

**DATED**

**202[ ]**

**NORTH SOMERSET COUNCIL**

**AND**

**[TBC]**

**HANDYPERSON SERVICES AND CONTRIBUTION AGREEMENT**

North Somerset Council  
Legal Services

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<sup>1</sup> Up-date upon draft being agreed

Schedule 1	Specification
Schedule 2	Charges and Contribution Payment
Schedule 3	Data Sharing Agreement
Schedule 4	TUPE

**THIS AGREEMENT** is dated

## **Parties**

- (1) **NORTH SOMERSET COUNCIL** of Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ (**'the Council'**)
- (2) **[TBC]** (registered with company number [TBC] whose registered office is at [TBC] (**'the Provider'**))

## **Background**

- (A) On [ INSERT DATE ] the Council advertised on the UK e-notification (reference [ INSERT REFERENCE ]) inviting prospective suppliers to submit proposals for the provision of the Handyperson Services (as defined below).
- (B) On the basis of the Provider's response to the advertisement and subsequent tender process, the Council selected the Provider to provide the Handyperson Services and the Provider is willing and able to provide the Handyperson Services in accordance with the terms of this Agreement.
- (C) Accordingly, the Parties have agreed to enter into a contract for the provision of the Handyperson Services on the terms and conditions of this Agreement.

## **1. Definitions and Interpretation**

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

**Achieved KPIs:** in respect of each KPI, the standard of performance actually achieved by the Provider in the provision of the corresponding Handyperson Service in the relevant measurement period.

**Agreement:** this Agreement, including its schedules.

**Audit Body:** a national body or office, as defined under the local audit framework or any successor framework or legislation, responsible for contract auditing.

**Bribery Act:** the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Business Day:** a day (other than a Saturday, Sunday, public holiday or any other day on which the Council is not open for normal business) on which banks are open for normal business in the City of London.

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

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

**Change Control Procedure:** the procedure for changing this agreement, as set in Schedule E

**Change in Law:** any change in any Law which impacts on the performance of the Handyperson Service and which comes into force after the Service Commencement Date

**Charges:** the charges which become due and payable by the Council to the Provider for:

(a) the provision of Handyperson Services to Service Users; and

(b) the provision of General Services to Qualifying Persons

in accordance with the provisions of this Agreement, as set out in clause 11 (Charges) and calculated in accordance with Schedule B.

**Child/Young Person:** a child or young person under the age of 18yrs with a Disability

**Children Support Service:** the provision of General Services and/or the services listed in paragraph 10 of the Specification (but not limited to them) carried out to the home of a Child/Young Person to help that Child/Young Person achieve independence and safety around the home

**Commencement Date:** the date of this Agreement.

**Confidential Information:** any commercial, financial or technical information, know-how or trade secrets which is obviously confidential in nature or has been marked as, or identified as confidential, or which is developed by a Party in performing its obligations under, or otherwise pursuant to this Agreement.

**Contract Year:** in respect of the first Contract Year, the period commencing on the Service Commencement Date and ending on the 31 January 2024 and thereafter each period of 12 months commencing on the 1 February and ending on the following 31 January.

**Contribution Payment:** the payment to be paid to the Provider by a Qualifying Person or a Service User as a contribution towards the Charges and the cost of all materials used in providing the General Services in accordance with clause 11 and Schedule B and calculated in accordance with Schedule B.

**Convictions:** other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (excluding any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions

specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order).

**Council's Contract Manager:** a nominated officer within the Council's Contracts and Commissioning Team and notified in writing to the Provider from time to time by the Council.

**Criminal Records Bureau:** the bureau established pursuant to Part V of the Police Act 1997

**Data Protection Laws:** means any Law relating to the processing, privacy and /or use of Personal Data, as applicable to either Party or the Handyperson Services, including:

- (a) the GDPR;
- (b) the Data Protection Act 2018;
- (c ) any laws which implement any such laws;
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and
- (e ) all guidance, guidelines, codes of practice and codes of conduct issues by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws(in each case whether or not legally binding).

**Data Sharing Agreement:** an agreement entered into on or about the date hereof substantially in the same form as the data sharing agreement contained in Schedule 3, setting out the basis on which the Parties will share and process personal data in connection with the Agreement

**DBS:** The Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

**Default Notice:** is defined in clause 5.2

**Directive:** The EC Acquired Rights Directive (Directive 2001/23/EC) as it applies to domestic law in England and Wales from time to time, including any amendment or modified by Laws of the United Kingdom or of a part modified by English law from time to time.

**Disability:** a person with a physical or mental impairment that has a substantive and long term (12 months or more) negative effect on that person's daily life.

**Dispute Resolution Procedure:** means the procedure for the resolution of disputes set out in clause 26

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

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

regarding any person employed by him who is assigned to the organised grouping of resources or employees which is the subject of the Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE.

**Extension Period:** has the meaning given to it in clause 2.2

**Further Services:** means together the Children's Support Service, the Home from Hospital Service, the Quoted Works Service, the Urgent Works Service and WHAM

**FOIA:** means the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Force Majeure:** means an event or sequence of events beyond a Party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under this Agreement including without limitation:

- (a) an act of God
- (b) fire, flood, storm, lightning, earthquake or other natural disaster
- (c) epidemic or pandemic (including, without limitation, the continuation or resurgence of the Covid-19 pandemic)
- (d) war, civil war, armed conflict, terrorism, civil commotion, unrest or riots
- (e) any blockade or embargo or the break off of diplomatic relations
- (f) nuclear, chemical or biological contamination or sonic boom
- (g) any failure or shortage of power, fuel, transport, equipment or telecommunications services or material required for performance of the Handyperson Services
- (h) any law or action taken by a government or public authority including, without limitation, imposing an export or import restriction, quota or prohibition
- (i) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case confined to action against the Provider's workforce) or any workforce of a Subcontractor of the Provider).

**GDPR:** the General Data Protection, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including any further amended or modified by the laws of the United Kingdom or of a part modified by English Law from time to time

**General Change in Law:** a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the

supply of services which are the same as, or similar to, Handyperson Service

**General Services:** the provision of minor repairs and adaptations carried out to a Service User's or a Qualifying Person's home to help that Service User or Qualifying Person achieve independence and safety around the home to include, but not limited to, the works listed in paragraph 5.2 of the Specification

**Good Industry Practice:** The degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body working and delivering comparable services which are substantially similar to the Handyperson Services.

**Handyperson Services:** means together the General Services and the Further Services

**Home from Hospital Service:** the provision of General Services and/or the services listed in paragraph 6 of the Specification (but not limited to them) to support a Service User on discharge from hospital to home or the provision of essential adaptations to support the independence and safety of Service Users who are eligible under the Care Act 2014

**Information:** has for the purpose of clause 22 the meaning given under section 84 of the FOIA.

**Initial Term:** the period commencing on the Commencement Date and ending on the second anniversary of the Service Commencement Date<sup>2</sup>

**Insolvency Event:** where:

- (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) the Provider files a petition, or gives notice, or passes a resolution, or makes an order for or in connection with the winding up of the Provider (being a company)
- (d) The Provider makes an application to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider's business (being a company);

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<sup>2</sup> Definition may have to be amended depending on the date of the contract

(e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;

(g) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;

(h) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

(i) the Provider (being an individual) is the subject of a bankruptcy petition or order;

(j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business

(k) the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

**KPIs:** where applicable the key performance indicators or service levels to which the Handyperson Services are to be provided as set out in paragraph 32 and in Annex 2 of the Specification, as may be amended by written agreement between the Parties from time to time.

**Law:** any legal provision the Provider must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, orders, regulations, mandatory guidance or code of codes of practice, judgement of a relevant court of law, or directives or requirements of any regulatory body, whether in the UK or elsewhere.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessarily required from time to time from any competent regulatory or licensing authority or any other persons whatsoever in connection with the provision of the Handyperson Services and in accordance with this Agreement.

**Party:** the Provider or the Council (as appropriate) and "**Parties**" shall mean both of them.

**Prescribed Rate:** Three (3) per cent over the base rate from time to time of the Bank of England

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to (i) induce the person to perform improperly a relevant function or activity or (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree or receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;
- (c) committing any offence (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Council;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK

**Provider's Representative:** the person appointed by the Provider to manage the provision of the Handyperson Services and notified in writing to the Council from time to time by the Provider.

**Qualifying Person:** a person who meets the following criteria:

- (a) is aged 60 years of age and over and who would struggle to carry out minor repairs and adaptations to their home; or
- (b) is 18 years of age and over who has a Disability that would prevent that person from carrying out minor repairs and adaptations to their home
- (c) is a Child/Young Person whose household is on a low income receiving a means tested benefit whose household would struggle to carry out minor repairs and adaptations to make the home safe and secure for the Child/Young Person

**Quoted Works Services:** the provision of General Services and/or the services listed in paragraph 7.3 of the Specification (but not limited to them) to provide minor adaptations to a Service User's home specified by Occupational Therapy (as defined in the Specification) pursuant to the Care Act 2014 or the provision of minor adaptations to the home of a Child/Young Person who is eligible under the Chronically Sick and Disabled Act 1970

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

**Relevant Requirements:** all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010

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

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

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

**Request for Information:** has the meaning set out in the FOIA or the EIRs as relevant.

**Service Commencement Date:** 1 February 2023

**Service Transfer Date:** the date on which the Handyperson Service will transfer for whatever reason from the Provider to any Replacement Provider

**Service User:** a person who meets the following criteria:

- (a) is aged 60 years of age and over; and/or
- (b) has a Disability; and
- (c) in respect of (a) and (b) above, has been referred to the Council's prevention and early intervention service for adults and older people by other health care professionals, or other professionals working in partnership with the Council or an Occupational Therapy referral or a hospital to home assessment that has identified that if minor repairs and/or adaptations were carried out to the Service User's home, it would help that Service User's independence and wellbeing and allow that person to live in their own home

**Specification:** the specification for the Handyperson Services set out in Schedule A.

**Staff:** all persons employed, engaged and/or authorised by the Provider to perform its obligations under the Agreement.

**Staff Vetting Procedures:** vetting procedures that accord with Good Industry Practice or, where requested by the Council, the Council's procedures for the vetting of Staff as provided to the Provider from time to time.

**Staffing Information:** in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information, including job title, age, gender, date of commencement of employment, salary, the identity of the employer, contractual notice periods and any other terms relating termination of employment, including redundancy procedures and redundancy payments, details of employment related benefits, details of sickness

absence, parental leave, maternity leave or other authorised long term absence, any outstanding or potential contractual, statutory or other liabilities, material terms and conditions of employment and the amount of time spent on the provision of the Handyperson Services.

**Sub-Contract:** any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of all or part of the Handyperson Services from that third party.

**Sub-Contractor:** the contractor or supplier that enters into a Sub-Contract with the Provider.

**Target KPIs:** the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Annex 2 of the Speciation.

**Term:** the period of the Initial Term as may be varied by any Extension Period, or the earlier termination of this Agreement in accordance with its terms

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations as enacted into English law

**Urgent Works Services:** the provision of the minor jobs more particular described in paragraph 8 of the Specification to supplement home improvement works carried out under a disabled facilities grant to a Service User's home

**VAT:** value added tax chargeable under the Value Added Tax Act 1994.

**WHAM:** the provision of General Services and/or the services listed in paragraph 9.4 of the Specification (but not limited to them) to support a Service User to heat their home

- 1.2. Clause, schedule and paragraph headings are for convenience of reference only and shall not affect the interpretation of this Agreement.
- 1.3. References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.4. A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. A Reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.6. The schedules forms part of the Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
- 1.7. Except where the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.8. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9. A reference to any enactment includes reference to that enactment as amended, extended or re-enacted from time to time and to any subordinate legislation or byelaw made under that enactment
- 1.10. The words“ **include**”, “**includes**”, “**including**” and “**included**” shall be understood as meaning without limitation by the words which follow those words;
- 1.11. A reference in the Agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.12. A reference to **writing** or **written** excludes faxes and e-mail.
- 1.13. Any obligation on a Party not to do or omit to do anything shall include an obligation not to allow agree that thing to be done or omitted to be done.
- 1.14. Where any statement is qualified by the expression “so far as the Party is aware” or “to the Party’s knowledge” or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.15. Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following descending order of priority:
  - 1.15.1. Clauses 1 to 43 (inclusive) of this Agreement;
  - 1.15.2. the schedules to this Agreement.

## **2. Commencement and Duration**

- 2.1. This Agreement shall take effect on the Commencement Date and shall continue for the Term.
- 2.2. The Council may extend this Agreement beyond the Initial Term by a further period or periods of up to 2 (two) years in aggregate in increments of 1 (one) year (each such extension, together with any previous extension, being the "**Extension Period**").
- 2.3. If the Council wishes to extend this Agreement, it shall give the Provider at least three months' written notice of such extension before the expiry of the Initial Term or Extension Period. If the Council gives such notice then the Term shall be extended by the period set out in the notice.
- 2.4. If the Council does not give notice to extend this Agreement beyond the Initial Term or an Extension Period in accordance with clause 2.3 this Agreement shall (unless otherwise agreed between the Parties) expire on the expiry of the Initial Term or the earlier Extension Period.
- 2.5. The Council shall not be entitled to extend this Agreement beyond the fourth anniversary of the Service Commencement Date.

## **3. Due Diligence and Provider's Warranty**

- 3.1. The Provider acknowledges and confirms that:
  - 3.1.1. the Council has delivered or made available to the Provider all the information and documents that the Provider considers necessary or relevant for the performance of its obligations under this Agreement;
  - 3.1.2. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 3.1.1;
  - 3.1.3. it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the

Commencement Date) of all relevant details relating to the performance of its obligations under the Agreement;

3.1.4. it has entered into this Agreement in reliance on its own due diligence;

3.1.5. no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

3.2. The Provider:

3.2.1. warrants, represents and undertakes to the Council that as at the Commencement Date:

3.2.1.1. all information and statements made by it as part of the procurement process, including without limitation in the tender submitted by the Provider, or response to the selection questionnaire, remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement; and

3.2.1.2. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Provider, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Provider to perform its obligations under this Agreement

3.2.1.3. it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Provider to perform its obligations under this Agreement

3.2.1.4. as far as it is aware no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Provider, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative

receiver, administrator, liquidator, trustee or similar officer to it or in relation to any of its assets or revenues;

3.2.1.5. it nor any of its Staff has committed an offence under the Modern Slavery Act 2015 (an MSA Offence) or been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015

3.3. The Provider shall promptly notify the Council in writing if it becomes aware during the performance of the Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Handyperson Services (or meet any Target KPIs).

3.4. The Provider undertakes with the Council that so long as this Agreement remains in force:

3.4.1. it will give the Council notice of all litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or relevant authority which would adversely affect, to an extent which is material in the context of this Agreement, the Provider's ability to perform its obligations under this Agreement

3.4.2. it will not undertake the performance of its obligations under this Agreement otherwise than through itself or through a Sub-Contractor approved by the Council in accordance with clause 17.2; and

3.4.3. it will give the Council notice of an occurrence of any Insolvency Event in respect of the Provider.

3.5. Nothing in this clause 3 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

#### **4. Necessary Consents**

4.1. The provider shall ensure that all Necessary Consents are in place to provide the Handyperson Services and the Council shall not, (unless otherwise agreed in writing) incur any costs associated with obtaining, maintaining or copying the same.

#### **5. Supply of the Handyperson Services**

5.1. Subject to the terms of the Agreement and in consideration of the payment of the Charges, the Provider shall provide the Handyperson Services to Service Users and the General Services to Qualifying

Persons with effect from the Services Commencement Date and for the remainder of the Term in accordance with the terms of the Agreement (which includes for the avoidance of doubt the Specification).

- 5.2. In the event that the Provider does not comply with clauses 5.1 in any way, the Council may serve it with a notice in writing setting out the details of the Provider's default and what steps it should take in order to remedy such default (**Default Notice**).
- 5.3. Without prejudice to clause 5.2, the Council may be written notice to the Provider at any time request a variation to the scope of any of the Handyperson Services and any Change shall be agreed and implemented in accordance with the Change Control Procedure.

## **6. Standards of Handyperson Services**

- 6.1. The Provider shall provide the Handyperson Services, or procure that they are provided at all times in accordance with:
  - 6.1.1. this Agreement (including (without limitation) the Specification and the Target KPIs);
  - 6.1.2. Good Industry Practice;
  - 6.1.3. all applicable Laws;
  - 6.1.4. the Modern Slavery Act 2015 and the Council's anti-slavery and human trafficking policy in force and notified to the Provider from time to time;
  - 6.1.5. all Necessary Consents; and
  - 6.1.6. all applicable policies of the Authority of which the Contractor could reasonably be expected to be aware as listed in the Specification.
- 6.2. In providing the Handyperson Services the Provider shall at all times ensure that all materials, standards and techniques used in providing the Handyperson Services are of the best quality and are free from defects in workmanship, installation and design.

## **7. KPIs**

- 7.1. Where any Handyperson Services are stated in the Specification to be subject to a specific KPI, the Provider shall provide that Handyperson Service in such manner as to ensure that the Achieved KPIs for such service is equal to or higher than the Target KPIs required for such specific KPI.
- 7.2. If the Handyperson Services are varied in accordance with clause 5.3, Target KPIs for such Handyperson Services will be agreed by the Parties as part of the Change Control Procedure and added to the Specification.
- 7.3. Without prejudice to clause 7.2, either Party may request a Change to a Target KPI. Any potential Change to a Target KPI shall be addressed by the Parties under the Change Control Procedure.
- 7.4. The Provider shall provide the monitoring and Management Reports in accordance with paragraph 31 of the Specification.

## **8. Staff**

- 8.1. At all times the Provider shall ensure that:
  - 8.1.1. each of the Provider's Staff is suitably skilled, qualified, adequately trained and capable of providing the Handyperson Services assigned to them and, in addition, each member of Staff complies with the training requirements set out in the Specification (as relevant to the Handyperson Service to be provided);
  - 8.1.2. there shall be a sufficient number of Staff (including periods of holiday, sickness and other absences) to allow the Provider to provide the Handyperson Services in accordance with the Agreement;
  - 8.1.3. the Provider and Staff comply with the Council's policies notified to the Provider from time to time by the Council relating to the conduct of Staff and comply with such rules, regulations and requirements relating to the conduct of Staff as may be made and enforced by the Council from time to time acting reasonably
  - 8.1.4. the Handyperson Services are provided in such a manner as to comply with the Equalities Law 2010 and the Human Rights Act 1998;
  - 8.1.5. the Provider shall replace any of the Staff who the Council reasonably decides to have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider's Staff for any reason, the Provider shall ensure such person is replaced promptly with another person with the

necessary training and skills to meet the requirements of the Handyperson Services.

- 8.1.6. the Provider shall maintain up-to-date personnel records of its Staff engaged in the provision of the Handyperson Services and shall provide information to the Council as the Council reasonably requests on the Provider's Staff. The Provider shall ensure that the Staff cannot be individually identified from the information so provided.
- 8.2. The Provider shall, and shall procure that any Sub-Contractor shall, notify the Council immediately in writing as soon as it becomes aware of any investigation of or proceedings brought against the Provider for any Sub-Contractor under the Equalities Law 2010.
- 8.3. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of its obligations under this Agreement being in contravention of Equalities Law 2010, the Provider shall, and shall procure that any Sub-Contractor shall, free of charge:
  - 8.3.1. provide any information requested in the timescale allotted;
  - 8.3.2. attend any meetings as required and permit any of Staff to attend;
  - 8.3.3. promptly allow access to and investigation of any documents or data deemed to be relevant;
  - 8.3.4. allow itself and Staff to appear as witness in any ensuing proceedings; and
  - 8.3.5. cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 8.4. The Provider shall be entirely responsible for the employment and conditions of the Provider's Staff and shall procure that any Sub-Contractor is likewise responsible for their respective employees.

## **9. Safeguarding**

- 9.1. Where required by Law, Good Industry Practice, Staff Vetting Procedures or any Council policy or policies the Provider shall (and shall procure that any Sub-Contractor shall) procure that in respect of all

potential staff or Staff performing any of the Handyperson Services (each a '**Named Employee**'), before a Named Employee begins to perform any of the Handyperson Services:

- 9.1.1. Each Named Employee is required to disclose any Convictions;
  - 9.1.2. Where any Named Employee discloses any Convictions, or is found to have any Convictions, the same shall be immediately notified to the Council; and
  - 9.1.3. Notwithstanding 9.1.1 and 9.1.2 (above) to carry out such checks as required by the Disclosure and Barring Service under the Safeguarding Vulnerable Groups Act 2006 to the level appropriate to the nature of the Handyperson Services to be performed by the Named Employee and that no Named Employee is engaged in the provision of Handyperson Services until such checks have been carried out.
- 9.2. The Provider shall procure that:
- 9.2.1. no person who discloses any Convictions, or who is found to have any Convictions following the results of a Criminal Records Bureau check, is employed or engaged without the Council's prior written consent; and
  - 9.2.2. each Named Employee is vested in accordance with the Staff Vetting Procedures.
- 9.3. The Provider warrants that at all times for the purposes of the Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Handyperson Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.
- 9.4. The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 9 have been met.
- 9.5. The Provider shall refer any information about any person carrying out the Handyperson Services to the DBS where it removes permission for such person to carry out the Handyperson Services (or would have, if such person had not otherwise ceased to carry out the Handyperson Services) because, in its opinion, such person has harmed or poses a risk of harm to a Service User or to a Qualifying Person.

- 9.6. Without prejudice to this clause 9, the Provider shall at all times comply with the safeguarding requirements set out in paragraph 19 and paragraph 21 of the Specification.

## **10. TUPE AND PENSIONS**

- 10.1. The Parties agree that the provisions of Schedule D shall apply to any Relevant Transfer under the Agreement.

## **11. Charges**

- 11.1. In consideration for the Provider providing the Handyperson Services to Service Users and the General Services to Qualifying Persons in accordance with the terms and conditions of the Agreement, the Council shall pay the Charges (as relevant) to the Provider in accordance with the terms of this Agreement (including for the avoidance of doubt the Specification). The Charges payable by the Council and set out in each invoice shall be calculated in accordance with Schedule B.

- 11.2. The Provider acknowledges and agrees that the total Charges in any Contract Year shall not exceed the sum of One Hundred and Fifteen Thousand Pounds (£115,000).

- 11.3. The Provider shall invoice the Council for payment of the Charges within ten (10) Business Days following the end of each calendar month during the Term.

- 11.4. Each invoice shall be accompanied by a spreadsheet containing such information as the Council may reasonably request from time to time in order to allow the Council to verify the Charges, including:

11.4.1. the name and address of each Service User and Qualifying Person;

11.4.2. for each Service User and Qualifying Person

11.4.2.1. a description of the Handyperson Services carried out together with a summary of the work carried out and materials provided;

11.4.2.2. the date each job was carried out;

11.4.2.3. the number of hours taken to complete each job;

11.4.2.4. the entire cost of each job, including a break-down between labour costs and the cost of all materials used;

11.4.2.5. the sum due and payable by the Council for each job; and

11.4.2.6. such other information, including equalities data, the Council shall reasonably require, subject to all necessary consents in place to enable lawful transfer of personal data in accordance with the Data Sharing Agreement.

11.4.3. In relation to Qualifying Persons, a statement detailing the Contribution Payment, including labour costs and the cost of all materials used.

11.5. Without prejudice to clause 11.4, all invoices shall be directed to the Council's Contract Manager and shall include in particular:

11.5.1. the Provider's name and address;

11.5.2. an invoice reference number;

11.5.3. the invoice period to which the invoice relates; and

11.5.4. the Provider's registration details for VAT purposes.

11.6. Where the Provider submits an invoice for the Charges in accordance with clause 11 and Schedule B, the Council will consider and verify that invoice within seven (7) Business Days. The Council shall pay the Provider the Charges due and payable under such invoice no later than a period of 20 Business Days from the date on which the Council has determined that the invoice is valid and undisputed.

11.7. Where a Party disputes all or any part of such sum to be paid by it then:

11.7.1. within 10 (ten) Business Days from the date of receipt of a disputed invoice it shall notify the other Party, setting out in reasonable detail the reasons for contesting the sum in dispute and in particular identifying which elements of the sum are contested and which are uncontested;

11.7.2. make a payment equal to the sum not contested in accordance with the terms of the Agreement; and

11.7.3. if the Parties have not resolved the dispute within 20 Business Days of the date of notification under clause 11.7.1, the disputed amount shall be resolved through the Dispute Resolution Procedure under clause 26 (Dispute Resolution Procedure). Provided the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the date which is five Business Days after resolution of the dispute between the Parties.

11.8. Where the Provider enters into a Sub-Contract the Provider shall include in that Sub-Contract:

11.8.1. provisions having the same effect of clause 11.3 and clause 11.6 of this Agreement; and

11.8.2. a provision requiring the counterparty to that Sub-Contract to include in any sub-contract which it awards provisions having the same effect as clauses 11.3 and 11.6 of this Agreement.

11.9. Subject to clause 11.7.3, interest shall be payable on the late payment of any undisputed Charges properly invoiced under the Agreement in accordance with this clause 11. The Provider shall not suspend the supply of the Handyperson Services if any payment is overdue unless it is entitled to terminate the Agreement under clause 27.2.

11.10. The Provider shall maintain complete and accurate records of, and supporting documentation for, all sums which may be chargeable to the Council pursuant to the Agreement. Such records shall be retained for inspection by the Council for six years from the end of the Contract Year to which the records relate.

#### Recovery of Non-Payment of Contribution Payments

11.11. If a Service User or a Qualifying Person fails to pay their Contribution Payment within the payment period specified in the invoice issued by the Provider to the Service User or Qualify Person (**Debtor**), the Provider shall issue a reminder (**First Reminder**) to the Debtor and give the Debtor [ ] to pay the sum outstanding (**the Debt**).

11.12. If the Debtor fails to pay the Debt within [ ] of service of the First Reminder, the Provider shall issue a further reminder (**Final Reminder**) to the Debtor.

11.13. If the Debtor fails to pay the Debt within [ ] of service of the Final Reminder the Provider shall:

11.13.1. provide full details of the Debt and the Debtor to the Council's Contract Manager and any Professional who made the referral into the General Services; and

11.13.2. seek to hold a face-to-face meeting with the Debtor to discuss the Debt and where necessary options for payment (such as a time-to-pay plan).

11.13.3. provide copies of the invoice, all reminder notices and any other relevant correspondence to the Council's Contract Manager.

## **12. VAT**

12.1. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under the Agreement.

## **13. Interest**

13.1. Each Party shall pay interest on any sum due under the Agreement, calculated as follows:

13.1.1. at the Prescribed Rate; and

13.1.2. for the period from when the overdue sum became due, until it is paid.

## **14. Set-off**

- 14.1. The Council may retain or set off any amount owed to it by the Provider under this Agreement which has fallen due and payable against any amount due to the Provider under this agreement or any other agreement pursuant to which the Provider provides services to the Council. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
- 14.2. If the Council wishes to set off any sum owned by the Provider to the Council against any sum due to the Provider pursuant to clause 14.1 it shall give notice to the Provider within 30 days of receipt of the relevant invoice setting out its reasons for withholding or retaining the relevant Charges.
- 14.3. The Provider shall not be entitled to retain or set off any amount due to the Council by it.

## **15. Reporting, meetings, monitoring and Records**

- 15.1. The Provider shall comply with the reporting and monitoring requirements in paragraphs 25, 29 and 31 of the Specification.
- 15.2. The Council's Contract Manager and the Provider's Representative shall meet at least once in each three month period ('**Review Period**') to monitor review and discuss, amongst other things, the delivery of the Handyperson Services, the achievement of the KPIs, the number of General Services completed to Qualifying Persons and the number of Handyperson Services completed to Service Users and the Charges paid for those services, the Contribution Payments due and properly payable and received, and the projected number of General Services and Handyperson Services estimated to be supplied to Qualifying Persons and to Service Users (as relevant) in the immediately following three (3) month period. Such meetings shall be minuted by the Council's Contract Manager and copies of those minutes shall be circulated to the Provider's Representative.
- 15.3. Without prejudice to any other reports required under this Agreement, in advance of each meeting to be held in accordance with clause 15.2:
- 15.3.1. the Provider shall provide the Council with a quarterly written report detailing its performance against each of the KPIs in the relevant quarter and identifying any issues regarding the performance of the Agreement in such period for discussion at the next meeting; and

- 15.3.2. the Council shall notify the Provider of any concerns it has regarding the performance of the Agreement at such meeting or within 3 (three) Business Days following such meeting.
- 15.4. If the total cost or the projected estimated total cost of the Contribution Payment in any calendar month shall have exceeded, or may exceed, the sum of £9,583 and/or the projected estimated Contribution Payment for any Contract Year is likely to exceed the sum of £115,000, the Council may by written notice to the Provider change the scope of the Handyperson Services and/or change the criteria to be applied to Qualifying Persons for eligibility to receive Handyperson Services, or require the Provider to cease providing the Handyperson Services for a specified period of time, in order to ensure that the Contribution Payment in any Contract Year shall not exceed the sum of £115,000. Such change or cessation shall be at no loss or cost of the Council.
- 15.5. The Provider shall, at no additional cost to the Council:
- 15.5.1. co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in this clause 15;
- 15.5.2. provide the Council with any information required for such monitoring that has not already been provided in accordance with clause 15, or otherwise under the Agreement.
- 15.6. The Council may increase the extent to which it monitors the performance of the Handyperson Services if the Provider fails to meet the Target KPIs or fails to fulfil its other obligations under the Agreement. The Council shall give the Provider prior notification of its intention to increase the level of its monitoring. The Provider shall bear its own costs in complying with such enhanced monitoring as is conducted by the Council referred to in this clause 15.6
- 15.7. The Provider shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement, including the Handyperson Services supplied under it, and all payments made under the Agreement. The Provider shall on request afford the Council such access to those records as may be reasonably requested in connection with the Agreement.

## **16. Continuous Improvement**

16.1. The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Handyperson Services. As part of this obligation the Provider shall identify and report to the Council's Contract Manager once every quarter on:

16.1.1. any potential improvements to the Handyperson Services;  
and

16.1.2. any Change the Provider wishes to propose to ways of working that would enable the Handyperson Services to be delivered at lower cost.

16.2. Where the Council or the Provider sees a need to make a Change to the Agreement as a consequence of the Provider's obligations under clause 16.1 the Party wishing to make the Change shall give written notice to the other Party to request a change to the Agreement, giving details of the Change, including:

16.2.1. the reason for and full details of the Change;

16.2.2. the price, or potential savings to be made;

16.2.3. the timetable for implementation;

16.2.4. details of the likely impact, if any, of the Change to other aspects of the Agreement.

16.3. In the event that the other Party agrees to the Change, the Change shall be addressed by the Parties under the Change Control Procedure.

16.4. Until such time as a Change is made, the Provider shall continue to perform the Handyperson Services in compliance with the terms of the Agreement, before such Change.

## **17. Assignment and Sub-contracting**

17.1. Subject to clause 17.4, neither Party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under the Agreement without the prior written consent of the other Party, neither may the Provider sub-contact the whole or any of its obligations under the Agreement except with the express prior written consent of the Council, such consent not to be unreasonably withheld.

- 17.2. Notwithstanding clause 17.1 prior to the Provider entering into a Sub-Contractor it shall provide such information as the Council shall reasonably request about the proposed sub-contractor and the impact of the proposed Sub-Contract on the Agreement. The Provider shall not enter into any Sub-Contract without the Council's consent (not to be unreasonably withheld or delayed)
- 17.3. In the event that the Provider enters into any Sub-Contract in connection with the Agreement it shall:
- 17.3.1. remain responsible to the Council for the performance of its obligations under the Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts, omissions and neglects of its Sub-Contractors;
  - 17.3.2. impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to the Agreement and shall procure that the Sub-Contractor complies with such terms; and
  - 17.3.3. provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such from the Council.
- 17.4. The Council shall be entitled to novate (and the Provider shall be deemed to consent to any such novation) the Agreement to any other body which:
- 17.4.1. substantially performs any of the functions that previously had been performed by the Council, or
  - 17.4.2. is controlled by the Council.

## **18. Health and Safety**

- 18.1. The Provider shall promptly notify the Council's Contract Manager of any health and safety hazards which may arise in connection with the provision of the Handyperson Services.
- 18.2. The Provider shall (and shall procure that the Staff) at all times comply with the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations and any other acts, order, regulations and codes of practice relating to health and safety.

- 18.3. The Provider must notify the Council as soon as it becomes aware of any health and safety hazards which arise in relation to the provision of the Handyperson Services.

## **19. Indemnities**

- 19.1. Subject to clause 19.2, the Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, damages, liabilities, losses and expenses incurred by the Council arising out of or in connection with:

19.1.1. the Provider's breach or negligent performance of the Agreement;

19.1.2. any claim made against the Council arising out of or in connection with the provision of the Handyperson Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Provider or the Provider's Staff;

19.1.3. the enforcement of the Agreement.

- 19.2. The indemnity under clause 19.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of the Agreement by the Council.

## **20. Limitation of Liability**

- 20.1. Subject to clause 20.2 and clause 20.3, neither Party shall be liable to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with the Agreement.

- 20.2. Notwithstanding the provisions of clause 20.1, the Provider assumes responsibility for and acknowledges that the Council may, amongst other things, recover:

20.2.1. sums paid by the Council to the Provider pursuant to the Agreement, in respect of any Handyperson Services not provided in accordance with the Agreement;

- 20.2.2. additional costs of implementing replacement for the Handyperson Services, including additional costs of management time; and
  - 20.2.3. losses incurred by the Council, arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceedings by any third party against the Council caused by the acts or omissions of the Provider.
- 20.3. Nothing in this clause 20 shall limit any liability for:
- 20.3.1. the indemnities in clause 10 (TUPE and Pensions); and
  - 20.3.2. breach of clause 29 (Prevention of Bribery)
- 20.4. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with the Agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in the Agreement.
- 20.5. Notwithstanding any other provisions of the Agreement neither Party limits or excludes its liability for:
- 20.5.1. fraud or fraudulent misrepresentation;
  - 20.5.2. death or personal injury caused by its negligence;
  - 20.5.3. breach of any obligation as to title implied by statute; or
  - 20.5.4. any other act or omission, liability for which may not be limited under any applicable law.

## **21. Insurance**

- 21.1. The Provider shall at its own cost take out and maintain in force throughout the Term with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- 21.1.1. public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
  - 21.1.2. employer's liability insurance with a limit of indemnity of not less 5,000,000, or in accordance with any legal requirement for

the time being in force (whichever is the greater) in relation to any one claim or series of claims; and

- 21.1.3. professional liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims

**(‘the Required Insurances’).** The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider’s performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

- 21.2. The Provider shall give the Council, on request, a copy of or a broker’s verification of insurance to demonstrate that the Required Insurances are in place, together with receipts of other evidence of payment of the latest premium due under those policies.
- 21.3. If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 21.4. the terms of insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement.

## **22. Freedom of Information**

- 22.1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and EIRs and shall:

- 22.1.1. at its own cost, assist and cooperate with the Council to enable the Council to comply with its obligations under the FOIA and EIRs in a timely manner;

- 22.1.2. transfer to the Council’s Contract Manager Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;

- 22.1.3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires

within 5 Business Days (or such other period as the Council may reasonably specify) of the request for such Information;

22.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the Council.

22.2. The Provider acknowledges that the Council may be required under the FOIA and the EIRs to disclose Information concerning the Provider or the Handyperson Services (including Confidential Information and commercially sensitive information) without consulting or obtaining consent from the Provider. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

22.3. Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Provider or the Handyperson Services is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **23. Confidentiality**

23.1. Subject to clause 23.2, each Party shall:

23.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

23.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

23.2. Notwithstanding clause 23.1, a Party may disclose Confidential Information which it receives from the other Party:

23.2.1. where disclosure is required by applicable Law, including FOIA or the EIRs, or by a Court of competent jurisdiction;

23.2.2. to its auditors or for the purpose of regulatory requirements;

23.2.3. on a confidential basis to its professional advisers;

- 23.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act;
- 23.2.5. where the Receiving Party is the Provider, to the Staff on a need to know basis to enable performance of the Provider's obligations under the Agreement provided that the Provider shall procure that any Staff to whom it discloses Confidential Information under this clause shall observe the Provider's confidentiality obligations under the Agreement;
- 23.2.6. where the other Party confirms in writing is not required to be treated as Confidential Information;
- 23.2.7. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- 23.2.8. which is in or enters the public domain other than through any disclosure prohibited by the Agreement;
- 23.2.9. which a Party can demonstrate was lawfully in its possession prior to receipt from the other Party;
- 23.2.10. where the receiving party is the Council;
- 23.2.11. on a confidential basis to its employees, partners, consultants and contractors of the Council;
- 23.2.12. on a confidential basis to any other government body;
- 23.2.13. to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- 23.2.14. In accordance with clause 22.
- 23.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Provider hereby gives its consent for the Council to publish the Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted). The Council may consult with the Provider to inform its decision

regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

## **24. Data Protection**

- 24.1. Each Party will comply with all applicable requirements of the Data Protection Laws
- 24.2. Each Party shall comply at all times with the provisions of the Data Sharing Agreement.

## **25. Audit**

- 25.1. During the Term and for a period of two years after the end of the Term, the Council, acting through itself or its auditors, may conduct an audit of the Provider, including for the following purposes:
  - 25.1.1. To verify that the Handyperson Services are being provided and all obligations of the Provider are being performed in accordance with the Agreement;
  - 25.1.2. to verify the accuracy of the Charges and the Contribution Payment;
  - 25.1.3. to review the confidentiality and security of any data relating to the Council or any Handyperson Services User or Qualifying Person;
  - 25.1.4. to review the Provider's compliance with the Data Protection Laws, FOIA and any other legislation applicable to the Handyperson Services;
  - 25.1.5. to review any records created during the provision of the Handyperson Services; and
  - 25.1.6. to fulfil any legally enforceable request by any regulatory body.
- 25.2. Except where an audit is imposed on the Council by an Audit Body, the Council may not conduct an audit under this clause 25 more than once in any Contract Year.

- 25.3. The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Handyperson Services.
- 25.4. The Provider shall on demand provide the Council and any relevant Audit Body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit including all information requested by the above persons within the permitted scope of the audit and access to the Staff.
- 25.5. The Council shall endeavour (but is not obliged) to provide at least 15 Business Days' notice of its intention or, where possible, an Audit Body's intention, to conduct an audit.
- 25.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure by the Provider to perform its obligations under the Agreement in any material manner in which case the Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

## **26. Dispute Resolution Procedure**

- 26.1. If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it (**Dispute**) then the Parties shall follow the procedures set out in this clause:
- 26.1.1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with any relevant supporting documents. On service of the Dispute Notice, the Council's Contract Manager and the Provider's Representative shall attempt in good faith to resolve the Dispute in an amicable and timely manner;
- 26.1.2. if the Council's Contract Manager and the Provider's Representative are for any reason unable to resolve the Dispute within 10 Business Days of service of the Dispute Notice, the Dispute shall be referred to the Council's Director of People and Communities (or any duly nominated and authorised representative of the director) and the Provider's [ TBC] who shall attempt in good faith to resolve it; and

26.1.3. if the individuals identified in clause 26.1.2 are for any reason unable to resolve the Dispute within 15 Business Days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, a Party must serve notice in writing (**ADR Notice**) to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to the CEDR Solve. The mediation will start no later than 20 Business Days after the date of the ADR Notice.

26.2. The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 26 which clause shall apply at all times.

## **27. Termination**

27.1. Without affecting any other right or remedy available to it, the Council may terminate the Agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Provider if one or more of the following circumstances occurs or exists:

27.1.1. if the Provider is in material breach of any obligation under the Agreement which is not capable of remedy;

27.1.2. if the Provider repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

27.1.3. if the Provider is in material breach of any obligation under the Agreement which is capable of remedy and that breach is not remedied within 5 Business Days of the Provider receiving notice specifying the breach and requiring it to be remedied;

27.1.4. if the Provider breaches any of the provisions of clause 9 (Safeguarding), clause 23 (Confidentiality) clause 24 (Data Protection) and clause 6.1.4

27.1.5. if there is an Insolvency Event in respect of the Provider

27.1.6. if the Council elects to terminate pursuant to clause 29.6

27.1.7. if the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply

- 27.2. The Provider may terminate the Agreement by written notice to the Council if the Council has not paid any undisputed sums within 40 Business Days of them falling due.
- 27.3. Either Party may, during the continuance of a Force Majeure Event, terminate the Agreement if the circumstances in clause 28.5 arise.
- 27.4. If the Agreement is terminated by the Council pursuant to this clause 27, such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any losses or costs which the Council may suffer as a result of any such termination.

## **28. Force Majeure**

- 28.1. Neither Party shall be liable to the other party for any delay in performing, or failure to perform, its obligations under the Agreement (other than payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use reasonable endeavours to mitigate the effect of the Force Majeure.
- 28.2. If a Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, that Party's failure or delay on its part as described in clause 28.1 (**Affected Party**), the Affected Party shall immediately notify the other Party in writing of the Force Majeure, the date on which is started, its likely potential duration and the effect of the Force Majeure on its ability to perform any of its obligations under the Agreement.
- 28.3. The Provider will not have the right to any payment from the Council under the Agreement where the Provider, as the Affected Party, is unable to provide the Handyperson Services because of an event of Force Majeure.
- 28.4. An Affected Party cannot claim relief if the event of Force Majeure is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.
- 28.5. If the Force Majeure prevents or delays the Affected Party's performance of its obligations under the Agreement for a period in excess of 40 Business Days, either Party may terminate this Contract with immediate effect by notice in writing to the other Party.

## **29. Prevention of Bribery**

- 29.1. The Provider represents and warrants that neither it, nor any Provider Staff:

- 29.1.1. has committed a Prohibited Act;
  - 29.1.2. to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
  - 29.1.3. has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 29.2. The Provider shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 29.1 at the relevant time.
- 29.3. The Provider shall (and shall procure that the Provider's Staff shall) during the Term:
  - 29.3.1. not, in connection with the Agreement, commit a Prohibited Act;
  - 29.3.2. not do or omit to do anything that would cause the Council or any of the Council employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
  - 29.3.3. comply with the Authority's Anti-bribery and Anti-Corruption Policy as updated from time to time
  - 29.3.4. notify the Council (in writing) if it becomes aware of any breach of clause 29.3.1 or clause 29.3.2, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage
- 29.4. The Provider shall maintain appropriate and up to date records showing all payments made by the Provider in connection with the Agreement and the steps taken to comply with its obligations under clause 29.3.
- 29.5. The Provider shall allow the Council and its third-party representatives to audit any of the Provider's records and any other relevant documentation in accordance with clause 25.
- 29.6. If the Provider is in Default under clause 29.1 the Council may be notice:

29.6.1. require the Provider to remove from performance of the Agreement any of its Staff whose acts or omissions have caused the Default; or

29.6.2. Immediately terminate the Agreement.

29.7. Any notice served by the Council under clause 29.6 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which the Agreement shall terminate).

### **30. Consequences of Termination**

30.1. On the termination of the Agreement for any reason, the Provider shall co-operate fully with the Council to ensure an orderly migration of the Handyperson Services to the Council, or at the Council's request a Replacement Provider.

30.2. Without prejudice to the generality of clause 30.1 during the final 3 (three) months prior to expiry of this Agreement, or during the period of any notice of termination of this Agreement or on the termination date where the grounds for termination is without notice, and in any case for a period of two months thereafter, the Provider shall (at no cost to the Council) co-operate fully with the transfer of responsibility for the Handyperson Services to the Council and/or any Replacement Provider, including:

30.2.1. liaising with the Council and/or a Replacement Provider, and providing reasonable assistance and advice concerning the Handyperson Services and its transfer to the Council or to a Replacement Provider;

30.2.2. providing to the Council and/or a Replacement Provider all and any information concerning the Handyperson Services which is required for the efficient transfer of responsibility for their performance;

30.2.3. not taking any action at any time during the Term or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult or increase the cost of the transfer of the Handyperson Services to the Council or Replacement Provider;

- 30.2.4. providing details of the works programme for General Services or Further Services, including a list of jobs commenced but not completed ('on-going jobs');
  - 30.2.5. providing details of all materials ordered and paid for by the Provider (but not the Qualifying Person) needed to start and/or complete the on-going jobs and to transfer full legal and beneficial title and ownership free of any financial charge in such materials to the Council or Replacement Provider subject to the Council or Replacement Provider paying to the Provider the price paid by the Provider for those materials, to enable the Council or Replacement Provider to complete the General Services and/or Further Services as ordered.
  - 30.2.6. transfer all materials to a Qualifying Person where that Qualifying Person has paid the Provider for those materials;
  - 30.2.7. detail how the General Services and Further Services will transfer to the Council or Replacement Provider on the termination of this Agreement.
- 30.3. On the termination of the Agreement (or where reasonably required by the Council before such date) the Provider will procure that all materials belonging to the Council (and any media of any nature containing information and data belonging to the Council or relating to the Handyperson Services) shall be delivered to the Council's Contract Manager and the Provider shall certify full compliance with this clause.
- 30.4. Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 15.6 (retention of records), clause 23 (confidentiality), Clause 22 (Freedom of Information), clause 24 (Data Protection), clause 20 (Limitation of Liability), clause 21 (Insurance), clause 29 (Prevention of Bribery), clause 27 (Termination) and this clause 30 (Consequences of Termination), clause 31 (publicity), and clause 43 (Governing Law and Jurisdiction) shall remain in full force and effect.
- 30.5. Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## **31. Change in Law**

31.1. The Provider shall monitor and shall keep the Council informed in writing of any changes in the Law which may impact the Handyperson Services and shall provide the Council with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Provider shall only implement such changes in accordance with the Change Control Procedure.

31.2. The Provider shall neither be relieved of its obligations to supply the Handyperson Services in accordance with the terms of the Agreement nor be entitled to an increase in the Charges as the result of a General Change in Law.

## **32. Publicity**

32.1. The Provider shall not, and shall take reasonable steps to ensure that its Staff shall not, make any press announcements or publicise the Agreement in any way without the prior approval of the Council.

32.2. The Provider shall not do anything or permit or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.

## **33. Capacity**

33.1. Each of Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representatives.

## **34. Waiver**

34.1. No failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **35. Rights and Remedies**

35.1. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

- 35.2. All remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election to the exclusion of other remedies.

## **36. Severance**

- 36.1. If any provision or part-provision of the Agreement is or becomes illegal, invalid or unenforceable, it shall be deemed modified to the minimum extent necessary to make it legal, valid 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 the Agreement.
- 36.2. If one Party gives notice to the other Party of the possibility that any provision or part-provision is illegal, invalid 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.

## **37. No Partnership or Agency**

- 37.1. This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

## **38. Third Party Rights**

- 38.1. No one other than the Parties shall have any right to enforce any of its terms.

## **39. Notices**

- 39.1. Any notice given under the Agreement shall be in writing and signed by or on behalf of the other Party giving it.
- 39.2. Any notice to be given or delivered under the Agreement must be given by delivering it personally or sending it by pre-paid first class post, or

other next Business Day delivery service to the address and for the attention of the relevant party as follows:

To the Council at:

Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ and where indicated pursuant to the terms of the Agreement marked for the attention of the Council's Contract Manager or otherwise marked for the attention of the Head of Legal and Democratic Services.

[Provider's details to be added]

- 39.3. Any notice shall be deemed to have been received:
  - 39.3.1. if delivered personally, on signature of a delivery receipt;
  - 39.3.2. if sent by pre-paid first-class post or other next day delivery service, at 9.00 a.m. on the on the second Business Day after posting.
- 39.4. A notice given under the Agreement will not be validly given if sent by email or fax.
- 39.5. 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.

#### **40. Council's Powers as a Local Authority**

- 40.1. Nothing contained or implied in the Agreement shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of its functions as a local authority.
- 40.2. Nothing in the Agreement will operate as an obligation upon, or in any way fetter or constrain, the Council in any capacity other than as a contracting Party and the exercise by the Council of its rights, powers, duties and obligations in any other capacity and will not lead to any liability under the Agreement on the part of the Council to the other Party.

#### **41. Entire Agreement**

- 41.1. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

## **42. Counterparts**

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

## **43. Governing Law and Jurisdiction**

- 43.1. The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

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

**Execution Clause NSC**

**[ Execution clause Provider]**

## **SCHEDULE A: SPECIFICATION**

## SCHEDULE B

### CHARGES AND CONTRIBUTION PAYMENT

#### Payment of the Charges

##### 1. Calculation of the Charges

The Charges shall be calculated on the basis of the rates set out in this Schedule.

##### 2. Charges based on hourly rates

Handyperson Service	Maximum Number of Hours	Maximum Sum	Hourly Rate	Contribution Payment
General Services	Up to 3 hours	3 hours x hourly rate	£	£TBC a % of the hourly rate
Children Support Service	UP to 2 hours	2 hours x hourly rate	£	£0
Home from Hospital Service	No cap	£1,000	£	£0
Quoted Works Service	No cap	£1,000	£	£0
Urgent Works Service	No cap	No cap	£	£0
WHAM	No cap	No cap	£	£0

##### 3. In the table set out in paragraph 2 of Schedule B

3.1. 'Maximum Number of Hours' mean the maximum number of hours that the Provider shall spend on:

- 3.1.1. delivering the General Services to each Service User or Qualifying Person; and
- 3.1.2. delivering the Children Support Service to each Service User

For the avoidance of doubt there is no Maximum Number of Hours for the delivery of Further Services save for Children Support Services.

3.2. 'Maximum Sum' means the total sum of the Charges payable by the Council to the Provider for each Handyperson Service delivered to a Service User or Qualifying Person

- 3.3. 'Hourly Rate' means the cost per hour to be charged for the Handyperson Services. The Hourly Rate can cover one or more different jobs carried out within the Maximum Number of Hours and subject to the Maximum Sum.
4. The Provider shall not provide the General Services to a Service User or to a Qualifying Person if a job will take more than three hours to complete and/or cost more than £1,000 save where the Council's Contract Manager or such other Professional making the referral has given written instruction to the Provider to proceed with the job, based on the estimated number of hours and price given in the Provider's fee quote.
  5. The Provider shall not provide the Children Support Services to a Service User if a job will take more than [ two ] hours to complete save where the Professional making the referral has given written instructions to the Provider to proceed with the job, based on the estimated number of hours and price given in the Provider's fee quote.
  6. The Provider shall not provide the Quoted Works Services to a Service User if the Quoted Works Service will cost more than £1,000. In such event the Provider shall discuss the total cost of the proposed Quoted Works Service with the occupational therapist making the referral and with the Council's Contract Manager and shall only carry out the Quoted Works Service where the occupational therapist or the Council's Contract Manager gives written instructions to the Provider to proceed with the Quoted Works Services, based on the estimated number of hours and price given in the Provider's fee quote. The occupational therapist or the Council's Contract Manager shall not consider such works if the Service User is or may be eligible for a disabled facilities grant. In such event the occupational therapist or the Council's Contract Manager shall inform the Service User that they may be eligible to apply for a disabled facilities grant from North Somerset Council.
  7. The cost of all materials needed to be purchased to deliver the General Services in order to complete a job will be payable to the Provider by each Service User and Qualifying Person in receipt of General Services. service. The Provider shall provide a price quote for the cost of the materials to the Service User or Qualifying Person and shall not place an order for any material unless and until the Service User or Qualifying Person has expressly accepted the quote.

**SCHEDULE C**  
**DATA SHARING AGREEMENT<sup>3</sup>**

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<sup>3</sup> Refer to the Data Protection Agreement. The Data Protection Agreement will be incorporated into Schedule C at the time engrossments are produced.

## **SCHEDULE D**

### **TUPE**

1. The Provider acknowledges that TUPE may apply in connection with the Agreement and if it does apply the Provider shall comply with its obligations under TUPE and its obligations under this Agreement.
2. The Provider shall (and shall procure that any Sub-Contractor shall) at any time within the period of twelve (12) months immediately preceding the date of expiry of this Agreement, or following the service of a notice under clause 27 (Termination), clause 28 (force Majeure) or clause 29 (Prevention of Bribery) or as a consequence of the Council notifying the Provider of its intention to retender this Agreement:
  - 2.1.1. On receiving a request from the Council to do so, provide to the Council the Staffing Information and the Employee Liability Information ("**Retendering Information**") in respect of any person engaged or employed by the Provider or any Sub-Contractor in, or wholly or mainly assigned to, the provision of the Handyperson Services, or any part of the Handyperson Services (the '**Assigned Employees**') at the date of preparation of the Retendering Information ("**Provider's Provisional Staff List**");
  - 2.1.2. provide the Re-tendering Information promptly and in any event within 10 Business Days of receiving such a request from the Council pursuant to paragraph 2.1.1 and at no cost to the Council.
  - 2.1.3. notify the Council's Contract Manager forthwith in writing of any material changes to the Re-tendering Information promptly as and when such changes arise;
  - 2.1.4. not make any material increase or decrease in the number of Assigned Employees without the Council's prior written consent;
  - 2.1.5. not make any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent (such consent not to be unreasonably withheld);
  - 2.1.6. not transfer any of the Assigned Employees to another part of its business or move other employees from elsewhere in its business who have not previously been employed or engaged in providing the Handyperson Services to provide the Handyperson Services

without the Council's prior written consent (such consent not to be unreasonably withheld);

2.1.7. warrant at the time of providing the Retendering Information that it is accurate and complete at the point that it is given.

3. At least 28 days' prior to the Handyperson Services Transfer Date (or as the Council shall request), the Provider shall, and shall procure that any Sub-Contractor shall, prepare and provide to the Council, and/or at the Council's request, to any Replacement Provider, the list of all the Provider's and Sub-Contractor's Assigned Employees, engaged in, or wholly or mainly assigned to, the provision of the Handyperson Services or any part of the Handyperson Services at the Handyperson Services Transfer Date ("**Provider's Final Staff List**") and identify which of the Provider's and Sub-Contractor's Assigned Employees are Relevant Employees. The Council shall be permitted to use and disclose the Retendering Information and the Provider's Final Staff List for informing any tenderer or other prospective Replacement Provider for any Handyperson Services that are substantially the same type of service as the Handyperson Services.
4. The Provider warrants to the Council that the Provider's Retendering Information and the Provider's Final Staff List ("**TUPE Information**") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Handyperson Services other than those included on the Provider's Final Staff List .
5. The Provider shall and shall procure that any Sub-Contractor shall, ensure at all times that it has the right to provide the TUPE Information under Data Protection Laws.
6. The Provider shall indemnify and shall keep indemnified in full the Council and at the Council's request any Replacement Provider against all damages, loss, liability, claims, actions, costs and expenses, whether arising under statute, contract or at common law arising from any claim by any party as a result of the Provider or any Sub-Contractor failing to provide, or failing promptly to provide, the Council with any Retendering Information or to provide full Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information.
7. On the expiry or earlier termination of this Agreement for whatever reason the Council and the Provider agree that it is their intention that TUPE shall apply in respect of the provisions hereafter of any service equivalent to the Handyperson Services but the position shall be

determined in accordance with all applicable Laws at the date of expiry or termination as the case may be and this Schedule is without prejudice to such determination.

8. Upon expiry or termination of this Agreement for whatever reason (such date being termed the **Return Date**), the provisions of this paragraph 8 will apply:
  - 8.1. the Provider shall or shall procure that all wages, salaries and other benefits of those employees who will transfer to a Replacement Provider pursuant to TUPE (the '**Transferring Employees**') and other employees or former employees of the Provider or a Sub-Contractor (who had been engaged in the provision of the Handyperson Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Provider or Sub-Contractor up to the Return Date are satisfied;
  - 8.2. Without prejudice to paragraph 8.1, the Provider shall:
    - 8.2.1. remain (and procure that any Sub-Contractor remains) (as relevant) responsible for the Provider's or Sub-Contractor's employees (other than the Transferring Employees) on or after the time of expiry or termination of this Agreement and shall indemnify the Council and any Replacement Provider against all damages, loss, liability, claims, actions, costs and expenses, whether arising under statute, contract or at common law incurred by the Council or any Replacement Provider resulting from any claim whatsoever whether arising before, on or after the expiry or termination of this Agreement by or on behalf of any of the Provider's or Sub-Contractor's employees who do not constitute the Transferring Employees;
    - 8.2.2. in respect of those employees who constitute the Transferring Employees the Provider shall indemnify the Council and any Replacement Provider against all damages, loss, liability, claims, actions, costs and expenses, whether arising under statute, contract or at common law incurred by the Council or any Replacement Provider resulting from any claim whatsoever by or on behalf of any of the Transferring Employees in respect of the period on or before the expiry or termination of this Agreement (whether any such claim, attributable to the period on or before the expiry or termination of this Agreement, arises before, on or after the expiry or termination of this Agreement) including but not limited to any failure by the Provider or any Sub-Contractor to comply with

its or their obligations under regulations 13 and 14 of TUPE and any award of compensation under regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of any act or omission of the Council or any Replacement Provider .

9. The Council shall be entitled to assign the benefit of this indemnity to any Replacement Provider.
10. In the event that the Provider enters into any Sub-Contract in connection with this Agreement it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this schedule and shall procure that the Sub-Contractor complies with such terms. The Provider shall indemnify and keep indemnified in full the Council and on behalf of any Replacement Provider against all damages, loss, liability, claims, actions, costs and expenses, whether arising under statute, contract or at common law incurred by the Council or any Replacement Provider as a result of or in connection with any failure on the part of the Provider to comply with this schedule and/or the Sub-Contractor's failure to comply with such terms.
11. The Contractor shall ensure that all Relevant Employees are offered membership of the pension scheme of which they were, or were eligible to be, members prior to the Handyperson Services Transfer Date or are afforded pension rights which are certified by the Government Actuary Department or by a professionally qualified actuary as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members prior to the Handyperson Services Transfer Date.

## **SCHEDULE E**

### **CHANGE CONTROL**

#### **1. GENERAL PRINCIPLES**

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

#### **2. PROCEDURE**

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

- 2.4. Each Change Control Note shall contain:
  - 2.4.1. the title of the Change;
  - 2.4.2. full details of the Change and the reason for the Change;
  - 2.4.3. any changes required to the Charges and/or the Contribution Payment;
  - 2.4.4. a timetable for implementation;
  - 2.4.5. details of the likely impact, if any of the Change on other aspects of the Agreement;
- 2.5. For each Change Control Note submitted by the Provider the Council shall, within the period of the validity of the Change Control Note:
  - 2.5.1. evaluate the Change Control Note and, as appropriate:
    - 2.5.1.1. request further information;
    - 2.5.1.2. accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by the Council and return one of the copies to the Provider; or
    - 2.5.1.3. notify the Provider of the rejection of the Change Control
- 2.6. A Change Control Note signed by the Council and by the Provider shall constitute an amendment to the Agreement.