform its obligations under this Contract, including those in relation to the Services, in accordance with:
		1. the Services Specifications;
		2. the Alliance Tender;
		3. Law (including, for the avoidance of doubt, all standards required by the Health and Social Care Act 2008 in respect of CQC registration and all relevant provisions of the Care Act 2014 together with all subordinate legislation made the Act and all legal obligations in the fields of environmental, social or labour law);
		4. Good Practice;
		5. reasonable care and skill;
		6. Guidance;
		7. all Consents;
		8. the Provider KPIs, Provider KPI Targets and Provider Performance Measures;
		9. the carbon reduction obligations set out in the Service Specification, the Provider KPIs and the Alliance Tender and the overarching obligation for each Provider to become carbon neutral before 2025
		10. the Caldicott Principles; and
		11. the Co-Ordinating Commissioner’s Policies,
	6. The Provider shall deliver the Services efficiently with optimum use of resources and in a manner which represents value for money for the Co-Ordinating Commissioner.
	7. The Provider shall not provide any Regulated Care under the provisions of this Contract unless the Provider is registered with the CQC for the provision of Regulated Care and has an office registered with the CQC in Cornwall.
	8. The Provider shall comply with and maintain policies to ensure that it and all Sub-Contractors comply with their and the Co-Ordinating Commissioner’s statutory obligations under the equal opportunities legislation from time to time in force, such obligations to include, for the avoidance of doubt:
		1. assisting the Co-Ordinating Commissioner with compliance with its and their duties under Part 11 of the Equality Act 2010; and
		2. assisting the Co-Ordinating Commissioner with compliance with any equality scheme in respect of all “Protected Characteristics” (as defined in the Equality Act 2010) as may reasonably and expressly be directed by the Co-Ordinating Commissioner.
	9. The Provider shall not, and shall use its best endeavours to procure that neither any Sub-contractor (if applicable) nor any employee or worker or agent of the Provider or any Sub-contractor (if applicable) shall, commit any act or omission of unlawful discrimination of any form against or in relation to any person.
	10. If in relation to the provision of the Services a finding of unlawful discrimination is made by any court or tribunal against an the Provider or any Sub-contractor (if appliable), the Provider shall:
		1. inform the Co-Ordinating Commissioner of this finding promptly upon becoming aware of it;
		2. take all reasonable appropriate steps to prevent repetition of the unlawful discrimination; and
		3. reimburse the Co-Ordinating Commissioner on demand for any Losses incurred in connection with any such investigations or proceedings.
	11. The Provider shall provide suitable training to its Staff in relation to equality, diversity and human rights throughout the Contact Term.
	12. The Provider shall ensure that its complaints process includes an option to record complaints relating to equality, diversity, human rights, harassment and discrimination through the Contract Term.
3. **REPRESENTATIVES**
	1. In accordance with Clause 15 (Representatives) of the Alliance Agreement, each Party has appointed a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract, such persons being identified as the Provider Representative and Commissioner Representative in these Particulars.
4. **STAFFING MATTERS**
	1. In addition to the requirements of GC5, the Provider shall:
		1. pay its Staff the Real Living Wage in accordance with special condition 7 (Real Living Wage) below;
		2. support the Co-Ordinating Commissioner in delivering the Co-Ordinating Commissioner’s Workforce Strategy;
		3. provide suitable protections for high standards in relation to international recruitment;
		4. comply with the UNISON Ethical Care Charter; and
		5. feed into the Adult Social Care Workforce Data Set.
	2. The Provider shall:
		1. provide a sufficient number of supervisory staff to ensure that any Staff engaged in the provision of the Services are at all times adequately supervised and trained and properly perform their duties to the standards set out in this Contract;
		2. employ at all times an adequate number of sufficiently qualified, certified, skilled and experienced Staff (including apprentices) to provide the Services in order to ensure adequate support for Persons in accordance with Good Practice and the Services Specifications;
		3. ensure that a sufficient reserve of Staff is available to provide the Services during Staff holidays or absence through sickness or any other cause;
		4. be responsible for all remuneration, benefits, entitlements and outgoings in respect of all Staff, including (without limitation) all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise and the Provider shall indemnify and keep the Co-Ordinating Commissioner indemnified from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Co-Ordinating Commissioner is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or liability or responsibility to HM Revenue and Customs as an employer of the Staff whether during the Contract Term or arising from termination or expiry of this Contract;
		5. ensure that its Staff perform their duties in as orderly, caring and sensitive a manner as may reasonably be practicable having regard to the nature of the duties being performed by them and shall ensure that its Staff and other employees (as applicable) are aware of and comply with the contents of this Contract and the Alliance Agreement and specific instructions issued to them from time to time by a Co-Ordinating Commissioner or any other agency responsible for the care of Persons;
		6. employ or cause to be employed in the performance of the Services only such persons who are medically fit as appropriate for their specific responsibilities and duties (subject to the Provider’s duty to make reasonable adjustments under the Equality Act 2010), careful and competent in the execution of their duties and either appropriately trained, skilled and experienced in their professions and vocations, or, in the case of trainees, properly supervised;
		7. remove as soon as reasonably practicable Staff from the provision of the Services in respect of a Person where the Co-Ordinating Commissioner in its absolute discretion considers such Staff’s continuing delivery of Services to be detrimental to the general well-being of any Person, following a request by the Co-Ordinating Commissioner which is supported by evidence (in reasonable detail) of the same not hold the Co-Ordinating Commissioner liable to the Provider or to any member of Staff of the Provider in respect of any claims, proceedings, loss or damages whatsoever arising as a result of or in connection with the removal by the Provider of any member of Staff and the Provider shall indemnify and keep indemnified the Co-Ordinating Commissioner against any Losses arising from the same; and
		8. instruct all its Staff that respect shall be accorded by them towards all Persons and their relatives and members of the public with whom they have contact.
	3. The Provider shall ensure it has systems in place to effectively monitor the work of its Staff and shall provide evidence of such systems to the Co-Ordinating Commissioner whenever the Co-Ordinating Commissioner reasonably requests.
	4. The Provider shall ensure that:
		1. so far as is possible, Persons receive delivery of the Services by the same members of staff throughout the course of their Care Package; and
		2. each Person is aware of which Staff will be delivering the Services under their Care Package and, if sickness or other events prevent the usual Staff from attending, the Provider shall make appropriate replacement arrangements and, where possible, notify the Person of the alternative arrangements in advance.

***International Recruitment***

* 1. The Provider shall at all times comply with the Law and all guidance in place from time to time relating to the recruitment of individuals from overseas, including but not limited to:
		1. the WHO Global Principles for Ethical International Recruitment;
		2. the LGA Overseas Recruitment Bite-Size Guide for Social Care Providers in England; and
		3. the Code of Practice for the International Recruitment of Health and Social Care Professionals.
	2. In the event that a Provider recruits, employs or engages individuals from overseas it shall at all times:
		1. hold a valid UK Sponsor Licence;
		2. have a CQC registered local office in Cornwall;
		3. adopt an ethical recruitment practice in accordance with the Code of Practice for the International Recruitment of Health and Social Care Professionals;
		4. comply with the WHO Global Principles for Ethical International Recruitment;
		5. comply with the LGA Overseas Recruitment Bite-Size Guide for Social Care Providers in England;
		6. carry out appropriate due diligence in respect of any agency it uses to complete the process of recruiting individuals from overseas;
		7. ensure that it does not contract, use or otherwise engage any such agency based in the UK if such agency charges a candidate directly for recruitment fees for their services.
	3. The Provider shall not recruit, employ or engage any individual in the provision of the Services from outside of the UK unless it is on the Ethical Recruiters List.
	4. The Provider shall notify the Co-Ordinating Commissioner immediately if:
		1. it or any Group Company has its UK Sponsor Licence Rating downgraded to a B-rating;
		2. any individual within its organisation or any Group Company (including but not limited to directors, trustees, non-executive directors, board members and management staff) has its UK Sponsor Licence Rating downgraded to a B-rating;
		3. it or any Group Company has, or has previously had, a UK Sponsor Licence suspended or revoked by the Home Office; and/or
		4. any individual within its organisation or any Group Company (including but not limited to directors, trustees, non-executive directors, board members and management staff) has or has previously had, a UK Sponsor Licence suspended or revoked by the Home Office whilst working within its organisation and/or a Group Company and/or an alternative organisation.

***Safeguarding***

* 1. The Provider shall use its best endeavours to ensure that Persons are safeguarded from any form of harm, abuse, neglect or exploitation (whether physical, financial psychological or sexual) through intended or negligent acts or omissions of the Provider and/or its Staff.
	2. On or before the Service Commencement Date, the Provider shall put or have in place a policy and practice designed to safeguard the wellbeing of Persons (the “**Provider’s Safeguarding Policy**”). The Provider’s Safeguarding Policy must:
		1. comply with all Law and Guidance relating to the safeguarding of children and/or adults at risk;
		2. comply with all of the Co-Ordinating Commissioner’s Safeguarding Policies as notified to the Provider from time to time and provide an equivalent level of protection as the Co-Ordinating Commissioner’s Safeguarding Policies;
		3. actively encourage the immediate reporting by Staff of any allegation, suspicion, incident or risk or incident of harm, neglect or abuse (whether physical, financial, psychological or sexual) of any individual affected by the Services, whether the Person or otherwise, to the appropriate representative of the Co-Ordinating Commissioner (as notified to the Provider from time to time).
	3. The Provider and all Staff shall comply with the Provider’s Safeguarding Policy at all times.
	4. Where:
		1. allegations of abuse towards any individual affected by the Services, whether the Person or otherwise, by a person other than the Provider or its Staff are made or where the Provider or any Provider Related Party suspects abuse is taking place towards an individual; and/or
		2. allegations of abuse towards any individual affected by the Services, whether the Person or otherwise are made against a member of Staff or where the Provider suspects a member of Staff of being guilty of abusing an individual; and/or
		3. where the Provider believes that an adult with care and support needs or a child is suffering or is likely to suffer significant harm,

the Provider shall:

* + 1. immediately take all action as necessary to ensure the safety and wellbeing of the Person, including carrying out a risk assessment and, as applicable and where appropriate, suspending and/or dismissing the relevant Staff member; and
		2. notify the CQC Inspector and the appropriate representative of the Co-Ordinating Commissioner (as notified to the Provider from time to time) immediately and in any event within one (1) Operational Day of the Provider becoming aware of such allegations and/or suspecting abuse is taking place and/or suspecting harm is occurring or likely to occur.
	1. The Provider shall:
		1. appoint an individual of sufficient seniority to have overall responsibility for and supervision of the implementation and monitoring of the Provider’s Safeguarding Policy;
		2. where the Provider is a Regulated Activity Provider (as defined by the SVGA 2006) with ultimate responsibility for the management and control of the Regulated Activity (as defined by the SVGA 2006) provided under this Agreement and for the purposes of the SVGA 2006, the Provider shall:

* + - 1. comply with all of its obligations under the SVGA 2006 including without limitation information sharing, Disclosure and Barring Service ("**DBS**", as defined by the SVGA 2006) referral obligations and checking that a person is subject to monitoring;
			2. in accordance with the SVGA 2006, refer information about any person providing the Regulated Activity to the DBS where it removes permission for such person to provide the Services (or would have, if such person had not otherwise ceased to provide the Services) because, in its opinion, such person has harmed or poses a risk of harm to a recipient of the Services;
		1. ensure that all Staff are subject to a valid enhanced disclosure check undertaken through the DBS;
		2. ensure that all Staff involved in the delivery of Regulated Activities (as currently defined by the Safeguarding Vulnerable Groups Act 2006 and as amended by the Protection of Freedoms Act 2012) are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the two DBS "barred lists" for adults and where services are being delivered to children, the DBS “barred list” for children;
		3. ensure that all Staff who have lived and/or worked abroad for a period of three (3) months or more during the last five (5) years and are involved in the delivery of the Services have a valid overseas check conducted in accordance with applicable DBS guidance;
		4. record, monitor the level and validity, and where necessary update the checks under this special condition 6.13 for each member of Staff, including any Agency Staff;
		5. immediately provide the Co-Ordinating Commissioner with all information that the Co-Ordinating Commissioner may reasonably require to enable the Co-Ordinating Commissioner to verify that it has satisfied its obligations under these special condition 6.9 to 6.16 (inclusive) and immediately inform the Co-Ordinating Commissioner if there is any reason to believe that any are not being complied with in relation to the Services;
		6. not employ, use the services of, or otherwise engage any person who is in any way barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services or who may otherwise present a risk to a recipient of the Services;
		7. comply with all guidance issued by the DBS as applicable and as amended from time to time; and
		8. ensure that appropriate and valid DBS certificates are held at the point of checking references of potential new Staff;
		9. ensure that appropriate and valid DBS certificates are held at the point of appointment of Staff to a new role within its organisation;
		10. ensure that any disclosures of relevant offences within its organisation have been investigated and appropriate action taken;
		11. make referrals to the DBS as and when required by Law; and
		12. provide Staff with regular and appropriate training in relation to the safeguarding of Persons.
	1. The Provider shall operate a recruitment and ongoing Staff monitoring procedure which implements the Co-Ordinating Commissioner’s safe recruitment and disciplinary standards, complies with Law relating to the safeguarding of children and/or adults with care and support needs and ensures the protection of Persons. Such procedure shall include but not be limited to:
		1. use of an appropriate application form;
		2. face to face interviews;
		3. checking self-declaration forms for relevancy to the role;
		4. checking references before confirming appointment;
		5. checking that appropriate and valid disclosure and barring service certificates are held at the point of checking references of potential new Staff;
		6. checking that appropriate and valid disclosure and barring service certificates are held at the point of appointment of Staff to a new role within its organisation;
		7. a probationary and supervision period for new Staff;
		8. conducting personal development reviews;
		9. continually monitoring conduct; and
		10. conducting regular risk assessments.
	2. The Provider warrants that at all times for the purposes of this Agreement it is appropriately registered in relation to all persons who are or will be employed or engaged by the Provider in the provision of the Services, and that it has no reason to believe that any such person is barred from the provision of the Services in accordance with the provisions of the SVGA 2006 and any regulations made thereunder.
	3. The Provider acknowledges that Co-Ordinating Commissioner may, acting in accordance with the SVGA 2006, disclose information in relation to an employee where required to do so by the DBS without consultation with the Provider.
1. **REAL LIVING WAGE**
	1. Without prejudice to any other provision of this Contract, the Provider shall (and shall procure that each Sub-Contractor shall):
		1. ensure that none of its employees engaged in the provision of the Services be paid less than the Real Living Wage as appropriate to the location of their workplace;
		2. provide to the Co-Ordinating Commissioner such information concerning the payment of the Real Living Wage as the Co-Ordinating Commissioner or its nominees may reasonably require from time to time; and
		3. cooperate and provide all reasonable assistance in monitoring the effect of the Real Living Wage in order to establish that the obligations in this special condition 7 (Real Living Wage) have been complied with.

For the avoidance of doubt the Provider shall implement the annual increase in the rate of the Real Living Wage in line with their existing salary review date and in any case not later than 1st April in the year following the publication of the increased rate of the Real Living Wage.

* 1. The Co-Ordinating Commissioner reserves the right to audit (acting by itself or its nominee(s)) the provision of the Real Living Wage to Staff.
1. **MODERN SLAVERY**
	1. The Provider undertakes, warrants and represents throughout the Contract Term that:
		1. neither the Provider nor any of its officers, employees, agents or Sub-Contractors has:
			1. committed an offence involving slavery and human trafficking anywhere in the world;
			2. committed an offence under the Modern Slavery Act 2015 (a “**MSA Offence**”);
			3. been the subject of any investigation, inquiry or enforcement proceedings by any governmental administrative of regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking, including any MSA Offence or prosecution under the Modern Slavery Act 2015;
			4. become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
			5. been listed or is listed by any Government agency as being debarred, suspended, proposed for suspension or debarment or otherwise ineligible for participation in any public sector procurement programmes or other public sector contracts including, without limitation, any exclusion under Regulation 57 of the Regulations.
	2. In performing its obligations under the Contract, the Provider shall (and shall procure that each Sub-Contractor shall):
		1. comply with all applicable anti-slavery and human trafficking Laws and codes from time to time in force, including, but not limited to, the Modern Slavery Act 2015 (“**Anti-Slavery Laws**”);
		2. comply with the Modern Slavery Policy;
		3. not engage in any activity, practice or conduct that would constitute an MSA Offence;
		4. implement due diligence and risk assessment procedures for its own suppliers, Sub-Contractors and other participants in its supply chains, to ensure that they comply with the standards laid out in the Modern Slavery Policy and to ensure that there is no slavery or human trafficking or forced labour in its supply chains;
		5. notify the Co-Ordinating Commissioner immediately in writing if it becomes aware or has reason to believe that it, or any of its Staff have breached or potentially breached any of the obligations under this special condition 8 (Modern Slavery). Any notice under this special condition 8.2.5 shall set out full details of the circumstances concerning the breach or potential breach of the Provider’s obligations;
		6. ensure that either:
			1. its Provider’s Safeguarding Policy include a modern slavery and human trafficking policy position; or
			2. it has a standalone modern slavery and human trafficking policy,

which includes how practices will be implemented and monitored and reviewed and how Staff, Persons and other stakeholders can raise areas of concern, such policy position or policy to align with the Modern Slavery Policy; and

* + 1. prepare and submit to the Co-Ordinating Commissioner within ten (10) Operational Days of the end of each Contract Year an annual slavery and human trafficking report setting out the steps the Provider has taken to ensure that slavery and human trafficking is not taking place in connection with the delivery of the Services.
	1. The Provider shall:
		1. if the Co-Ordinating Commissioner reasonably suspects the Provider of breach of this special condition 8 (Modern Slavery), permit the Co-Ordinating Commissioner and its third party representatives to have access to and take copies of any records and any other information at any Provider’s premises and to meet with the Staff to audit the Provider’s compliance with its obligations under this special condition 8 (Modern Slavery); and
		2. implement annual audits of its compliance and its Sub-Contractors’ compliance with the Modern Slavery Policy and the Anti-Slavery Laws, either directly or through a third party auditor. The first set of audits shall be completed no less than the date falling twelve (12) months from the Service Commencement Date.
	2. The Provider shall:
		1. implement a system of training for its employees and Sub-Contractors to ensure compliance with the Modern Slavery Policy and Anti-Slavery Laws, such training to align with the Government’s training approach as set out at <https://www.gov.uk/government/collections/modern-slavery>; and
		2. keep a record of all training offered and completed by its employees and Sub-Contractors to ensure compliance with the Modern Slavery Policy and Anti-Slavery Laws and shall make a copy of the record available to the Co-Ordinating Commissioner on request.
	3. The Provider shall indemnify the Co-Ordinating Commissioner against any Losses incurred by the Co-Ordinating Commissioner as a result of any breach of this special condition 8 (Modern Slavery) by the Provider.
1. **ANTI-TAX EVASION**
	1. The Provider shall not, and shall use all reasonable endeavours to ensure that the Provider Associated Persons shall not, solicit or engage with or take steps to solicit or engage with any person Associated With the Co-Ordinating Commissioner to facilitate the commission of a UK Tax Evasion Offence or a Foreign Tax Evasion Offence in connection with the performance of the Services and this Contract and the Alliance Agreement.
	2. The Provider shall, and shall procure that the Provider Associated Persons shall, pay, in full and in a timely manner, all taxes due and payable relating to all monies, remuneration, profit and value received or payable by the Provider or the Provider Associated Persons in connection with the performance of the Services and this Contract and the Alliance Agreement.
	3. The Provider shall ensure that it and all relevant Provider Associated Persons have in place such Prevention Procedures as is reasonable in all the circumstances to expect such persons to have in place to prevent any breach of this special condition 9 (Anti-Tax Evasion). Such Prevention Procedures shall set out as a minimum:
		1. the procedures that each such person should follow if they are requested to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence;
		2. acceptable conduct in relation to engagement with customers, clients and Provider Associated Persons;
		3. risk assessments and due diligence procedures for identifying tax evasion facilitation risks in relation to customers and Provider Associated Persons; and
		4. the Provider’s procedures for taking action to inform the relevant enforcement bodies or regulatory authorities about requests to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence,

and the Provider shall provide the Co-Ordinating Commissioner on request with copies of these policies and procedures (and prompt notice of any material changes to the same from time to time).

* 1. The Provider shall ensure that all of the Provider Associated Persons involved in providing the Services or with this Contract or Alliance Agreement have been vetted and that due diligence has been undertaken to such standard or level of assurance as is reasonably necessary in relation to a person in that position in the relevant circumstances.
	2. The Provider shall maintain accurate and up to date records of:
		1. any requests to facilitate any UK Tax Evasion Offence or any Foreign Tax Evasion Offence made to the Provider or any Provider Associated Person in connection with the Services or with this Contract and/or the Alliance Agreement either in the United Kingdom or elsewhere;
		2. any action taken by the Provider to inform the relevant enforcement bodies or regulatory authorities that the Provider or any Provider Associated Person has been requested to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence (except to the extent that the Provider is prevented by Law from doing so);
		3. its compliance with its obligations under this special condition 9 (Anti-Tax Evasion) and all training and guidance provided to the Provider Associated Persons in respect of the obligations under this special condition 9 (Anti-Tax Evasion) and applicable Law for the prevention of tax evasion;
		4. the Provider’s monitoring of compliance by Provider Associated Persons with the applicable policies and procedures as required by special condition 9.4; and
		5. the measures that the Provider has taken in response to any incidence of suspected or actual tax evasion or facilitation of tax evasion or breach of this special condition 9 (Anti-Tax Evasion),

and shall allow the Co-Ordinating Commissioner access to such records or information on request.

1. **PREVENTION AGAINST BRIBERY AND CORRUPTION**
	1. The Provider shall not:
		1. offer or give, or agree to give, to the Co-Ordinating Commissioner or any Relevant Person any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract, or any other contract with the Co-Ordinating Commissioner;
		2. engage in and shall procure that all the Provider Related Parties or any person acting on the Provider’s behalf shall not commit any Prohibited Act.
	2. The Provider warrants, represents and undertakes to the Co-Ordinating Commissioner that it has not:
		1. in entering into this Contract breached the provisions of special condition 10.1; or
		2. paid commission or agreed to pay commission to the Co-Ordinating Commissioner or any Relevant Person in connection with this Contract; or
		3. entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to the Co-Ordinating Commissioner or any Relevant Person in connection with this Contract or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Co-Ordinating Commissioner before execution of this Contract.
2. **RECORDS**
	1. The Provider shall keep and maintain the Transaction Records for a period of six (6) years after the date of termination or expiry of this Contract.
3. **CANCELLATION, HAND BACK AND REALLOCATION OF CARE PACKAGES**
	1. The Co-Ordinating Commissioner shall be entitled to cancel a Care Package for any reason by giving no less than ten (10) Operational Days’ notice to the Provider. In such circumstances, the Provider shall be paid the Local Prices up until the end of the ten (10) Operational Day period. For the avoidance of doubt, where the Services being delivered under a Care Package are to cease prior to the end of the ten (10) Operational Days’ notice period, the Provider shall be paid the Local Prices up until the end of the ten (10) Operational Days’ notice period.
	2. Subject to special condition 12.3 below, the Provider shall be entitled to cancel a Care Package only in circumstances where the provisions of paragraph 8 of Schedule 3C (Local Prices) of these Particulars apply and it becomes apparent that the Person is unlikely to be fit for discharge by the end of the Retainer Period. In such circumstances, the Provider shall notify the Co-Ordinating Commissioner in writing as soon as reasonably practicable of becoming aware of the circumstances having arisen, and the Provider shall be paid the Retainer Fee up until the end of the Retainer Period.
	3. Either Party shall notify the other as soon as reasonably practicable where they become aware that a Person receiving care under a Provider Care Package dies, and the Provider shall be paid the Local Prices up until the date of the Person’s death.
	4. Where the Provider wishes to relinquish a Care Package for a reason other than that set out in special conditions 12.2 and 12.2 above, the provisions of Clause 10 (Ordering Procedure and Hand Back and Reallocation of Care Packages) of the Alliance Agreement shall apply.
4. **NOT USED**
5. **COTERMINATION WITH THE ALLIANCE AGREEMENT**
	1. Expiry of the Alliance Agreement shall not cause this Contract to terminate automatically unless notified in writing by the Co-Ordinating Commissioner to the Provider. If no such notification is provided, the Contract will end on the ISP Expiry Date once the Alliance Agreement has expired.
	2. This Contract shall automatically terminate where the Alliance Agreement is terminated pursuant to Clauses 38 (Termination for Alliance Default), Clause 40 (Termination for Continuing Force Majeure), or Clause 41 (Termination pursuant to the Public Contracts Regulations 2015) of the Alliance Agreement.
6. **TERMINATION: PROVIDER DEFAULT**
	1. It is acknowledged that the circumstances which give rise for a right for the Co-Ordinating Commissioner to terminate this Contract are set out in GC17.5. The obligations which shall be considered material obligations, the breach of which gives rise to a right to terminate for the purposes of GC17.5.4 include (without limitation):
		1. GC11.3 in respect of the obligation to procure and maintain Indemnity Arrangements;
		2. compliance with Data Protection Legislation pursuant to GC21;
		3. GC26 (Prohibited Acts);
		4. SC24.1 (NHS Counter-Fraud Requirements);
		5. SC32 (Safeguarding Children and Adults);
		6. special condition 8 (Modern Slavery);
		7. special condition 10 (Prevention Against Bribery and Corruption);
		8. special condition 17.3.2 (ECM System);
		9. special condition 18.4.1 (IPR Claim);
		10. special condition 24.18 (Performance Regime); and
		11. special condition 29.3 (Quality Assurance).
7. **REMOVAL OF SERVICE PROVIDER FROM THE ALLIANCE**
	1. Where this Contract is terminated pursuant to GC17.5 (Termination: Provider Default), the Provider shall automatically be removed from the Alliance Agreement pursuant to Clause 7 (Removal from the Alliance) of the Alliance Agreement.
8. **ECM SYSTEMS**
	1. The Parties acknowledge and agree that:
		1. electronic call monitoring is a process of recording the start time, the end time and the duration of Service Visits to all Persons under this Contract (“**ECM Data**”);
		2. an ECM System ensures that the ECM Data can be recorded in Real Time and is available for the Provider and the Co-Ordinating Commissioner to view and report on;
		3. the Provider shall ensure that the ECM Data is recorded on the ECM System from the Service Commencement Date;
		4. the ECM System shall be used by the Provider to generate an evidence report of Services delivered, recorded in Real Time, and submitted to the Co-Ordinating Commissioner as requested from time to time; and
		5. the ECM Data may be used to by the Co-Ordinating Commissioner:
			1. verify or audit the Provider’s invoices and/or Payment Requests including (without limitation) where the actual hours delivered deviate from the Commissioned Hours;
			2. monitor and manage the Provider’s performance, including (without limitation), its ability to meet the Provider KPIs and the Provider KPI Targets; and/or
			3. monitor the Provider’s compliance with the terms of this Contract.
	2. The Provider’s System Requirements
		1. The Provider will implement, connect, operate and use an ECM System in accordance with the Provider’s obligations at special condition 17.3 below.
		2. The Provider shall also implement, connect, operate and use an electronic rostering system to manage the rostering of Staff. The electronic rostering system shall either be implemented as part of the ECM System or be capable of interfacing with the ECM System in order to enable accurate recording of ECM Data and accurate reporting in accordance with this special condition 17 (ECM Systems).
		3. The Provider shall determine which ECM System software is operated, provided that the ECM System shall meet the requirements set out in this special condition 17 (ECM Systems), the NHS Data Security and Protection Toolkit and guidance provided by the Co-Ordinating Commissioner. Any ECM System that does not comply with these requirements shall not be acceptable to the Co-Ordinating Commissioner.
		4. This electronic rostering and ECM System and Operating Devices must have adequate security levels to meet the Data Protection Legislation taking into account the level of sensitivity of the data being held within or accessed through the ECM System or any Operating Device.
		5. The ECM System must have the ability to produce an ECM Visit Report in accordance with paragraphs 17.3.3 and 17.3.4 of this special condition 17 (ECM Systems).
	3. The Provider’s General Obligations
		1. The Provider shall ensure that an ECM System is implemented, connected and ready to use by the Service Commencement Date. From the Service Commencement Date, the Provider shall operate and use the ECM System in respect of all Service Visits and record the ECM Data.
		2. In the event the Provider has not implemented or connected and is not operating and using an ECM System from the Service Commencement Date, the Co-Ordinating Commissioner shall be entitled to treat this as a material breach which entitles the Co-Ordinating Commissioner to terminate pursuant to GC17.5.
		3. From the Service Commencement Date, the Co-Ordinating Commissioner may request from time to time that the Provider generates an ECM Visit Report which shall be submitted in a secure file format to be notified by the Co-Ordinating Commissioner via a secure transfer within seven (7) days from the Co-Ordinating Commissioner’s request. This ECM Visit Report may be used by the Co-Ordinating Commissioner to validate the Care Package Payments and invoices and/or Payment Requests.
		4. The ECM Visit Report must be run from the ECM System and contain information required by the Co-Ordinating Commissioner to validate requested Care Package Payments, including as a minimum, but not limited to: the Person’s identifiable number (as notified by the Co-Ordinating Commissioner), date, planned and actual Service Visit start and end times, duration of the Service Visit, carer name, any Exceptional Circumstances and the Real Time recording percentage as evidenced by the ECM System.
		5. The Provider shall provide all other information reasonably required by the Co-Ordinating Commissioner in connection with the ECM System and/or the ECM Data including (without limitation) Staff rotas.
	4. The Co-ordinating Commissioners’ Rights
		1. The Co-Ordinating Commissioner reserves the right, at its complete discretion, not to require the Provider to operate and use the ECM System in respect of any Service Visit (“**Non-ECM Service Visit**”) and will notify the Provider in writing of any exceptional circumstances which give rise to the Co-Ordinating Commissioner exercising this discretion.
		2. The Co-Ordinating Commissioner shall require the Provider to use the ECM System to support contingency arrangements in respect of Persons at times of emergency, including but not limited to severe weather conditions. At such times, the Provider shall work together with the Alliance Providers, subject always to the Data Protection Legislation, to identify vulnerable Persons and their location and to identify any Time Critical Service Visits that need to be conducted during such times. The Provider, working with the other Alliance Providers, shall, where appropriate, temporarily re-allocate the delivery of the Services pursuant to this Contract under the provisions of Clause 10 (Ordering Procedure and Hand Back and Reallocation of Care Packages) of the Alliance Agreement.
	5. Implementation Requirements
		1. The Provider shall ensure that the Staff are properly trained in the operation and the administration of the ECM System, and managed appropriately to ensure robust application of the ECM System.
		2. The Provider shall not use the ECM System, ECM Data or ECM Visit Report to:
			1. introduce any viruses, trojan horses, worms, time bombs, cancelbots, or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information;
			2. create any liability for the Co-ordinating Commissioner or cause the Co-ordinating Commissioner to lose (in whole or in part) the services of its suppliers;
			3. violate any law, statute, ordinance or regulation;
			4. infringe any copyright, patent, trademark, trade secret, or other proprietary right;
			5. access any data or system which the Provider is not authorised to access; or
			6. cause annoyance, inconvenience or needless anxiety.
	6. Operation of the ECM System and related obligations
		1. The Parties acknowledge and agree that an ECM System is able to show the actual length of each Service Visit and where the length of any Service Visit is more or less than the Commissioned Hours.
		2. In circumstances where the total hours delivered in a Payment Period exceed the Commissioned Hours for the same period due to an Exceptional Circumstance or where a Provider Led Review has been submitted, the reason must be either:
			1. where the Provider Payment Portal is being used to request payments pursuant to Schedule 3C (Local Prices), submitted via a *‘note viewable by the Council’* within the Provider Payment Portal at time of verifying the payment and:
				1. where the reason is due to an Exceptional Circumstance, the Provider must provide details of that Exceptional Circumstance, and start the note with *‘Exceptional Circumstance – [reason]’;*
				2. where a Provider Led Review has been submitted, the Provider must confirm the date the Provider Led Review was submitted, and start the note with ‘*PLR submitted – [date]’*; or
			2. where the Provider Payment Portal is not being used to request payments pursuant to Schedule 3C (Local Prices) of these Particulars, submitted in the supporting information with an invoice and:
				1. where the reason is due to an Exceptional Circumstance, the Provider must provide details of that Exceptional Circumstance in the supporting information, and start the note with ‘*Exceptional Circumstance – [reason]’*;
				2. where a Provider Led Review has been submitted, the Provider must confirm the date the Provider Led Review was submitted in the supporting information, and start the note with ‘*PLR submitted – [date]’*;
		3. If the Provider fails to comply with special condition 17.6.2, it shall lead to the charges being disputed by the Co-Ordinating Commissioner and may delay payment if not resolved promptly in accordance with Dispute Resolution .
		4. Where the Provider provides a satisfactory explanation in accordance with special condition 17.6.2 above, the Co-Ordinating Commissioner shall pay the Provider the Local Prices for the actual time taken to complete such Service Visits over the Payment Period.
		5. The Provider shall ensure that the Staff record ECM Data in Real Time at the point of care delivery on the ECM System.
		6. Where a Staff member is delayed from entering a Person’s home, the Service Visit start time will be deemed by the Provider to be the time that the member of Staff arrived at the Person’s home, preferably as recorded by mobile devices connected to the ECM System where relevant.
		7. In circumstances where ECM Data is not or cannot be recorded in Real Time at the point of care delivery, the Provider shall ensure that the Staff record the ECM Data on the ECM System as soon as possible after the relevant Service Visit and at the latest at the Staff member’s following Service Visit or through the Provider’s place of business when delay occurred on the Staff member’s final Service Visit of a particular day.
		8. The Provider will use its best endeavours to achieve consistent recording of all (100%) commissioned Service Visits being logged in Real Time. In the event that the Provider fails to meet this recording target, the Co-Ordinating Commissioner reserves the right to require alternative evidence of service delivery, such as Service Visit time sheets signed by the Person, prior to authorising payment of Local Prices. The Co-Ordinating Commissioner shall also be entitled to interrogate records and to investigate situations on a random sample basis, where concerns have been reported or where the minimum percentage is not being achieved.
		9. Where there are persistent delays in a Staff member entering a particular Person’s home, the Provider shall consider and, if appropriate, implement, reasonable and appropriate measures to address such delays, including but not limited to the use of a key safe if appropriate.
		10. The Provider shall notify the Commissioner Representative in writing, as soon as reasonably practicable, in the event it has been late for or otherwise missed a Time Critical Service Visit.
9. **IPR CLAIMS**
	1. The Provider shall ensure and procure that the availability, provision and use of the Services as permitted under this Contract and the Alliance Agreement and the performance of Provider’s responsibilities and obligations hereunder shall not infringe any IPR of any third party.
	2. The Provider shall at all times, during and after the Contract Term, on written demand indemnify the Co-Ordinating Commissioner and keep the Co-Ordinating Commissioner indemnified against all Losses incurred by, awarded against or agreed to be paid by the Co-Ordinating Commissioner arising from an IPR Claim provided that the Co-Ordinating Commissioner has complied in full with any terms of use which:
		1. relate to the relevant IPR Claim; and
		2. have been notified to it in advance and by the Provider.
	3. If an IPR Claim is made, or the Provider anticipates that an IPR Claim might be made, the Provider may, at its own expense and sole option, either:
		1. procure for the Co-Ordinating Commissioner the right to continue using the relevant item which is subject to the IPR Claim; or
		2. replace or modify the relevant item with non-infringing substitutes provided that:
			1. the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
			2. the replaced or modified item does not have an adverse effect on any other Services;
			3. there is no additional cost to the Co-Ordinating Commissioner; and
			4. the terms and conditions of this Contract shall apply to the replaced or modified Services.
	4. If the Provider elects to procure a licence in accordance with special condition 18.3.1 or to modify or replace an item pursuant to special condition 18.3.2, but this has not avoided or resolved the IPR Claim, then:
		1. the Co-Ordinating Commissioner may treat this as a material breach and terminate the Contract pursuant to GC17.5; and
		2. without prejudice to the indemnity set out in special condition 18.2, the Provider shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
	5. The Provider shall promptly notify the Co-Ordinating Commissioner (in writing) of any IPR Claim of which it is aware.
	6. The Co-Ordinating Commissioner shall:
		1. notify the Provider in writing of any IPR Claim of which it is aware;
		2. allow (subject to special condition 18.7) the Provider to conduct all negotiations and proceedings and provide the Provider with such reasonable assistance required by the Provider (as applicable), each at the Provider’s cost, regarding the IPR Claim; and
		3. not, without first consulting with the Provider, make an admission relating to the IPR Claim.
	7. The Provider shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the Co-Ordinating Commissioner into disrepute.
	8. On termination or expiry of this Contract, the licences granted pursuant to GC22 (Intellectual Property) shall determine and the Provider shall return all materials relating to such licences held in any format.
10. **RELATIONSHIP OF THE PARTIES**
	1. Nothing in this Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of another Party, or to authorise any Party to act as agent for the another Party. None of the Parties shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the another Party.
11. **LIABILITY**
	1. For the avoidance of doubt, the Parties agree that there shall be no double recovery on the part of the Co-Ordinating Commissioner in relation to any costs, losses or liabilities which are recoverable by the Co-Ordinating Commissioner under this Contract, whether by way of indemnity or otherwise, where such costs, losses or liabilities have been recovered under the provisions of the Alliance Agreement.
	2. The Provider shall (subject to special condition 20.3) be responsible for, and shall release and indemnify the Co-Ordinating Commissioner on demand from and against all liability for Losses arising from:
		1. death or personal injury;
		2. loss or damage to property; or
		3. third party actions, claims and/or demands brought against the Co-Ordinating Commissioner, including any fine, penalty or levy imposed on the Co-Ordinating Commissioner by any competent authority as a result of breach of statutory duty or otherwise,

in each case which may arise out of, or in consequence of the provision of the Services or the performance or non-performance by the Provider of its obligations under this Contract.

* 1. The Provider shall not be responsible or be obliged to indemnify the Co-Ordinating Commissioner pursuant to special condition 20.2:
		1. for any matter referred to in special condition 20.2 that arises as a direct result of the Provider acting on written notice issued by that the Co-Ordinating Commissioner and which the Provider has, upon receipt of such written notice, communicated to the Co-Ordinating Commissioner the relevant risks associated with the course of action described in the relevant notice; and
		2. for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of that Co-Ordinating Commissioner (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Provider of its obligations under this Contract) or by the breach of the Co-Ordinating Commissioner of its obligations under this Contract.
	2. The losses for which the Provider assumes responsibility and which shall be recoverable by the Co-Ordinating Commissioner shall include, but not be limited to the following:
		1. the costs and expenses reasonably incurred by the Co-Ordinating Commissioner in procuring and implementing alternative or replacement services including consultancy costs, the additional costs of management time and other personnel costs and costs of hardware, software and other equipment and materials; and
		2. Losses incurred by the Co-Ordinating Commissioner arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party against the Co-Ordinating Commissioner caused by the act or omission of the Provider.
	3. To the extent permitted by the Unfair Contract Terms Act 1977, the Co-Ordinating Commissioner shall not be liable for any loss or damage (except the negligence of the Co-Ordinating Commissioner, its officers or employees) and the Co-Ordinating Commissioner shall in no circumstances be liable to the Provider for any Indirect Losses whatsoever (howsoever caused) which arise out of or in connection with this Contract.
	4. Subject to special conditions 20.1 and 20.5, the aggregate liability of the Co-Ordinating Commissioner in respect of all causes of action, losses, damages or liability (whether for breach of contract, in negligence or for any other tort under statute or otherwise) arising out of or in connection with this Contract shall be limited in aggregate per year to the amount that the Co-Ordinating Commissioner paid the Provider under the terms of the Contract in the preceding twelve (12) month period.
	5. Subject to special conditions 20.2, 20.7, 20.9 and 20.10 and notwithstanding anything contained in this Contract to the contrary, the Provider’s liability in contract, tort negligence, statutory duty or otherwise arising by reason of or in connection with this Contract (except in relation to death or personal injury caused by negligence) shall be limited in aggregate per year to the amount that the Co-Ordinating Commissioner paid the Provider under the terms of the Contract in the preceding twelve (12) month period.
	6. The limitation of liability set out in special condition 20.7 shall not apply to any liability of the Provider arising pursuant to GC16.4, special condition 18.2 and paragraphs 2.1.4, 4.2, 5.3, 5.5, 5.6, 5.8.4, 5.9 and 6.2 of Schedule 8 (TUPE) of these Particulars.
	7. Nothing in this Contract excludes or limits the liability of the Provider for Losses incurred by the Co-Ordinating Commissioner as a result of the Data Protection Legislation where the Provider is at fault.
	8. The Provider’s liability to the Co-Ordinating Commissioner under this special condition 20 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Parties whether under the common law principles of contract, equity or tort, under statute or as expressly provided in this Contract and shall not (without limitation) prejudice the Co-Ordinating Commissioner’s right to enforce at any time and in any manner whatsoever any bond, parent company guarantee or sub-contractor warranty.
1. **NON-EXCLUSIVITY**
	1. In accordance with its relevant statutory obligations, including the Co-Ordinating Commissioner’s obligations under the Care Act 2014, the Co-Ordinating Commissioner shall have the right to order or commission services that are equivalent to the Services outside of this Contract from a third party. As such, the provision of the Services under this Contract is not an exclusive arrangement.
2. **STEP-IN AND NOVATION UNDER THE ALLIANCE AGREEMENT**
	1. The Parties acknowledge and agree that the provisions of Clause 7 (Removal from the Alliance for Provider Default) of the Alliance Agreement bind the Provider to implement a novation under the provisions of Clauses 7.12 and 7.15 of the Alliance Agreement when requested by the Co-Ordinating Commissioner.
	2. The Parties acknowledge and agree that the provisions of Clause 14 (Step-In Rights) of the Alliance Agreement may result in the need for the Co-Ordinating Commissioner, SPoLR or a third party to step in to deliver the Services and the Parties shall facilitate any such Step-In Action as set out in the Alliance Agreement.
3. **SUBCONTRACTING AND TRANSFER RESTRICTIONS**
	1. The Parties acknowledge and agree that the provisions of:
		1. Clause 49 (Subcontracting) of the Alliance Agreement applies to the Provider and any Subcontracting (if permitted under the provisions of Clause 49 (Subcontracting) of the Alliance Agreement) shall be carried out in full accordance with those provisions; and
		2. Clause 51.6 (Transfer Restrictions) of the Alliance Agreement shall apply in relation to this Contract.
4. **PERFORMANCE MONITORING**
	1. The Provider shall monitor its performance under this Contract and in particular the achievement of the Provider KPI Targets at its own expense as part of the overall performance provision of the Services in accordance with this special condition 24(Performance Monitoring) and any other provisions of this Contract.
	2. Subject to special condition 24.9, the reporting of the Provider Performance Measures, and the requirement to meet the Provider KPIs and Provider KPI Targets shall apply in full for the Contract Term and contain a non-exhaustive remedy to the Co-Ordinating Commissioner in respect of any failure by the Provider to deliver the Services in accordance with this Contract.
	3. The Provider shall be responsible for the monitoring and accurate reporting at all times of its performance and delivery of the Services and of compliance with, or default under, the requirements of this Contract.
	4. Where any breach of or failure to satisfy any Provider KPI Target (“**Provider** **Performance Failure**”) comes to the notice of the Provider, the Provider shall report this in reasonable detail to the Strategic Provider as soon as reasonably practicable.
	5. The Provider shall provide reasonable detail to the Strategic Provider of any Provider Performance Failure and, in particular, shall ensure that all Provider Performance Failures are recorded in the Performance Monitoring Workbook.
	6. The Provider shall monitor its performance against each Provider Performance Measure, Provider KPI and Provider KPI Target by completing and returning to the Strategic Provider a Performance Monitoring Workbook on a Quarterly basis within ten (10) Operational Days of the end of each Quarter.
	7. The Strategic Provider shall share the Performance Monitoring Workbook with the Co-Ordinating Commissioner. The Co-Ordinating Commissioner shall review each Performance Monitoring Workbook in order to assess and measure the Provider’s performance in respect of the achievement of the Provider KPI Targets.
	8. The contents of the Performance Monitoring Workbook along with any performance issues shall be discussed at the Strategic Meetings conducted in accordance with Schedule 10 (Monitoring and Report) of the Alliance Agreement.
	9. The Provider Performance Measures, Provider KPIs and the Provider KPI Targets shall be reviewed by the Strategic Provider, the Provider and the Co-Ordinating Commissioner each year to ensure they continue to align with this Contract.
	10. Following the review described by special condition 24.9, the Co-Ordinating Commissioner may adapt and finesse the Provider Performance Measures, Provider KPIs or the Provider KPI Targets but shall not increase the Provider’s obligations so as to ensure that the Provider is in no better and no worse position.
	11. Where a Repeat Provider Performance Failure occurs, the Co-Ordinating Commissioner may at its absolute discretion issue a notice to the Provider (a “**Provider Rectification Notice**”) detailing the relevant Provider Performance Failure and setting out a request that the Provider provides a rectification plan to address the Provider Performance Failure (a “**Provider Rectification Plan**”). A failure by the Co-Ordinating Commissioner to issue a Provider Rectification Notice in accordance with this special condition 24.11 shall not prejudice any other rights or remedies that the Co-Ordinating Commissioner has under this Contract.
	12. The Provider shall promptly provide to the Co-Ordinating Commissioner any Provider Rectification Plan requested by the Co-Ordinating Commissioner. The Parties shall use their best endeavours to agree the terms of any such Provider Rectification Plan as soon as reasonably practicable following receipt by the Co-Ordinating Commissioner and, following agreement or determination in accordance with Dispute Resolution, the Provider shall implement the Provider Rectification Plan in accordance with its terms.
	13. Where the Provider fails to implement any Provider Rectification Plan in accordance with its terms, this shall be deemed a Persistent Provider Performance Failure.
	14. Notwithstanding the Co-Ordinating Commissioner’s rights pursuant to special condition 24.17, the Co-Ordinating Commissioner may in its absolute discretion, undertake its own assessment and monitoring in seeking to verify the accuracy of any submissions made by the Provider in respect of its performance pursuant to this Contract and the Provider shall facilitate such assessment acting reasonably and in good faith, promptly advising the Co-Ordinating Commissioner with access to all records and granting to the Co-Ordinating Commissioner all other assistance which it may reasonably require.
	15. Without prejudice to the Co-Ordinating Commissioner's other express rights under this Contract, where the Provider has been found to:
		1. be fraudulent in the submission of any Performance Monitoring Workbook or any other report or information required to be submitted under this Contract; or
		2. have submitted at least two (2) erroneous Performance Monitoring Workbook within a twelve (12) month period,

then the Co-Ordinating Commissioner may by notice to the Provider increase the level of its monitoring of the Provider in respect of the Services (or any part thereof) which are the subject of such erroneous or fraudulent reporting until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Co-Ordinating Commissioner that it will perform (and is capable of performing) its obligations under this Contract.

* 1. For the purposes of special condition 24.14 above, the Co-Ordinating Commissioner acknowledges that if the Provider has otherwise failed to have demonstrated to the reasonable satisfaction of the Co-Ordinating Commissioner as required in special condition 24.14, but:
		1. the Provider has removed the person or persons responsible for the fraudulent reporting under special condition 24.14 above; or
		2. in the Quarter following the Co-Ordinating Commissioner’s notice (if it has not already been established), there have been no further erroneous reports of any kind,

this shall be regarded as sufficient demonstration that the Provider will perform and is capable of performing its obligations.

* 1. If the Co-Ordinating Commissioner issues a notice under special condition 24.14, the Provider shall bear its own costs and indemnify and keep indemnified the Co-Ordinating Commissioner at all times from and against all reasonable costs and expenses incurred by or on behalf of the Co-Ordinating Commissioner in relation to such increased level of monitoring arising due to the circumstances under special condition 24.14 above.
	2. In the event that the Provider commits a Persistent Provider Performance Failure, the Co-Ordinating Commissioner shall be entitled to terminate this Contract pursuant to GC17.5 (Termination: Provider Default).

1. **DATA PROTECTION**
	1. The Parties agree that the Provider and the Co-Ordinating Commissioner are each a Data Controller for the purposes of this Contract. If the Parties determine that the relationship between them changes, then the Parties will co-operate in agreeing and documenting appropriate arrangements for that other relationship, including where necessary completing and entering into Schedule 6E of the General Conditions (Provider Data Processing Agreement).
2. **CHANGES**
	1. This special condition 26 sets out the procedure for dealing with Changes to this Contract.
	2. Under this Change Control Procedure:
		1. the Co-Ordinating Commissioner and the Provider may request a Change which they shall initiate by issuing a Change Request in accordance with special condition 26.6 below;
		2. the Provider or the Co-Ordinating Commissioner as appropriate will assess and document the potential impact of a proposed Change in accordance with the relevant sections of special condition 26.7 below before the Change can be either approved by the Co-Ordinating Commissioner or implemented by the Provider;
		3. the Co-Ordinating Commissioner shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in special condition 26.8 below;
		4. the Provider shall have the right to reject a Change Request issued by the Co-Ordinating Commissioner solely in the manner set out in special condition 26.9 below; and
		5. no proposed Change shall be implemented by the Providers until such time as a Change Authorisation Notice has been signed and issued by the Co-Ordinating Commissioner in accordance with special condition 26.8.2 below.
	3. Until such time as a Change Authorisation Notice has been signed and issued by the Co-Ordinating Commissioner in accordance with special condition 26.8.2 then:
		1. unless the Co-Ordinating Commissioner expressly agrees otherwise in writing, the Provider shall continue to provide the Services in accordance with the existing terms of this Contract as if the proposed Change did not apply; and
		2. any discussions, negotiations or other communications which may take place between the Co-Ordinating Commissioner and the Provider in connection with any proposed Change, including the submission of any Change communications, shall be without prejudice to either Party's other rights under this Contract.
	4. Subject to special condition 26.5 each Party shall bear its own costs in relation to the preparation and agreement of each Change Request and any Impact Assessment.
	5. The Parties' reasonable and properly incurred costs incurred in respect of any operation of this Change Control Procedure as a result of any Provider default as set out in GC17.5 (Termination: Provider Default) shall be paid for by the Provider.
	6. Change Request
		1. Either Party may issue a Change Request to the other at any time during the Contract Term.
		2. Subject to special condition 26.6.4, if the Provider issues a Change Request to the Co-Ordinating Commissioner, then it shall also provide an Impact Assessment to the Co-Ordinating Commissioner as soon as is reasonably practicable but in any event within ten (10) Operational Days of the date of issuing the Change Request. Such Impact Assessment shall be considered a composite assessment by the Provider in respect of the impact of the proposed Change.
		3. Subject to special condition 26.6.4 if the Co-Ordinating Commissioner issues a Change Request to the Provider, then the Provider shall provide an Impact Assessment to the Co-Ordinating Commissioner as soon as is reasonably practicable but in any event within ten (10) Operational Days of the date of receiving the Change Request from the Co-Ordinating Commissioner.
		4. If the Provider requires any clarifications in relation to the Change Request before the Impact Assessment can be delivered, then the Provider will promptly notify the Co-Ordinating Commissioner and the time period for the receipt of the Impact Assessment shall be extended by the time taken by the Co-Ordinating Commissioner to provide such clarifications. The Co-Ordinating Commissioner shall respond to the request for clarifications as soon as is reasonably practicable and the Co-Ordinating Commissioner shall provide the Provider with sufficient information to enable the Provider to understand fully the nature of the request for clarification.
	7. Impact Assessment
		1. The Strategic Provider shall ensure that each Impact Assessment includes details of:
			1. the impact of the proposed Change on the delivery of the Services; and
			2. the Provider’s ability to meet its other obligations under this Contract; and
			3. any variation to the terms of this Contract that will be required as a result of that impact and including without limitation changes to:
				1. the Service Specification;
				2. other proposed Changes which have yet to be agreed with the Co-Ordinating Commissioner pursuant to this Change Control Procedure;
				3. details of the cost of implementing the proposed Change;
				4. details of the ongoing costs required by the proposed Change when implemented, including any associated increase or decrease in the Local Prices;
				5. a timetable for the implementation of the Change and details of the impact on any other proposed Changes; and
			4. such other information as the Co-Ordinating Commissioner may reasonably request in (or in response to) the Change Request.
		2. The Co-Ordinating Commissioner shall review the Impact Assessment and, shall no later than fifteen (15) Operational Days of receiving the Impact Assessment, respond to the Provider in accordance with special condition 26.8 below.
	8. The Co-Ordinating Commissioner’s Right of Approval
		1. Within the period specified in special condition 26.7.2, the Co-Ordinating Commissioner shall consider the Impact Assessment and shall do one of the following:
			1. approve the proposed Change, in which case the Parties shall follow the procedure set out in special condition 26.8.2;
			2. in its absolute discretion reject the Change, in which case it shall notify the Provider of the rejection. If the Co-Ordinating Commissioner does reject a Change, then it shall explain its reasons in writing to the Provider as soon as is reasonably practicable following such rejection; or
			3. require the Provider to modify the Change Request and/or Impact Assessment in which event the Provider shall make such modifications within five (5) Operational Days of such request. Subject to special condition 26.6.4, on receiving the modified Change Request and/or Impact Assessment, the Co-Ordinating Commissioner shall approve or reject the proposed Change within ten (10) Operational Days.
		2. If the Co-Ordinating Commissioner approves the proposed Change pursuant to special condition 26.8.1 and it has not been rejected in accordance with special condition 26.9, then the Co-Ordinating Commissioner shall inform the Provider and as soon as reasonably practicable thereafter the Provider shall prepare two (2) copies of a Change Authorisation Notice which shall be promptly signed by the Provider and delivered to the Co-Ordinating Commissioner for its signature. As soon as reasonably practicable following receipt by the Co-Ordinating Commissioner of the Change Authorisation Notice, it shall sign both copies and return one (1) copy to the Provider. On the Co-Ordinating Commissioner’s signature, the Change Authorisation Notice (together with the variations itemised in the Impact Assessment that has been approved by the Co-Ordinating Commissioner in accordance with special condition 26.8.1.1 and/or 26.8.1.3 (as applicable)) shall constitute a binding variation to this Contract, provided that the Change Authorisation Notice has been signed by the Co-Ordinating Commissioner within ten (10) Operational Days of receiving the Providers’ signed copy. If the Co-Ordinating Commissioner does not sign the Change Authorisation Notice within this time period, then the Provider shall have the right to notify the Co-Ordinating Commissioner and if the Co-Ordinating Commissioner does not sign the Change Authorisation Notice within five (5) Operational Days of the date of such notification, then the Provider may refer the matter to Dispute Resolution.
	9. Providers’ Right of Rejection
		1. If the Provider reasonably believes that any proposed Change which is requested by the Co-Ordinating Commissioner:
			1. would materially and adversely affect the risks to the health and safety of any person; or
			2. would cause any Consent to be revoked;
			3. would require the Services to be provided in a way that infringes any Law; or
			4. is outside of the Provider’s technical capability where:
				1. the Provider can demonstrate to the Co-Ordinating Commissioner’s reasonable satisfaction that the proposed Change is impossible to implement; and
				2. the proposed Change is outside the technical scope of the Services as set out in the Service Specification,

then the Provider shall be entitled to reject the proposed Change and the Provider shall notify the Co-Ordinating Commissioner of the reasons for doing so within the relevant Impact Assessment in accordance with special condition 26.7.

* 1. Change Authorisation

Any proposed Change processed in accordance with this special condition 26 (Changes) will not be authorised and the Alliance Providers shall not implement any proposed Change until the associated Change Authorisation Notice is executed in accordance with special condition 26.8.2.

1. **CHANGE IN LAW**
	1. Subject to the terms of this special condition 27 (Change in Law) the Provider shall take all steps necessary to ensure that the Services are delivered and performed in accordance with the terms of this Contract and all Law following any Change in Law.
	2. The Provider acknowledges and agrees that the Provider shall not be entitled to:
		1. relief from any of its obligations under this Contract; or
		2. any payment or other form of compensation from the Co-Ordinating Commissioner, as a result of the occurrence of a General Change in Law.
	3. If a Specific Change in Law occurs or is shortly to occur, then the Provider may by way of written notice to the Co-Ordinating Commissioner express an opinion on its likely effects, giving details of its opinion of:
		1. any necessary changes to the Services;
		2. whether any changes are required to the terms of this Contract to deal with the Specific Change in Law;
		3. whether any relief from compliance with any obligations is required; and
		4. any adjustment to the Local Prices which is required as a result of a Specific Change in Law, whether of a temporary or permanent nature, such adjustment to be calculated in accordance with special conditions 27.4 to 27.6 (inclusive),

in each case giving in full detail the procedure for implementing the change in Services.

* 1. As soon as practicable after receipt of any notice from a Party under special condition 27.3 above, the Parties shall discuss and agree the issues referred to in special condition 27.3 above and any ways in which the Provider can mitigate the effect of the Specific Change of Law, including:
		1. providing evidence that the Provider has used reasonable endeavours to minimise any increase in costs and maximise any reduction in costs;
		2. demonstrating how any expenditure to be incurred or avoided is being measured in a cost effective manner and has been taken into account by the Provider when proposing any amendments to the Local Prices; and
		3. giving evidence as to how the Specific Change in Law has affected prices charged by any businesses delivering services the same as or similar to the Services.
	2. If the Parties agree or it is determined under Dispute Resolution that Local Prices should be adjusted to take into account the Specific Change in Law, such adjustment shall be calculated in accordance with the basic principle that the Provider should be in a no better and no worse position than it would have been but for the Specific Change in Law.
	3. If the Provider considers that the Specific Change in Law requires an adjustment to the Local Prices, it shall provide evidence to the Co-Ordinating Commissioner on an open book basis of why such an adjustment is required.
	4. If the Parties cannot reach agreement on any matter arising from a Specific Change in Law, the matter shall be referred to Dispute Resolution.
	5. Any reference in this Contract to "no better and no worse" or to leaving the Provider in a "no better and no worse position" shall be construed by reference to the Provider’s:
		1. rights, duties and liabilities under or arising pursuant to performance of this Agreement; and
		2. ability to perform its obligations and exercise its rights under Contract,

so as to ensure that the Provider is left in a no better and a no worse position.

1. **HEALTH AND SAFETY**
	1. The Provider shall promptly notify the Co-Ordinating Commissioner of any health and safety hazards which may arise in connection with the performance of the Services.
	2. The Provider shall maintain the relevant Health and Safety Accreditation throughout the Contract Term.
	3. The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety including any policies of the Co-Ordinating Commissioner in relation to the Services, which may apply to Staff and other persons working in the performance of its obligations under this Contract.
	4. The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Co-Ordinating Commissioner on request.
	5. The Provider shall notify the Co-Ordinating Commissioner immediately in the event of any accident or incident occurring in the performance of the Services where such accident or incident causes a death, any personal injury or damage to property which could give rise to personal injury.
2. **QUALITY ASSURANCE**
	1. The Co-Ordinating Commissioner shall carry out, and the Provider acknowledges and agrees that it shall comply with, the quality assurance processes set out in Paragraph 7 and Appendix 1 of the Services Specification.
	2. Following completion of a Quality Assurance Review, the Co-Ordinating Commissioner shall produce a report of its findings and if required, in the reasonable opinion of the Co-Ordinating Commissioner, produce a list of actions which the Provider shall be required to carry out in order for improvements to be made by the Provider to the delivery of the Services and in order to satisfy any obligations pursuant to this ISP Agreement (a "**QAR** **Action Plan**").
	3. If the Provider does not carry out the actions in the QAR Action Plan within the timescales agreed, the Co-Ordinating Commissioner shall be entitled to treat this as a breach of a material obligation pursuant to GC17.5.4.
3. **DEFAULTS IN PERFORMANCE AND SUSPENSION**
	1. Where the Provider commits an Urgent Default or a Default, the Co-Ordinating Commissioner shall be entitled to serve on the Provider a notice (a “**Default Notice**”) which shall:
		1. state on its face that it is a Default Notice;
		2. set out in general terms the matter or matters giving rise to such Default Notice; and
		3. require that the Provider (at its own cost and expense) remedy such Urgent Default or Default (and/or any damage directly or indirectly resulting from such failure) and/or take measures to prevent the recurrence of such Urgent Default or Default within a reasonable period (in either case, the "**Remedial Period**").
	2. If the Provider:
		1. considers that a particular Remedial Period is unreasonable or impossible to comply with; and/or
		2. disputes the Urgent Default or Default

then the Provider shall notify the Co-Ordinating Commissioner within the Remedial Period, and in any event within twenty-four (24) hours of receipt of the Default Notice, and the Parties shall attend a meeting to discuss the matter. If the matter still remains unresolved, it shall be referred to Dispute Resolution.

* 1. Unless the Remedial Period is less than two (2) days, the Provider shall, within two (2) Operational Days of receipt of a Default Notice, prepare a plan (an "**Action Plan**") setting out the measures which the Provider shall carry out or has carried out to ensure that the Urgent Default or Default is remedied within the Remedial Period and to ensure that it does not occur again.
	2. The Provider shall submit the Action Plan to the Co-Ordinating Commissioner for approval (which approval shall not be unreasonably withheld or delayed). The Co-Ordinating Commissioner shall be entitled to suggest reasonable amendments to the Action Plan which the Provider shall incorporate.
	3. The Provider shall implement the approved Action Plan within the timescale contained within the approved Action Plan.
	4. The Co-Ordinating Commissioner may (without prejudice to any other right or remedy available to it) issue a notice to the Provider placing it into Suspension (a “**Suspension Notice”**) immediately on the occurrence of a Urgent Default.
	5. If:
		1. the Co-Ordinating Commissioner considers a Default is sufficiently serious;
		2. the Provider fails to remedy a Default in accordance with the Default Notice and/or Action Plan;
		3. the Provider repeats the same or substantially similar Default; and/or
		4. two (2) Default Notices in respect of a Default (in each case not necessarily relating to the same breach or failure) have been issued to the Provider in a continuous six (6) month period,

then the Co-Ordinating Commissioner may (without prejudice to any other right or remedy available to it) issue a Suspension Notice on the Provider placing it into Suspension.

* 1. A Suspension Notice shall:
		1. state on its face that it is a Suspension Notice; and
		2. set out the course of action (if any) which the Co-Ordinating Commissioner requires the Provider to take in to ensure that the Urgent Default or Default is remedied and/or does not occur again together with the date by which such action is to be taken; and
		3. confirm that the Provider shall be immediately placed into Suspension until such a time as the Urgent Default or Default is remedied.
	2. The matters listed in special condition 30.7 above shall be considered Suspension Events for the purposes of this Contract.
	3. The Provider shall remain in Suspension until the Co-Ordinating Commissioner is satisfied that the relevant Urgent Default or Default has been remedied.
	4. If the Provider fails to remedy the Urgent Default or Default in accordance with the Suspension Notice, or take any other action required in the Suspension Notice by the dates set out in the Suspension Notice, the Co-Ordinating Commissioner shall be entitled to treat this as a breach of a material obligation pursuant to GC17.5.4

**Appendix 1 to Schedule 2G – Provider KPIs and Provider Performance Measures**

**Provider Key Performance Indicators and Performance Measures**

The capitalised terms and definitions in this Appendix shall have the meaning set out in this Contract or the Alliance Agreement, as applicable.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **KPI No.** | **KPI Description** | **KPI Target** | **Link to ASCOF Objectives** | **Requirement Reference** |
|  | Percentage of New Care Packages allocated to the Alliance Provider commenced within twenty eight (28) days of the issue of the Service Request in each Quarter | Not less than ninety percent (90%) in each Quarter | * + 1. **Quality of life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently.
	+ **2. Independence**: people are enabled by adult social care to maintain their independence and, where appropriate, regain it.
	+ **4. Safety**: people have access to care and support that is safe, and which is appropriate to their needs.
	+ **5. Social Connections**: people are enabled by adult social care to maintain and, where appropriate, regain their connections to their own home, family and community.
	+ **6. Continuity and quality of care**: people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff.
 | Paragraph 3.3. of Schedule 5 (Ordering Procedure) of the Alliance Agreement |
|  | Percentage of Service Requests allocated to the Alliance Provider each Quarter for which Service Request Responses are submitted by the Deadline (twenty four (24) hours for Priority Care Packages and one hundred and twenty (120) hours for other New Care Packages) | Not less than ninety percent (90%) in each Quarter | * + **1. Quality of life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently.
	+ **2. Independence**: people are enabled by adult social care to maintain their independence and, where appropriate, regain it.
	+ **4. Safety**: people have access to care and support that is safe, and which is appropriate to their needs.
	+ **6. Continuity and quality of care**: people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff.
 | Paragraph 3.1 of Schedule 5 (Ordering Procedure) of the Alliance Agreement |
|  | Percentage of all Service Visits commissioned to the Alliance Provider that are logged in Real Time in ECM System | Not less than seventy five percent (75%) of all Service Visits each Quarter | * + **1. Quality of Life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently
	+ **2. Independence:** people are enabled by adult social care to maintain their independence and, where appropriate, regain it.
	+ **4. Safety:** people have access to care and support that is safe, and which is appropriate to their needs.
	+ **6. Continuity and quality of care**: people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff.
 | Special condition 17 (ECM Systems) of the Contract |
|  | **MEASURED FROM YEAR 2 OF THE TERM OF THE ALLIANCE AGREEMENT**Percentage of home visits for the provision of the Care Services carried out by the Alliance Provider using zero or low carbon methods in each Alliance Agreement Contract Year | Not less than [the percentage bid back by the Alliance in the Alliance’s Tender in response to Question 7] | * + **1. Quality of Life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently
	+ **4. Safety**: people have access to care and support that is safe, and which is appropriate to their needs.
 | Schedule 3 (Alliance Tender) of the Alliance Agreement |
|  | **MEASURED FROM YEAR 2 OF THE TERM OF THE ALLIANCE AGREEMENT**Compared to the Theoretical Baseline, percentage increase in home visits for the provision of the Care Services carried out by the Alliance Provider using zero or low carbon methods in each Alliance Agreement Contract Year | Not less than [the percentage bid back by the Alliance in the Alliance’s Tender in response to Question 7] | * + **1. Quality of Life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently
	+ **4. Safety**: people have access to care and support that is safe, and which is appropriate to their needs.
 | Schedule 3 (Alliance Tender) of the Alliance Agreement |

Provider Performance Measures

Workforce and Recruitment (for each Alliance Provider)

|  |  |  |
| --- | --- | --- |
| **PM No.** | **PM Description** | **Requirement Reference** |
| 1a. | Total number of direct care Staff (not Agency Staff) working for the Provider involved in the direct provision of the Services on the last Operational Day of each Quarter | Services Specification |
| 1b. | Turnover of direct care Staff (not Agency Staff) working for the Provider involved in the direct provision of the Services on the last Operational Day of each Quarter  | Services Specification |
| 1c. | Percentage of Agency Staff as a proportion of the total Staff working for the Provider involved in the direct provision of the Services on the last Operational Day of each Quarter | Services Specification |
| 1d. | Care Certificate: Total number of direct care or management Staff (not Agency Staff) working for the Provider involved in the direct provision of the Services who have a valid Care Certificate on the last Operational Day of each Quarter | Services Specification |
| 1e. | International Workforce: Total number of internationally recruited Staff working for the Provider involved in the direct provision of the Services on the last Operational Day of each Quarter | Clause 18 (Staffing Matters) of the Alliance Agreement |
| 1f. | Adult Social Care Workforce Data Set Completion of the ASC-WDS by the Alliance Provider by the last Operational Day of Quarter 4 | Schedule 10 (Monitoring and Reporting) of the Alliance Agreement |

Provider Led Reviews

|  |  |  |
| --- | --- | --- |
| **PM No.** | **PM Description** | **Requirement Reference** |
| 2a. | Number of Provider Led Reviews submitted to the Co-Ordinating Commissioner by the Provider to request an increase in support during the Quarter  | Services Specification |
| 2b. | Number of Provider Led Reviews submitted to the Co-Ordinating Commissioner by the Provider to request a decrease in support during the Quarter | Services Specification |

Care Visit Punctuality

|  |  |  |
| --- | --- | --- |
| **PM No.** | **PM Description** | **Requirement Reference** |
| 3a. | Total number of Late Visits by the Provider during the Quarter | Paragraph 6.13 of the Care Services Specification |
| 3b. | Total number of Missed Visits by Provider during the Quarter | Paragraph 6.13 of the Care Services Specification |
| 3c. | Total number of Early Visits by Provider during the Quarter | Paragraph 6.13 of the Care Services Specification |

Person Feedback, Complaints and Compliments

|  |  |  |
| --- | --- | --- |
| **PM No.** | **PM Description** | **Requirement Reference** |
| 4a | Total number of Persons supported by the Provider who have received a feedback survey form (year to date) | Services Specification |
| 4b | Total number of formal complaints/compliments received by the Provider within the Quarter, which would trigger the Provider’s complaints procedure | Services Specification |
| 4c | Number of formal complaints received by the Provider within the Quarter, which were upheld (with reason) | Services Specification |

**Appendix 2 to Schedule 2G – Change Request**

|  |  |
| --- | --- |
| CR No.: | Title: |
| Required by date: |
| Action:  | Name: | Date: |
| Raised by:  |
| Area(s) impacted (optional field):  |
| Full description of requested Change:  |
| Details of any proposed alternative scenarios: |
| Reasons for and benefits and disadvantages of requested Change: |
| Signature of requesting Change owner: |
| Date of request: |

**Appendix 3 to Schedule 2G – Change Authorisation Notice**

|  |  |  |
| --- | --- | --- |
| CR No.: | Title: | Date raised:  |
| Required by date:  |
| Detailed description of Change for which an Impact Assessment has been being prepared and details of any related Changes to the Contract:  |
| Financial implications (and proposed means and mechanism of payment) |
| Signed on behalf of the Co-Ordinating Commissioner:Signature:NamePosition:Date: |
| Signed on behalf of the [STRATEGIC PROVIDER]:Signature:NamePosition:Date: |
| Signed on behalf of the [ALLIANCE PROVIDER]:Signature:NamePosition:Date: |
| Signed on behalf of the [ALLIANCE PROVIDER]:Signature:NamePosition:Date: |

1. **Transfer of and Discharge from Care Protocols**

| If the Provider is unable to fulfil their obligations under the Contract either due to a change in Provider’s circumstances or the Person’s needs or circumstances, they will move into a period of Provider Fragility and notify the Strategic Provider (as Operational Provider of Last Resort). The Strategic Provider will support the Provider to identify a solution to allow the Provider to continue to deliver the Provider Care Package(s) in accordance with the provisions of the Alliance Agreement.If, in exceptional circumstances, the Provider cannot continue to deliver the Provider Care Package(s), the Strategic Provider will identify an alternative Alliance Provider and notify the Co-Ordinating Commissioner of the change in provider.  |
| --- |

1. **Safeguarding Policies and Mental Capacity Act Policies**

| **Insert text locally as required** |
| --- |

# SCHEDULE 3 – PAYMENT

**B. Locally Agreed Adjustments to NHS Payment Scheme Unit Prices**

| **Not Applicable** |
| --- |

1. **Local Prices**

**3C.1 CORNWALL COUNCIL PAYMENT TERMS**

1. **Interpretation**
	1. In this Schedule 3C (Local Prices) of the Particulars, the following words and expressions have the following meanings unless the context otherwise requires:

|  |  |
| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Actual Cost”** | has the meaning given to it in paragraph 4.1 of this Schedule 3C (Local Prices) of the Particulars; |
| **“Actual Hours”** | has the meaning given to it in paragraph 4.1 of this Schedule 3C (Local Prices) of the Particulars; |
| **“Additional Payment”** | has the meaning given to it in paragraph 4.5 of this Schedule 3C(Local Prices) of the Particulars; |
| **“Adjustment Date”**  | has the meaning given to it in paragraph 11.1 of this Schedule 3C (Local Prices) of the Particulars; |
| **“Admin Fee”** | means the fee chargeable by the Co-Ordinating Commissioner to the Provider pursuant to paragraph 13 (Admin Fee) of this Schedule 3C (Local Prices) of the Particulars; |
| **“Announcement Date”** | means the date the Living Wage Foundation Citizens UK registered charity number 1107264 (or any relevant replacement organisation) announces the living wage rates to be applied in the following year; |
| **“Care and Support Plan”** | has the meaning given to it in the Service Specification; |
| **“Care Package Payment”** | means the sum payable to the Provider in respect of each Provider Care Package in each Payment Period calculated in accordance with paragraph 3 (Care Package Payment) of this Schedule 3C (Local Prices) of the Particulars; |
| **“Charging Policy”** | means the Co-Ordinating Commissioners policy on fees and charges to be found at: <https://www.cornwall.gov.uk/health-and-social-care/adult-social-care/fees-and-charges/>; |
| **“Commissioned Cost”** | has the meaning given to it in paragraph 4.3.2 of this Schedule 3C (Local Prices) of the Particulars; |
| **“Core Hourly Rate”** | means the Provider’s core hourly rate for delivering the Services set out in Appendix 1 to this Schedule 3C (Local Prices) of the Particulars; |
| **“Corporate Payments Policy”** | means the Co-Ordinating Commissioner’s policy relating to payments to suppliers which has been shared with the Provider and as updated from time to time; |
| **“Exception Service Visit”** | has the meaning given to it in paragraph 7.2 of this of this Schedule 3C (Local Prices) of the Particulars; |
| **“Financial Year”** | means the period commencing on 1 April and ending on 31 March; |
| **“Index”** | means the Consumer Price Index (however such index might be termed) issued by the Office for National Statistics or any other government department upon which duties in connection with the compilation and maintenance of such index shall have devolved or in the absence of any such index such other index as the Co-Ordinating Commissioner may reasonably specify; |
| **“Payment Period”** | has the meaning given to it in paragraph 3.2 of this Schedule 3C (Local Prices) of the Particulars; |
| **“Payment Request”** | has the meaning given to it in paragraph 5.3 of this Schedule 3C (Local Prices) of the Particulars; |
| **“Person Identifiable Data”** | means data of Persons that enables identification of the same Persons including without limitation, name, date of birth, national insurance number or NHS Number; |
| **“Purchase Order”**  | has the meaning given to it in the Alliance Agreement; |
| **“Provider Compliance Certificate”** | means a certificate submitted by the Provider to the Strategic Provider certifying its compliance with the matters set out in paragraph 10.1 of this Schedule 3C of the Particulars the form of which is annexed to Appendix 2 of this Schedule 3C (Local Prices);  |
| **“Provider Led Review”**  | has the meaning given to it in the Service Specification; |
| **“Provider Payment Failure”** | has the meaning given to it in paragraph 13.1 of this Schedule 3C (Local Prices) of the Particulars; |
| **“Provider Payment Portal Date”** | has the meaning given to it in paragraph 5.1 of this Schedule 3C (Local Prices) of the Particulars; |
| **“Provider Payment Portal”** | has the meaning given to it in paragraph 5.1 of this Schedule 3C (Local Prices) of the Particulars; |
| **“Retainer Fee”** | means the fee payable to the Provider pursuant to the terms of paragraph 8 (Retainer Fees) of this Schedule 3C (Local Prices) of the Particulars; |
| **“Service Request”** | means a service request issued by the Co-Ordinating Commissioner via the E-referral Platform requesting a New Care Package; |
| **“Variable Travel Rate”** | means the Provider’s variable travel rate for delivering the Services set out in Appendix 1 to this Schedule 3C (Local Prices) of the Particulars; and |
| **“Week”** | means the period from Saturday to Friday (inclusive), and the term “Weekly” shall be construed accordingly. |

* 1. Any Capitalised terms not defined in this Schedule 3C (Local Prices) or the General Conditions shall be interpreted by reference to the defined terms in Schedule 2G (Special Conditions) of these Particulars.
1. **Local Prices**
	1. Subject to paragraph 11 (Adjustment of Local Prices) below, the hourly rates which are applicable to this Contract are those set out in the Appendix 1 (Local Prices) to this Schedule 3C (Local Prices).
2. **Care Package Payment**
	1. Each Care Package Payment shall be calculated as the sum of:
		1. subject to paragraph 4.3, the Provider’s Actual Costs during the Payment Period;
		2. any Exception Service Visit payment due to the Provider; and
		3. any Retainer Fee,

in the relevant Payment Period.

* 1. In order to allow some flexibility to the Provider in respect of raising Payment Requests and/or invoices, and in managing fluctuations in the duration of Service Visits, the “**Payment Period**” for the purposes of this Contract shall be a period of:
		1. no less than one (1) Week; and
		2. no more than four (4) Weeks,

from 00:00 hours on Saturday to 23:59 hours on Friday. The Provider shall be entitled to raise a Payment Request and/or invoice in respect of any Services delivered pursuant to a Provider Care Package within the applicable Payment Period.

* 1. Notwithstanding the flexibility granted to the Provider pursuant to paragraph 3.2 above, the Provider shall raise all Payment Requests and invoices in accordance with the provisions of this Schedule 3C (Local Prices) of the Particulars. The Provider acknowledges that where it fails to comply with the provisions of this Schedule 3C (Local Prices) of the Particulars, the Co-Ordinating Commissioner may be entitled to levy an Admin Fee pursuant to paragraph 13 (Admin Fee) below.
1. **Actual Costs**
	1. The Provider shall use the ECM System to collate information on each Service Visit undertaken by the Staff in each Payment Period in order to calculate the costs for each Provider Care Package (the “**Actual Cost**”), such costs to be the number of hours actually delivered in the Payment Period (the “**Actual Hours**”) multiplied by the relevant hourly rates in the Local Prices.
	2. The Provider shall calculate the Actual Hours delivered in each Payment Period using information (including, but not limited to, ECM Visit Reports) it may have in respect of each Service Visit made in that Payment Period.
	3. Save for where the Provider is claiming payment for an Exception Service Visit or where a Retainer Fee applies, where the Actual Hours in any given Payment Period are:
		1. less than the total Commissioned Hours in the same period, the Provider will charge the Co-ordinating Commissioner for the Actual Cost; and
		2. greater than the total Commissioned Hours in the same period, the Provider will only charge the Co-ordinating Commissioner for the commissioned costs, such costs to be the number of Commissioned Hours in the Payment Period multiplied by the relevant hourly rates in the Local Prices (“**Commissioned Cost**”).
	4. For the avoidance of doubt, the Provider will not be entitled to any additional payment in respect of a Provider Care Package where the Actual Hours are greater than the Commissioned Hours in any given Payment Period UNLESS an Exceptional Circumstance applies or a Provider Led Review has been submitted.
	5. Where the Provider, in respect of any Provider Care Package, wishes to claim an additional payment which is above the Commissioned Cost due to an Exceptional Circumstance or a Provider Led Review (an “**Additional Payment**”), it shall do so within the Payment Request or invoice for the Payment Period in which an Additional Payment arose in compliance with the timeframes set out in paragraphs 5.3 or 6.2 (as applicable). Any such Payment Request or invoice must set out in detail the reasons why the Provider considers it is entitled to an Additional Payment in compliance with special condition 17.6.2.
	6. The Provider acknowledges and agrees that if it fails to submit a Payment Request or invoice for an Additional Payment in compliance with paragraph 4.5 above, the Provider shall not be entitled to be paid the Additional Payment UNLESS the Co-ordinating Commissioner, in its absolute discretion, decides otherwise.
	7. Where the Provider has submitted a Payment Request for more than the Commissioned Cost due to an Exceptional Circumstance or where a Provider Led Review has been submitted, the Co-Ordinating Commissioner reserves the right to request the ECM Visit Report for the relevant Services to verify such variance to the Commissioned Cost.
	8. Where the Provider has claimed an Additional Payment due to a Provider Led Review under the provision of paragraph 4.5 above, the Provider acknowledges and agrees that it shall only be entitled to the Additional Payment for that Provider Led Review up until the date that the Co-Ordinating Commissioner has, acting at its complete discretion, confirmed or rejected the adjustment to hours set out in the Provider Led Review. Where the Co-Ordinating Commissioner has confirmed the Provider Led Review in accordance with the provisions of paragraph 6.9 of the Service Specification, this will be reflected in the Commissioned Hours for the next Payment Period through the issue of a new Purchase Order. If the Co-Ordinating Commissioner rejects the Provider Led Review, the Commissioned Hours for that Provider Care Package will remain as set out prior to the Provider Led Review and no further Additional Payment will be made in relation to that Provider Led Review.
2. **Payment Process – Provider Payment Portal.**
	1. The Co-Ordinating Commissioner intends to move to a new electronic payment systems through which the Provider shall request payments for Services (the “**Provider Payment Portal**”) from a date to be notified by the Co-Ordinating Commissioner to the Provider (the “**Provider Payment Portal Date**”). Where the Co-Ordinating Commissioner has served a notice on the Provider informing it of the Provider Payment Portal Date, the terms and conditions set out in this paragraph 5 (Payment Process – Provider Payment Portal) shall apply from the Provider Payment Portal Date.
	2. For the purposes of this Contract, references to issuing an “invoice” in the Service Conditions shall also be interpreted as a reference to a Payment Request.
	3. The Provider shall request all Care Package Payments through the Provider Payment Portal within thirty (30) days of the end of each Payment Period in respect of all Services delivered in that Payment Period (a “**Payment Request**”).
	4. Where a Payment Request has been rejected by the Co-Ordinating Commissioner, or the Provider has been asked to retract its Payment Request by the Co-Ordinating Commissioner in the Provider Payment Portal, it shall resubmit its amended Payment Request within fifteen (15) Operational Days of such rejection or request (as applicable).
	5. Where paragraph 4.5 applies, the Provider must submit the reason for the variation to the Commissioned Hours in the manner set out in special condition 17.6.2.
	6. The Provider shall at all times comply with and abide by the terms of use of the Provider Payment Portal as communicated and set out on the Provider Payment Portal and as varied from time to time including, for the avoidance of doubt, where there is a software upgrade.
	7. The Provider shall at all times use (and shall train and instruct its Staff to use) the Provider Payment Portal in accordance with the Co-Ordinating Commissioner’s instructions and the terms of use and shall not use the Provider Payment Portal to:
		1. introduce any viruses, trojan horses, worms, time bombs, cancelbots, or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information;
		2. create any liability for the Co-Ordinating Commissioner or cause the Co-Ordinating Commissioner to lose (in whole or in part) the services of its suppliers;
		3. violate any law, statute, ordinance or regulation;
		4. infringe any copyright, patent, trademark, trade secret, or other proprietary right;
		5. access any data or system which the Provider is not authorised to access; or
		6. cause annoyance, inconvenience or needless anxiety.
	8. The Provider shall indemnify and keep the Co-Ordinating Commissioner indemnified against all Losses incurred as a result of the Provider’s breach of its obligations under paragraphs 5.6 and 5.7 above.
3. **Payment Process in the absence of the Provider Payment Portal**
	1. Where:
		1. no notice has yet been served by the Co-Ordinating Commissioner on the Provider pursuant to paragraph 5.1 (above) requiring the Provider to use the Provider Payment Portal; or
		2. a notice has been served pursuant to paragraph 5.1 (above), but the Provider needs to request payments prior to Provider Payment Portal Date,

the terms of this paragraph 6 (Payment Process in the absence of the Provider Payment Portal) of this Schedule 3C (Local Prices) shall apply in relation to payments to be made by the Co-Ordinating Commissioner to the Provider.

* 1. The Provider shall submit its invoices to the Co-Ordinating Commissioner within thirty (30) days of the end of each Payment Period for payment in respect of all Services delivered in that Payment Period.
	2. Subject to paragraph 6.4, the Provider shall submit invoices to:
		1. By Email: adultsfinance@cornwall.gov.uk
		2. By Post: Adults Payments, Cornwall Council, 1st Floor, East Wing, County Hall, Treyew Road, Truro, Cornwall, TR1 3AY
	3. The Provider shall ensure that any invoice raised in accordance with paragraph 6.2 above:
		1. identifies the Contract and/or Purchase Order number(s);
		2. contains the name and address of the Provider;
		3. contains a unique invoice number and invoice date;
		4. is identified by the adult social care user ID reference number;
		5. contains details of the relevant Payment Period;
		6. contains a breakdown of the actual hours delivered during the relevant Payment Period;
		7. contains the Provider’s bank details;
		8. contains any other information reasonably required by the Co-Ordinating Commissioner and as notified to the Provider from time to time.
	4. The Provider shall ensure that Person Identifiable Data is not included in any invoice. In the event such data is shown on any invoice, such invoice will not be regarded as a valid invoice and shall be cancelled from the Co-Ordinating Commissioner's payments system.
	5. The Provider shall ensure that submission of invoices in accordance with this paragraph 6 (Payment Process in the absence of the Provider Payment Portal) is via a secure transfer route with adequate security levels to meet the Data Protection Legislation taking into account the level of sensitivity of the data being submitted.
	6. The Provider shall not submit an invoice before the end of the relevant Payment Period as all payments shall be made in arrears. Where a Provider submits an invoice for any payments in advance, the invoice will not be regarded a valid invoice.
1. **Service Visit Requirements and Payment**
	1. The Co-Ordinating Commissioner shall pay the Provider the Local Prices for the Commissioned Hours for any Service Visit in the following circumstances:
		1. where a Person cancels the Service Visit and provides the Provider with less than twelve (12) hours’ notice of the same;
		2. where the Person requires a Staff member to finish a Service Visit before all the Services have been fully and completely delivered;
		3. where the Person is not at home at the time of the Service Visit; or
		4. where a Staff member is unable to gain access to a Person's property, where all attempts to gain access in accordance with the Service Specification have been exhausted.
	2. Each of paragraphs 7.1.1 to 7.1.4 shall be defined as an "**Exception Service Visit**" and collectively as the "**Exception Service Visits**".
	3. The Provider shall record the occurrence of any Exception Service Visit and shall, where requested by the Co-Ordinating Commissioner, provide written and auditable evidence of such circumstances to the Co-Ordinating Commissioner in the ECM Visit Report.
	4. Where the Provider has not delivered any Services in respect of a Provider Care Package during a Payment Period for whatever reason, it shall nevertheless:
		1. where the Provider Payment Portal is being used, submit a Payment Request via the Provider Payment Portal for zero (0) hours in the manner set out in paragraph 5 (Payment Process – Provider Payment Portal) above; or
		2. where the Provider Payment Portal is not being used, submit an invoice for zero (0) hours in the manner set out in paragraph 6 (Payment Process in the absence of the Provider Payment Portal) above.
2. **Retainer Fees**
	1. Subject to paragraphs 8.2 and 8.3 below, the Provider shall be entitled to charge the Co-Ordinating Commissioner a Retainer Fee in respect of any Service Visit its Staff are unable to perform due to the Person having unplanned admittance to hospital or unplanned respite.
	2. Subject to paragraph 8.3 below, where a Retainer Fee is payable pursuant to paragraph 8.1 above, it shall be calculated as:
		1. in respect of Care Packages where the total Commissioned Hours are twelve (12) or more hours per Week, a sum equating to fifty per cent (50%) of the Commissioned Cost of each unperformed Service Visit, provided that the Provider keeps the Service Visit times unallocated to another Person for a period of four (4) Weeks from the date of admittance to hospital or respite; and
		2. in the case of Care Packages where the total Commissioned Hours are less than twelve (12) hours per Week, a sum equating to one hundred per cent (100%) of the Commissioned Cost of each unperformed Service Visit provided that the Provider keeps the Service Visit times unallocated to another Person for a period of (2) Weeks from the date of admittance to hospital or respite.
	3. A Retainer Fee will only be payable during the Retainer Period and where:
		1. the Provider informs the Co-Ordinating Commissioner as soon as reasonably practicable and in any event within forty eight (48) hours of the start of the relevant Person’s hospital admission or unplanned respite; and
		2. a prompt recommencement of the Services is achieved within twenty four (24) hours from notification by the hospital or respite centre that the Person is ready for discharge from hospital or respite; or
		3. during the Retainer Period, there is an unexpected death of the Person.
	4. A Retainer Fee will not be payable by the Co-Ordinating Commissioner:
		1. if the Provider:
			1. cannot fulfil its obligations for a timely discharge within twenty-four (24) hours of notification in accordance with paragraph 8.3.2; or
			2. fails to inform the Co-Ordinating Commissioner as soon as reasonable practicable and in any event within forty eight (48) hours of the start of the relevant hospital admission or unplanned respite; or
			3. the provision of Services is not maintained (without good reason) for a reasonable period following discharge; or
		2. where there is a period of planned respite for the Person.
	5. The Provider shall apply any Retainer Fee paid pursuant to this paragraph 8 (Retainer Fees) to pay the wages of any Staff connected with the provision of Services under the relevant Care Packages first before using it to pay for any other costs.
3. **Payment**
	1. The Co-Ordinating Commissioner shall endeavour to pay any undisputed invoice within the timeframes set out in its Corporate Payments Policy, and in any case within thirty (30) days of receipt.
4. **Provider Compliance Certificate**
	1. The Provider shall submit to the Strategic Provider a Provider Compliance Certificate each Month in accordance with the provisions of Schedule 10 (Monitoring and Reporting) of the Alliance Agreement. In the Provider Compliance Certificate, the Provider shall warrant, represent and certify that:
		1. it has checked and verified the hours and payment claimed and confirms that that the units/hours entered on the Provider Payment Portal or set out in an invoice are based on actuals delivered up to and including the Commissioner Hours;
		2. it can and will provide the Co-Ordinating Commissioner with appropriate Actual Cost information (including any ECM Data) as and when requested for auditing and monitoring purposes; and
		3. it has used its best endeavours to achieve consistent recording of all (100%) commissioned Service Visits being logged in Real Time.
	2. The Provider acknowledges that, it may be asked to confirm this information each time it submits a Payment Request on the Provider Payment Portal.
5. **Adjustment of Local Prices**
	1. Subject to paragraph 11.2below, the Local Prices shall be adjusted from 1 April each year (the “**Adjustment Date**”) as follows:
		1. in respect of the Core Hourly Rate:
			1. eighty percent (80%) of the Core Hourly Rate shall be adjusted in accordance with the proportionate rise or fall between the Real Living Wage applicable immediately prior to the Announcement Date and Real Living Wage announced on the Announcement Date immediately prior to the Adjustment Date; and
			2. twenty percent (20%) of the Core Hourly Rate will be adjusted in accordance with the Index rate prevailing on the Announcement Date immediately prior to the Adjustment Date; and
		2. in respect of the Variable Travel Rate:
			1. the Staff travel time element of the Variable Travel Rate shall be adjusted in accordance with the proportionate rise or fall between the Real Living Wage applicable immediately prior to the Announcement Date and Real Living Wage announced on the Announcement Date immediately prior to the Adjustment Date; and
			2. the mileage element of the Variable Travel Rate shall be adjusted in accordance with the rates published by HM Revenue and Customs prevailing on the Announcement Date immediately prior to the Adjustment Date.
	2. The Co-ordinating Commissioner shall keep the pricing adjustment methodology set out in paragraph 11.1 above under review. Where the Co-ordinating Commissioner considers that an alternative methodology should be adopted, it may, at its absolute discretion, notify the Provider accordingly and the Local Prices shall be adjusted in accordance with that alternative methodology.
	3. The Provider shall ensure that any adjustments to the Local Prices made pursuant to this paragraph 11 (Adjustment of Local Prices) shall apply only to those Services delivered from the Adjustment Date. Any Care Package Payments requested for Services delivered prior to the Adjustment Date shall be based on the Local Prices prevailing prior to the Adjustment Date.
6. **Financial Year Information**
	1. The Provider shall, no less than one (1) month prior to the end of each Financial Year, provide to the Co-Ordinating Commissioner details of all outstanding disputed Payment Requests and/or invoices (as applicable) in respect of any Provider Care Package.
7. **Admin Fee**
	1. The Co-Ordinating Commissioner may charge the Provider an Admin Fee where:
		1. the Provider has failed to claim any Additional Payment in compliance with paragraph 4.5 above, and the Co-Ordinating Commissioner has decided, in its absolute discretion, to accept the Payment Request or invoice;
		2. the Provider fails to submit a Payment Request or invoice for a Care Package Payment within the time periods set out in paragraph 5.3 or 6.2 (as applicable); or
		3. the Provider fails to submit the information requested in paragraph 12.1 within the stipulated timeframes,

each a “**Provider Payment Failure**”.

* 1. Any Admin Fee payable shall be charged in accordance with the Co-Ordinating Commissioner’s Charging Policy and is acknowledged and agreed to be a genuine pre-estimate of the Co-ordinating Commissioner’s loss and damage in respect of the following:
		1. administrative costs, including Co-ordinating Commissioner staff time in investigating, processing and handling the Provider Payment Failure;
		2. the production of any reports as necessary to verify and validate any information provided by the Provider; and
		3. any other activities arising from the Provider Payment Failure and which are suffered or which may be suffered in relation to any Provider Payment Failure.
	2. Where the Co-ordinating Commissioner wishes to claim an Admin Fee, it shall be entitled to either:
		1. set off the amount of the Admin Fee against any Care Package Payment; or
		2. send the Provider an invoice for the amount of the Admin Fee, and the Provider shall pay such invoice within thirty (30) days of receipt.
1. **VAT**
	1. The Provider and the Co-Ordinating Commissioner acknowledge and agree that the supply of the Services by the Provider will be exempt for VAT purposes and accordingly no amount in respect of VAT will be payable by the Co-Ordinating Commissioner in respect of the delivery or performance of the Services. If Her Majesty's Revenue and Custom determines that any VAT shall become chargeable in respect of the delivery or the performance of any of the Services, all Local Prices and all payments by the Co-Ordinating Commissioner to the Provider shall be deemed to be inclusive of VAT and the Provider shall account for VAT applied at the prevailing rate set by Her Majesty's Revenue and Customs applicable at the time of delivery or performance of the Services to which the relevant payment relates.
	2. The Provider shall indemnify the Co-Ordinating Commissioner on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Co-Ordinating Commissioner at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider for the delivery or the performance of any of the Services under this Contract. Any amounts due under this paragraph 14.2 shall be paid by the Provider no less than five (5) Operational Days before the date upon which the VAT or other liability is payable by the Co-Ordinating Commissioner.

**Appendix 1 to Schedule 3C - Local Prices**

***[Alliance response to the Pricing Schedule will be inserted here.]***

**Appendix 2 to Schedule 3C – Form of Provider Compliance Certificate**

***[The template Provider Compliance Certificate shall be provided by the Council prior to contract signature.]***

**D. Expected Annual Contract Values**

| **Not Applicable** |
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# SCHEDULE 4 – LOCAL QUALITY REQUIREMENTS

**Not used.**

# SCHEDULE 6 – CONTRACT MANAGEMENT, REPORTING AND INFORMATION REQUIREMENTS

1. **Reporting Requirements**

**Not used.**

**SCHEDULE 6 – CONTRACT MANAGEMENT, REPORTING AND INFORMATION REQUIREMENTS**

**E. Provider Data Processing Agreement**

|  |
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| **Not applicable**  |

# SCHEDULE 7 – PENSIONS

|  |
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| **Not Applicable** |

# SCHEDULE 8 – TUPE\*

1. **Interpretation**
	1. In this Schedule 8 (TUPE) the following words and expressions shall have the following meanings:

|  |  |
| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Alleged New Employer”** | has the meaning given to it in paragraph 5.8 of this Schedule 8 (TUPE); |
| **“Alternative Provider”** | means any person appointed by the Co-Ordinating Commissioner to provide services the same as or similar to any of the Services in place of a Provider or any Sub-Contractors, including (without limitation):1. any Alliance Provider to whom the Services are being transferred or reallocated pursuant to the Alliance Agreement;
2. any Replacement Provider appointed by the Co-Ordinating Commissioner pursuant to Clause 14 (Step-In Rights) of the Alliance Agreement;
3. the SPoLR where it is appointed by the Co-Ordinating Commissioner pursuant to Clause 7.12.2 of the Alliance Agreement;
4. any New Provider appointed by the Co-Ordinating Commissioner pursuant to Clause 6 (Joining the Alliance) of the Alliance Agreement; or
5. any person appointed by the Co-Ordinating Commissioner following the termination or expiry of this Contract;
 |
| **“Assigned Employees”** | any person engaged or employed by the Provider or any Sub-Contractor (if applicable) or any of them as appropriate and who is at the relevant time wholly or substantially engaged in the provision of any element of the Services; |
| **“Employee Information”** | means the following details:1. name of employer;
2. anonymised staff number;
3. the team in which they work;
4. date of birth;
5. gender;
6. continuous service commencement date;
7. (if relevant) the date of the end of any fixed term employment);
8. job title and grade;
9. salary or hourly rate of pay;
10. payment intervals (monthly or weekly);
11. bonus and commission arrangements;
12. benefits provided (insurance or otherwise);
13. pension contribution rates (employer and employee/worker);
14. annual leave entitlement and balance of entitlement due in current leave year (including any leave carried over from previous years);
15. normal place of work;
16. contracted hours and normal working hours;
17. overtime arrangements (including whether compulsory or voluntary, and rates of pay);
18. whether the employee or worker is absent from work as a result of sickness or injury, or any family-related reasons, and (if so) the anticipated return to work date;
19. current disciplinary and grievance issues (but excluding expired warnings);
20. periods of notice of termination which the employer and employee or worker are required to give;
21. whether the employee or worker has issued or threatened to issue legal action against their employer (or which the employer has reasonable grounds to believe the employee or worker may issue), and the nature of that legal action;
22. proportion of the employee's or worker’s working time which they spend in delivering the Services; and
23. a summary of the activities which the employee or worker carries out in relation to providing the Services.
 |
| **“Employee Liability Information”** | means the employee liability information to be provided pursuant to Regulation 11 of TUPE; |
| **“Employee List”** | includes the First Employee List, all material changes to the First Employee List which the Provider is obliged to provide under paragraph 5.1.2 of this Schedule 8 (TUPE), and the Final Employee List; |
| **“Final Employee List”** | has the meaning given to it in paragraph 5.1.3 of this Schedule 8 (TUPE); |
| **“First Employee List”** | has the meaning given to it in paragraph 5.1.1 of this Schedule 8 (TUPE); |
| **“Relevant Transfer”** | means a relevant transfer for the purposes of TUPE; |
| **“Return Date”** | means in respect of any of the Services the date on which the Provider ceases to provide that Service or those Services whether upon the occurrence of a Service Provision Change, expiry or earlier termination of the Contract Term or pursuant to any notice served by the Co-Ordinating Commissioner or for any other reason; |
| **“Returning Employees”** | means those employees and workers of the Provider or any of its Sub-Contractors (if applicable) who are wholly or mainly engaged in the provision of Services at or immediately before the date of the Service Provision Change or expiry or termination of the provision of any Services and whose contract of employment transfers to the Co-Ordinating Commissioner or an Alternative Provider pursuant to TUPE as a consequence of such expiry or termination;  |
| **“Service Provision Change”** | has the meaning given to it in paragraph 3.1 of this Schedule 8 (TUPE); and |
| **“Terminated Service”** | means any or all of the Services which a Provider or any Sub-Contractor (if applicable) ceases to provide for whatever reason. |

1. **TUPE on Commencement**
	1. The Provider:
		1. acknowledges that the Co-Ordinating Commissioner has made and makes no representations or warranty as to the application or otherwise of TUPE in relation to the commencement of the provision of any Services by the Provider or any Provider Related Party;
		2. has formed and shall form its own view as to whether or not TUPE applies to this Contract;
		3. has and shall have no cause of action or claim for compensation or other remedy whatsoever against the Co-Ordinating Commissioner in relation to the application or otherwise of TUPE in relation to this Contract issued before the Service Commencement Date;
		4. shall indemnify and keep indemnified the Co-Ordinating Commissioner against any claims, proceedings, loss or damages as may be occasioned by the Co-Ordinating Commissioner arising out of or in relation to the application or otherwise of TUPE in relation to any of the arrangements contemplated by this Contract.
	2. The Provider agrees further that no Local Prices or Care Package Payments shall be varied on the grounds that TUPE does or does not apply in respect of this Contract.
2. **TUPE during the Term**
	1. The Parties acknowledge that TUPE may apply during the Contract Term where the identity of the Provider delivering the Services under a Care Package changes, including (without limitation):
		1. following the suspension and/or removal of an Alliance Provider from the Alliance Agreement; or
		2. on the exercise of the Co-Ordinating Commissioners’ step in rights pursuant to Clause 14 (Step-In Rights) of the Alliance Agreement;
		3. on the appointment of a New Provider pursuant to Clause 6 (Joining the Alliance) of the Alliance Agreement;
		4. on the appointment of the SPoLR where it is appointed by the Co-Ordinating Commissioner pursuant to Clause 7.12.2 of the Alliance Agreement;
		5. on the Sub-Contracting of a Care Package to a Sub-Contractor under the provisions of Clause 49 (Subcontracting) of the Alliance Agreement; or
		6. following any decision by the Alliance to reallocate the Care Package to a different Alliance Provider for the purposes of optimising the Services or otherwise under the Alliance Agreement,

each a “**Service Provision Change**”.

* 1. Where a Service Provision Change has or is due to take place, the Provider shall:
		1. form its own view as to whether or not TUPE applies to the Service Provision Change; and
		2. where TUPE is deemed to apply, comply with the obligations under TUPE (including the consultation requirements and the provision of Employee Liability Information to the Alternative Provider) and the provisions of paragraph 5 (TUPE Issues on Re-Letting The Services and Service Provision Change) of this Schedule 8 (TUPE).
1. **Remuneration and Benefits**
	1. The Provider shall be responsible for, and/or shall procure that any relevant Sub-Contractor (if applicable) is responsible for, all remuneration, benefits, entitlements and outgoings in respect of all its and/or their respective Staff, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise.
	2. The Provider shall indemnify and keep indemnified in full the Co-Ordinating Commissioner and each Alternative Provider, against:
		1. all Losses incurred by the Co-Ordinating Commissioner or any Alternative Provider in connection with or as a result of any claim or demand against the Co-Ordinating Commissioner or any Alternative Provider by:
			1. any person who is or has been employed or engaged by an Alliance Provider or any Sub-Contractor in connection with the provision of any of the Services; or
			2. any trade union or staff association or employee representative in respect of any such person,

in either case where such claim is alleged to have arisen as a result of any act, fault or omission of the Provider and/or any Sub-Contractor on or after the Effective Date;

* + 1. all Losses incurred by the Co-Ordinating Commissioner or any Alternative Provider in connection with or as a result of a breach by the Provider of its obligations under paragraph 4.1; and
		2. all Losses incurred by the Co-Ordinating Commissioner or any Alternative Provider in connection with or as a result of any claim by any employee, worker, trade union or staff association or employee representative (whether or not recognised by the Provider and/or the relevant Sub-Contractor in respect of all or any of its or their employees or workers) arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative, whether under Regulation 13 of TUPE or otherwise and, whether any such claim arises or has its origin before or after the Effective Date.
1. **TUPE Issues on Re-Letting The Services and Service Provision Change**

**Employee Lists**

* 1. The Provider shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) months immediately preceding the expiry of the Term, or following the service of notice of termination in respect of any of the Services, or on the occurrence of a Service Provision Change or as a consequence of the Co-Ordinating Commissioner notifying the Provider of its intention to reprocure any of the Services under this Contract:
		1. on receiving a written request from the Co-Ordinating Commissioner provide to the Co-Ordinating Commissioner at no cost as soon as is reasonably practicable and in any event within five (5) Operational Days, the Employee Information in respect of all Assigned Employees assigned at that time to the delivery of such Services (the “**First Employee List**”);
		2. notify the Co-Ordinating Commissioner forthwith in writing of any material changes to the First Employee List promptly as and when such changes arise;
		3. provide to the Co-Ordinating Commissioner within five (5) Operational Days after the Return Date information, which was correct as at the Return Date, in respect of the Returning Employees on all the same matters as should be provided in respect of the First Employee List (the “**Final Employee List**”); and
		4. be precluded from (other than in the ordinary course of business and with the Co-Ordinating Commissioner's prior written consent (such consent not to be unreasonably withheld or delayed)):
			1. making any material increase or decrease in the numbers of Assigned Employees;
			2. making any increase in the remuneration or other change in the terms and conditions of employment of the Assigned Employees;
			3. dismissing any of the Assigned Employees; and/or
			4. transferring any of the Assigned Employees to another part of its or their business or moving other employees or workers from elsewhere in its or their business to provide the Services or any of them.
	2. The Provider hereby grants permission to the Co-Ordinating Commissioner to share all Employee Lists:
		1. with any possible Alternative Provider to allow them to prepare a bid for the provision of the Services (including, for the avoidance of doubt, where the Co-Ordinating Commissioner runs a Competition) or any of them in place of any Alliance Provider or any Sub-Contractor; and
		2. with any Alternative Provider.
	3. The Provider shall indemnify and shall keep indemnified in full the Co-Ordinating Commissioner and any Alternative Provider against all Losses arising from any claim by any person as a result of the Provider failing to provide or promptly to provide the Co-Ordinating Commissioner and/or any Alternative Provider where requested by the Co-Ordinating Commissioner with complete and accurate Employee Lists and/or Employee Liability Information or as a result of any material inaccuracy in or omission from any Employee Lists and/or Employee Liability Information.

**Termination of the provision of any of the Services**

* 1. Without prejudice to paragraph 3.2, on the termination of the provision of the Services or any of them by the Provider or any Sub-Contractor (if applicable), whether on the occurrence of a Service Provision Change, the expiry or earlier termination of the Contract Term or for any other reason, the Co-Ordinating Commissioner and the Provider agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to such Terminated Services but the position shall be determined in accordance with the law at the date of expiry or termination as the case may be and paragraphs 5.5 – 5.8 (inclusive) of this Schedule 8 (TUPE) are without prejudice to such determination.
	2. The Provider shall or shall procure that:
		1. all wages, salaries and other benefits of the Returning Employees and other employees or workers or former employees or workers of the Provider or any Sub-Contractors who had been engaged in the provision of the Terminated Services; and
		2. all PAYE tax deductions and national insurance contributions relating thereto,

in respect of the employment of the Returning Employees and such other employees or workers or former employees or workers of the Provider or any Sub-Contractors up to the Return Date, are satisfied. The Provider shall indemnify and shall keep indemnified in full the Co-Ordinating Commissioner and any Alternative Provider against all Losses arising from any breach of the Provider's obligations under this paragraph 5.5.

* 1. Without prejudice to paragraph 5.5, the Provider shall:
		1. remain (and procure that its Sub-Contractors shall remain) (as relevant) responsible for all the Provider's or the relevant Sub-Contractor's employees and workers (other than the Returning Employees) on or after the Return Date and shall indemnify the Co-Ordinating Commissioner and any Alternative Provider against all Losses incurred by the Co-Ordinating Commissioner or any Alternative Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Provider's or Sub-Contractor's employees or workers who do not constitute the Returning Employees; and
		2. in respect of those employees and workers who constitute Returning Employees indemnify the Co-Ordinating Commissioner and any Alternative Provider against all Losses incurred by the Co-Ordinating Commissioner or any Alternative Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees arising out of or in respect of the period on or after the Effective Date but on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) where such claim arises out of any act, fault or omission of the Provider and/or any Sub-Contractor including but not limited to any failure by the Provider or any Sub-Contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Co-Ordinating Commissioner or any Alternative Provider.
	2. The Provider shall discharge all of its obligations arising under TUPE in respect of or in connection with its ceasing to provide any of the Services for any reason (and in particular under Regulations 11, 13 and 14 of TUPE) and acknowledges that the indemnities it gives in paragraph 5.6 above shall be without prejudice to:
		1. any remedies available to the Co-Ordinating Commissioner or any Alternative Provider in respect of any alleged failure by the Provider to discharge such obligations (and in particular under Regulation 12 of TUPE); or
		2. any arguments which the Co-Ordinating Commissioner or an Alternative Provider may wish to advance in defence of any claims made by employees or workers or their representatives in respect of any alleged breaches of Regulations 13 and 14 of TUPE.
	3. If it is found or alleged that the contract of employment of any employee or worker of the Provider or any Sub-Contractor other than the people identified by the Provider as Returning Employees has transferred to the Co-Ordinating Commissioner and/or any Alternative Provider or any Sub-Contractor of any of them (“**Alleged New Employer**”) at any time during the Contract Term or as a result of the Provider or any Sub-Contractor ceasing to provide the Services or any of them and whether pursuant to TUPE or otherwise:
		1. the Co-Ordinating Commissioner shall notify the Provider, or shall take reasonable steps to procure that the Alleged New Employer notifies the Provider, of that finding or allegation as soon as reasonably practicable after becoming aware of it;
		2. in consultation with the Alleged New Employer, the Provider may within five (5) Operational Days of becoming aware of that allegation or finding make that person a written offer of employment to commence immediately on the same terms and conditions on which that person was employed prior to the transfer (actual or alleged), and under which the Provider would agree to recognise that person's prior service with the Provider or Sub-Contractor as appropriate;
		3. the Alleged New Employer may, within twenty eight (28) days after becoming aware of that finding or allegation, if that person is still an employee or worker of the Alleged New Employer and has either not received or (if received) has not accepted an offer of employment made in accordance with paragraph 5.8.2 above, dismiss that person; and
		4. the Provider shall in the circumstances described in paragraph 5.8.3 above indemnify and keep indemnified the Co-Ordinating Commissioner and/or the Alleged New Employer against all Losses which the Co-Ordinating Commissioner and/or the Alleged New Employer may suffer or incur in relation to that dismissal and the employment of that person up to the date of that dismissal.
	4. The Co-Ordinating Commissioner shall be entitled to assign the benefit of the indemnities set out in this Schedule 8 (TUPE) to the Provider or Alleged New Employer.

**Offer of Employment if TUPE does not apply**

* 1. If on the termination of the provision of the Services or any of them by the Provider, whether on the occurrence of a Service Provision Change or the expiry or earlier termination of the Term or for any other reason, TUPE does not apply, each Alternative Provider (including the Co-Ordinating Commissioner) shall have the right to offer employment to persons employed or engaged by the Provider or a Sub-Contractor and assigned to the provision of the Services immediately before the Return Date.
		1. Where any such offer as referred to in paragraph 5.10 is accepted, the Provider shall indemnify and keep indemnified in full the Co-Ordinating Commissioner and/or the relevant Alternative Provider on the same terms and conditions as those set out in paragraph 4.2 as if there had been a Relevant Transfer in respect of each and every employee or worker who has accepted any such offer, and for the purposes of this paragraph and paragraph 4.2 each and every such employee or worker shall be treated as if they were a Returning Employee.
		2. Where any offer made pursuant to paragraph 5.10 is not accepted and TUPE does not apply, the relevant employee or worker shall remain an employee or worker of the Provider or Sub-Contractor as appropriate.
1. **Sub-Contractors**
	1. If the Provider enters into any Sub-Contract, in accordance with the provisions of Clause 49 (Subcontracting) of the Alliance Agreement, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Schedule 8 (TUPE) and shall procure that each Sub-Contractor complies with such terms.
	2. The Provider shall indemnify and keep the Co-Ordinating Commissioner and any Alternative Provider indemnified in full against all Losses incurred by the Co-Ordinating Commissioner or any Alternative Provider as a result of or in connection with any failure on the part of the Provider to comply with paragraphs 6.1 and/or any Sub-Contractor's failure to comply with such terms.
2. **Third Party Rights**
	1. Notwithstanding anything to the contrary provided in any other provision of this Contract or its Schedules, it is agreed that any Alternative Provider has the benefit of and may enforce the terms of any of the indemnities given by the Provider to it or the Co-Ordinating Commissioner in this Schedule 8 (TUPE), subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.