(1) THE CHESHIRE EAST BOROUGH COUNCIL

and

(2) [NAME OF PROVIDER]

[DEED OF] AGREEMENT

[LOT 1 – Beechmere, Crewe]

[LOT 2 – Oakmere, Handforth]

[LOT 3 - Willowmere, Middlewich]

[LOT 4 – Mill House, Nantwich]

[LOT 5 – Heath View, Congleton]

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for the provision of Extra Care Housing (ECH) care and support services

THIS AGREEMENT is made [as a Deed] on the
2019

BETWEEN

(1) **CHESHIRE EAST BOROUGH COUNCIL** Westfields, Middlewich Road, Sandbach, CW11 1HZ (the "**Council**"); and

(2) **[NAME OF PROVIDER]** whose [registered] place of business is situated at [address] (Company No/Charity Registration No)] (hereinafter referred to as "the Provider")

each a "Party" and together the "Parties"

WHEREAS

(A) This Agreement is entered into by the Council in discharge of its responsibilities under the Care Act 2014 and the Care and Support (Eligibility Criteria) Regulations 2014 for Adults and Older People who have been assessed as having eligible needs.

(B) The Council has undertaken a tender process to procure Providers to deliver the Services throughout East Cheshire as defined in the Specification at Schedule 1.

(C) The Council has selected the Provider to provide Services in respect of Lot [insert here].

(D) The Council wishes to enter into this Agreement with the Provider for the provision of the services in accordance with the terms and conditions set out in this Agreement and as is more particularly described in the Specification which is annexed to and incorporated into this Agreement at Schedule 1 and the Provider's Tender Response Documentation which is annexed and incorporated into this Agreement at Schedule 4.

The following documents are annexed and incorporated into this Agreement:
Schedule 1 – The Specification
Schedule 2 – The Monitoring Schedule (Performance Monitoring Framework)
Schedule 3 – The Pricing Schedule
Schedule 4 – The Provider's Tender Response Documentation
Schedule 5 – The Interface Obligations
Schedule 6 - Data Protection

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the meaning given to them below:

"Agreement"	means this agreement between the Council and the Provider consisting of these clauses and any attached Schedules and Appendices
"Approval"	means the written consent of the Council
"Carer"	means someone who provides care support to another person when it is not part of their job, like a family member or friend
"Care Worker"	means the Provider's members of Staff who have the relevant skills and experience in providing care and support to the Service User and / or Carer in accordance with the Agreement
"Care Plan"	means the plan prepared by the Provider containing the information set out in the Specification at Schedule 1
"Commencement Date"	means 1 August 2019
"Completion Date"	means 31 July 2022 (subject to option to extend to 31 July 2024)
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party all personal data and sensitive personal data within the meaning

	of data protection legislation and commercially sensitive information
"Contract Manager"	means the person for the time being appointed by the Council as being authorised to administer the Agreement on behalf of the Council or such other person nominated by the Council to act on its behalf
"DBS"	means the Disclosure and Barring Service which was established under the Protection of Freedoms Act 2012
"Default Notice"	means a notice which sets out the nature of the Provider Default committed, whether or not it is a Serious Default what remedial action is required and the timescale within which the remedial action must take place
"Employee"	means all persons employed by the Provider together with the Provider's servants, agents and Sub-Contractors
"Employment Checks"	means the pre-appointment checks that are required by Law and/or any applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks
"Equipment"	means any items used by the Provider to deliver the Services. This could include items used within the Service User's apartment or within the staff office, sleeping accommodation or other scheme facilities and may include items supplied by the Housing Provider or Council
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes

	of practice issued by the Information Commissioner's Office in relation to such legislation
"Housing Provider/Manager"	means Avantage/Your Housing Group in respect of Beechmere, Oakmere and Willowmere and means Plus Dane Housing in respect of Heath View and means The Guinness Partnership in respect of Mill House.
"Information"	has the same meaning as provided under section 84 of the Freedom of Information Act 2000
"Intellectual Property Rights"	means patents inventions trade marks service marks logos design rights (whether registerable or otherwise) and applications for any of the foregoing; copyright database rights domain names trade or business names moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Interface Obligations"	means the obligations and interface between the Provider and the Housing Provider/Manager as set out in Schedule 5 of this Agreement
"Lot"	means the applicable Lot within the footprint of the Borough of Cheshire East to which the Provider has been appointed under this Agreement and is, subject to the Award Criteria, eligible to provide Services under the terms of this Agreement (subject always to any suspension rights of the Council)
"Monitoring Schedule"	means the monitoring requirements as detailed in the Performance Monitoring Framework attached at Schedule 2
"Month"	means calendar month

"Price"	means the price which shall become due and payable by the Council to the Provider in respect of the proper performance of the Services in accordance with the provisions of this Agreement, as set out in the Pricing Schedule at Schedule 3
"Pricing Schedule"	means the pricing schedule attached at Schedule 3 which includes details of the Price
"Provider"	means Provider/s contracted under the terms of this Agreement to deliver the services for a specified Lot and who will, subject to conditions, receive a regular minimum payment
"Provider Default"	means any breach of the Provider's obligations (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Provider, its employees, agents or Sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which the Provider is liable to the Council
"Quality Standards"	means the quality standards published by a Regulatory Body or any other equivalent body that a skilled and experienced operator engaged in the same type of service as the Provider would reasonably and ordinarily be expected to comply
"Referral"	the process of advising the Provider of a requirement to provide Services for a Service User as set out in Schedule 1.
"Regulatory Bodies"	means those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or

	otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly
"Replacement Provider"	means any third party provider appointed by the Council from time to time to provide any services which are substantially similar to the Service and which the Council receives in substitution for any part of the Service following the expiry, termination or partial termination of the Agreement
"Request for Information"	shall have the meaning set out in the FOIA
"Resident"	means someone who normally resides in the Extra Care Housing
"Serious Default"	means a Provider Default which either (a) the Provider commits on two or more occasions during any consecutive period of 6 months even if the Provider rectifies the Provider Default each time; or which (b) amounts to a material breach by the Provider of its obligations under this Agreement or which (c) in the Council's reasonable opinion materially prejudices the health, safety and/or welfare of a Service User
"Service"	means the provision of services more particularly described in the Specification together with the proposals made by the Provider in Schedule 4 which shall take effect as contractual obligations upon the Provider.
"Service User"	means a Resident to whom the Services are provided under a Care/Support plan.
"Specification"	means the requirement specification for the provision of the Service attached at

	Schedule 1 including any appendices referred to within the specification
"Staff"	means the Provider's staff, including its Employees, volunteers, servants, agents and sub-contractors or any other person or company that the Provider uses in the performance of the Service. Reference to "Care Staff" shall be included within this definition
"Sub-Contractor"	means the contractors or providers engaged by the Provider to provide services to, for or on behalf of the Provider for the purposes of providing the Service to the Council
"Support Plan"	means the plan prepared by the Council containing the information set out in the Specification at Schedule 1
"TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) or any amendment or replacement thereof
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for domestic business

1.2 References to numbered clauses or appendices are to the relevant numbered clauses or appendices in this Agreement;

1.3 The headings are included for ease of reference only and shall not affect the interpretation or construction of the Agreement;

1.4 References to the singular shall include the plural and references to the masculine shall include the feminine and the neuter and vice versa in each case;

1.5 References to a statute, statutory instrument, regulation order or quality standard shall be construed as a reference to such statute, statutory instrument, regulation order or quality standard as amended or re-enacted or updated or superseded from time to time;

1.6 References to any person shall include natural persons and partnerships firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

1.7 The words “include” “includes” and “including” shall be construed without limitation

1.8 No terms and conditions of the Provider whether stated on an invoice in a catalogue or other literature shall apply override or supersede any of the terms of this Agreement

1.9 The Schedules and Appendices form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

1.10 Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

1.10.1 The clauses of the Agreement

1.10.2 The Specification at Schedule 1 to this Agreement

1.10.3 The Monitoring Schedule at Schedule 2 to this Agreement

1.10.4 The Pricing Schedule at Schedule 3 to this Agreement

1.10.5 The Provider’s Tender Response Documentation at Schedule 4 to this Agreement.

2. Contract Period

2.1 This Agreement shall take effect on the Commencement Date. Delivery of the Service shall begin on the Commencement Date and shall expire on the Completion Date unless it is otherwise terminated in accordance with this Agreement (“the Contract Period”).

2.2 The Council acknowledges that the Provider will require a period of mobilisation between contract award and the Commencement Date to be in a position to fully deliver all of the Services.

2.3 The Provider is required to deliver all of the Services in accordance with the terms of this Agreement and the Specification from the Commencement Date.

2.4 Failure by the Provider to deliver all of the Services as set out in 2.3 above may be regarded as a breach of this Agreement resulting in the procedures set out in clause 25 being invoked.

2.5 The Provider shall not be eligible for any payments in respect of the period from the contract award to the Commencement Date that relate to mobilisation and not to the direct delivery of Services to a Service User.

2.6 The Council may extend the Contract Period for two additional periods each of twelve months duration ("the Extension Period") subject to the Council giving six months (6 months) notice in writing to the Provider prior to the Completion Date (or prior to the end of the Extension Period whichever is applicable).

3. Council's Obligations

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

4. Obligations of the Provider

4.1 The Provider warrants that it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services. Save as expressly provided in the Specification, 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.

4.2 The Provider warrants it is capable of performing the Service in all respects in accordance with this Agreement and has all necessary Staff, Equipment and experience for this purpose

4.3 The Provider shall ensure that all Equipment required for the proper performance of the Service and care of the Service User, is fit for all the purposes for which it will be required.

4.4 The Provider warrants and represents that any Employees assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Service and, insofar as such persons were named in the Provider's tender, it shall not remove or replace such persons without prior Approval. The Council shall have the right after consultation with the Provider to request the removal of any person engaged in the performance of the Services if in its reasonable opinion the performance or conduct of such person is or has been unsatisfactory.

4.5 The Provider warrants to the Council that in the performance of the Service and in regard to all documents prepared by the Provider and all information provided by the Provider in connection with the Service it has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a professional body experienced in carrying out services of the kind envisaged by the Specification and shall at all times comply with the Quality Standards as applicable. No enquiry inspection approval sanction comment consent decision or instruction at any time made or given by or on behalf of the Council or any other party in relation to any such document data or information and no failure of the Council or any other party to discern any defect in or omission from any such document data or information shall operate to exclude or limit the obligation of the Provider to deliver the Services in accordance with this Agreement.

4.6 The Provider warrants and represents that all information contained in or provided with the Provider's tender remains true, accurate and not misleading as at the Commencement Date, save as may have been specifically disclosing in writing to the Council prior to the execution of this Agreement.

4.7 The Provider shall not without prior Approval accept any trade commission discount allowance direct or indirect payment or other consideration from any third party in connection with the performance of the Service

4.8 The Council shall have the right after consultation with the Provider to request the removal of any person engaged in the performance of the Service if in its reasonable opinion the performance or conduct of such person is detrimental to the reputation of the Council or prejudicial to the efficient execution of the Service

4.9 The Provider shall comply with all reasonable instructions given to it by the Council and the monitoring requirements as contained in the Monitoring Schedule, in relation to the performance of the Service

4.10 In the event that the Provider receives any complaint whether written or oral in respect of the provision of the Service whether such complaint is made by a Service User, Carer or by a member of the public the Provider shall immediately

inform the Council of the particulars of the complaint and shall promptly provide the Council with a copy of the complaint, and the Provider's response to the complaint, if such complaint is received in writing.

5. The Service

5.1 The Provider shall provide the Service within the relevant Lot during the Contract Period in accordance with the Council's requirements as set out in this Agreement and in accordance with all applicable laws.

5.2 In providing the Services, the Provider shall provide such reasonable assistance and work collaboratively and in good faith with the Council and the Housing Provider and/or such other parties notified to the Provider by the Council. The Provider shall do this taking into consideration Schedule 5 (Interface Obligations) of the Agreement.

5.3 The Provider agrees to receive Referrals from the Council in accordance with the process set out in the Specification (Schedule 1).

5.4 Referrals will be made by the Authorised Officer by giving the Provider the Service User's Support Plan and any other associated/supporting documents.

5.5 Where the Provider has committed itself to obligations under another contract or agreement with the Council, the Provider remains committed to those other obligations and cannot use its obligations under this Agreement as a way of escaping liability under another contract or agreement with the Council.

5.6 The Provider shall provide the Services with reasonable skill and care and in accordance with the best practices prevailing in the industry-sector of which the Services form part.

5.7 The Council shall have the power to inspect and examine the performance of the Service at any reasonable time provided that the Council gives reasonable notice to the Provider at any premises where any part of the Service is being performed

5.8 In the event that the Council notifies the Provider of the Council's reasonably held opinion that any part of the Service does not meet the requirements of the Agreement or differs in any way from those requirements and this is other than as a result of Default or negligence on the part of the Council the Provider shall at its own expense re-schedule and carry out the Service in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Council

5.9 Timely provision of the Service shall be of the essence including commencing the provision of the Service within the time agreed or on a specified date.

5.10 Without prejudice to any other rights and remedies the Council may have pursuant to this Agreement the Provider shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Provider's delay in the performance of its obligations under the Agreement (except where such delay is caused by the Council's breach of this Agreement or negligence). For the avoidance of doubt, the Provider may be required to reimburse the Council for the reasonable costs it may incur in situations that include but are not limited to the payment of housing costs to the Housing Provider paid to ensure that the accommodation is retained for Council nominations.

5.11 The Provider acknowledges that the Council does not provide any guarantee or other assurance as to the volumes of Services which it will require from the Provider pursuant to this Agreement. The Provider further acknowledges that it is not appointed on an exclusive basis and that the Council has appointed third parties to carry out services of a kind similar to or the same as the Services (and that nothing in this Agreement prevents the Council from appointing more third parties or from carrying out such activities on an in-house basis).

6. STAFF AND SAFEGUARDING VULNERABLE ADULTS

6.1 The Provider shall procure at all times during the Contract Period that all of its Staff comply with all of their applicable legal and regulatory obligations when performing any Services on behalf of the Provider, including (without limitation) any obligations and/or requirements which are prescribed by the CQC (or any other applicable regulator) from time to time.

6.2 At all times during the performance of any Services the Provider shall ensure that:

6.2.1 all of its Staff are suitably qualified and experienced, adequately trained and supervised and capable of providing the applicable Services in respect of which they are engaged, including (without limitation) receiving all of the training which is set out in the Specification;

6.2.2 there is an adequate number of Staff to provide the Services properly in accordance with the provisions of this Contract;

6.2.3 where applicable, Staff are registered with the appropriate

Regulatory Body; and

6.2.4 all of its Staff are aware of and respect the equality and human rights of Service Users.

6.3 The Provider must have in place processes for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:

6.3.1 proper and sufficient continuous professional and personal development, training and instruction; and

6.3.2 full and detailed appraisals (in terms of performance and on-going education and training), each in accordance with Good Industry Practice and the standards of any applicable relevant professional body and/or Regulatory Body.

6.4 Subject to clause 6.5 of this Contract, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of such Services, the Provider must without limitation, promptly complete:

6.4.1 the Employment Checks; and

6.4.2 such other checks as required by the DBS.

6.5 Subject to clauses 6.4 and 6.6 of this Contract, the Provider may only engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate).

6.6 Where clause 6.4 above applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:

6.6.1 an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff;

6.6.2 wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted;

6.6.3 the new member of Staff is accompanied at all times by another member of Staff, preferably the appointed supervisor, whilst providing any Services;

6.6.4 the Provider shall (and shall procure that all of its Staff) comply with any additional reasonable requirements of the Council which the Council notifies to the Provider from time to time.

6.7 The Provider shall undertake checks to ensure that any of its potential Staff members who are likely to be in a position where they are providing any Services to a Service User has a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom. The Provider shall not employ or engage any Staff prior to receipt of a satisfactory Employment Check, and should the Employment Check disclose information about Staff which indicates that the person does not have a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom then that person shall not be so employed or engaged in connection with such Services.

6.8 The Provider shall ensure that the employment or involvement of young Staff complies with all applicable Laws and in particular the Children and Young Persons Act 1933 (as amended) and the Children Act 1989.

6.9 The Provider shall ensure that any concerns relating to the abuse or neglect of a child are reported to the relevant local authority in accordance with the Cheshire East Borough Council Safeguarding Children Board Policy and Procedures.

6.10 The Provider must have policies and procedures which acknowledge and provide for on-going monitoring of its Staff including undertaking further DBS disclosures if required and the Provider shall comply with such policies at all times when performing any Services.

6.11 The Provider must keep and must procure that the Council is kept advised at all times of any Staff who subsequent to their commencement of employment or engagement with the Provider receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider or any member of its Staff and the Provider must immediately notify the Council where a referral is made to the DBS in relation to future barring of any member of its Staff.

6.12 The Provider shall comply and shall ensure that all Staff comply with the Cheshire East Borough Council Adult Safeguarding Enquiry Procedures (as amended from time to time) and the Provider's own policies and procedures concerning adult protection and/or safeguarding.

6.13 The Provider's above policies and procedures shall include safeguarding adults and children from any form of abuse or exploitation which includes

physical, financial, psychological or sexual abuse, neglect, discriminatory, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance.

6.14 The Provider shall have in place robust procedures for responding to suspicion or evidence of abuse and/or neglect to ensure the safety and protection of the Service User. The procedures shall reflect local multi-agency policies, protocols and guidance, including informing the CQC (or any other applicable regulator) and where appropriate involving the police in accordance with the Public Interest Disclosure Act 1998.

6.15 The Provider's safeguarding policy and procedures must ensure that all allegations and incidents of abuse are followed up in a prompt, specified timeframe. All details and actions taken are recorded in a special record/electronic file kept specifically for the purpose, and on the personal file of the Service User.

6.16 The Provider will undertake safeguarding enquiries under section 42 of the Care Act 2014 when caused to do so by the Council including (but not limited to) producing an enquiry report in compliance with local procedures.

6.17 The Provider will immediately co-operate with any safeguarding enquiry undertaken by the Council under section 42 of the Care Act 2014 and will provide any information and documentation that is relevant to that enquiry.

6.18 The Provider shall have a Public Interest Disclosure Act 1998 (Whistleblowing) policy which will include procedures under which Staff can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way. These can include situations when Staff believe that:

6.18.1 a criminal offence has been committed;

6.18.2 someone has failed to comply with a legal obligation;

6.18.3 a miscarriage of justice has occurred;

6.18.4 the health and safety of an individual is being endangered; and

6.18.5 there are or may be financial irregularities.

6.19 The Provider shall have in place policies and procedures for Staff regarding the Service User's will and bequests. The policies and procedures shall prevent the involvement of any Staff, or family members of Staff, in the making of, or benefiting from, the Service User's will, soliciting any other form of bequest or legacy, acting as a witness or executor,

and being involved in any way with any other legal arrangement.

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

Safeguarding and Safeguarding Adult Reviews

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

7. Price & Payment

7.1 In consideration of the proper performance of the Services by the Provider in accordance with the terms and conditions of this Agreement, the Council shall pay the Price to the Provider subject to and in accordance with the following provisions of this Agreement.

7.2 The Price will be fixed from the Commencement Date until the Completion Date and for the duration of any extension in accordance with Clause 2.6.

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

7.4 Where under clause 7.3 the Provider submits to the Council a properly raised invoice in compliance with the payment provisions of this Agreement the Council shall pay the Provider any sums due under that invoice no later than 30 days from the date on which the Council has determined it to be valid and undisputed. When the Council determines whether such an invoice is valid and undisputed, it will do so in accordance with the timescale set out within the Pricing Schedule.

7.5 Where an invoice is disputed by the Council, it will make payment equal to the sum not in dispute, and the dispute as to the sum that remains unpaid shall

be referred to the dispute resolution procedure in clause 32 without undue delay for resolution.

7.6 All amounts stated in this Agreement are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Provider a sum equal to the VAT chargeable in respect of the Services.

7.7 Where an invoiced sum is in dispute pursuant to clause 7.5 the Provider shall not be permitted to suspend the supply of the Services, except if it has acquired the right to terminate this Agreement for a failure to pay undisputed sums pursuant to clause 26.4.

7.8 If a payment of an undisputed amount is not made by the Council by the due date, then the Council shall pay the Provider interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

7.9 Without prejudice to any other rights and remedies which it may have under this Agreement, the Council may:

(a) reduce payments proportionately in the event of unsatisfactory performance by the Provider; and

(b) if any sum of money is recoverable from or payable by the Provider under this Agreement (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Agreement), unilaterally deduct that sum from any sum then due, or which may come due, to the Provider under this Agreement or under any other agreement or contract with the Council.

7.10 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.

7.11 Without prejudice to the provisions of clause 31, where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:

(a) provisions having the same effect as clause 7.3 of this Agreement; and

(b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 7.4 of this Agreement.

In this clause 7.11, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting

chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the Services.

7.12 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

7.13 In the event that the Council elects to terminate this Agreement then the Council's liability to remunerate the Provider shall be limited to such apportioned payment in respect of the remaining months of the term prior to such termination. For the avoidance of doubt the Provider shall not be entitled to any remuneration in respect of any period subsequent to the date of cessation of this Agreement should the cessation date be earlier than the Completion Date.

7.14 Any legislative requirement to account for the Services in euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Provider at nil charge to the Council.

8 Mistakes in Information

The Provider shall be responsible for the accuracy of all documentation and information supplied to the Council by the Provider in connection with the provision of the Service and shall pay the Council any extra costs occasioned by any discrepancies errors or omissions therein.

9 Conflicts of Interest

9.1 The Provider shall take appropriate steps to ensure that neither it nor its Staff are placed in a position where in the reasonable opinion of the Council there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Provider or such persons and the duties owed to the Council under the provisions of the Agreement. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

9.2 The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination.

10 Fraud

The Provider shall take all reasonable steps in accordance with good industry practice to prevent any fraudulent activity by the Provider its Staff (including its shareholders members and directors) and/or any of the Provider's suppliers in connection with the receipt of monies from the Council. The

Provider shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

11 Prevention of Bribery

11.1 The following constitute "Prohibited Acts" under this clause 11:

11.1.1 to directly offer, promise or give to any person working for or engaged by the Council a financial or other advantage to:

(a) induce that person to perform improperly a relevant function or activity; or

(b) reward that person for improper performance of a relevant function or activity

11.1.2 to directly or indirectly request agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement

11.1.3 committing any offence:

(a) under the Bribery Act 2010;

(b) under legislation creating offences concerning fraudulent acts;

(c) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or

(d) defrauding attempting to defraud or conspiring to defraud the Council

11.2 The Provider:

11.2.1 shall not and shall procure that any Staff in connection with this Agreement shall not commit a Prohibited Act

11.2.2 warrants represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council or that an agreement has been reached to that effect in connection with the execution of this Agreement

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

11.4 If any breach of clause 11.2 is suspected or known the Provider must notify the Council immediately

11.5 If the Provider provides notice to the Council in accordance with clause 11.4 the Provider shall respond promptly to any enquiries made and cooperate with any investigation carried out by the Council and allow the Council access to audit books, records and any other relevant documentation. This obligation shall continue for a reasonable time after expiry or termination of this Agreement.

11.6 The Council may terminate this Agreement by written notice with immediate effect if the Provider or its Staff (whether or not acting with the Provider's knowledge) breaches clause 11.2

11.7 If this Agreement is terminated under clause 11.6 the Council may recover from the Provider the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the provision of the Service and any other loss sustained by the Council in consequence of any breach of this clause 11 whether or not this Agreement has been terminated.

12. Discrimination and Equal Opportunities

12.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of equal opportunities legislation, which includes but is not limited to the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, any statutory modification or re-enactment thereof.

12.2 The Provider shall ensure that all Employees of the Provider and all suppliers and Sub-Contractors employed in the execution of the Agreement are aware of the provisions of clause 12.

13. Health and Safety

13.1 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts orders regulations and codes of

practice relating to health and safety which may apply to the Provider its Staff and other persons working on premises in the performance of the Agreement.

13.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

14 Human Rights Act 1998 and Modern Slavery Act 2015

14.1 The Provider will take all reasonable steps to protect and promote the human rights guaranteed to Service Users under the European Convention on Human Rights as set out in the Human Rights Act 1998. The Council may require the Provider to take any step or to cease to perform any act or acts which in the opinion of the Council will prevent an infringement of the said rights of a Service User occurring. In the event of the Council making such a request, the Provider shall comply immediately.

14.2 In performing its obligations under the contract the Provider shall:

(a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

(c) include in contracts with its direct subcontractors and Providers provisions which are at least as onerous as those set out in this clause 14.2;

(d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement;

(e) maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with the Contract; and

(f) permit the Council and its third party representatives to inspect the Provider's premises, records, and to meet the Provider's personnel to audit the Provider's compliance with its obligations under this clause 14.2.

14.3 The Provider shall indemnify the Council against any loss, claims and expenditure resulting from the Provider’s breach of this clause 14.

15 The Mental Capacity Act Deprivation of Liberty Standards

The Provider will ensure that the Service provided to all Service Users, including those who self-fund, complies with the provisions of the Mental Capacity Act 2005, as amended by the Mental Health Act 2007 and within the guidelines set out in the Mental Capacity Act 2005 Code of Practice and the Deprivation of Liberty Safeguards supplemental to the Code of Practice. This includes ensuring that:

(a) All Staff exercise their statutory duty to have regard for the MCA Code of Practice when working with people who may lack capacity to make decisions for them.

(b) No Service User is unlawfully deprived of liberty and policies and procedures are in place to seek appropriate remedies.

16 Data Security and Data Protection Laws

16.1 The Provider shall comply with the provisions of Schedule 6 which shall apply to this Agreement.

16.2 The Provider shall, if requested to do so by the Council, enter into a Data Sharing Agreement with the Council.

16.3 The provisions of this clause protecting personal data belonging to the Council shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

17 Freedom of Information

17.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 ("EIR") and shall assist and cooperate with the Council to enable the Council to comply with these Information disclosure requirements at no cost to the Council.

17.2 The Council shall be responsible for determining at its absolute discretion whether Information is exempt from disclosure in accordance with the provisions of the FOIA or EIR.

17.3 The Provider acknowledges that the Council may, acting in accordance with the Secretary of State's Code of Practice on the discharge of public

authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

(a) without consulting with the Provider; or

(b) following consultation with the Provider and having taken its views into account,

provided always that where clause 17.3 (a) applies the Council shall, in accordance with any recommendations of the Code, 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.

18 Confidentiality

18.1 Each Party:

(a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

(b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement

18.2 The Provider shall ensure that all Staff are aware of the confidentiality requirements and this is incorporated in to their contracts of employment with a breach of this being grounds for disciplinary action

18.3 The provisions of clause 18.1 shall not apply to any Confidential Information received by one Party from the other:

(a) made by the Council under clause 17 above in response to requests subject to the FOIA and/or EIR

(b) required by any applicable law;

(c) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Agreement;

(d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 18;

(e) which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

(f) by the Council to any other department, office or agency of the Government; or

(g) by the Council relating to this Agreement and in respect of which the Provider has given its prior written consent to disclosure.

18.4 Nothing in this clause shall prevent either Party from using any techniques ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights

18.5 The Council shall be entitled to disclose to any Replacement Provider any Confidential Information of the Provider which relates to the performance of the Agreement by the Provider. In such circumstances the Council shall authorise the Replacement Provider to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Replacement Provider accepts an obligation of confidence.

19 Security of Confidential Information

19.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement the Provider undertakes to maintain systems which are secure. In the event of unauthorised access or where deficiencies are identified, the Council may require the Provider to alter any security systems at any time during the Contract Period at the Provider's expense.

19.2 The Provider will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Provider will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

20 Publicity, Media and Official Enquiries

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

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

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

21 The Counter-Terrorism and Security Act 2015

21.1 The Provider acknowledges that the Council has a duty under the Counter-Terrorism and Security Act 2015 (CTSA) to endeavour to prevent people from being drawn into terrorism. The Provider agrees to facilitate the Council's compliance with this duty including by ensuring that its frontline staff:-

(a) understand what radicalisation means and why people may be vulnerable to being drawn into terrorism as a consequence of it;

(b) are aware of what is meant by the term "extremism" and the relationship between extremism and terrorism;

(c) know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extremist ideology that can be associated with it;

(d) obtain support for people who may be exploited by radicalising influences.

An explanation of the terms 'radicalisation' and 'extremism' and other details of what is expected under this clause can be found in the statutory guidance issued by Government under section 29 of the CTSA.

21.2 Under no circumstances shall the Provider permit any resources to which it is given access or use under this Agreement to be used to provide a platform for extremists or to disseminate extremist views.

21.3 Where the Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, it must refer such person or activity to the police.

22 Intellectual Property Rights

22.1 All Intellectual Property Rights created by the Provider or any Employee:

(a) in the course of performing the Services; or

(b) for the purpose of performing the Services,

shall vest in the Council on creation ("Foreground Intellectual Property Rights").

22.2 Where, in connection with the provision of the Services by the Provider, the Provider uses Intellectual Property Rights which do not fall within clause 22.1 and which are owned by the Provider ("Background Intellectual Property"), the Provider shall grant to the Council a perpetual, irrevocable, non-exclusive, royalty-free licence to use, reproduce, adapt, maintain and support the Background Intellectual Property for all purposes which are reasonably required by the Council in order to enable the Council to take the full benefit of this Agreement including the Services. Such licence shall include the right to sub-license, transfer, novate or assign to other contracting authorities or to any other third party providing services to the Council.

22.3 The Provider shall obtain Approval before using materials in relation to the performance of this Agreement which are or may be subject to any third party Intellectual Property Rights. The Provider shall procure that the owner of the rights grants to the Council a perpetual, irrevocable, non-exclusive, royalty-free licence to use, reproduce, adapt, maintain and support such Intellectual Property Rights. Such licence shall include the right to sub-license, transfer, novate or assign to other contracting authorities or to any other third party providing services to the Council.

22.4 It is a condition of this Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Provider shall during and after the Contract Period on written demand indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever which the Council may suffer or incur as a result of or in connection with any breach of this clause.

22.5 At the termination of the Agreement the Provider shall at the request of the Council immediately return to the Council all materials, work or records held including any back-up media.

22.6 Where the Provider is provided with or permitted to access Intellectual Property Rights belonging to the Council, including any Foreground Intellectual Property Rights, those Intellectual Property Rights shall remain the property of the Council, and the Provider shall not use or disclose them without prior Approval except where necessary for the performance of this Agreement.

23 Indemnity and Insurance

23.1 Subject to clauses 23.2 and 24, the Provider shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under this Agreement or the presence of the Provider or any Employees on Council premises, including (without limitation) in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. For the avoidance of doubt, this indemnity includes liability arising in the circumstances stated in clause 5.9 of this Agreement and also the cost of any damage caused to the Housing Provider's property by the Provider that has been charged to the Council.

23.2 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under this Agreement.

23.3 Without prejudice to the foregoing the Provider shall maintain insurance with the following limits of indemnity for any one occurrence or series of occurrences arising out of any one event :-

(a) Employers' Liability Insurance in respect of the Provider's Employees in compliance with the Employers' Liability (Compulsory Insurance) Act 1969 and any Order thereunder or amendment thereto to a limit of not less than £10,000,000 (ten) million pounds for each and every claim; and

(b) Public Liability Insurance in respect of any liability damage loss expense cost claim or proceedings in respect of personal injury to or death of any

person (including any employee of the Council or the Provider) or injury or damage to any property arising out of or in connection with the performance of the Service for a limit of indemnity of not less than £10,000,000 (ten) million pounds for each and every claim with no abuse exclusion/inner limit;

(c) Medical Malpractice Insurance in respect of any liability damage loss expense cost claim or proceedings in respect of personal injury to or death of any person arising out of or in connection with the performance of the Service for a limit of indemnity of not less than £10,000,000 (ten) million pounds for each and every claim;

(d) Professional Indemnity Insurance covering the Provider's liability hereunder and including without prejudice to the generality of the following any act of negligence or contractual default or omission on the Provider's part or the part of its sub-contractors and their respective employees for a limit of indemnity of not less than £2,000,000 (two) million pounds each and every claim and in the aggregate; and

(e) Motor Vehicle Insurance covering each vehicle (i.e. a proper adequate business use extension if not covered by insurance provided by the business)

Such insurance cover is to be maintained throughout the Contract Period (and, in the case of the Professional Indemnity Insurance, also for a period of 12 (twelve) years thereafter) with a well-established insurance provider or underwriter of good repute. The Provider shall promptly produce for inspection documentary evidence as and when required by the Council that the insurance so required is properly maintained.

23.4 The Provider shall immediately upon receipt of a claim made against it under this Agreement notify its insurer of the claim.

23.5 The Provider shall give immediate written notice to the Council in the event of the cancellation or a material change in the terms of any of the required insurance policies.

24 Limitation of Liability

24.1 Subject to clauses 19.1, 24.2 and 24.5, neither the Council nor the Provider shall be liable to the other for:

(a) loss of profits, business, revenue or goodwill;
(b) loss of savings (whether anticipated or otherwise); or
(c) indirect or consequential loss or damage.

24.2 For the purposes of clause 24.1(c), the following shall not be treated as indirect or consequential losses or damages:-

(a) any additional operational and/or administrative expenses arising from a Provider Default;

(b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from a Provider Default;

(c) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of this Agreement in whole or in part as a result of a Provider Default; and

(d) liabilities, costs and/or expenses (including legal expenses) incurred by the Council in connection with a claim from a third party arising out of a Provider Default.

24.3 Not used

24.4 Not used

24.5 Notwithstanding any other provision of this Agreement:

(a) neither Party limits or excludes its liability for (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by its negligence; (c) breach of any obligation as to title implied by statute; or (d) any other act or omission for which that Party is not, under applicable law, permitted to limit or exclude its liability; and

(b) the Provider's liability in respect of the indemnities given by the Provider in clauses 16 (data protection indemnity), 22.4 (intellectual property rights indemnity) is unlimited.

25 Performance Management

25.1 Without prejudice to other right or remedy which may be available to the Council either under this Agreement or at law, if in its reasonable opinion the Council believes that there has been a Provider Default, including but not limited to service failure, safeguarding concerns or quality standard issues, which is capable of remedy, the Council may, at its discretion, request the Provider to produce a Service Improvement Action Plan which will be agreed with the Council and the Council may specify additional actions or requirements proportionate to any underperformance.

25.2 If the Provider fails to produce or implement this action plan, or fails to rectify the underperformance within the timescales specified by the Council, the Council may issue an Improvement Notice, Default Notice and/or fully or partially suspend the contract.

(a) Improvement Notice.
If the Council issues an Improvement Notice, the Provider must produce a Service Improvement Action Plan which will be agreed with the Council and the Council may specify additional actions or requirements proportionate to any underperformance.
If the Provider fails to produce or implement this action plan, or fails to rectify the underperformance within the timescales specified by the Council, the Council may issue a Default Notice and/or fully or partially suspend the Agreement.

(b) Default Notice
If the Council serves a Default Notice on the Provider, the Provider must take the specified remedial action within the timescales specified. If the Provider fails to complete the remedial action within the timescales, the Council may;
Initiate full or partial suspension if the Agreement, where any monitoring or feedback obtained exposes performance issues or incidents relating to breaches in Service delivery. This may also include safeguarding incidents.

If the Council believes that a serious Provider Default has occurred, the Council may:
Initiate full or partial suspension of the Agreement, where an active Improvement Notice or Default Notice is in place or the Provider is under Large Scale Safeguarding Enquiry (LSE) procedures.

Where there has been a serious breach or multiple breaches which may affect Servicer User of Resident Safety and wellbeing, the Council retains the right to move the Provider's business to alternative providers. This may be via a staggered approach or moving the business as a whole and is at the Council's discretion.

Where improvements are evidenced and the required standard reached, the suspension may be lifted, initially with a phased approach which will be decided by and closely managed by the Council.

26 Termination on Default, Change of Control & Insolvency

26.1 The Council may terminate this Agreement in whole or in part by notice in writing with immediate effect if:

a) the Provider fails to remedy a Provider Default in accordance with a Default Notice served under clause 25;

b) the Provider fails to remedy a Provider Default following a period of suspension under clause 25;

c) the Provider commits a Provider Default which is not capable of being remedied;

d) the Provider commits a Serious Default;

e) the Provider materially breaches any other contract that it may have with the Council

f) 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;

g) 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 (otherwise than for the purpose of solvent amalgamation or reconstruction);

h) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) (otherwise than for the purpose of solvent amalgamation or reconstruction);

i) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);

j) 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;

k) 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;

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

m) 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;

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

o) 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 in clause 26.1 f) to n) above;

p) 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;

q) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Provider to which the Council reasonably objects; or

r) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

26.2 If this Agreement is terminated by the Council for cause (including under any of the provisions of clause 26.1) such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

26.3 The Council may terminate this Agreement by notice in writing with immediate effect where an award for ineffectiveness of this Agreement is made under the Public Contracts Regulations 2015 or if legal proceedings seeking such an award are brought against the Council and the Council considers that such an award will be made.

26.4 If the Council does not make payment of undisputed sums due under this Agreement within 60 days of the due date, the Provider may serve notice on the Council requiring the Council to make payment, and if the Council fails to

make payment within 30 days of such notice, the Provider may terminate this Agreement with immediate effect on written notice to the Council.

27 General Termination

27.1 The Council may terminate this Agreement in whole or in part at any time on giving not less than six months (6 months) notice to the Provider.

27.2 Should the Service be de-commissioned by the government or the Council the Council reserves the right to terminate this Agreement by written notice with immediate effect. In such circumstances the Council shall pay to the Provider a reasonable proportion of the Price based on the Services already performed by the Provider prior to the date of such notice.

28 Consequences of Termination

28.1 At the termination of this Agreement (howsoever arising) the Provider shall at its own cost provide assistance to the Council and any Replacement Provider appointed by the Council to continue or take over the performance of all or part of the Agreement in order to ensure an effective handover of the Services.

28.2 Without prejudice to the generality of clause 28.1, upon the termination of this Agreement (howsoever arising) the Provider shall forthwith deliver to the Council upon request all the Council's property and to the Housing Provider all the Housing Provider's property (including but not limited to materials, documents, records, information and access keys) relating to this Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and, in default of compliance with this clause, the Council may recover possession thereof and the Provider grants licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-Contractors where any such items may be held.

28.3 Termination of this Agreement shall be without prejudice to any rights remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

28.4 The provisions of the following clauses shall survive termination or expiry of this Agreement (in addition to those provisions which are, elsewhere in this Agreement, stated to continue following termination): clause 16 (Data Protection), clause 17 (Freedom of Information), clause 18 (Confidentiality), clause 23 (Indemnity and Insurance), clause 24 (Limitation of Liability), clause

26 (Termination on Default), clause 35 (Audit), and this clause 28 (Consequences of Termination).

29 Disruption

29.1 The Provider shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council

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

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

29.4 If the Provider's proposals referred to in clause 30.3 are considered insufficient or unacceptable by the Council then the Agreement may be terminated by the Council by notice in writing with immediate effect.

30 Notices

30.1 Any notice required or authorised to be given by either Party under this Agreement to the other Party shall be in writing and shall either be delivered personally or sent by first class pre-paid post or by electronic mail or facsimile transmission to the other Party at the address stated in this Agreement or such other address as may be specified by the Parties by notice to the other from time to time and shall be deemed duly served:

(a) in the case of a notice delivered personally at the time of delivery; or

(b) in the case of a notice sent by first class pre-paid post three clear Working Days after being posted; or

(c) in the case of an electronic mail or facsimile transmission if sent during normal business hours then at the time of that transmission and if sent outside normal business hours then on the next following Working Day provided (in each case) that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next Working Day

30.2 Both Parties shall promptly notify the other upon any change of address or facsimile number occasioned during the Contract Period.

31 Force Majeure

31.1 In the event that the performance of any obligation under this Agreement is prevented restricted or interfered with by reason of circumstances including but not limited to Act of God fire flood civil disobedience Governmental Acts or regulation or industrial action (other than by the Parties employees) beyond the control of the Party obliged to perform it the Party so affected (upon giving prompt notice in writing to the other Party) shall be excused from the performance to the extent of the prevention restriction or interference but the Party so affected shall use all reasonable endeavours to avoid or remove the cause of non-performance and shall continue performance under this Agreement with the utmost dispatch whenever such cause is removed or diminished.

31.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a force majeure event. If any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of six months from the first day of the force majeure event either Party may terminate the Agreement by notice in writing with immediate effect.

32 Dispute Resolution

32.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the commercial director or equivalent of each Party.

32.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

32.3 If the dispute cannot be resolved by the Parties pursuant to clause 32.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 32.5 unless;

(a) the Council considers that the dispute is not suitable for resolution by mediation; or

(b) the Provider does not agree to mediation

32.4 The performance of the Agreement shall not be suspended ceased or delayed by the reference of a dispute to mediation and the Provider (or its Staff) shall comply fully with the requirements of the Agreement at all times.

32.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or if they are unable to agree upon a Mediator then they shall apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator

(b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure

(c) Unless otherwise agreed all negotiations connected with the dispute and any settlement or agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings

(d) If the Parties reach agreement on the resolution of the dispute the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives

(e) Failing agreement either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties

(f) If the Parties fail to reach agreement in the structured negotiations within 40 Working Days of the Mediator being appointed or such longer period as may be agreed by the Parties then any dispute or difference between them may be referred to the English courts

33 TUPE

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

34 Assignment and Sub-Contracting

34.1 Subject to clause 34.3, the Provider shall not assign, novate or otherwise transfer any benefit, duty or obligation under this Agreement or any right or remedy available to it hereunder.

34.2 The Council expects that the save in exceptional circumstances, the Provider shall not sub-contract to or allow any other person to perform any part of the Services. In any event the Provider shall not sub-contract or allow any other person to perform any part of the Services without obtaining prior Approval.

34.3 Any such sub-contracting shall not in any way relieve the Provider from its liabilities hereunder and the Provider shall be and shall remain fully responsible in respect of the Service notwithstanding such sub-contracting. The Provider shall ensure that any sub-contractor meets the standards and performance levels required of the Provider under this Agreement.

34.4 If the Provider has requested and obtained from the Council prior Approval, the Provider shall be entitled to novate this Agreement where:

(a) the specific change in contractor was provided for in the procurement process for the award of this Agreement;

(b) there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.

34.5 The Council shall be entitled to novate this Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

35 Audit

The Provider shall keep and maintain until six years after the expiry of the Agreement full and accurate records of the Agreement including the Service provided under it, all expenditure reimbursed by the Council and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives or any auditing body appointed by the Government such access to those records as may be required by the Council in connection with the Agreement.

36 Waiver

The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

37 Remedies Cumulative

Except as otherwise expressly provided by the Agreement all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies

38 Severability

38.1 If any provision of the Agreement is held invalid illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid illegal or unenforceable provision eliminated.

38.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

39 Miscellaneous

39.1 This Agreement constitutes the entire Agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations representations and undertakings whether written or oral except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

39.2 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.

39.3 The Provider shall not be relieved of its obligations to perform the Service in accordance with the terms of the Agreement as the result of a change of law which comes into effect after the Commencement Date.

39.4 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Council and the Provider. Nothing in this Agreement shall be construed as constituting either Party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.

39.5 Nothing in this Agreement shall confer or purport to confer the right to enforce any term hereunder upon any person or legal entity that is not a party to it and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

39.6 This Agreement shall not be varied except by instrument in writing signed by the authorised representatives of the Parties. The Provider acknowledges and agrees that the Council may wish to make variations to this Contract during the Contract Period in order to:

(a) provide for any applicable changes to the Law, the common law or any regulatory requirements;

(b) further develop the provisions of Schedule 2 (Quality, Performance and Contract Monitoring) hereto.

(c) develop additional Services pursuant to Schedule 1 section 3 of the Specification, (Trusted Assessors, Outreach Services, Intermediate Care Services) hereto.

The Parties have signed [executed] this Agreement [as a Deed] on the date stated at the beginning of it.

[SIGNED for and on behalf of)
CHESHIRE EAST BOROUGH COUNCIL])
By **[The Common Seal of Cheshire East Borough Council was hereunto affixed in the presence of:-]**)

…….
Authorised Signatory
Print name:
Title:

Signed for and on behalf of)
[**INSERT NAME OF PROVIDER**])

……
Authorised Signatory

Print Name:

Title:

Schedule 1
The Specification

[Specification including Scheme Information Packs to be inserted]

Schedule 2
Performance Management
Performance Monitoring Framework

Schedule 3
Pricing Schedule

[To be inserted]

Schedule 4
Tender Response

[To be inserted]

Schedule 5
Interface Obligations

[To be inserted]

Schedule 6
Data Protection

[To be inserted]