

DATED

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CARE AND SUPPORT SPOT PURCHASE

between

NORTH SOMERSET DISTRICT COUNCIL

and

[] LIMITED

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

THIS CONTRACT is dated

201

PARTIES

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

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

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

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

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

.....
Authorised Signatory

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

.....
Director

TERMS AND CONDITIONS OF CONTRACT

(Care and Support Spot Purchase)
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TERMS AND CONDITIONS OF CONTRACT

BACKGROUND

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

AGREED TERMS

1. INTERPRETATION

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

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

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

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

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

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

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

Catastrophic Failure: means either:

- (a) An act or a failure of the Provider to provide the Services to the required Service Levels in such a way that, in the reasonable opinion of the Council, which brings the Council into disrepute so that the Council cannot reasonably continue to contract with the Provider to provide the Services;
- (b) Save in cases of Force Majeure or where **Clause 3.2 (Disaster Recovery)** applies, if the Provider fails to provide more than 60% of the Services required in any consecutive period of 3 days the Services to the standards required by **clause 4**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Intellectual Property: property in which intellectual property rights of whatever nature (including but not limited to patents, trademarks, database rights and present and future copyright) subsist and, where the context so admits, includes such intellectual property rights.

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

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

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

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

Month: a calendar month.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VAT: value added tax.

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

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

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

2. TERM OF THIS CONTRACT

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

3. SERVICES

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

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

3.2 Disaster Recovery

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

4. STANDARDS

4.1 Council-specific standards

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

5. STAFF ENGAGED IN THE PROVISION OF THE SERVICES

5.1 General standards

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

5.2 Training

- (a) The Provider shall ensure that:
 - (i) All Staff are supported, developed and trained to work using a Client-centred approach offering, where possible, flexibility and freedom in the way the Services are delivered.

- (ii) All Staff and Managers receive as a minimum, training as detailed in the Council's Training Requirements **Schedule 8**.
- (iii) All Care Staff receive any specific training necessary to meet the needs of Clients.
- (iv) It complies with the requirements of the National Minimum Data Set for Social Care;
- (v) It requests a training competency assessment tool (such as "TGM Care Certificate Tool") to assess the competency of each member of Care Staff (including the registered manager and/or responsible individual) and measure the effectiveness of its Care Staff training.
- (vi) It regularly reviews its assessment of Staff competence; and
 - (A) Ensures that any Staff found to not be competent in any area of Service delivery undertake further training until their supervisor is satisfied that they are competent; and
 - (B) The frequency of the reviews necessary to comply with the requirements of this **Clause** shall be determined based on the level of risk to the Clients and the relevance to the Services the relevant Care Staff member is undertaking at the time.
- (vii) It ensures that all Staff including office and on-call Care Staff receive work-based supervision relevant to their roles and tasks.
- (viii) It ensures that all Registered Managers receive regular supervision and have the opportunity to escalate problems to a senior manager in the organisation, proprietor or a mentor.
- (ix) It ensures that any Staff member whose role it is to make decisions (whether it is outside of office hours or in a working day situation) where a manager may not be present, receives regular audits and competency checks.

5.3 **Safeguarding**

- (a) The Provider shall work in partnership with the Council and other organisations to ensure that Clients who may be at risk of abuse or neglect are enabled to live as safely and independently as possible, making their own decisions and taking control of their own lives. The Council has a duty to make sure that the Services it commissions are provided safely and to a high standard. The Provider understands this duty and shall take action to ensure the Provider's role in this is fulfilled.

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

6. THIRD PARTY PRODUCTS AND CONTRACTS

6.1 Licences

- (a) The Council hereby grants to the Provider, with effect from Commencement Date for the duration of this Contract, a non-exclusive royalty-free licence to use, operate, copy and modify the Council Intellectual Property for the purpose only of fulfilling the Provider's obligations under this Contract.
- (b) The parties shall co-operate to obtain the consents of third parties to the use by the Provider of any third party software, documentation and other materials ("Third Party Products") (including, without limitation, software and know-how) which:
 - (i) The Council is permitted to use; and
 - (ii) Is required by the Provider for the provision of the Services.

If the Council fails to obtain such consent or if the Council determines that the cost of obtaining such consent is unreasonable, the parties shall co-operate to agree alternative Third Party Products which may replace those in respect of which consent has not been or cannot, except at unreasonable cost, be obtained.
- (c) The Provider shall assume all liability to third parties in respect of its use of any Third Party Products in accordance with **Clause 6.1(b)** as from Commencement Date and shall indemnify the Council against all costs, claims, damages or expenses arising from the Provider's failure to adhere to the terms and conditions of agreements between the Council and such third parties in respect of such Third Party Products.

7. SERVICE CHARGES AND PAYMENTS

Submission and Payment of Invoices

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

details of the Actual Care Provided to each Client as detailed on the Provider's records and in accordance with **paragraph 7 of Schedule 1 (Finance)**. The Charging and Monitoring Team or Personalised Commissioning (as defined in the **Schedule 1 Specification**) will check

the information provided and either approve the Service Charges, or if the provisions of **Clause** Error! Reference source not found. apply, and in either case will notify the Provider.Team

- 7.3 Within 10 Working Days of receipt of the approved Service Charges under **Clause 7.2** the Provider shall submit to the Council's accounts payable a VAT invoice correctly rendered, together with all necessary substantiating documentation which is reasonably required by the Council, which invoice shall set out:
- (a) The Service Charges payable for Actual Services Provided in respect of the Service Period for which the invoice is rendered;
 - (b) Any sums payable by the Provider to the Council in respect of Liquidated Damages incurred in respect of any preceding Service Period (to the extent the same have not been wholly satisfied by payment by the Provider or by deduction from previous invoices); and
 - (c) The net amount (if any) owing by the Council to the Provider in respect of the above,
- and the Council shall pay such invoice within 28 days of the date of receipt by the Council of (i) the said invoice or (ii) (if later) documentation substantiating the said invoice in such form as is reasonably required by the Council.
- 7.4 If the Council reasonably and properly believes that the information on the relevant Invoice is misleading or inaccurate it may withhold or refuse payment in whole or part.
- 7.5 Invoices submitted late may be subject to payment delay and the Council may in its absolute discretion refuse to accept any claim for payment submitted more 10 Working Days from the end of the relevant Service Period.
- 7.6 Within 10 days of termination of this Contract the Provider shall submit to the Council a VAT invoice or credit note correctly rendered, together with all substantiating documentation which is reasonably required by the Council, which invoice shall set out:
- (a) A reconciliation of the actual Service Charges payable in respect of the final Month and the estimated Service Charges which were invoiced to the Council in respect of that final Month;
 - (b) Any sums payable by the Provider to the Council in respect of Liquidated Damages incurred in respect of the final Month or any preceding Month (to the extent the same have not been wholly

satisfied by payment by the Provider or by deduction from previous invoices); and

- (c) The net amount (if any) owing by the Council to the Provider or by the Provider to the Council in respect of the above.

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

7.7 VAT

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

7.8 Interest

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

7.9 Payment liability

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

7.10 Audit

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

8. VARIATION IN THE BASIC PRICE

- 8.1 The Provider shall supply the Services from the Commencement Date until 31 March 2020 in consideration for the Service Charges as set out in **Schedule 2** which shall remain fixed until the first Review Date and thereafter the provisions of **clauses 8.2 to 8.5** shall apply.
- 8.2 Prior to the 21 December in each year of the Term, but not more than 5 months before any Review Date the Provider shall determine whether, and if so, what amendments or adjustments it proposes to make to the Service Charges for the next Service Year. The Provider will consult the Council for a period of not less than 28 days about its proposal(s) to amend or leave static the Service Charges for the next Service Year. In undertaking such consultation, the Provider shall give the Council promptly at the beginning of the consultation period both its calculations giving rise to the proposal(s) and its reasons for its proposal(s) and the Parties shall, as part of the consultation exercise, compare the Council's proposal(s) with the Service Charges paid in the previous year. As part of the consultation process, the Provider is entitled (but not obliged) to provide the Council with evidence regarding:-
- (a) Any fluctuations in the Provider's costs incurred since the Commencement Date and/or the previous Review Date in providing the Services;
 - (b) The current and future costs faced by the Provider in providing the Services;
 - (c) Factors that affect those – e.g. local employment costs, insurance and regulatory costs and local land values and costs: and
 - (d) The potential for improved performance and more cost-effective ways of working.
- 8.3 Such evidence, if provided, must include a full breakdown of the Provider's costs as they have been incurred in relation to a Client or category of Clients and shall be cross-referenced to the Provider's audited financial accounts and bank statements showing clearly in relation to the relevant Service(s) or category of Client what, why and by how much such fluctuations in costs have been incurred since the previous Review Date. The Council shall be obliged only to have due regard to any such evidence provided, but it shall be within the Council's sole discretion as to whether or not and if so by how much to adjust or amend the Service Charges in the light of that evidence.
- 8.4 At the end of the consultation period, the Council shall inform the Provider in writing as to whether or not and if so by how much the Service Charges are to be adjusted giving the Provider reasons for the Council's decision

which shall include, in the light of local factors relevant to the Service Charges and any evidence provided by the Provider pursuant to **Clause 8.2** above, setting out the basis on which the Council reached its final decision. If applicable the Service Charges as set out in **Schedule 2** shall be amended accordingly for the next Service Year.

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

9. PRICE REDUCTION

- 9.1 Notwithstanding **Clause 8** and subject to the provisions of this **Clause** the following principles shall apply:
- (a) the Provider shall at all times during this Contract use all reasonable endeavours to ensure that the Council receives the benefit of reduced third party costs and charges relevant to the provision of the Services;
 - (b) Where the Provider identifies such a potential benefit, it shall promptly inform the Council and shall advise the Council whether, in the Provider's professional opinion, the implementation of any change necessary to enable the Council to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price).
 - (c) If the Council shall conclude that the implementation of the necessary change is desirable, the Provider shall implement the change.
 - (d) Where the achievement of the benefit by the Council would necessitate the making of a Change Request (as defined in **Clause 11.1**), the procedures in the Change Control Procedure shall apply but (for the avoidance of doubt) the Provider shall not be entitled to object to the proposed change.
 - (e) Any benefits arising from any such change as is referred to in this Clause (including any consequent reductions in the Service Charges) shall accrue solely to the Council (subject to any costs reasonably incurred by the Provider in implementing the necessary change being taken into account).

10. LIQUIDATED DAMAGES

- 10.1 If the Provider fails to provide the Services in accordance with any individual Service Level measured on a monthly basis, the Provider will pay to the Council liquidated damages calculated as set out in this Clause.

- 10.2 The parties agree that any such liquidated damages have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Council.

Default Notices

- 10.3 If the Provider is in breach of its obligations under the Contract, the Council may in accordance with the provisions of this **clause** serve notices:
- (a) (“Default Notice” and if applicable
 - (b) a “Remedy Notice”)
- on the Provider specifying the breach and requiring it to be remedied within a stipulated period of time.
- 10.4 The Council is entitled to recover its costs in respect of the issuing of a Default Notice all losses which arise as a result of the deficient Services. In the case of direct losses these shall, where possible, be calculated accordance with the remaining provisions of this **Clause** and the Council will serve a Remedy Notice to recover these losses.
- 10.5 In the case of indirect or consequential losses which flow from the deficient Services (including but not restricted to any claims made by **Clients** or their Carers) or any contractual or other obligations which fall on the Council these shall be recoverable as a debt owing to the Council by the Provider.
- 10.6 For the avoidance of doubt, it is agreed and declared that the application of this **Clause** and its method of calculation represents a genuine pre-estimate by the Parties of the reduction in the value of the Services to the Council, resulting from the failure of the Provider to perform such Services strictly in accordance with the Contract.
- 10.7 It is recognised that certain deficiencies will only require the Council to expend administrative time for their rectification. Where remedial work is necessary the Council may issue a Remedy Notice, however, then the remaining provisions of this Clause may be applied in addition to this Sub-Clause or, if in the opinion of the Service Manager circumstances warrant it, in lieu of this Sub-Clause;
- (a) Where the Service Manager or any other officer responsible for monitoring has expended administrative time in investigating and organising the remedying of any deficient Services then the reduction in value shall be deemed to be £100 per incident. **This to be referred to as a Category ‘A’ Remedy Notice.**
 - (b) Where the Service Manager determines that it would cost the Council the equivalent of a single officer working for between 1 and 4 hours

to rectify the deficient Services then the reduction in value shall be deemed to be £150 per incident. **This is to be referred to as a Category 'B' Remedy Notice.**

- (c) Where the Service Manager determines that it would cost the Council the equivalent of a single officer working for between 4 hours and a Day to rectify the deficient Services then the reduction in value shall be deemed to be £300 per incident. **This is to be referred to as a Category 'C' Remedy Notice.**
- (d) In the case of deficient Services which require 2 or more officers, or in the case that a single officer would take longer than a Day, then the rate for a single officer shall be doubled or otherwise appropriately increased.

10.8 The parties agree that the Council may reasonably deem the following to be a **Consistent Failure** for the purposes of this Agreement:

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

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

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

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

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

11. CHANGE CONTROL

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

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

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

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

11.2 Origin of Change Requests

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

11.3 Agreement of Change Orders

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

11.4 Implementation costs

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

12. CO-OPERATION BETWEEN THE PARTIES

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

13. DISPUTE RESOLUTION PROCEDURE

- 13.1 Either party may call an extraordinary meeting of the parties by service of not less than five days' written notice and each party agrees to procure that its Service Manager and at least one (1) other of its designated representatives from its Management Team shall attend all extraordinary meetings called in accordance with this **Clause**.
- 13.2 The members of the relevant meeting shall use reasonable endeavours to resolve disputes arising out of this Contract. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to the Council's Chief Executive and the Provider's Managing Director who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the Council's Chief Executive and the Provider's Managing Director fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.

- 13.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.
- 13.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly, all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for either party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 13.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.
- 13.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 13.7 While the Dispute Resolution Procedure referred to in this **Clause 13** is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this Contract. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

14. ASSIGNMENTS AND SUBCONTRACTING

- 14.1 Except as expressly set out in this Contract neither party shall be entitled to give, bargain, sell, assign, let or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other party.
- 14.2 The Provider may not except with the express prior written consent of the Council:

- (a) Assign the whole its obligations under this Contract, or
- (b) Sub-contract any part/parts of its obligations (where such a sub-contract together with any previous sub-contracting) would result in more than 20% of the total Services (measured in number of hours) under this Contract being sub-contracted.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 General

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

- (a) In the course of performing the Services; or
- (b) Exclusively for the purpose of performing the Services,

shall vest in the Council upon creation.

15.2 Copyright

Where such Intellectual Property includes software, designs, documentation or other property subject to copyright, the Provider hereby assigns absolutely to the Council, with full title guarantee, the copyright and all other rights of a like nature conferred under the laws of the United Kingdom and all other countries of the world in such property, and all modifications, enhancements and amendments made by the Provider (or such employee, agent or subcontractor) to such property for the Council, for the full term during which the copyright and any renewals or extensions shall subsist. The Provider shall procure that its employees, agents and subcontractors shall waive absolutely and irrevocably their moral rights granted under the Copyright, Designs and Patents Act 1988 or equivalent or analogous rights under laws of other jurisdictions in relation to such property.

15.3 Intellectual Property owned by the Provider

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

to use, adapt, maintain and support such Intellectual Property for the benefit of the Council or any such company.

15.4 Third Party Licences

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

16. CALDICOTT PRINCIPLES:

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

- (a) it can justify the purpose for which such data is being processed;
- (b) such data is used only as absolutely necessary;
- (c) only the Data Subject's Personal Data required for the delivery of the Services is recorded and processed;
- (d) access to such data is on a strict need-to-know basis;
- (e) ensure that everyone with access to Personal Data is aware of their responsibilities;
- (f) ensure that the safeguarding and use of Personal Data complies with the relevant Law; and
- (g) have confidence to share information in the best interests of clients within the framework set out by the Caldicott Principles.

17. Data Protection

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

Data Protection Legislation:

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

- (d) any other applicable Laws governing the processing of Personal Data and privacy which may come into force from time to time.

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

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

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

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

- 17.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is and will remain the Controller and the Provider is the Processor in respect of the processing of Personal Data under this Agreement. **Schedule 10 Schedule of Processing, Personal Data and Data** sets out the scope, nature and purpose of the processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 17.2 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringes the Data Protection Legislation.
- 17.3 The Provider shall (and shall procure that any of its Care Staff involved in the processing of Personal Data shall) comply with its obligations under the Data Protection Legislation which arise in connection with this Agreement.
- 17.4 Notwithstanding the general obligation in **clause 17.3**, where the Provider is processing Personal Data as a Processor for the Council:
 - (a) The Provider shall only process the Personal Data in accordance with this Agreement, and in particular **Schedule 10**, and on documented instructions from the Council, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - (b) The Provider shall ensure that persons authorised to process the Personal Data;

- (i) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council, or as otherwise permitted by this Agreement;
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data and training is kept up-to-date; and
 - (iv) are aware of and comply with the Provider's duties under this **clause 17**.
- (c) Taking into account the nature of the data to be protected, the harm that might result from a Data Loss Event, the state of technological development and the cost of implementation the Provider shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
- (i) The pseudonymisation and encryption of Personal Data;
 - (ii) The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (iii) The ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
 - (iv) A process of regular testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- (d) In assessing the appropriate level of security referred to in **clause (c)** above, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed,

17.5 The Provider shall not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (a) The Provider or the Council has provided appropriate safeguards in relation to such transfer;
- (b) The Data Subject has enforceable rights and effective legal remedies;
- (c) The Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- (d) The Provider complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data.
- 17.6 Subject to **clause 17.7** the Provider shall notify the Council immediately if it:
- (a) Receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) Receives a request to rectify, block or erase any Personal Data;
 - (c) Receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - (d) Receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) becomes aware of a Personal Data breach;
 - (f) Receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (g) Becomes aware of a Data Loss Event.
- 17.7 The Provider's obligation to notify under **clause 17.6** shall include the provision of further information to the Council in phases, as details become available.
- 17.8 Taking into account the nature of the processing, the Provider shall provide the Council with full assistance and co-operation in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under **clause 17.6** (and insofar as possible within the timescales reasonably required by the Council including by promptly providing:
- (a) The Council with full details and copies of the complaint, communication or request;
 - (b) Such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) The Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) Assistance as requested by the Council following any Data Loss Event;
 - (e) Assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

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

18. COUNCIL DATA

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

19. FREEDOM OF INFORMATION

- 19.1 The Provider acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and cooperate with its disclosure obligations.
- 19.2 The Provider shall provide all necessary information and assistance as reasonably requested by the Council to enable the Council to respond to

any request for information within the time for compliance set out in FOIA or EIR.

- 19.3 The Council shall be responsible for determining in its absolute discretion whether the terms of this agreement or any other information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or EIR and save in the case of manifest error the Provider shall not challenge the Council's determination.
- 19.4 The Provider acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA, be obliged to disclose information without consulting or obtaining consent from the Provider, or having taken the Provider's views into account.

20. CONFIDENTIALITY

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

21. ANTI-BRIBERY

- 21.1 The Provider shall:
- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - (b) Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) Comply with the Council's Ethics, Anti-bribery and Anti-corruption Policies (referred to in **Schedule 5**), in each case as the Council or the relevant industry body may update them from time to time (**Relevant Policies**).

- (d) Have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and **Clause 21.1(b)**, and will enforce them where appropriate;
- (e) Promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Contract;
- (f) Immediately notify the Council (in writing) if a foreign public official becomes an officer or employee of the Provider **AND/OR** acquires a direct or indirect interest in the Provider (and the Provider warrants that it has no foreign public officials as officers or employees **AND/OR** direct or indirect owners at the date of this Contract);
- (g) Within 2 months of the date of this Contract, and annually thereafter, certify to the Council in writing signed by an officer of the Provider, compliance with this **Clause 21** by the Provider and all persons associated with it and all other **Clients** for whom the Provider is responsible under **Clause 21.1(d)**. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

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

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

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

22. INSURANCE POLICIES

22.1 The Provider shall maintain in force the following insurance policies:

- (a) Public Liability Insurance Policy - limit **£10 million per claim**; and
- (b) Professional Indemnity Insurance Policy - **limit £5 million per claim**,

and shall ensure that the appropriate noting of the Council's interest has been recorded on the policies or a generic interest **Clause** has been included and shall on the written request of the Council from time to time provide the Council with copies. On the renewal of each policy, the Provider shall promptly send a copy of the premium receipt to the Council.

22.2 The Provider shall, during the term of this Contract, and for a period of six years thereafter:

- (a) Administer the insurance policies and the Provider's relationship with its insurers at all times to preserve the benefits for the Council set out in this Contract;
- (b) Do nothing to invalidate any such insurance policy or to prejudice the Council's entitlement thereunder; and
- (c) Procure that the terms of such policies shall not be altered in such a way as to diminish the benefit to the Council of the policies as provided at Commencement Date.

23. LIMITATION OF LIABILITY

23.1 Any limitation of liability set out in this Contract shall not apply so as to restrict either party's liability for death or Personal injury resulting from that party's negligence or the deliberate default or wilful misconduct of that party, its employees or agents or subcontractors.

23.2 Nothing in this **Clause** 23 shall affect the Council's right to terminate this Contract in accordance with its terms.

24. FORCE MAJEURE

24.1 Subject to due compliance with **Clause** 24.2 and **Clause** 24.3, neither party shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Contract arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: Act of God, governmental act, war, explosion or civil commotion ("Force Majeure").

24.2 In the event of either party being so delayed or prevented from performing its obligations such party shall:

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

25. TERMINATION FOR CAUSE

- 25.1 Subject to the **Clause 13 (Dispute Resolution)** procedure this Contract may be terminated for cause in whole in the following circumstances:
- (a) By the Council with immediate effect:
 - (i) If a Consistent Failure has occurred and the Provider has failed to remedy such breach within 21 days of service of a notice so to do or such other longer period reasonably specified by the Council in the notice; or
 - (ii) From the date of service on the Provider of written notice if a Catastrophic Failure has occurred;
 - (b) By the Council with immediate effect if:
 - (i) The Provider is no longer registered with the CQC (or its successor in function) or
 - (ii) If a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or
 - (iii) If the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an

encumbrancer takes possession of any of the Provider's property;

(iv) From the date of service on the Provider of written notice from the Council if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010 of the Provider to which the Council reasonably objects

(c) By either party with immediate effect from the date of service on the other party of written notice if the other party ceases or threatens to cease to carry on business in the United Kingdom;

(d) By the Provider with immediate effect from service on the Council of written notice if the Council is in breach of any material obligation under this Contract and, if the breach is capable of remedy, the Council has failed to remedy such breach within 28 days of receipt of notice so to do;

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

26. TERMINATION WITHOUT CAUSE

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

27. CONSEQUENCES OF TERMINATION

27.1 If this Contract is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a new Provider. .

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

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

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

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

28. NON-SOLICITATION

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

29. WAIVER

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

30. RIGHTS AND REMEDIES

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

31. SEVERANCE

- 31.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is

not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this **Clause** shall not affect the validity and enforceability of the rest of this Contract.

- 31.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

32. NO PARTNERSHIP OR AGENCY

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

33. COUNCIL'S STATUS

- 33.1 Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

34. RIGHTS OF SET-OFF

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

35. CURRENCY

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

36. VAT AND INDEMNITIES

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

37. THIRD PARTY RIGHTS

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

38. NOTICES

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

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

- 38.3 For the purpose of **Clause 38.2** and calculating deemed receipt:
- (a) All references to time are to local time in the place of deemed receipt;
and

- (b) If deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a Bank Holiday, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

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

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

39. ENTIRE AGREEMENT

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

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

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

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

40. GOVERNING LAW

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England.

41. JURISDICTION

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

42. COUNTERPARTS

- 42.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 42.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

43. INADEQUACY OF DAMAGES

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

44. ANNOUNCEMENTS

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

45. COSTS

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

46. VARIATION

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

47. LANGUAGE

- 47.1 This Contract is drafted in the English language. If this Contract is translated into any other language, the English language version shall prevail.
- 47.2 Any notice given under or in connection with this Contract shall be in the English language. All other documents provided under or in connection with this Contract shall be in the English language, or accompanied by a

certified English translation. If such document is translated into any other language, the English language version shall prevail unless the document is a constitutional, statutory or other official document.

48. FURTHER ASSURANCE

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

SCHEDULE 1 CARE AND SUPPORT SPOT PURCHASE SPECIFICATION

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SERVICES

1. DEFINED TERMS

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

"Actual Care Provided"	The time spent with Clients (measured to the minute).
"ACP"	An Advanced Care Plan produced between a Client and his/her care providers irrespective of discipline, making clear the Client's wishes based on an anticipated deterioration in the Client's condition in the future with attendant loss of capacity to make

	decisions and/or ability to communicate wishes to others.
“Assessment”	The community care assessment undertaken by the Department to determine a Client’s needs and whether a service will be provided under the Council’s eligibility criteria.
“AWP”	Avon and Wiltshire Mental Health Partnership NHS Trust is a significant provider of high-quality mental health services across a core catchment area covering Bath and North East Somerset (B&NES), Bristol, North Somerset, South Gloucestershire, Swindon and Wiltshire. The Trust also provides specialist services for a wider catchment extending throughout the south west. The Mental Health Teams in North Somerset are made up of professionals who work for AWP and the Council. For the purposes of this Contract they will be included in the definition of and reference to the Department.
“CCG”	The Bristol, North Somerset and South Gloucester Clinical Commissioning Group, being the health body responsible for the provision and commissioning of health services including GP’s, hospitals and community health services in North Somerset.
“Call-Off”	The individual contracts that fall under the framework agreement.
“Care and Support Plan”	The document produced by the Department following a full assessment of a Client’s needs. The Care and Support Plans will detail the Services to be provided to that Client to include the level of support required, the Outcomes and the timescale for achieving the Outcomes. For Clients under 18 which may include, but not limited to, the “Education, Health and Care Plan” and/or the “Pathways to Adulthood Plan”.
“Care Coordination Team”	The Team which assess and accept referrals for CHC End of Life funding for those with rapidly deteriorating conditions.

“Care Manager”	The person within the Department responsible for completing the Community Care Assessment and managing the Client’s Package.
“Case Manager”	The particular Professional within the Funded Healthcare Team responsible for managing a Client’s Package.
“Community Nurse”	A nurse based within a GP surgery delivering health services in the community.
“Contracts and Commissioning Team”	The Team within People and Communities Directorate with the responsibility of managing the Contract. The Personalised Commissioning Team and Contract Compliance Team sit within the Contracts and Commissioning Team.
“Contract Compliance Team”	The Contract Compliance Team is responsible for monitoring compliance of the Terms and Conditions of the Contract and accompanying Schedules and Appendices.
“Cost/balance”	The Council’s internal process for considering the actual costs for an individual between providing a Package in the community and a care home. Decisions as to the most cost effective setting will be made based on individual circumstance and via the Department’s panel process.
“Direct Payment Personal Budget”	Personal Budget taken as a cash payment in order for a Client to purchase his/her own care package.
“Eligibility Criteria”	The criteria used for determining Client’s eligibility to receive a service as set out in Paragraph 8 of this Schedule
“Emergency Services”	Any or all of the following as appropriate CCG’s Rapid Response, Ambulance Service; Fire Service and Police Service.
“End of Life Care”	Care provided for the terminally ill in the latter stages of their life.
“ESM”	Electronic Scheduling and Monitoring System that will plan Staff rotas and record actual time spent in a

	Client's home.
"Funded Healthcare Team"	The operational Team commissioned by the CCG that is responsible for assessing for eligibility for CHC funding and liaising with the Personalised Commissioning Team to source packages of care for Clients who meet the threshold for CHC funding.
"Interim Care Plan"	The document produced by the Department prior to a full assessment of a Client's needs. The Interim Care Plan will be agreed by the Department, will be outcome focussed and will be superseded by a Care and Support Plan
"Key Worker"	A member of Staff who takes a lead role in overseeing the well-being of a Client they visit, as allocated to them by the Provider.
"Managed Personal Budget"	A Personal Budget arranged and managed for a Client by a support agency. For the purposes of this contract the support agency will be the Council's Personalised Commissioning Team.
"Minor Change"	A minor change is any small change from the provision in the Care and Support Plan and/or the Personal Plan. A minor change is to allow for simple adjustments to provisions of care to be made simply and quickly. Up to two minor changes may be made, provided both in combination do not exceed the overall permitted variation from the original Package. The variation to a care and support plan permissible within a 'minor' change will be along a sliding scale depending on costs of the care or size of the Package.
"Monitoring Form"	A form completed by the Department and sent to the Contracts and Commissioning Team reporting failings of the Provider.
"Notification Form"	The form provided by the Council to the Provider to be used by either party in to request a permanent change to the Package or cessation of the individual service.

“Order”	<p>The Order issued by the Personalised Commissioning Team to the Provider specifying the Service required for a particular Client under the Call-Off. The Order will contain as a minimum;</p> <ul style="list-style-type: none"> • The Unique Identifying Number, name, address and date of birth of the Client • The volume of Services to be provided across the specified period i.e. per week – this could be number of hours purchased, the cost of the hours purchased, or both; • The start date of the Service • The end date of the Service or indication that it is to be provided until further notice • The Care and Support Plan/Record of Needs
“Outcome”	A set goal to be achieved.
“Panel”	<p>The process that takes place for each Department that reviews whether the Services being requested by the Care Manager is within budget and appropriate for the Client. The panel is made up from various representatives from the Department.</p>
“Personal Plan”	<p>The Plan to be completed by the Provider specifying the Services to be provided in accordance with the Care and Support Plan. The Personal Plan will be completed using a Client-centred approach and focus on achieving any outcomes set and the expression “Personal Planning” shall be interpreted accordingly.</p>
“Poor Practice Alert”	<p>A contact that informs the Contracts and Commissioning Team of an issue with a Provider where it has been deemed that the cause is from poor practice or poor quality of care. Many such incidents may have originally been raised as a Safeguarding concern but considered not to meet the criteria that require the Local Authority to make enquiries, or</p>

	cause others to make enquiries, under section 42 of the Care Act 2014.
“Positive Social Interaction”	<p>The all or any of the following (as defined by © Dementia Care Matters):</p> <ul style="list-style-type: none"> • Beneficial conversation • Positive, active companionship • Increased feelings of well being • Where a task is turned into an opportunity to connect with someone • A time of fun and pleasure • An opportunity to reminisce • Being involved in domestic activity • Receiving sensory comfort or stimulation • Being physically close, hugs, hand holding or comforted • Real choices being offered • Being offered encouragement, comfort and support greater than is necessary to carry out a task • Being praised, valued, validated, helped to feel positive about oneself
“Prevention”	The action of stopping something from happening or arising. For the purposes of this contract, the deterioration of a situation that may lead to Clients needing a Package from the Council.
“Professionals”	Including but not limited to, members of the CCG’s provider services e.g. Community Nurse, GP’s and other providers of services.
“Provider Summary Account”	A spreadsheet exchanged between the Provider and the Charging and Monitoring Team (18+ years old) or Personalised Commissioning Team (0-17 years old) detailing the number of Actual Care Provided delivered to Clients over the course of a Service Period.
“Reablement”	Relearning the skills necessary for daily living following illness, usually with guidance and support from health professionals, so that there is an improvement in function and increased independence.

“Reablement Completion Form”	The form provided by the Council to the Provider that informs the Council of the care and support provided during the Reablement period.
“Record of Needs”	The document used by the Funded Healthcare Team responsible for purchasing CHC Packages, equivalent to the Department’s Assessment and Care and Support Plan.
“Resilience”	Initiatives that arise from poor weather such as snow, flooding, heat waves and other emergency situations such as health pandemics or incidences involving the emergency services.
“Safeguarding”	The process of protecting Clients from harm or damage with an appropriate measure.
“Serious Incident Forms”	Forms used by the CCG and/or the Provider to record incidents relating to the delivery of Service to Clients.
“Service Manager”	The Manager of the Team Manager.
“Significant Change”	Significant Changes are where the changes exceed a Minor Change. A significant change may also be indicated by a change in the nature of service provision, such as a move from a community to care home setting, or a change from a managed to a Direct Payment Personal Budget.
“Team North Somerset”	A unique pioneering partnership of organisations who support the most vulnerable and disadvantaged people in our communities into sustainable quality employment.
“Team Manager”	The Manager of the Care Manager.
“Therapist”	An Occupational Therapist or Physiotherapist employed by the Council or the CCG

“Time Bands”	Time bands are parameters to allow the Provider flexibility in service delivery whilst ensuring Clients receive a Service at a time that is appropriate to their assessed needs.
“The Department”	<p>The Department is collectively the Adult Care Teams and Disabled Children’s Team Teams within the People and Communities directorate of the Council and AWP who are responsible for:</p> <ul style="list-style-type: none"> • The overall professional management of any day to day issues regarding the Clients and the Service her or she receives. • Carrying out assessments and preparing Care and Support Plans. • Considering and agreeing variations to Paperwork. • Reviewing ongoing Packages <p>The Provider will communicate with the Department, by telephone to Care Connect, or by using a Notification Form via the Personalised Commissioning Team.</p>
“Unique Identifying Number”	A unique identifying number created by the Council’s social care system for each Client.
“Variation Log”	<p>A log to be submitted by the Provider to the Charging and Monitoring Team (18+ years old) or Personalised Commissioning Team (0-17 years old) at the end of each service period detailing any changes to delivery of the Package in accordance with the Contract terms and conditions. The Variation Log should contain as a minimum;</p> <ul style="list-style-type: none"> • The relevant service period dates • The Unique Identifying Number, Name, Address and Date of Birth of the Client • The volume of Package • The date of each variation • The number of hours over or under delivered for each variation • The reason for the over/under delivery of each variation

	<ul style="list-style-type: none"> • The total variation to the Package hours during the whole service period
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2. **INTRODUCTION**

- 2.1. This contract is for the provision of care and support to children, young people and adults.
- 2.2. In partnership with CCG, the Council is committed to commissioning high-quality personal care and support services for people who are assessed as being in need of a service to enable them to remain living in their own home.
- 2.3. The Council's vision for the future of personal care is one of holistic, integrated and joined-up provision whereby Providers offer a wide range of approaches.
- 2.4. The Services will be provided primarily in the geographic boundary of North Somerset, although the Council or CCG may be required to fund a Service to a geographical area outside the usual remit of this contract due to the location of a Client's homes in relation to the GP.
- 2.5. The Council has given due consideration to legislation and a number of published recommendations regarding good practice in relation to commissioning high-quality community-based care and support including the following;
 - The Care Act 2014, which sets out this vision and general responsibilities for social care, reinforcing the transformation necessary to enable greater choice, control and personalisation.
 - The Children's Act 2008
 - The Short Breaks for Carers of Disabled Children Regulations 2011
 - "Key to Care" – Report of the Burstow Commission on the future of the Home Care Workforce;
 - Unison's Ethical Care Charter;
 - "Think Local, Act Personal" – Commissioning for Better Outcomes;
 - The Equality and Human Rights Commission's Recommendations for Local Authorities.
- 2.6. Care and support services will be delivered according to best practice and relevant local and national strategies. The North Somerset Corporate Plan 2015-19 considers various areas of key focus. The following listed under Health and Wellbeing state that the Council will.
 - Enable residents to make healthy choices and promote active lifestyles which reduce ill-health and increase independence.
 - Support families to give their children the best start in life.

- Commission or provide quality health and care services, which deliver dignity, safety and choice.
- 2.7. The following listed under Prosperity and Opportunity state that the Council will.
- Enable young people to fulfil their potential.
 - Ensure that all our communities share in prosperity and employment growth.
- 2.8. The following listed under Quality Places state that the Council will.
- Build and sustain great places to live and visit - vibrant, accessible and safe.
 - Empower people to contribute to their community and communities to provide their own solutions.
- 2.9. The People and Communities Annual Directorate Statement for 2017-18 lists under the Excellence in Managing Resources section of the Enablers key area.
- Recommissioning domiciliary care, care homes, support people and voluntary sector provision to address financial challenges.
 - Joint commissioning with Health to achieve ambitions of the Better Care fund.
- 2.10. The Authority aims to promote and protect the independence and wellbeing of adults living in North Somerset. The aim is driven from the Housing with Support Strategy 2017-2027 of the Authority's "Maximising Independence Vision"
- 2.11. Strong partnerships and effective commissioning are essential to achieving our vision. This will include improving integration between health and social care, building community capacity, shaping the market to ensure that when people do need services sufficient choice and quality is available locally, and working with care providers as partners in maximising independence. Our approach to commissioning will be evidence based and user-centred. The Housing with support strategy, and forthcoming Assistive Technology strategy, will ensure we are ambitious in supporting innovation and transformation in service delivery.
- 2.12. This Service Specification sets out the core standards and expectations of a Care and Support service in the community.
- 2.13. It is acknowledged that this Framework Agreement will be issued to Providers for different reasons and some Packages may only be a one off or short term, and therefore, **paragraphs 8-11** will only apply where relevant.

3. SERVICE PRIORITIES

3.1. Secure Provision

- 3.1.1. The Council wishes to ensure that all People currently receiving a Service and those needing Services in the future have security in that provision, thus the Provider shall ensure that it has sufficient current and future capacity to meet the required Services throughout the Contract Term taking into consideration demographic changes.
- 3.1.2. The Provider must ensure responsiveness to requests for End of Life provision enabling every Client to die at home if it is their wish.

3.2. Strategic Partnerships and Strategic Aims

The Council wishes to facilitate workforce development by working in partnership with providers to improve terms and conditions of employment and to develop career pathways for Staff that supports recruitment, retention, flexibility and quality. The Provider shall work in partnership the Council to achieve strategic aims and those of partner organisations such as the CCG. These aims include;

- 3.2.1. **Transitions** - the Provider may be required to work with a Client who is moving from children's services to adult services from the age of 14. This may involve planning for the Client moving into his/her own property, trying to access employment as well as social and leisure opportunities. The Department will endeavour to involve the Provider at the earliest opportunity in the transitions process if a change of provider is required for the Client.
- 3.2.2. **Resilience Planning** - the Provider will pro-actively engage with the Council and other providers of services if there is a requirement to implement the Disaster Recovery Plan or Exit Management Plan (see **Schedule 4**). If required by the Council the Provider will attend any resilience planning meetings whether they are of a planned or urgent nature. The Provider will ensure it Staff are fully aware of risks relating to hot and cold weather and will act accordingly within the boundaries of the Provider's own policies and processes. The provider will actively promote and support staff to take up the offer of free vaccinations for staff identified in high risk groups for flu, convey hand hygiene messages throughout the flu season, for example by adding a hand hygiene footnote to all communication e.g. Clients/staff letters, emails and so forth and utilise the free Flu Fighters campaign resource (or any such campaign which may replace it) to raise awareness and improve uptake and any national campaign resource.

- 3.2.3. **Health related services** – the Provider may be asked to undertake tasks on behalf of the CCG that may not necessarily be delivered under this Contract, but that will support the Provider to improve terms and conditions of employment and to develop a career pathway for Staff.
- 3.2.4. **Assessments and Provider-Led Reviews** – in accordance with the Council's duties under the Care Act 2014, the Council may require the Provider to assist with assessments and reviews. This may include assisting with self-assessment and/or reviewing existing Care and Support Plans for the Department.
- 3.2.5. **Enabling Effective Hospital Discharges** – the Provider will be required to work effectively with hospital staff, the Personalised Commissioning Team and if applicable North Somerset Community Response Service to ensure Clients are discharged promptly and do not remain in hospital past being ready for discharge.

3.3. **Cost Reduction**

3.3.1. The Council's focus is on quality, safety, accountability and market sufficiency and aims to achieve a balance between price competition (that drives innovation and value for money) and securing a price range that aids market stability and development. The Provider will understand the requirement for the Council to achieve cost/balance in the level of Services. Where appropriate, the Provider will work actively with the Department to identify when Packages in the community are either

3.3.1.1. Reaching a level whereby alternative provision may need to be considered whilst achieving a balance in providing a Client-centred Service; or

3.3.1.2. No longer required at the level being provided.

4. **THE ETHOS OF THE SERVICE**

4.1. The ethos of the Service is quality of life for all Clients. The Provider shall ensure that the promotion of well-being and quality of life are central to all Services provided. The Provider shall ensure that Care Staff:

4.1.1. Are able to recognise signs of well-being and ill-being and take any appropriate action necessary; and

4.1.2. Demonstrate an understanding of the importance of quality of life to Clients.

- 4.2. The Provider must have a focus on Prevention and reablement as a way of reducing the risk of social isolation and maximising a Client's independence.
- 4.3. The Provider should recognise that partnership working with the voluntary sector, including any Council run initiatives is vital to the success of Prevention, particularly in supporting Clients at risk of social isolation.
- 4.4. In the delivery of the Service the Provider will work closely with a Client's family and carers, and if applicable, the Department, North Somerset Funded Healthcare Team and Care Coordination Centre as well as the CCG Community Services such as community matrons, the district nursing service, general practitioners and agencies involved in End of Life care such as outreach palliative care Teams and the Marie Curie nursing service.
- 4.5. The Provider must communicate effectively with all agencies involved in the support of Clients including voluntary services and any other commissioned services that may be provided by private providers or NHS services.
- 4.6. The Provider will involve Clients and, if appropriate their carers or family, in all aspects of their Personal Planning, including reviews.
- 4.7. Where the Client does not fully understand the process or lacks capacity, the Provider must make provision for an advocate to be involved. The advocate may be a carer, interpreter or someone especially engaged to act as an advocate.
- 4.8. The Provider must ensure that Services are delivered positively and each Staff visit should involve Positive Social Interaction and shall ensure that Staff must be trained in understanding what this means including that incorporating Positive Social Interaction into a visit does not take longer but has a big impact on the Client's well-being and quality of life.

5. COMPLAINTS

- 5.1. The Department will monitor complaints received about the Provider. This includes where applicable;
 - 5.1.1. Complaints received by the Provider about the Provider;
 - 5.1.2. Complaints received by the Council about the Provider;
 - 5.1.3. Monitoring forms;
 - 5.1.4. Poor Practice alerts; and
 - 5.1.5. Serious Incident forms.

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

6. SOCIAL VALUE

- 6.1. The Social Value Act 2012 requires that when buying services commissioners to consider securing:

- 6.1.1. Economic,
- 6.1.2. Social, and
- 6.1.3. Environmental benefits.

To that end the Council requires the Provider to:

6.2. Economic

- 6.2.1. Target recruitment and offer work locally wherever possible;
- 6.2.2. Recruit Care Staff will be recruited in a way that ensures availability to meet the needs of the Clients rather than Staff;
- 6.2.3. Offer all Care Staff at least, minimum contracted hours to ensure Staff are paid the national minimum wage or the national living wage as appropriate.
- 6.2.4. Pay staff for their time spent travelling in between Clients and
- 6.2.5. Ensure that its Service delivery model supports these aims in the most cost-effective and environmentally-friendly way possible.
- 6.2.6. Further, the Council has committed to adopting the priorities of Team North Somerset, which includes supporting care leavers, high impact families, young people not in education, Clients with a mental health condition and/or a learning disability into quality sustained employment. The Provider will support the Council in its strategic commitment by offering employment opportunities to people in these groups where appropriate.

6.2.7. The Provider will establish links with local higher educational facilities and organisations supporting apprenticeships to offer placements and part time work to students studying relevant qualifications on the basis that students can progress onto permanent employment opportunities in their chosen area which may be with the provider.

6.2.8. The Provider will recognise engaging any students attending higher educational facilities in employment opportunities offer solutions to service provision gaps such as evenings, weekend and school and Bank holidays.

6.3. **Social**

6.3.1. Consider ways that it can develop the Services it provides to meet the needs of people living in North Somerset, whether it be those funded by the Council, those in receipt of direct payments or financing their care privately, or those in the local community who do not yet meet the Eligibility Criteria for a Service.

6.3.2. Understand what Services are needed locally, what people want to buy from them and have a policy and operational document to support this.

6.4. **Environmental**

6.4.1. The Provider shall endeavour to develop sustainable transport initiatives in the provision of its Service including encouraging 'greener' ways of travelling i.e. walking and cycling where appropriate; and

6.4.2. The Provider will dispose of all waste, including proper disposal of, and take measures to reduce, re-use and recycle these resources where possible.

7. **FINANCE**

7.1. Packages will be delivered in accordance with **Clause 7 Contract Terms and Conditions**).

7.2. In addition to **Clause 7** it is acknowledged that from time to time Clients may temporarily require additional Service time and to ensure that their needs are met, for payment purposes the Provider will be given a tolerance of total Service delivery that equates to 11 hours per Client, per week. ***E.g. 100 Clients x 11 hours = a tolerance of 1100 per week.*** For any time incurred above this tolerance, the Provider must provide a full explanation to the Charging and Monitoring Team. Should the Provider deliver above this tolerance for 3 consecutive Service Periods, the Charging and monitoring Team will notify the Contracts and Commissioning Team.

- 7.3. For the purpose of this Service the Provider will either;
- 7.3.1. complete a Client timesheet for each visit, accurately to the nearest minute, where they are providing a Service for ten or less Clients. It is not a requirement to send timesheets to the Council at the end of every Service Period, however timesheets must be available on request. or
 - 7.3.2. use an Electronic Scheduling and Monitoring system where they are providing a Service for more than ten Clients.
- 7.4. Regardless of the mechanism used to capture the information, all finance reports sent to the Council must be in accordance with **Schedule 4**.
- 7.5. A Variation Log will be submitted by the Provider to Adults 18+ - The Charging and Monitoring Team and Children and Young People 0-17 - The Personalised Commissioning Team detailing changes in a Client's circumstance and cancellations and/or absences that may affect the Personal Plan and/or the Provider's invoice. Each Variation Log will detail any or all of the following circumstances: -
- 7.5.1. An admission to hospital and the recommencement of the Service.
 - 7.5.2. Variances above the tolerance specified in **Paragraph 7.2**.
 - 7.5.3. Any temporary cancellations of the Service and the reason stating whether 24 hours' notice of the cancellation was given.
 - 7.5.3.1. Dates when the Service was not delivered
 - 7.5.3.2. The reason (and the Provider must state the time of the cancellation on the Variation Log stating "no visit no cancellation notice" to ensure payment is made).
 - 7.5.4. Any absence, planned or unplanned, of the Client, including respite care and holidays.
 - 7.5.5. Where applicable, in exceptional circumstances, ESM System user errors.

8. ELIGIBILITY CRITERIA FOR THE SERVICE

- 8.1 The Service will be available to Clients who have met the Council's Eligibility Criteria under the Care Act 2014 or the Children's Act 1989 and who fall into one or more of the following categories;
- 8.1.1. Clients with hearing impairments who are deaf, hard of hearing, or deafened.

- 8.1.2. Clients with severe visual impairments.
- 8.1.3. Clients who are deafblind
- 8.1.4. Clients with mental health issues such as dementia and associated conditions.
- 8.1.5. Clients with physical impairments.
- 8.1.6. Clients living with HIV infection and AIDS.
- 8.1.7. Other disabled Clients.
- 8.1.8. Clients who misuse alcohol and drugs.
- 8.1.9. Clients eligible for End of life care.
- 8.1.10. Clients eligible for NHS Continuing Healthcare funding

9. SERVICE REQUIREMENTS

- 9.1. The processes for setting up and management of Packages are detailed in **Schedule 3**
- 9.2. The Provider shall ensure that:
 - 9.2.1. The Service provision will be available 24 hours a day, every day of the year (for example by arrangement Staff may be available for night care etc. when required).
 - 9.2.2. The Provider shall have manned office premises open from 9am-5pm every Monday to Friday, excluding Bank Holidays.
 - 9.2.3. The Provider's manager or a senior member of Staff will be available at all times during Office Hours.
 - 9.2.4. An on-call service, manned by a senior member of Staff shall be available for Clients, other care staff and professionals to contact outside of Office Hours from 07.00 at least up to 22.00 hours every day of the year.
 - 9.2.5. In an emergency situation,
 - 9.2.5.1. If requested by either a Client or the Department, the Provider shall send a member of Staff, if required, between the hours of 07.00 and 22.00.
 - 9.2.5.2. The Provider must endeavour to send that member of Staff as soon as practicably possible based on the risk to the Client and once at the Client's home must act in accordance with **Schedule 3, Paragraph 5 Emergencies.**

9.2.5.3. The Provider will not be required to send Staff to attend between the hours of 22.00-7.00 and will refer to the appropriate emergency services if the Client is unwell or at risk.

9.2.5.4. To ensure appropriate payment is made for an emergency service the Provider must record the visit on the Variation Log.

10. SERVICE PRINCIPLES

10.1. The provision of Services delivered under this contract must be provided within the Client's own environment or a community setting and must be relevant to the Client's outcomes set in their Care and Support Plan based on their assessed need.

10.2. The Provider will manage any Packages that are of a complex and challenging nature by working collaboratively with the Department and other health and social care professionals. The Provider's Staff must be aware that there will be Packages that are of a complex and challenging nature from time to time and that wherever possible these Packages must be managed and sustained.

10.3. The Provider will apply a Client-centred approach to the delivery of Services and complete a Personal Plan for Clients before the Package starts.

10.4. The Council expects that the Provider will allocate a time for service delivery that is suitable to the Client. However, the Council recognises that supply and demand creates a conflict in the times that care staff are available. Therefore, the following Time Bands will apply for Packages offered: -

Time Band	Need (examples)
7am to 9.30 am Priority Morning	<ul style="list-style-type: none">• Unable to get out of bed unaided• Need assistance to go to the toilet• Time critical medication• Time critical assistance with Personal care to enable other services i.e. day care, support informal carer

7am to 10.30am Morning	<ul style="list-style-type: none"> • Able to get of bed unaided, but requires support with Personal care • Medication prompts with Personal care
11.30am to 2pm Lunch	<ul style="list-style-type: none"> • Support with meals • Needs assistance to go to the toilet and • Medication prompts
4pm to 6.30pm Tea	<ul style="list-style-type: none"> • Support with meals • Needs assistance to go to the toilet • Medication prompts
6.30pm to 10pm Evening	<ul style="list-style-type: none"> • Assistance with Personal care and preparing for bed • Needs assistance to go to the toilet • Medication prompts
8pm to 10pm Evening Bed	<ul style="list-style-type: none"> • Assistance to bed and Personal care
Non time critical	This band is for any non time-specific needs for example – domestic and shopping – these services will be offered at whatever time and day is available in discussion with the Client at assessment

- 10.5. Packages or individual care visits that require Care Staff to arrive at a specific time and are therefore defined as time critical, must be agreed and carried out at the required time.
- 10.6. Packages or individual care visits that are not defined as time critical must be carried out at a time agreed between the Provider and Client in accordance with the Time Bands.
- 10.7. The agreed Time Band must be recorded on the Provider's Personal Plan.

- 10.8. The Provider will not exploit the Time Bands e.g. offer all Clients the latest time possible and will move any visits that are at times unsuitable to the Client to a preferred Time Band as soon as is practicably possible.
- 10.9. The Provider shall keep 15-minute visits to a minimum.
- 10.10. The Provider must be able to demonstrate, if requested by the Department, that a Client's outcomes have been set, reviewed and achieved.
- 10.11. The Provider will work with Clients from the start of Service until the end of Service despite any changes to the Client's health and well-being. The exception to this would be if the skills and training required to meet a Client's needs fall outside the scope of this contract. If the Provider believes the Service required by Clients is outside the remit of this contract it must contact the Department promptly.
- 10.12 The Provider will allocate to each Client a Key Worker who should have a good understanding of the Client's past and current circumstances and their wishes for their future.
- 10.13 Regular reviews will be conducted as follows: -.
- 10.13.1. The Department will review the Care and Support Plan and will actively involve the Key Worker in such reviews. The frequency of such reviews will be decided by the Department on a case by case basis but will be no less frequently than 12 monthly.
- 10.13.2. The Funded Healthcare Team will conduct reassessments of NHS CHC eligibility on an ongoing basis. The first review will be three months after the commencement of the Package and then on a yearly basis. The Care Coordination Centre will conduct reassessments of Fast Track-funded Persons within the first 12 weeks to determine if eligibility remains. Any review will include the following criteria:
- The relevance of the Record of Needs
 - The effectiveness of the Record of Needs and outcomes
 - Any unmet need
 - Satisfaction with the care and support
 - Activities of daily living, basics of daily living, social care support
 - Medication support
 - Risk assessment procedures and crisis/urgent response
 - Additional training needs of Staff

- 10.13.3. The Provider will review the Personal Plan and risk assessment on a frequency to be decided by the Provider on a case by case basis but no less frequently than 6 monthly.
- 10.13.4. Both the Department and the Provider shall involve Clients and if applicable, their Carers or anyone else they choose, in such reviews.
- 10.13.5. For new Council funded Packages, the Department and the Provider will conduct a joint review within the first month of the commencement of the Package.
- 10.13.6. A review can be done at any time and may be at the request of the Client, a family member/Carer or the Department.
- 10.14 For the avoidance of doubt, the Department and/or CCG will be responsible for accessing and funding necessary equipment, such as hoists, however, it is the Provider's responsibility to:
 - 10.14.1 Ensure that that Staff are competent to use the equipment;
 - 10.14.2 Ensure that equipment is serviced appropriately;
 - 10.14.3 Ensure that a stock take of clinical consumables needed to provide health tasks e.g. suction tubes, is regularly undertaken to prevent depletion of said consumables;
 - 10.14.4 Liaise with the Funded Healthcare Team to order clinical consumables or recommend alternative/new consumables required;
 - 10.14.5 Ensure that the funding party is notified promptly if;
 - 10.14.5.1 Equipment requires maintenance, or
 - 10.14.5.2 Further equipment is required; or
 - 10.14.5.3 Any equipment is no longer appropriate for the Client.
 - 10.14.6 Contact the Council's contracted equipment provider if equipment is no longer being used by the Client
 - 10.14.7 Contact the Council's contracted equipment provider if equipment is no longer being used by the Client

11. SERVICES TO BE PROVIDED - WHERE REQUESTED

11.1. REABLEMENT

This will be considered the initial community-based offer of Service. All new Clients will receive a reablement Service for up to 6 weeks unless otherwise agreed by the Department.

Service Outcome

The Provider will reduce or eliminate unnecessary dependence for Clients on long term community care and support services.

- All Staff will adopt a reablement approach encouraging a Client to gain maximum independence.
- The Service will focus on helping the Client to do things for himself/herself and will promote self-confidence, self-esteem, and motivation to work towards independent living.
- The Provider will assist Clients to reduce or eliminate unnecessary dependence on long term care and support services in line with the aim to maximise a Client's independence by either reducing the overall Package for a sustained period of time or by ceasing the Package completely.
- This will be achieved as effectively and timely as is practicable, to attain the best results for both the Client and the Department.
- Where care and support needs dictate that the Package cannot be reduced further, maintenance outcomes will be identified and set.

- 11.2 When requested the Provider will work with all Clients, regardless of their abilities and presenting needs as detailed in the Reablement Service Outcome.
- 11.3 Prior to the Package starting the Provider will assess the Client and set an outcome focussed Personal Plan using the Departments Care and Support Plan as a guide.
- 11.4 The Provider will define what hours are required to deliver the identified Care and Support Plan outcomes.
- 11.5 The Personal Plan will have clear goals to be achieved and set review dates within the first 6 week period.
- 11.6 The Provider will complete a Reablement Completion Form for every Client for whom the Provider has provided any Services under this **Paragraph**, at the end of service. The Reablement Completion Form will capture the outcome of each reablement Package and will be used as part of contract management as a measure of Performance Indicators.
- 11.7 The Reablement Completion Form will inform the Contracts and Commissioning Team whether;

- 11.7.1 The Client has become independent and the Service has ceased; or
- 11.7.2 The Client requires an ongoing Package at the specified level.
- 11.7.3 The reason why reablement was unsuccessful if applicable.
- 11.8 The Provider must be able to demonstrate through its assessment and Personal Plan that it has considered tele-care and assistive technology as a solution for achieving outcomes and ultimately, if possible, reducing the level of Package.
- 11.9 **COMMUNITY BASED CARE AND SUPPORT**

Care and support Service aimed at maximising independence whilst recognising that some Clients require a long-term service. This will be offered as an alternative to care home provision.

Service Outcomes

There are adequate resources to meet a Client's needs.

- The Provider will ensure that there are adequate resources to meet specified individual outcomes.
- Services will be developed and matured to ensure capacity and choice in line with the Care Act 2014. Staff will be recruited and trained to deliver high quality and flexible services to meet people's needs.

Clients have the optimum quality of life

- Clients say that their quality of life is improved because of the Service.
- The Service responds to the diverse practical and emotional needs of people and promotes a culture of empowerment amongst Staff and the Clients using the Provider's services.

Risk is managed and Clients are safeguarded

- The Service ensures that Clients are supported to manage their own risk within a recorded risk assessment compiled with the Client and/or their representative.

- This does not mean eliminating risk altogether but encourages positive risk taking whilst keeping the Client safe.

The Service has local community links, promotes social inclusion and reduces social isolation

The Service has a strategic approach to linking with the local community and promotes community-based projects and services, enabling Clients to maintain established community links and forge new ones.

The Service is well managed and well led

- The Provider operates effectively and efficiently to deliver good quality, flexible Services, implementing and maintaining good practice through robust policies and procedures.
- The Provider meets the legislative and regulatory requirements and works to a programme of continuous improvement. The Provider has robust management information system to account for individual Service delivery.

The Service is delivered with a strong Client-centred focus

- A robust system of quality assurance is in place. This will be based on achieving outcomes for Clients. It will clearly define the standards and indicators to be achieved and monitored on a continuous basis by Staff and their line managers to ensure the Service is run in the best interests of Clients.
- Within the quality assurance system there is a defined process for consulting regularly with Clients and/or their Carers about the Service and mechanisms for taking account of feedback to improve Service delivery.

11.10. DEMENTIA CARE

Dementia care that is delivered differently from other community-based care and support. Staff will provide Services proven to improve the quality of life experienced by people with dementia and their carers.

Service Outcomes

To support Clients with dementia or associated conditions to remain living in their own home

- There will be fewer Clients entering residential care at an early stage of dementia. The Provider must have a genuine understanding of the skills and resources needed to be able to ensure unnecessary admissions to care homes are avoided.
- Services must be flexible and responsive to daily changing need and manage Clients in a way that reflects their stage of dementia.
- Care Staff will support Clients to sustain lifelong skills.

Carers continue in their chosen caring role for as long as they can

- The Provider must take a role in supporting carers to understand the needs of the Client and identify carer stress prior to any break down in the home situation. Carers can pursue their own activities and have quality time for themselves.

11.12 Staff rotas must be designed in a way that allows for flexibility in Service delivery, acknowledging that Clients may be in a different reality daily and require different lengths and times of visits.

11.13 Some Clients may present behaviour that challenges the Staff delivering the Service. The Provider will work with the Care Manager and any Carer to understand why the Client may be presenting challenging behaviour. The Personal Plan must be revised to set in place strategies to deal with such behaviour. Consideration will need to be given to regards to additional training and support and guidance from skilled professionals for those Staff delivering the Service.

11.14 The Provider will;

11.14.1 Keep up with relevant legislation surrounding best practice for supporting people with dementia.

- 11.14.2 Demonstrate that it is working to the following common core principles for people with dementia as set out by skills for care and skills for health or any equivalent document that may replace it during the life of the contract: -

11.15. CONTINUING HEALTH CARE

Care for those whose funding transfers to the Funded Healthcare Team or Care Coordination Centre offering quality End of Life provision and appropriately-trained and skilled Staff to deliver care and support to Clients with complex and/or long term health conditions.

Service Outcomes

Clients with complex long-term conditions have a well-planned Service with appropriately trained Staff to meet their health and social care needs

- Personal Plans are formulated based on the needs identified by the assessment in conjunction with the Care and Support Plans or Record of Needs.
- The quality of care is audited and reviewed.
- Staff are appropriately trained, competent and supported.
- Processes are in place to monitor appropriate transfers and admissions of people between home and other places of care.
- Carers and family members are involved to the extent that they and the Client receiving the service wish and are supported by the named nurse assessor.
- National Institute for Health and Care Excellence (NICE) pathways and guidelines relating to providing home-based care is adopted as best practice.

Effective delivery of an End of Life care that offers a meaningful and dignified Service for a Client and their family/carers

- The Client's preferences for End of Life care are discussed and documented.
- A Client's needs for End of Life care are assessed on an ongoing basis.

- The quality of End of Life care provided by the Service is audited and reviewed.
- Staff involved in discussing End of Life issues are appropriately trained and supported.
- Training programmes on End of Life care which are relevant to Staff are available and accessible.
- Processes are in place to monitor appropriate transfers and admissions of Clients between home and other places of care in the last month of life.
- A Client who is dying is entered onto a care pathway.
- Family members are involved in End of Life care decisions to the extent that they and the Client wish.
- Family/carers are supported prior to the death of the Client.

11.16 The Provider will understand policy guidance relating to delivering health-funded care and support.

11.17 The Provider shall ensure that the Services;

11.17.1 Enhance the quality of life for Clients and maximise long term health outcomes wherever possible and

11.17.2 Aims to reduce unscheduled acute admissions and improve co-ordination of community services especially End of Life Services.

11.18 For the avoidance of doubt, Staff will not be expected to carry or administer controlled drugs unless they have received training under the clinical governance of a nursing provider. This aspect of the Client's care will be largely undertaken by members of the primary care Team which include community matrons, district nurses, general practitioners and specialist nurses such as Marie Curie nurses and the hospice outreach Teams.

11.19 The Provider shall ensure the Services are subject to robust clinical governance and risk management and abide by NICE guidelines and CCG's policies relating to clinical waste management.

11.20 Wherever possible the Provider will introduce its Staff to the Client and his/her family prior to the commencement of the Package if times allows.

- 11.21 It is vitally important to ensure that Clients reaching the end of their life are integrated into the End of Life care pathway adopted by the CCG for patients receiving care in their home.
- 11.22 As the Service cannot work in isolation of other commissioned health services, the Provider shall work co-operatively with the other healthcare services including the following:
- Hospital discharge liaison Teams;
 - The community ward and district nursing Teams, specialist nurses such as diabetes, respiratory, tissue viability, continence advisors, Marie Curie nurses;
 - General practitioners;
 - Allied health professionals such as physiotherapists, speech and language therapists, and podiatrists;
 - Voluntary sector such as hospice care and
 - Ambulance/patient transport services.
- 11.23 Where Clients are at End of Life, an ACP will be written and co-ordinated by CCG staff; however, it is vitally important that the Provider's Staff support the Client in achieving the objectives outlined in their ACP.
- 11.24 Staff must be aware of the systems in place with respect to ACP and pass on important information to the Care Coordination Team.
- 11.25 Staff must be able to identify the triggers that a Client wishes to discuss plans for their death and ensure that this information is shared with the Care Coordination Team in order that the ACP planning process can commence.
- 11.26 Information pertaining to CHC and any funding issues will be given to the Client by the Funded Healthcare Team/Care Coordination Team and any complaints regarding CHC funding and eligibility should be directed to the CCG.

END OF SCHEDULE

Schedule 2 - PAYMENT SCHEDULE - TABLE OF RATES

Care and Support Spot Purchase – Call-Off Table of Rates

Name of Company:

Name of Client:

Indicative Price Schedule as at

	Service Description	Service Delivery Time	Rate per Hour
1	Care and Support - Day	Mon – Sun (inclusive) 07.00 – 22.00	To be submitted on request.
2	Night Sleeping	Per night	To be submitted on request. Max £90.00
3	Night Sitting	Per night	To be submitted on request. Max £150
4	“Live-in” or 24-hour packages of care available		On request
5	Payments for all Bank Holidays shall attract a premium of		100%
6	Sitting Services	Mon – Sun (inclusive) 07.00 – 22.00	To be submitted on request.
7	Fixed Rate for Emergency Call Out - per call		
8	Additional Costs – Agreed in line with Appendix 1		£

Notes:

Night Sleeping is defined as a session of work from 22.00 to 07.00 am where the worker is expected to attend at one place and spend up to two hours per session assisting the service User. The worker is then expected to sleep for the rest of the night.

Night Sitting is defined as a session of work from 22.00 to 07.00 am where the worker is expected to attend at one place and assist the service user to bed. The worker is

then expected to remain awake in order to assist the service user as and when necessary in accordance with the requirements of the Care Plan.

For the avoidance of doubt the Provider shall indicate separately those minutes of Actual Care Provided on a Bank Holiday on which the Council pays the Provider's Bank Holiday premium, but which are not recharged to the relevant Client.

FIXED RATE FOR EMERGENCY CALL OUT

This is a one off lump sum payment to be made in addition to the normal hourly charge to reflect the Provider's costs in arranging care at short notice.

END OF SCHEDULE

SCHEDULE 3 - Care Package Processes

1 PACKAGE ACCEPTANCE

SELECTION OF PROVIDER – CALL-OFF CONTRACT

- 1.1 The Personalised Commissioning Team will follow the Call-Off process as detailed in the ITT.

2 SERVICE DELIVERY

- 2.1. Following the award of the Package, the Personalised Commissioning Team will send the Provider the Order.
- 2.2. The Provider will commence any Packages offered to them on the date specified on the Order.
- 2.3. If the Client is in a setting that is not their home i.e. hospital at the start of the package the Provider will liaise with the relevant parties to ensure a smooth and safe discharge.
- 2.4. In these circumstances, the Department or Funded Healthcare Team and Personalised Commissioning Team will be notified by the Provider of any changes to the discharge arrangements and subsequently the Package start date.
- 2.5. If at any point the Provider believes the Package not to be suitable on the grounds of risk, a discussion must be had between the Client, the Provider and the Department or Funded Healthcare Team as well as any other relevant NHS staff at a case conference prior to discharge.
- 2.6. The Personalised Commissioning Team will send the Provider an Order.
- 2.7. The Provider will produce an outcome focussed Personal Plan for Clients before the Package starts unless an emergency Package is requested by the Personalised Commissioning Team to commence within 48 hours of the request.
- 2.8. In this instance the Provider will complete a risk assessment on arrival with the Client and a Personal Plan will be completed within 48 hours.

Reablement Packages

- 2.9. The Provider will contact the allocated Care Manager 2 weeks before the anticipated end date of the reablement period to review the Package. The end date will be defined as the day prior to 6 weeks from the start date.
- 2.10. If the Provider feels that the Client has reached their full potential before the 4 week review or that the Client is not benefitting from reablement, they will contact the Care Manager immediately with a view to moving the Client onto

an ongoing Order or ceasing the Package. At this point the Provider will send the Personalised Commissioning Team a Reablement Completion Form.

- 2.11. Following the 4 week review the service may cease, be extended or be transferred onto an ongoing Order or Direct Payment. At this point the Provider sends a Reablement Completion Form to reablement.admin@n-somerset.gov.uk or any such email address as provided to the Provider by the Council.
- 2.12. If the Provider feels that the Client will benefit from further reablement they will discuss with the Care Manager at the review.
- 2.13. In cases where the Provider has successfully reabled a Client to independence within and up to 6 weeks of the start date the Package will cease immediately and the Provider will not receive a notice period.
- 2.14. If the Care Manager agrees to extend the reablement period, the Provider must ensure that clear outcomes are set for the extended period and provide feedback on the progress to the Care Manager.
- 2.15. The Care Manager informs the Charging and Monitoring Team for the purposes of recharging the Client.
- 2.16. Reablement is accessible to those financially responsible for paying for their own care. Any cases that fall into this category, will be managed as above. However, at the 4 week review, should the Client require an ongoing Package, the Care Manager may refer the Client to a Care Navigator for support to find alternative services if this is what the Client wishes.
- 2.17. Should the Client want to stay with the Provider, they will become a private Client from the agreed end date until such time they meet the Council's funding criteria.

3 CHANGES TO SERVICE PROVISION (Council & Funded Healthcare Clients)

Temporary Changes for 18+ year olds

- 3.1. A Temporary Change is defined as no longer than 3 months duration.
- 3.2. In order to allow for the Provider to provide responsive, flexible ongoing care and support, the Provider will be able to work outside of the allocated Package hours as follows;
 - a. The Provider shall be allowed to flex the Package accordingly without contacting the Department or Funded Healthcare Team if the change

is temporary to accommodate a Minor Change in need. Significant Changes must be managed in accordance with the provisions of **paragraph 3.14**

- b. The Minor Change can be an increase or decrease and must fit within the Department's specified parameters below.
- c. Up to two changes can be permitted which overall, in combination do not exceed these parameters before the Provider must contact the Department or Funded Healthcare Team;

TABLE: DEPARTMENT'S SPECIFIED CHANGE PARAMETERS

Original Package Level	Percentage Increase Permitted per Week
Package is up to £165 weekly in value or approx. 10 hours	Provider can increase up to 40% of the original total Order
Package is between £165 and £410.10 weekly in value or between approx. 10 and 25 hours	Provider can increase up to 20% of the original total Order
Package between the £410.0 and £497.55 in value or between approx. 25 and 30 hours	Provider can increase up to 10% of the original total Order but cannot exceed upper range of £497.55/30 hours
Package is above £497.55 in value or greater than 30 hours	Considered a Significant Change must contact Department or Funded Healthcare Team

NB, the use of these tolerances will be monitored by the Charging and Monitoring Team

- 3.3. The Provider must make the Client aware that they will be charged for any additional care and support if they contribute to the cost of their Service unless they are CHC funded.
- 3.4. Decreased hours can be delivered at another time within the 4-weekly invoicing period;
- 3.5. The Provider must have mechanisms for monitoring unused hours that show what the Client has available to use.
- 3.6. A reablement approach must be taken by the Provider to ensure that increases are temporary wherever possible.

- 3.7. Care Managers will work within the same parameters as above.
- 3.8. The Care Manager will contact the Provider to discuss any temporary changes.
- 3.9. An amended Order may be sent to the Provider via the Personalised Commissioning Team if deemed necessary by the Department or Funded Healthcare Team.

Temporary Changes for 0-17 year olds

- 3.10. The Provider shall not temporarily change the Package without contacting the Personalised Commissioning Team.

Permanent Changes

- 3.11. Permanent changes to a Personal Plan must be validated by the Department or Funded Healthcare Team as a review will be necessary. The Provider will contact the Department or Funded Healthcare Team and vice versa if the following criteria applies;
 - (i) A temporary Minor Change needs to be made permanent
 - (ii) There has been a Significant Change
 - (iii) The Client no longer needs the current level of care and support Services.
- 3.12. The Personalised Commissioning Team will send the Provider an amended Order where appropriate.
- 3.13. The Provider will amend the Personal Plan to reflect the change.

Team

- 3.14. If the Provider is the party requesting a permanent change, they will contact the Department or Funded Healthcare Team directly to discuss the change and send the Personalised Commissioning Team an email informing them that they have requested a permanent change to the current Order.

4 CANCELLATIONS OF SERVICE

- 4.1 The Provider will inform the Department or Funded Healthcare Team if the Client frequently refuses to allow the Provider to perform the Services commissioned.

Temporary Cancellations

- 4.2 Where the Department, Funded Healthcare Team or the Provider is aware of circumstances that will entail the temporary cancellation of Services they will endeavour to inform one another within 24 hours.
- 4.3 Where the Client, Department or Funded Healthcare Team has not given 24 hours' notice to the Provider; payment at the appropriate rate will be made for any visits within that 24 hour period. In the case of a 24hr Package, payment will be made for time spent with the Client up to 24hrs from the time of cancellation.
- 4.4 The Provider must record the occurrence and time of the cancellation in accordance with the Schedule under which the Service is being delivered under to ensure payment is made.
- 4.5 If the Provider is aware that a Client frequently cancels visits without 24 hours' notice they shall inform the Department or Funded Healthcare Team and Personalised Commissioning Team immediately.
- 4.6 All cancellations shall be recorded on a Variation Log.

Absences

- 4.7 The Provider will not receive payment for any hospital or respite breaks in service unless prior agreement is sought in writing from the Department or Funded Healthcare Team.
- 4.8 In the event of an absence of the Client, the Provider will keep the agreed times of the Package available for 14 calendar days.
- 4.9 If after 14 calendar days there is no news of the Clients return home, the Provider will contact the Department or Funded Healthcare Team for confirmation on the situation. Agreement will be made between the Provider and the Department or Funded Healthcare Team with respect to the status of the Package.

Hospital Admissions

- 4.10 In the event of hospitalisation of the Client, the Provider will keep the agreed times of the Package available for 14 calendar days.
- 4.11 If the Package is required on the discharge and the Package is the same level as it was when the Client was admitted, the Provider will reinstate the Service in accordance with the original Package and within 24 hours of being notified of the discharge.

- 4.12 If after 14 calendar days there is no news of discharge, the Provider will contact the Department or Funded Healthcare Team for confirmation on the situation. Agreement will be made between the Provider and the Department or Funded Healthcare Team with respect to the status of the Package.

Permanent Cancellations

- 4.13 The Provider must give 4 weeks' notice to cease a Package.
- 4.14 The Provider may only end two or more Packages within the same Service Period by giving the Council not less than 8 weeks' notice in writing. In addition, if the Provider gives notice to end all its Packages of Services within the same Service Period then this will be a repudiation of the Contract and the provisions of **Clause 25** will apply.
- 4.15 Where a member of Staff has been abused or it appears to the Provider that may be at risk or there is a health and safety risk, the Provider may suspend a Package forthwith.
- (i) The Provider must be able to evidence their concerns in the form of a risk assessment.
- (ii) The Risk Assessment must be sent to the Personalised Commissioning Team for record.
- 4.16 Immediately following the suspension, the Provider will verbally notify the Client's Care Manager, nurse and the Personalised Commissioning Team or, outside normal office hours the EDT.
- 4.17 A review by the Department or Funded Healthcare Team will be undertaken within 5 working days.
- 4.18 The risk to Staff and/or health and safety risk shall be managed by the Provider and the Care Manager using a separate Risk Management Plan. In some circumstances this may be managed via the Council's safeguarding adults process.
- 4.19 Both the Provider and the Department or Funded Healthcare Team must in agreement that the situation has been suitably addressed before the Package is recommenced.
- 4.20 If they cannot reach an agreement, then the situation will be escalated to a manager within the Department or Funded Healthcare Team and a meeting will be arranged with the Provider and if applicable the Contracts and Commissioning Officer and/or Safeguarding Adults Officer.
- 4.21 Should the Provider reach a point the Package has broken down irrevocably, alternative provision will be explored based on the knowledge that to get to that point, all avenues with the Provider will have been

exhausted. A notice period and if appropriate, transfer of the Package to another Provider, will be agreed between the Provider, Department or Funded Healthcare Team and the Personalised Commissioning Team.

Changes requested by the Client receiving the Service

- 4.22 The Provider will not cease all, or any part of a Service if requested to do so by the Client and/or their carer until confirmation has been received from the Department or Funded Healthcare Team and, where appropriate, an amended Order has been issued.
- 4.23 If the Client wishes to cancel their entire Service because they are not satisfied with the Service delivered by the Provider, then the Care Manager or nurse will inform the Contracts and Commissioning Team. Steps will be taken between the Contracts and Commissioning Team and the Provider to resolve any concerns the Client has prior to the Package being permitted to cease.
- 4.24 On the death of a Client or permanent admission to a Care Home or other establishment the Service will cease immediately.
- 4.25 A Package may cease when;
- (i) a Client moves out of CCG's geographic area. In this case payment to the Provider, for the Package, ceases on the day of transfer.
 - (ii) A Client under the age of 18 becomes funded by the CCG. In this case payment to the Provider under this contract will cease. The Provider may continue to provide the Package contracted directly with the CCG.
- 4.26 Other than the aforementioned occasions, a notification form (which shall be issued to the Provider by the Council) shall be completed by the Provider and sent to the Personalised Commissioning Team within 24 hours of becoming aware of any of the following
- (i) A Client dying
 - (ii) The Client has permanently cancelled the Service as they no longer require it and the cancellation has been authorised by the Department or Funded Healthcare Team

5 EMERGENCIES

- 5.1 Where Staff attend the home of a Client and consider the Client needs urgent attention, they will ensure that the relevant emergency service is summoned immediately.

- 5.2 Immediately following the Client being attended to, Staff shall contact their supervisor/manager for further guidance.
- 5.3 The supervisor/manager shall immediately inform the Department, Funded Healthcare Team or out of office hours, the EDT.
- 5.4 Providers will instruct their Staff not to enter a Client's home unless the Client or a carer/relative/friend is present. If, under exceptional circumstances, a Provider is asked to enter the Client's home without the any of the above being present, they must first inform the Department or Funded Healthcare Team of the request.
- 5.5 If agreement from a social worker or nurse has been obtained, a manager or supervisor from the Provider must accompany the Staff. Under no circumstances will a lone worker enter the premises. The Provider must record the name of the social worker or nurse for reference.

END OF SCHEDULE

SCHEDULE 4 – CONTRACT MANAGEMENT

2. AUTHORISED REPRESENTATIVES

The Council's initial Authorised Representative is the Contracts and Commissioning Manager or his/her duly authorised deputy.

3. SERVICE MANAGERS

The Council's initial Service Manager Contracts and Commissioning Officer or his/her duly authorised deputy:

4. MANAGEMENT TEAMS

- 4.1 The Council's People and Communities Directorate includes Adult Social Services (The Department as defined below) and within the Department, the relevant teams and their respective responsibilities are as defined below:

Defined Term	Contact Details	Role
"Care Connect"	(Tel 01275 888801)	The Council's social care call centre.
"Contracts and Commissioning Team"	(Tel 01934 427611)	The team with responsibility for managing the Contract. Also contains the Personalised Commissioning Team and the Contract Compliance Team.
"Contract Compliance Team"	(Tel 01934 427611)	Part of the Contracts and Commissioning Team responsible for monitoring compliance with the Contract
"EDT"	(Tel 01454 615165)	The Council's Emergency Duty Team responsible for handling all urgent and emergency communications.
"Charging and Monitoring Team"		Part of the Contracts and Commissioning Team responsible for processing community-based Care and Support Order invoices and recharging these to Clients aged 18+.
"Personalised Commissioning Team"	(Tel 01934 427611)	The team within the Contracts and Commissioning Team responsible for purchasing care and support, comprising of the Brokerage Team, Children's Placements Team, Direct Payments Team and Care Navigators.

5. MANAGEMENT REPORTS

5.1 The Provider shall provide the Council's Contracts and Commissioning Team in a format reasonably required by the Council with the following Management Reports **not less than once per annum**:

(a) **Total number of compliments received.** Data to be presented in an excel spreadsheet. Minimum data to be;

- (i) Total number of compliments
- (ii) Themes
- (iii) 10% sample of the number received to be submitted – photocopied and scanned.

(b) **Total number of complaints received per quarter.** Data to be presented in an excel spreadsheet. Minimum data to be;

- (i) Total number of complaints
- (ii) Themes
- (iii) 10% sample of number received from beginning to end of the process – Copies of letters and supporting information
- (iv) Action plan for any issues that arose from complaint investigation including the dates set for resolution
- (v) Number of safeguarding adult referrals that have been partially or fully substantiated that relate to neglect on the part of the Provider. Any that fall into the above category will result in a breach or default depending on the seriousness of the referral.

(c) **Equalities Data** for all Staff and Persons in the format as defined by the Council.

(d) **Provider's Quality Assurance** - Contents -To be determined by Provider but must meet requirements of the Contract, Service Specification and **Schedules**.

5.2 The Provider shall provide the Council's Contracts and Commissioning Team in a format reasonably required by the Council with the following Management Reports **on an ad hoc basis, if requested**;

(a) **Continuity of Care Staff.** Details of how many different care staff have attended a person each week on average across a quarter. Results to be in accordance with the Service Specification. Data to be taken from the ESM system and presented in an excel spreadsheet. Minimum data to be;

- (i) Name of the person;
- (ii) Week commencing; and

- (iii) Number of care Staff

5.3 The Council shall review and raise with the Provider **on an ad hoc basis, if applicable**

- (i) The number of Monitoring Forms, Poor Practice alerts and/or Serious Incident Forms.
- (ii) Themes of (ii)
- (iii) The number of breaches and/or defaults issued by Contracts and Commissioning Team

6. FINANCIAL REPORTS

6.1 The Care Act 2014 (Sections 19 and 48 to 57) places a duty on the Council to manage Provider failure and other service interruptions'. This covers such eventualities such as financial failure of providers. On this basis the Council requires the Provider to submit their latest audited financial statements and any other documentation that evidences their financial viability annually, so that the Council receives the necessary assurance for sustained business continuity.

6.2 The Provider will provide the Council with the following Financial Reports as per the Payment **Schedule 2**:

- (a) **Provider Summary Report - Weekly Summary Reports** are to be provided in excel format. The minimum information required on the Summary Report is:

- (i) Week commencing date
- (ii) Surname
- (iii) Forename
- (iv) AIS Number
- (v) MINUTES delivered each week (see NOTE)

NOTE: The Weekly Summary Report is to be provided for each week of the invoicing period (4 weeks in total), as per the Payment Schedule. The Charging and Monitoring Team (18+ years old) or Personalised Commissioning Team (0-17 years old) will calculate the rounded hours and the cost of the care. The Charging and Monitoring Team (18+ years old) or Personalised Commissioning Team (0-17 years old) will send the Provider a final figure to invoice the Council. The invoice will be sent to the Council electronically, who will authorise and send to Accounts Payable. Minutes provided on a Bank Holiday are to be indicated in a separate column. The Council pay the Provider but do not recharge persons a Bank Holiday premium, hence the need for the minutes to be indicated separately.

- (b) **Actual Visit Report** - To be provided in excel format showing all the visits delivered for the relevant payment period. The minimum information required on the Actual Visit Report is:

- (i) Week commencing date
- (ii) Surname
- (iii) Forename
- (iv) AIS Number
- (v) Actual service delivery against the **Scheduled** visits
- (vi) Variations in actual service delivery against the **Scheduled** visits

7. QUALITY

- 7.1 The Department and Funded Healthcare Team will be responsible for the standard of care delivered to Clients, however any issues raised will be shared with the Contracts and Commissioning Team and if necessary action under the contract will be taken.
- 7.2 If requested, the Provider will produce an action plan for the Council stating the identified issues and remedies.
- 7.3 Providers with Packages at the end of each year of the Term of the Framework Agreement will be required to demonstrate their compliance with the Service Outcomes by meeting the Performance Indicators set out in **Schedule 6**. This will include completing an annual Provider questionnaire which will be provided to the Provider by the Council.
- 7.4 Providers with no Packages at the end of each year of the Term of the Framework Agreement will be required to demonstrate their compliance with the Framework Agreement by confirming the following;
- (a) that all relevant policies and procedures have been reviewed, are up to date and are in place;
 - (b) That they have not had any formal action taken against them by the CQC: if they are rated as inadequate by CQC no work will be given until such time the rating is changed; and
 - (c) That they have not shown significant or persistent deficiencies in the performance of a prior or existing public contract, which led to early termination of that prior contract, damages or other comparable sanctions

END OF SCHEDULE

SCHEDULE 5 – POLICIES

1. The Council and Partner Organisations

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

2. The Provider

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

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

END OF SCHEDULE

SCHEDULE 6 – PERFORMANCE INDICATORS

SCHEDULE 7 – EXIT MANAGEMENT PLAN

1. GENERAL OBLIGATION

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

2. PLANS AND PROCEDURES

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

3. CONTINUATION OF THE PROVISION OF SERVICES

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

4. DUTY TO DOCUMENT THE SERVICES

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

5. CONTRACTS, SOFTWARE, AND KNOW-HOW

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

6. PERSONNEL

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

END OF SCHEDULE

SCHEDULE 8 – TRAINING MATRIX

SCHEDULE 9 – DISASTER RECOVERY PLAN

1. DEFINITIONS

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

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

2. INTRODUCTION

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

- 2.3.1 Where the Client lives and the impact this will have based on the event that has occurred e.g. a person living on high ground may not be vulnerable in case of flooding however would be vulnerable if there was heavy snow.
 - 2.3.2 Whether the Client lives alone or has neighbours who can offer support.
 - 2.3.3 Whether the Client has access to food.
 - 2.3.4 How much of their normal Package is an absolute necessity based on their ability to mobilise and support themselves.
 - 2.3.5 If the Client does not require their normal package of care as an absolute necessity, how long can they survive with a scaled down version.
 - 2.3.6 The specific risks to the area of Service delivery.
 - 2.3.7 Where Care Staff live and how best they can be deployed in the event of an emergency. This includes mechanisms for office and on call Staff to be able to work remotely whilst retaining control over operations.
 - 2.3.8 How they will work with other care providers to cover all Clients in North Somerset by utilising Staff effectively.
- 2.4 The Provider will have their own Health and Safety policy in accordance with **Schedule 5** which details Infection Control measures. The Provider and their Staff will comply with this policy at all times.
- 2.5 Staff will receive training in infection control in accordance with **Schedule 8**.

3. CATEGORIES RELATING TO DISASTER RECOVERY

- 3.1 Infection control including Flu pandemics and other viruses that can be passed from Client to Care Staff and vice versa.**
 - 3.1.1 The Provider will be proactive at times of the year where air borne viruses such as Flu and Norovirus are prevalent, with promotion around prevention of spreading such viruses.
 - 3.1.2 The Provider will recognise their duty as an employer to keep their workforce and client base protected and will actively promote the annual take up of the Flu vaccination with both Care Staff and Clients.
 - 3.1.3 The Council will support the Provider in achieving this by providing promotional material and other such resources available from time to time.
 - 3.1.4 The Provider will recognise their duty as an employer to cover the cost of such vaccination to front line Care Staff.

- 3.1.5 The Council will support the Provider by agreeing for them to utilise a Client's Package effectively to either assist them to attend a clinic or to arrange for a GP to make a home visit.
- 3.1.6 The Provider will record data on and provide to the Council on request;
 - (a) Care Staff sickness (e.g. the number of Care Staff recorded as sick with Norovirus and Flu per annum) and use this data to forward plan year on year.
 - (b) Care Staff take up of the Flu vaccine to support with Public Health planning

3.2 Extreme Weather and Emergency Incidents

- 3.2.1 The Provider is required to support the Council wherever possible in the event of extreme weather and/or an emergency incident. The Provider may be asked to;
 - (a) Communicate events with all Staff including any information that will effect service delivery such as road closures.
 - (b) Assist with the running of any rest centre.
 - (c) Providing emergency services with information about Clients.
 - (d) Speaking to family members to keep them informed of events.
 - (e) Evacuating Clients where it is safe to do so and transporting them to a rest centre or place of safety.
 - (f) Divert Staff where possible to support with looking after Clients at a rest centre.
 - (g) Where the incident is considered to be Force Majeure, Clause 24 of the Contract will apply.

3.3 Provider Failure

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

4 CONTINGENCY PLANNING

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

4.2 Care Staff Sickness

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

4.3 Staff Retention

- 4.3.1 The Provider must have a Recruitment and Retention Policy in accordance with **Schedule 5** which addresses ways in which the Provider will seek to retain Care Staff.
- 4.3.2 The Provider will have established relationships with other providers and will seek to draw on support to ensure minimal disruption.
- 4.3.3 The Provider must inform the Council immediately should they believe that they will have to implement their Vulnerability Matrix due to Staff shortages.
- 4.3.4 The Provider will consult with a Care Manager should they believe that any individual is at risk.
- 4.3.5 The Council's Personalised Commissioning Team will step in as a last resource to support the Provider in covering packages of care, particularly if an end to the situation is not in the foreseeable future. Any costs associated with this support will be recovered in line with **Clause 10 Liquidated Damages**.
- 4.3.6 The Provider will ensure that there is appropriate plans in place to cover Staff shortages at popular holiday times. Care Staff contracts and recruitment initiatives to support this will be built into the Provider's Recruitment and Retention Policy.

5 SERVICE LEVELS

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

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

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

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

meet their health and social care needs.		
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END OF SCHEDULE

SCHEDULE 10: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

END OF SCHEDULE

SCHEDULE 11 – Electronic Scheduling and Monitoring (ESM)

1. The Council requires the Provider to provide information, from their ESM system, to the Department for use at any time for the purposes of;
 - 1.1. Checking invoicing queries
 - 1.2. Validating compliance concerns by the Department
 - 1.3. Responding to complaints about the Provider
2. The Provider's Electronic Scheduling and Monitoring system must provide real time and actual data to the nearest minute which has a full audit trail to ensure consistency of data supplied.
3. The system must highlight late or missed visits, 30 minutes after the allocated time of the call, to office Staff in order for them to take appropriate action.
4. The method used to log into the system must be appropriate for the service. For example, EMS in an Extra Care Scheme should allow for flexible service delivery where staff may provide multiple short visits to check the welfare of a person.
5. There may be exceptions where the Provider uses an alternative method to record service delivery. An exception will only be agreed by the Contracts and Commissioning Team.
6. **The Provider must;**
 - 6.1. Have policies and procedures relating to the use of Electronic Scheduling and Monitoring
 - 6.2. Ensure all Staff use electronic monitoring appropriately
 - 6.3. Clearly identify where actual visit records have been adjusted because of missed calls and visits.
 - 6.4. Be responsible for using the most efficient and effective way of logging actual care visits to the system.
 - 6.5. Acceptable levels on a quarterly basis of all calls logged
 - 6.5.1. From the Client's home 80%
 - 6.5.2. Confirmed using an alternative method 20%

END OF SCHEDULE

SCHEDULE 12 – TUPE

1. INTERPRETATION

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

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

- (a) the identity and age of the Employee;
- (b) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
- (c) information about any disciplinary procedure taken against the Employee and any grievances raised by the Employee within the previous two years, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied;
- (d) information about any court or tribunal case, claim or action either brought by the Employee against the Council within the previous two years or where the Council has reasonable grounds to believe that such action may be brought against the Provider arising out of the Employee's employment with the Council; and
- (e) information about any collective agreement which will have effect after the Commencement Date in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.

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

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

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

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

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

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

2. EMPLOYMENT EXIT PROVISIONS

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

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

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

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

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

- (b) at least 28 days before the Service Transfer Date, the Provider shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's personnel named are Transferring Employees;
- (c) the Council shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services which are substantially the same type of services (or any part thereof) as the Services; and
- (d) on reasonable request by the Council the Provider shall provide the Council or at the request of the Council, the Replacement Provider, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Council reasonably requests.

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

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

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

assignments and projects previously Scheduled and agreed with the Council;

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF SCHEDULE

