

BATH AND NORTH EAST SOMERSET COUNCIL

FLEXIBLE FRAMEWORK FOR THE PROVISION OF CARE FOR ADULTS IN CARE HOMES

BLOCK CONTRACT

between

BATH AND NORTH EAST SOMERSET COUNCIL

and

[THE PROVIDER]

Contents

| | | |
|----|--|----|
| 1 | GENERAL | 5 |
| 2 | DEFINITIONS AND INTERPRETATION | 6 |
| 3 | INTERPRETATIONS..... | 10 |
| 4 | DURATION OF THIS BLOCK CONTRACT | 11 |
| 5 | THE SERVICES | 12 |
| 6 | AGENTS OF THE COUNCIL..... | 12 |
| 7 | AUTHORISED OFFICERS..... | 12 |
| 8 | REGISTERED STATUS | 13 |
| 9 | GUARANTEED BLOCK AND VOID PLACEMENTS..... | 14 |
| 10 | MAKING BLOCK PLACEMENTS | 14 |
| 11 | TRIAL PERIODS | 16 |
| 12 | CHANGE OF OWNERSHIP/NOTICE OF CLOSURE | 16 |
| 13 | NOTICE OF CHANGE OF MANAGER..... | 17 |
| 14 | HEALTH AND SAFETY | 17 |
| 15 | NON-DISCRIMINATION..... | 17 |
| 16 | SERVICE USER'S RIGHTS..... | 19 |
| 17 | STAFF | 19 |
| 18 | SAFEGUARDING..... | 20 |
| 20 | MONITORING ARRANGEMENTS | 23 |
| 21 | CONTRACT REVIEWS AND CONTRACT MEETINGS..... | 24 |
| 22 | ENTRY AND INSPECTION..... | 25 |
| 23 | VARIATIONS..... | 25 |
| 24 | ASSESSMENTS..... | 25 |
| 25 | NOTIFIABLE EVENTS..... | 26 |
| 26 | ACTIONS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE AND/OR DEFAULT | 27 |
| 27 | SUSPENSION | 28 |
| 28 | CHARGES AND PAYMENT | 29 |
| 29 | TERMINATION OF BLOCK PLACEMENTS..... | 30 |

| | | |
|----|---|----|
| 30 | CONSEQUENCES OF TERMINATION OF A BLOCK PLACEMENT | 32 |
| 31 | TERMINATION OF BLOCK CONTRACT..... | 32 |
| 32 | DUTY TO CO-OPERATE ON TERMINATION | 34 |
| 33 | RECOVERY UPON TERMINATION | 35 |
| 34 | SURVIVAL OF TERMS | 35 |
| 35 | INDEMNITY AND INSURANCE REQUIREMENTS | 36 |
| 36 | LIABILITY..... | 36 |
| 37 | ONGOING COMPLIANCE WITH SELECTION REQUIREMENTS..... | 37 |
| 38 | WARRANTIES AND REPRESENTATIONS..... | 37 |
| 39 | CONFIDENTIALITY | 38 |
| 40 | FREEDOM OF INFORMATION | 40 |
| 41 | DATA PROTECTION AND CALDICOTT PRINCIPLES..... | 41 |
| 42 | INFORMATION MANAGEMENT AND SECURITY POLICIES..... | 45 |
| 43 | INTELLECTUAL PROPERTY RIGHTS | 45 |
| 44 | CORRUPT GIFTS AND PAYMENTS OF COMMISSION..... | 46 |
| 45 | SAFEGUARD AGAINST FRAUD | 47 |
| 46 | FORCE MAJEURE..... | 47 |
| 47 | BUSINESS CONTINUITY | 47 |
| 48 | TEMPORARY DUTY AND BUSINESS FAILURE | 48 |
| 49 | CONFLICTS OF INTEREST | 49 |
| 50 | PUBLICITY | 49 |
| 51 | COMPLAINTS | 50 |
| 52 | TRANSFER AND SUB-CONTRACTING | 50 |
| 53 | DISPUTE RESOLUTION..... | 50 |
| 54 | NOTICES | 52 |
| 55 | TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY | 52 |
| 56 | TRANSFER OF UNDERTAKINGS (TUPE)..... | 52 |
| 57 | THIRD PARTIES | 53 |
| 58 | NO PARTNERSHIP OR AGENCY..... | 53 |
| 59 | COUNTERPARTS..... | 53 |

60 SEVERABILITY 53

61 CUMULATIVE REMEDIES 53

62 WAIVER..... 54

63 RIGHTS AND DUTIES RESERVED 54

64 ENTIRE AGREEMENT 54

65 GOVERNING LAW..... 54

SCHEDULE 1 – INDIVIDUAL PLACEMENT FORM..... 56

SCHEDULE 2 – SERVICES SPECIFICATION 60

SCHEDULE 3 – INDICATIVE PAYMENT MECHANISM 61

SCHEDULE 4 - TUPE, EXIT AND SERVICE TRANSFER ARRANGEMENTS 70

SCHEDULE 5 - VARIATIONS PROCESS 75

SCHEDULE 6 – SAFEGUARDING REQUIREMENTS..... 79

SCHEDULE 7 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS 83

BLOCK CONTRACT

DATED

BETWEEN:

- (1) **BATH & NORTH EAST SOMERSET COUNCIL** of(the “**Council**”); and
- (2) **[NAME]** [(company number **[NUMBER]**)] whose registered office [and business address] is at **[ADDRESS]** (the “**Provider**”).

WHEREAS:

- (A) The Council and the Provider entered into the Framework Agreement allowing the Council to request the Services from the Provider.
- (B) Pursuant to the Framework Agreement, the Council requests the Services to be provided by the Provider, and the Provider agrees to provide such Services to the Council in accordance with this Block Contract.

IT IS AGREED as follows:

1 GENERAL

- 1.1 The Framework Agreement, the Tender, this Block Contract (including Schedules 1 to 7 hereto) and each Individual Placement Form constitute the entire agreement between the Council and the Provider for the supply of the Block and Services, and shall supersede any previous contracts between the Council and the Provider for services which are the same as or similar to the Services to the exclusion of any other terms, or which may be implied by trade, custom, practice or course of dealing.
- 1.2 This Block Contract shall be read in conjunction with the Framework Agreement. For the avoidance of doubt, the termination or expiry of the Framework Agreement shall not operate to automatically terminate this Block Contract. This Block Contract shall remain in force and the Provider shall continue to provide the Services under this Block Contract unless and until it is terminated or expires in accordance with the terms set out in this Block Contract.
- 1.3 In the event of, and only to the extent of, any conflict between the Framework Agreement, Individual Placement Form, the Clauses, any document referred to in the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.3.1 the Framework Agreement;
 - 1.3.2 the Individual Placement Form;
 - 1.3.3 the Clauses;

1.3.4 the Schedules; and

1.3.5 any other document referred to in the Clauses of this Block Contract.

2 DEFINITIONS AND INTERPRETATION

2.1 In this Block Contract unless the context otherwise requires the following provisions shall have the meaning given to them below. Any capitalised terms used but not defined in this Block Contract shall have the meaning given to them in the Framework Agreement.

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| “Assessment” | means an assessment (including a Re-assessment of Need, risk assessment or any other assessment) carried out by the Council in accordance with Clause 24; |
| “Audit” | means an audit carried out pursuant to Clause 19; |
| “Auditor” | means the National Audit Office or an auditor appointed by the Council and/or the Audit Commission as the context requires; |
| “Authorised Agents” | means the authorised agents of the Council as notified to the Provider in writing from time to time, which at the date of this Block Contract are Care Home Selection, Virgin Care Services Ltd and Avon & Wiltshire Mental Health Partnership NHS Trust; |
| “Authorised Officers” | means the authorised officers appointed by the Provider and the Council pursuant to Clause 7; |
| “Authorised Person” | means the Council and any person or body with written authority from the Council to enter the Home and inspect the Services; |
| “Available Placement” | means a Block Placement which is fully available for occupation by a Service User; |
| “Block Placement” | means the placement of a Service User in the Guaranteed Block for a Service User to receive the Services at the Home in accordance with this Block Contract and their Individual Placement Form. For the avoidance of doubt, a Block Placement shall include any Emergency Block Placement and, where applicable, a Trial Placement; |
| “Clauses” | means the clauses and all sub-clauses of this Block Contract, and “Clause” shall be construed accordingly; |
| “Change of Control” | shall have the meaning given to it in Clause 31.4; |

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| “Charges” | means the charges set out in the Payment Mechanism; |
| “Commencement Date” | means the date that this Block Contract commences, [insert date]; |
| “Contract Meetings” | means meetings held between the Council and the Provider in accordance with Clause 21 to discuss the Provider’s performance of this Block Contract; |
| “Contract Period” | means the period commencing on the Commencement Date until the later of: (a) the date of expiry of the Initial Term or any Extension Period, or the earlier termination of this Block Contract (as applicable); and (b) the date of termination or expiry of the final Individual Placement Form in force between the Provider and the Council; |
| “Contract Review” | means a review by the Council of the Provider’s performance of the Services in accordance with Clause 21; |
| “Council Breach” | means a Default by the Council of a material nature which substantially deprives the Provider of the benefit of this Block Contract or which has a material adverse effect on the Provider’s ability to fulfil its obligations under this Block Contract; |
| “Council Care and Support Plan” | means the plan prepared by the Council in accordance with Sections 24 and 25 of the Care Act 2014 which sets out the support and care services required to meet the outcome requirements of the relevant Service User; |
| “DBS” | means the Disclosure and Barring Service; |
| “Default” | means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party (or the Staff where the relevant Party is the Provider) in connection with or in relation to the subject-matter of this Block Contract and in respect of which such Party is liable to the other; |
| “Emergency Block Placement” | means a Block Placement made on an emergency basis in accordance with Clause 10.6; |
| “Extension Period” | means the period set out in Clause 4.2; |
| “Framework Agreement” | means the framework agreement entered into between the Provider and the Council on [DATE]; |

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| “Fundamental Standards” | means the standards of care required by the Registration Authority which are known as the “fundamental standards”; |
| “Guaranteed Block” | means the number of places at the Home guaranteed by the Provider to the Council as set out in Clause 9.1 representing the number of Services Users that may be placed at the Home by the Council in accordance with this Block Contract; |
| “Home” | means [INSERT DETAILS OF CARE HOME]; |
| “Identified Concerns” | means concerns about the Services, the Home and/or a Service User identified by the Council including through: <ul style="list-style-type: none"> • an Assessment; • Monitoring, including of Key Performance Indicators; • intelligence from the Registration Authority; • Service User review/feedback; • professional feedback; and/or • a safeguarding incident/involvement; |
| “Individual Placement Form” | means the individual placement form in the form set out in Schedule 1 (Individual Placement Form) which sets out the description of the Services to be supplied in accordance with the terms of this Block Contract in relation to the Service User named in such individual placement form in each case; |
| “Initial Term” | means the period set out in Clause 4.1.1; |
| “Manager” | means the individual appointed by the Provider as the manager for the relevant Regulated Activity in respect of the Services at the Home who is required to be registered with the Registration Authority pursuant to the Health and Social Care Act 2008; |
| “Material Breach” | shall have the meaning given to it in Clause 31.6; |
| “Material Change” | means any change in a Service User’s needs that requires additional resources (for example, equipment, higher staffing ratios, etc) and/or a change in the Block Placement; |

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| “Monitoring” | means the monitoring of the Services and this Block Contract carried out by the Council pursuant to Clauses 20 and 21; |
| “Payment Mechanism” | means the payment mechanism set out in Schedule 3 (Payment Mechanism); |
| “Payment Period” | shall have the meaning given to it in the Payment Mechanism; |
| “Pre-Admission Assessment” | means the assessment of a Service User’s needs prior to admission carried out by the Provider to ensure that it can meet the care and social needs of the relevant Service User in accordance with the requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; |
| “Price” | means the price which is payable to the Provider, in accordance with the Payment Mechanism, for the full and proper performance by the Provider of its obligations under this Block Contract; |
| “Provider's Group” | means and includes each and any subsidiary or holding company of the Provider and each and any subsidiary of a holding company of the Provider; |
| “Re-assessment of Need” | means a re-assessment by the Council of a Service User’s care and needs in accordance with Clause 24; |
| “Registration Authority” | means the Care Quality Commission or any successor body or bodies from time to time; |
| “Regulated Activity” | in relation to vulnerable adults, shall have the meaning set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012); |
| “Regulated Activity Provider” | shall have the meaning set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012); |
| “Relevant Transfer” | means a relevant transfer for the purposes of TUPE; |
| “Safeguarding Requirements” | means the safeguarding requirements set out in Schedule 6 (Safeguarding Requirements); |
| “Service User” | means an individual service user who is named in the Individual Placement Form to whom the Services are to be provided pursuant to this |

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| | Block Contract; |
| “Services” | means the services to be provided by the Provider in accordance with this Block Contract and the Services Specification in relation to a Service User as specified in each Individual Placement Form and Council Care and Support Plan; |
| “Services Specification” | means the specification of the Services set out in Schedule 2 (Services Specification); |
| “Social Worker” | means the social worker allocated from time to time by the Council to a Service User which at the commencement of a Block Placement shall be as stated in the Individual Placement Form. Social Workers may be employed by the Authorised Agents; |
| “Tender” | means the tender submitted by the Provider to the Council in response to a Block Opportunity issued by the Council under the Framework Agreement; |
| “Trial Period” | shall have the meaning given to it in Clause 11.1; |
| “Trial Placement” | means a Block Placement to which a Trial Period applies as specified in the Services Specification; |
| “Void Placement” | means any unoccupied Block Placement in the Guaranteed Block; and |
| “Working Days” | means Monday to Friday, excluding bank holidays, between the hours of 9 a.m. and 5:30 p.m. |

3 INTERPRETATIONS

3.1 The interpretation and construction of this Block Contract shall be subject to the following provisions:

3.1.1 reference to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall (unless the reference expressly states otherwise) include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;

3.1.2 words importing one gender include the other genders; words in the singular include the plural and vice versa, and wording importing individuals shall be treated as importing bodies corporate and vice versa;

- 3.1.3 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 assigns or transferees;
- 3.1.4 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 3.1.5 the headings used in this Block Contract are for ease of reference only and shall not affect the interpretation of this Block Contract;
- 3.1.6 any schedule or annexure to a document comprised in this Block Contract shall have full force and effect as if expressly set out in the document to which it is attached;
- 3.1.7 references to Paragraphs are to paragraphs of the relevant Schedule;
- 3.1.8 where a standard, policy or document is referred to in this Block Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Provider shall notify the Council and the parties shall update this Block Contract with a reference to the replacement hyperlink;
- 3.1.9 references in this Block Contract to the "Council" and the "Provider" shall include their respective successors in title and any reference to any government department or other relevant authority is deemed to include its or their successors; and
- 3.1.10 time shall, during the summer time, be British summer time but otherwise Greenwich Mean Time;

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

4 DURATION OF THIS BLOCK CONTRACT

4.1 This Block Contract shall take effect on the Commencement Date and (unless terminated earlier) shall terminate at:

4.1.1 the end of [INSERT PERIOD] from the Commencement Date (the "**Initial Term**"); or

4.1.2 if the Initial Term is extended in accordance with Clause 4.2, at the end of the Extension Period.

4.2 The Council may elect to extend the Initial Term by notifying the Provider in writing at least [six months] prior to expiry of the Initial Term. The Parties may extend the duration of this Block Contract by a period of [two years] from the end of the Initial Term ("**Extension Period**") by agreement in writing.

5 THE SERVICES

- 5.1 The Provider shall at all times provide the Services during the Contract Period in accordance with the Council's requirements set out in this Block Contract, the Services Specification and the required standards in respect of the Key Performance Indicators in consideration of the Price.
- 5.2 The Provider shall at all times ensure that the Home:
- 5.2.1 is suitable for the proper performance of the Services;
 - 5.2.2 complies with the requirements of the Health and Social Care Act 2008 Act;
 - 5.2.3 complies with all regulatory requirements including the Fundamental Standards and any notice or order served on the Provider by the Registration Authority;
 - 5.2.4 complies with all applicable Law and Good Industry Practice relating to health and safety including in accordance with Clause 14; and
 - 5.2.5 is kept in good repair and condition and is sufficient to enable the Services to be provided at all times at which they are required and in all respects in accordance with this Block Contract.
- 5.3 If, at any time, the Provider becomes aware that it will not (or is unlikely to) achieve the required standards in respect of the Services Specification and/or Key Performance Indicators it shall promptly notify the Council of the fact and summarise the reasons for it. Provision of information pursuant to this Clause 5.3 shall not release or excuse the Provider from any of its obligations under this Block Contract.

6 AGENTS OF THE COUNCIL

- 6.1 The Provider acknowledges and agrees that the Council's obligations under the Framework Agreement and this Block Contract (and any Individual Placement Form issued under this Block Contract) may be performed by the Authorised Agents (including their representatives and practitioners, in particular, Social Workers engaged by them) on behalf of the Council. The Provider shall assist and co-operate with the Authorised Agents as it would if such obligations were performed directly by the Council. In the event that the Provider is unable, despite all reasonable efforts, to verify the identity and authority of an individual purporting to represent an Authorised Agent acting on behalf of the Council, it shall notify the Council's Authorised Officer promptly.

7 AUTHORISED OFFICERS

- 7.1 The Authorised Officer of the Council and Provider appointed under the Framework Agreement shall act as the Authorised Officer of the respective Party in connection with this Block Contract unless notified otherwise by either Party. Each Party shall notify the other of any deputy authorised by it to act on behalf of its Authorised Officer in connection with this Block Contract. Each Party shall notify the other in writing of the name, address and telephone number of its Authorised Officer(s) (if not the same as under the Framework Agreement) and its

deputy within 14 days of the appointment. Any change of the Authorised Officer(s) and/or deputies shall be notified to the other Party from time to time as appropriate.

7.2 The Provider shall ensure that the Authorised Officer, or a named competent deputy who is duly authorised to act on his or her behalf, is available to the Council within a reasonable time when any Staff of the Provider is on duty for the provision of the specified Service(s). The Provider shall inform the Council of the identity of any Staff authorised to act for any period as deputy for the Provider's Authorised Officer before the start of that period.

8 REGISTERED STATUS

8.1 The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Block Contract.

8.2 The Provider shall ensure that at all times it has and maintains all licences, authorisations, consents or permits required in relation to the performance of its obligations under this Block Contract to provide the Services and meets the standards pursuant to the Health and Social Care Act 2008 and any regulations made thereunder or any replacement provisions as enforced and required by the Registration Authority.

8.3 In the event of the Provider receiving from the Registration Authority any notice or order concerning the Home or the Provider, the Provider shall forward a copy of any such notice or order to the Council within one Working Day of receipt of the same.

8.4 At the request of the Council, or a Service User, the Provider shall make available for inspection any report on the Home or the Provider (as the case may be) made by the Registration Authority.

8.5 The Provider shall respond to and act on any recommendations or outcomes of any inspections and enforcement notices issued by the Registration Authority. The Provider shall make available to the Council a copy of its CQC Action Plan.

8.6 The Provider shall notify the Council within one Working Day where an enforcement notice is issued regarding a Home under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009 received from the Registration Authority.

8.7 The Provider shall, if requested, provide to the Council a Statement of Purpose (required under the Health and Social Care Act 2008) in respect of the Home.

8.8 If any of the registration criteria of the Home is proposed to be changed for any reason, the Provider shall give the Council a minimum of three months' notice in writing, or such other period as may be agreed with the Council.

9 GUARANTEED BLOCK AND VOID PLACEMENTS

- 9.1 The Provider shall provide *[insert number]* of Block Placements in the Guaranteed Block.
- 9.2 All Service Users placed in the Home pursuant to this Block Contract shall be allocated a Block Placement.
- 9.3 If at any time during the Contract Period the number of Services Users placed by the Council falls below the Guaranteed Block then any unoccupied Block Placement within the Guaranteed Block shall be considered a Void Placement.
- 9.4 The Council shall be liable to pay the relevant Charge for any Void Placement in accordance with the Payment Mechanism. A Block Placement shall not be considered to be a Void Placement if it is unavailable for occupancy. The Council shall not pay for any Void Placement which is not an Available Placement for whatever reason.
- 9.5 The number of Void Placements shall be reviewed at least annually or such other period as may be specified in the Services Specification to enable both Parties to consider whether they wish to vary the Guaranteed Block size.

10 MAKING BLOCK PLACEMENTS

- 10.1 The Council may submit a request to make a Placement at any time on any day.
- 10.2 Subject to Clause 10.6 in respect of Emergency Block Placements, the following process shall apply to making a Block Placement:
- 10.2.1 the Council shall send to the Provider the Council Care and Support Plan for that Service User, and any other relevant information;
- 10.2.2 the Provider shall:
- (a) promptly, and in any event within 48 hours following its receipt of the Service User's Council Care and Support Plan, carry out (or arrange for the Trusted Assessor to carry out) a Pre-Admission Assessment; and
 - (b) within 24 hours of conducting the Pre-admission Assessment confirm, subject to Clause 10.5, to the Council whether or not it accepts or rejects the proposed Placement;
- 10.2.3 where the Provider accepts the proposed Block Placement, the Council shall issue an Individual Placement Form to the Provider; and
- 10.2.4 the Provider shall sign a copy of the Individual Placement Form and return it to the Council within seven days of receipt.

- 10.3 The Parties agree that any document or communication (including any document or communication in the apparent form of an Individual Placement Form) which is not in the form set out in Schedule 1 (Individual Placement Form) shall not constitute an Individual Placement Form under this Block Contract.
- 10.4 The Parties acknowledge and agree that the Block Placement of a Service User and the Individual Placement Form for that Service User shall be legally binding on the Provider and the Council from the date that is the earlier of:
- (a) the date on which the Provider returns the Individual Placement Form signed by it to the Council; and
 - (b) the date on which the Provider accepts admission of the relevant Service User at the Home,
- and the terms of this Block Contract shall apply from such date in respect of that Service User's Block Placement and their Individual Placement Form.
- 10.5 The Provider shall not reject a proposed Block Placement unless:
- 10.5.1 the potential Service User's requirements are outside the scope of the Services Specification and the care category of the Home;
 - 10.5.2 placing the potential Service User at the Home would be, or is likely to be, detrimental to other service users already at the Home; or
 - 10.5.3 there are no Available Placements in the Guaranteed Block,
- and shall notify the Council promptly if it believes that a reason for rejection under this Clause 10.5 applies to a proposed Block Placement. The Provider agrees to take all reasonable steps possible to meet a Service User's needs rather than reject the Block Placement of a Service User and, where it believes that a reason for rejection does apply, shall provide full information to the Council as to the reason for rejection and the basis of the Provider's belief.
- 10.6 The following process shall apply to making an Emergency Block Placement:
- 10.6.1 the Council may request to make an Emergency Block Placement without provision of the Service User's Council Care and Support Plan and/or Individual Placement Form to the Provider prior to the commencement of the Emergency Block Placement of that Service User;
 - 10.6.2 the Provider shall co-operate and assist the Council in respect of the Emergency Block Placement and shall as soon as possible, and in such manner possible in the circumstances, carry out a Pre-Admission Assessment;
 - 10.6.3 provided the reasons for rejection under Clause 10.5 do not apply, the Provider shall accept the Emergency Block Placement on the same day as the request for the Emergency Block Placement is

made by the Council and the Emergency Block Placement shall be legally binding on the Parties in accordance with Clause 10.4;

10.6.4 the Council shall conduct a provisional assessment of the Service User's needs and shall provide the Service User's Council Care and Support Plan and/or Individual Placement Form (as applicable) to the Provider no later than seven days after commencement of the Emergency Block Placement; and

10.6.5 the Provider shall sign a copy of the Individual Placement Form and return it to the Council within seven days of receipt.

11 TRIAL PERIODS

11.1 The first 28 days of all Trial Placements will be treated as a trial period ("**Trial Period**").

11.2 The purpose of a Trial Period is:

11.2.1 to establish whether it is possible for the Service User to live in the Home; and/or

11.2.2 to enable the Parties and the Service User to determine whether or not the Provider and the Home can meet the Service User's needs.

11.3 During the Trial Period, the Provider will monitor and record the progress of the Trial Placement, giving particular attention to the Service User's adjustment to his/her new surroundings, the relationship between the Service User and the Staff and the extent to which the Service User's personal needs have been met.

11.4 The Provider and the Council shall review the progress of the Trial Placement before the end of the Trial Period to enable the Council to determine what is required for the relevant Service User.

11.5 A Trial Period may be extended in writing by the Council.

11.6 All Trial Placements will automatically continue after the Trial Period unless terminated in accordance with Clause 31.

12 CHANGE OF OWNERSHIP/NOTICE OF CLOSURE

12.1 The Provider shall:

12.1.1 give the Council's Authorised Officer a minimum of three months' written notice of a proposed closure of the Home; and

12.1.2 notify the Council of any intention to change the ownership of the Home at least 48 hours prior to contracts being exchanged.

12.2 Any such information given to the Council under Clause 12.1 will be treated as Confidential Information. The Provider acknowledges and agrees that the requirements of Clause 12.1 shall apply regardless of the timing, stages and/or process (such as any staff consultation periods) for closure or change of ownership of the Home.

12.3 On closure of the Home or change of ownership of the Home (as applicable), any outstanding liabilities up to the effective date of the closure or change of ownership (as applicable) or, if earlier, the termination of this Block Contract shall be settled between the Provider and the Council.

13 NOTICE OF CHANGE OF MANAGER

13.1 Where the Manager is absent from the Home for more than 21 consecutive days, or on indefinite leave whether due to illness or otherwise, or is to be absent for any reason for one day or more per week for a period of three weeks or more, the Council must be promptly notified in writing along with details of any deputy or deputies and their competence to perform the Manager's role.

13.2 Where there is a change in the Manager, the Provider shall notify the Council in writing within seven days of the departure of the Manager and shall provide details of the replacement Manager.

14 HEALTH AND SAFETY

14.1 The Provider, its Staff and any Sub-contractors shall, throughout the Contract Period, comply fully with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended), and any other acts, regulations and approved codes of practice relating to the health and safety of Staff and others who may be affected by the Provider's provision of the Services.

14.2 The Provider shall have a health and safety policy in a form which is approved by the Council and shall adhere to such health and safety policy throughout the Contract Period, subject only to any amendments which are required by the Council from time to time (acting reasonably).

14.3 The Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under this Block Contract.

15 NON-DISCRIMINATION

15.1 The Provider shall:

15.1.1 ensure that its recruitment, employment and equal opportunities policies comply with all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise) and provide the Council with a copy of the policy and updates when reasonably requested;

15.1.2 perform its obligations under this Block Contract in accordance with:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) the Council's equality and diversity policy as provided to the Provider from time to time;
- (c) any other requirements and instructions which the Council reasonably requires in connection with any equality obligations imposed on the Council at any time under applicable equality Law,

to include (without limitation) the supply on request of a report detailing the number of its Staff with “protected characteristics” (as defined in the Equality Act 2010) that are engaged in the performance of the Services from time to time;

15.1.3 take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);

15.1.4 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Block Contract. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998;

15.1.5 notify the Council in writing as soon as reasonably possible once it becomes aware of any investigation of, or proceedings brought against the Provider under any equalities Law; and

15.1.6 procure that the Staff and any Sub-contractors shall operate in a manner and co-operate with the Council so as to allow the Council to comply with its statutory public sector equality duty which means any legislation in relation to the promotion of equality on the grounds as specified in Clause 15.1.1.

15.2 Where any investigation is undertaken by any Regulatory Body and/or proceedings are instituted in connection with any matter relating to the Provider’s performance of its obligations under this Block Contract being in contravention of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation including but not exclusively in Clause 15.1.1, the Provider shall, at no cost to the Council:

15.2.1 provide any information requested in the timescale allotted;

15.2.2 attend any meetings as required and permit Staff to attend;

15.2.3 promptly allow access to and investigation of any document or data deemed to be relevant;

15.2.4 allow itself and any staff to appear as witness in any ensuing proceedings; and

15.2.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

15.3 Where any investigation is conducted or proceedings are brought under the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, which arise directly or indirectly out of any act or omission of the Staff or any Sub-contractors, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Council with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay a third party.

15.4 In the event that the Provider enters into any Sub-contract in connection with this Block Contract, it shall impose obligations on its Sub-contractors in terms substantially similar to those imposed on it pursuant to this Clause 15.

16 SERVICE USER'S RIGHTS

- 16.1 The Provider shall at all times in its performance of the Services and its treatment of the Service User, have regard to, and abide by, the principles of the HRA and comply with Clause 15.
- 16.2 The Provider shall have clear policies and procedures in relation to Service Users' rights that comply with:
- 16.2.1 the Care Act 2014; and
 - 16.2.2 the Mental Capacity Act 2005.
- 16.3 The Provider shall make these policies and procedures clear to its Staff via induction, training and development, Staff meetings and supervision.
- 16.4 The Provider shall ensure that information is designed with the participation of the Service User in mind and (as required) is produced in a variety of ways to ensure that the needs of any Service User with specific needs is met including, where appropriate, the use of Braille, audio tapes, different languages, pictures and symbols.

17 STAFF

- 17.1 The Provider shall employ sufficient persons to ensure that the Service(s) are provided in accordance with this Block Contract and all Individual Placement Forms (together with the relevant Council Care and Support Plans) in force.
- 17.2 The Provider shall observe and comply with all staffing, training and recruitment requirements as set out in Clause 18, the Safeguarding Requirements and the Services Specification.
- 17.3 Staff employed in connection with this Block Contract shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties, and the Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Service(s) and in particular:
- 17.3.1 the task or tasks such person has to perform;
 - 17.3.2 all relevant provisions of the Framework Agreement, this Block Contract and all Individual Placement Forms (together with the relevant Council Care and Support Plans) in force;
 - 17.3.3 all relevant policies, rules, procedures and standards of the Provider and the Council; and
 - 17.3.4 all legislative requirements.
- 17.4 The Provider shall take all reasonable steps to avoid changes in key personnel involved in the provision of the Service(s).
- 17.5 The Provider is responsible for the employment, including employment conditions, of its employees and shall at

all times be responsible for the payment of all salaries and wages, income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the employment of any persons employed by the Provider.

17.6 Throughout this contract the term Staff should be read as including agency Staff who are engaged by the Provider to undertake the Service(s). Insofar as the Provider uses agency Staff they shall:

17.6.1 obtain such Staff through a reputable agency for the provision of care home staff;

17.6.2 ensure that Clause 18, the Safeguarding Requirements and the Services Specification is complied with in relation to all agency staff;

17.6.3 ensure that such agency Staff have been sufficiently trained to undertake their role;

17.6.4 ensure that appropriate monitoring and supervisory arrangements are in place; and

17.6.5 ensure where possible that there is consistency in agency staff employed.

17.7 The Provider shall complete the Adult Social Care Workforce Data Set (ASCWDS) as applicable to their workforce on at least an annual basis.

18 SAFEGUARDING

18.1 The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Block Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012.

18.2 The Provider shall comply with all statutory / national guidance related to safeguarding adults, including but not limited to:

18.2.1 Care Quality Commission Regulation 11 of the Health and Social Care Act 2008 (Regulated Activities) 2010;

18.2.2 Care Act 2014;

18.2.3 Equality Act 2010;

18.2.4 Human Rights Act 1998;

18.2.5 Mental Capacity Act 2005; and

18.2.6 Safeguarding Vulnerable Groups 2006 (as amended by the Protection of Freedoms Act 2012).

18.3 The Provider shall designate a lead member of staff with responsibility for safeguarding adults in respect of the Services as set out in the Safeguarding Requirements.

18.4 The Provider shall ensure that it has established its own safeguarding policies in accordance with the Law, the Safeguarding Requirements and local multi-agency policies and shall meet the requirements of the Council in terms of safeguarding audits and monitoring. Where remedial actions are identified by the Council's Authorised Officer, the Provider shall develop and agree an action plan to deliver these.

Mental Capacity Act 2005

18.5 The Provider shall comply with the Mental Capacity Act 2005 and shall:

18.5.1 advise the Council promptly if at any point that it appears that a Service User may require an Independent Mental Capacity Advocate or a Deprivation of Liberty Safeguards authorisation;

18.5.2 provide all reasonable assistance and co-operation to the Independent Mental Capacity Advocate, best interest assessor and mental health assessor appointed in respect of any Service User; and

18.5.3 notify the Council immediately if a Service User may be deprived of their liberty.

Recruitment and retention of Staff

18.6 The Provider shall:

18.6.1 ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the DBS adults' barred list;

18.6.2 monitor the suitability of the level, and validity, of the checks under this Clause 18.6 for each member of Staff; and

18.6.3 ensure compliance with the Safeguarding Requirements in relation to the recruitment and retention of its Staff.

18.7 The Provider warrants that at all times for the purposes of this Block Contract 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 Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012 and any regulations made thereunder, as amended from time to time.

19 RECORDS AND ACCESS

Financial Accounts

19.1 The Provider shall maintain professionally audited accounts or (as applicable) small company accounts and other appropriate financial records throughout the Contract Period in order to document all income and expenditure which is generated by the operation of the Services.

Record Keeping

19.2 The Provider shall retain and maintain at its own expense in accordance with good accountancy practice full

and accurate records (including superseded records) of this Block Contract including the following in chronological order and in a form that is capable of audit:

19.2.1 the Services provided in respect of Service Users;

19.2.2 all information, records and documentation necessary to effectively monitor the performance of the Provider in relation to this Block Contract;

19.2.3 all expenditure reimbursed by the Council;

19.2.4 all payments made by the Council;

19.2.5 any complaints received by the Provider in respect of the Services together with details of how such complaints were resolved;

19.2.6 the number of Staff engaged by it from time to time in the performance of the Services on zero hours contracts; and

19.2.7 any data or other information required by Law.

19.3 The Provider shall, during the Contract Period and for at least six years from the date of termination or expiry (whichever is the earlier) of this Block Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all records (whether in electronic format or otherwise) referred to in Clause 19.2.

19.4 The Provider will maintain formal procedures/systems for keeping accurate records that fully comply with all applicable Law.

19.5 The Provider shall throughout the Contract Period, at the Provider's own cost, provide the Council with all assistance reasonably requested by the Council to assist it in complying with its policies on information management and security where such compliance is in respect of records created by the Provider pursuant to this Block Contract.

Access to Records

19.6 The Provider shall throughout the Contract Period:

19.6.1 permit the Council and the Auditors (upon request in writing by the Council) to have unrestricted access to its Staff, premises (including the Home), equipment, accounts, records (including, but not limited to, the records described in this Clause 19), written policies and procedures in relation to this Block Contract; and

19.6.2 provide copies of the records and documents which are referred to in Clause 19.6.1, to the Council (free of charge) within five Working Days of receiving a specific written request from the Council stating which records and documents the Council either require access to or copies of.

19.7 The Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:

19.7.1 all information requested by the Auditor within the scope of the Audit;

19.7.2 reasonable access to premises (including the Home) controlled by the Provider and to equipment used in the provision of the Services; and

19.7.3 access to the Staff.

19.8 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.

19.9 The Provider shall, at the reasonable request of the Council, promptly transfer or deliver a copy of the Service User records held by the Provider for a Service User for which the relevant Council is responsible to a third party provider of healthcare or social care services designated by the Council.

19.10 The Provider shall allow an authorised representative of the Local Healthwatch to enter and view premises from which the Provider provides Services including the Homes and observe the activities on those premises in accordance with any regulations, directions or guidance made under section 225 of the Local Government and Public Involvement Health Act 2007.

19.11 Subject to compliance with the Law and Good Industry Practice, the Provider shall implement and/or respond to all relevant recommendations:

19.11.1 made in any report by a relevant Regulatory Body;

19.11.2 agreed with the Auditors or its appointed auditors following any audit;

19.11.3 of any appropriate clinical audit; and

19.11.4 that are otherwise agreed by the Provider and the Council to be implemented.

19.12 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 19, unless the Audit reveals a Material Breach by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

20 MONITORING ARRANGEMENTS

20.1 The Provider acknowledges and agrees that the performance of the Services shall be monitored by the Council in accordance with the Contract, Risk Management and Quality Monitoring of Care Homes Policy, the terms of this Block Contract, the Services Specification, the Key Performance Indicators and the respective Individual Placement Forms for Service Users placed at the Home. The Provider shall co-operate with the Council and provide such assistance to facilitate such Monitoring by the Council.

- 20.2 Monitoring of this Block Contract and the Provider's performance of the Services shall be carried out by the Council's Authorised Officer.
- 20.3 The Provider shall at its own cost comply with the monitoring, reporting and Contract Review and Contract Meeting provisions set out in the Services Specification and the requirements in relation to Contract Reviews and the Contract Meetings set out in Clause 21.
- 20.4 The Council's Authorised Officer or their representative shall have the right with or without notice at any time and with as little interruption as reasonably possible to inspect the Provider's performance of the Services to include (without limitation) any and all documentation in the possession, custody or control of the Provider which is relevant to this Block Contract (including, without limitation, documentation relating to the Service User). For the avoidance of doubt, this right will include the power to interview Service Users and members of Staff, take copies of any and all documentation as aforesaid save to the extent any information which is held by the Provider under a confidentiality undertaking to a third party.
- 20.5 Where practicable, both the Council and the Provider will use anonymised data for the purposes of monitoring. Where it is not practicable to use anonymised data, both Parties will ensure appropriate security measures are used to protect the data and will process the data in accordance with Clause 41.
- 20.6 The Manager or their representative shall attend the quarterly Care Homes Forum facilitated by the Council, and other meetings with the Council and the Registration Authority as notified to the Provider. The Manager or their representative shall give prior notice to the Council as to who will be in attendance and shall give reasonable notice should they be unable to attend.

21 CONTRACT REVIEWS AND CONTRACT MEETINGS

- 21.1 Contract Reviews and Contract Meetings shall be carried out by the Council on reasonable notice, to monitor the performance of the Service against the Services Specification and in accordance with the Contract, Risk Management and Quality Monitoring of Care Homes Policy.
- 21.2 The Manager shall attend Contract Reviews and Contract Meetings. Any additional persons, including members of Staff, may attend the Contract Meetings if their attendance is agreed by the Council's Authorised Officer and the Provider's Authorised Officer in advance of the relevant Contract Review and Contract Meeting.
- 21.3 The Provider shall demonstrate its compliance with all conditions of the Framework Agreement (as relevant to the provision of the Services under this Block Contract) and this Block Contract to the satisfaction of the Council.
- 21.4 Where required by the Council, the Provider shall develop and agree an action plan detailing the remedial actions to be taken, with timescales for completion of actions.

22 ENTRY AND INSPECTION

- 22.1 The Provider must comply with all reasonable written requests made by any relevant Regulatory Body (or its authorised representatives), the Auditors, or its appointed auditors, or any Authorised Person for entry to the Home for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services.
- 22.2 Subject to Law, an Authorised Person may enter the Home without notice for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services.

23 VARIATIONS

- 23.1 No variations shall be made to this Block Contract unless made in writing in accordance with the variation procedure set out in Schedule 5 (Variations Process).
- 23.2 In the event that either Party notifies the other of any Material Change in a Service User's needs they shall follow the procedure in Clause 24.

24 ASSESSMENTS

- 24.1 Assessments and any consequent changes to their Block Placement shall be made in accordance with this Clause 24.
- 24.2 The Provider shall comply with the requirements in relation to Assessments set out in the Services Specification.
- 24.3 The Provider shall co-operate fully with to the Council in facilitating any Assessment by:
- 24.3.1 allowing the Council's agents or representatives access to the Home and the relevant Service User at all reasonable times; and
 - 24.3.2 ensuring that the Council, its agents and representatives have access to up-to-date and complete care notes in respect of the relevant individual prior to the relevant Assessment.

Re-assessment of Need

- 24.4 A Re-assessment of Need of a Service User shall be carried out on at least an annual basis and at such other times as the Council requires from time to time. The Provider may also request a Re-assessment of Need in accordance with Clause 24.7.
- 24.5 In re-assessing a Service User's needs and determining the outcome, the Parties shall take all reasonable steps possible to meet a Service User's needs rather than terminate the Block Placement of a Service User.
- 24.6 In the event that the Provider is of the view that there is or may be a Material Change, the Provider shall re-assess its ability to provide the Services in respect of the relevant Service User.

- 24.7 Where the Provider, having re-assessed its ability to provide the Service in respect of a Service User (whether such re-assessment follows the making of an Emergency Block Placement, Trial Placement or at any other time during the life of any Block Placement), determines that there is a Material Change, it shall request a Re-assessment of Need from the Council. The Council shall carry out the Re-assessment of Need within 28 days (or such other period agreed by the Parties) of receiving such a request from the Provider.
- 24.8 Wherever the Council carries out a Re-assessment of Need, it shall discuss the outcome of the Re-assessment of Need with the Provider within 10 Working Days and:
- 24.8.1 decide whether the Block Placement should continue as originally agreed;
 - 24.8.2 establish if there is a Material Change and prepare a new Council Care and Support Plan within a reasonable time for the relevant Service User where there is Material Change;
 - 24.8.3 establish whether any additional services are required. Where additional services are required, the Provider and the Council may agree that the Service User remains in the Block Placement with additional support in place; or
 - 24.8.4 decide whether to terminate the Block Placement in accordance with Clause 29 and secure an alternative service.
- 24.9 The Provider shall continue to provide the Services in respect of the relevant Service User, and any additional support and resources deemed necessary and agreed between the Provider and the Council as recorded in the Individual Placement Form until the Re-assessment of Need has been completed by the Council.
- 24.10 Where a Provider is unable to meet the re-assessed needs of a Service User despite its efforts in accordance with Clause 24.5, the Provider may terminate the Block Placement in accordance with Clause 29.5.
- 24.11 Where a Block Placement is to be terminated pursuant to this Clause 24, the provisions of Clause 30.1 shall apply.
- 24.12 Following the completion of a Re-assessment of Need, the Council shall notify (or procure notification to) the Provider, the Service User and/or family member/representative (as appropriate) of the outcome as to whether the Service User can remain in the Block Placement or whether the Service User's Block Placement will be terminated.

25 NOTIFIABLE EVENTS

- 25.1 The Provider shall provide the Council with written notice of any serious events that take place in relation to a Service User no later than 24 hours of it first becoming aware of its occurrence. For the purposes of this Clause 25.1, a serious event shall include but not be limited to:
- 25.1.1 the death of the Service User;

- 25.1.2 the serious illness of the Service User;
- 25.1.3 an serious accident involving the Service User;
- 25.1.4 a serious complaint regarding a member of Staff;
- 25.1.5 any incident which involves the loss or theft of Service Users' money or property from the Home;
- 25.1.6 any incident from which it becomes apparent that a financial relationship between a member of Staff and the Service User exists;
- 25.1.7 any incident involving the Service User or a member of Staff where the police are involved;
- 25.1.8 any incident involving the Service User or a member of Staff where there has been a referral to the DBS;
- 25.1.9 if protection enquiry involving Service User has taken place or is scheduled to take place;
- 25.1.10 a Service User going missing, discharging themselves or leaving the Home unplanned;
- 25.1.11 a criminal conviction against the Provider; or
- 25.1.12 a criminal conviction against any of the Provider's Staff, who are engaged in the provision of the Service(s) under this Agreement, in respect of offences involving dishonesty, violence or misuse of drugs.

26 ACTIONS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE AND/OR DEFAULT

- 26.1 Where the Council believes:
 - 26.1.1 there are Identified Concerns; or
 - 26.1.2 the Provider has committed a Default or a Material Breach,

the Council shall have the right to investigate the Identified Concern, Default or Material Breach (as the case may be) and the Provider shall co-operate and assist the Council with such investigation.
- 26.2 Without prejudice to any other rights and remedies available to the Council including under Clause 26.3, where required by the Council, the Provider shall develop and agree an action plan detailing the remedial actions to be taken, with timescales for completion of actions and shall implement such action plan at its own cost and expense. The Provider agrees that any Identified Concern, Default and/or Material Breach shall be addressed through the Contract, Risk Management and Quality Monitoring of Care Homes Policy and as set out in this Block Contract.

- 26.3 The Council may, in its sole discretion:
- 26.3.1 apply a suspension in accordance with Clause 27;
 - 26.3.2 initiate a safeguarding investigation; and/or
 - 26.3.3 take further action in accordance with Clause 31.5.
- 26.4 In the event that the Council is of the reasonable opinion that there has been a Material Breach, or the Provider has failed to meet the Key Performance Indicators, then the Council may, without prejudice to its rights under Clause 26.3, do any of the following:
- 26.4.1 in accordance with Clause 28.7, make such deduction from the Price to be paid to the Provider as the Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of the Services or such part of the Services which the Provider has failed to provide or which it has performed inadequately;
 - 26.4.2 without terminating this Block Contract, itself provide or procure the provision of part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will be able to perform such part of the Services in accordance with this Block Contract;
 - 26.4.3 without terminating the whole of this Block Contract, terminate this Block Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
 - 26.4.4 terminate, in accordance with Clause 31, the whole of this Block Contract and remove the Service User(s) from the Home.
- 26.5 The Council may charge to the Provider any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Council or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Provider for such part of the relevant Services.

27 SUSPENSION

- 27.1 Without prejudice to any other rights that it may have (including, where applicable, any termination rights under this Block Contract), the Council may suspend or restrict Block Placements by notice in writing to the Provider for the period set out in the notice or such other period notified to the Provider by the Council in writing from time to time:
- 27.1.1 any of the circumstances entitling the Council to terminate this Framework Agreement occurs under Clauses 31.2 or 31.5; and/or

27.1.2 in accordance with the Contract, Risk Management and Quality Monitoring of Care Homes Policy,

27.2 Suspension under this Clause 27 may include no further Block Placements being made at the Home, suspension of payments for Void Placements, the Provider being excluded from consideration for any further services or awards under the Framework Agreement and/or any other rights or consequences set out in the Contract, Risk Management and Quality Monitoring of Care Homes Policy.

28 CHARGES AND PAYMENT

28.1 In consideration of the Provider's performance of its obligations under this Block Contract, the Council shall pay the Price to the Provider in accordance with the Payment Mechanism. Save as set out in the Payment Mechanism or as agreed by the Council in writing, no additional charges shall be levied by the Provider on the Council (or any Service User) in respect of Services.

28.2 On termination or expiry of this Block Contract, the Price payable shall be pro-rated up to the effective date of termination or expiry (as applicable).

28.3 The Provider shall invoice the Council no later than 20 Working Days after the end of each Payment Period for the Price due in respect of Services provided in that Payment Period. The invoice shall include the following information:

28.3.1 the period to which the invoice relates;

28.3.2 the aspects of the Services for which payment is claimed, including a breakdown of the Price to show the Service User to whom it relates; and

28.3.3 any VAT payable in accordance with Clause 28.4.

28.4 Unless otherwise specified, all amounts stated to be payable by either Party under this Block Contract shall be exclusive of any VAT properly chargeable on any amount. Each Party shall pay to the other any VAT properly chargeable on any supply made to it under this Block Contract provided that it shall first have received from the other Party a valid tax invoice in respect of that supply.

28.5 Where the Council exercises its right to reduce or withhold payment in respect of any Services under Clause 26.4, or to charge the Provider under Clause 26.5, before reducing or withholding payment or setting-off such charge (in accordance with Clause 28.7), the Council shall provide details in writing of the relevant Material Breach, Default or failure and the value of the Services concerned.

28.6 Where the Provider enters into a Sub-contract, the Provider shall include in that Sub-contract, provisions having the same effect as this Clause 28 and the terms of the Payment Mechanism.

Recovery of Sums Due

- 28.7 Wherever under this Block Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any Default or Material Breach of this Block Contract including under Clause 26), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under this Block Contract.
- 28.8 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 28.9 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.
- 28.10 All payments due shall be made within a reasonable time unless otherwise specified in this Block Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

29 TERMINATION OF BLOCK PLACEMENTS

Good Faith

- 29.1 The Parties shall act in good faith to ensure that in the event of the termination of a Block Placement there is smooth transition between the Services provided for the Service User(s) by the Provider and any services provided by a New Provider and/or the Council (as the case may be).

Termination of Block Placement by Notice

- 29.2 The Council may terminate a Block Placement by giving at least 48 hours' notice in writing if:
- 29.2.1 in the reasonable opinion of the Council the Placement is no longer suitable for the relevant Service User's needs, safety or welfare;
 - 29.2.2 the relevant Service User has been absent from the Home for at least one week. The Council may terminate the Block Placement on a shorter period of absence with the agreement of the Provider (such agreement not to be unreasonably withheld or delayed);
 - 29.2.3 the Local Safeguarding Adults Board recommends that the Block Placement be terminated;
 - 29.2.4 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 and the duties owed to the Council under the provisions of this Block Contract;
 - 29.2.5 a risk assessment carried out by either Party has concluded that significant risk to the relevant Service User cannot be adequately managed by the Provider;

- 29.2.6 in its reasonable opinion the continuation of the Block Placement would put the relevant Service User or any other person at risk of harm; or
- 29.2.7 the Council has been notified of a change to the registration of the Home pursuant to Clause 8 or the Council becomes aware of a change or proposed change to the registration of the Home.
- 29.3 Without prejudice to Clause 29.2, a Block Placement may be terminated by the Council by giving to the Provider not less than:
- 29.3.1 28 days' notice in writing save that, in respect of a Trial Placement, the Council shall have the right to terminate a Trial Placement by giving the Provider not less than seven days' notice in writing during the relevant Trial Period; or
- 29.3.2 14 days' notice in writing where a change to the funding arrangements for a Service User results in that Service User funding their own care (and the relevant terms in the Payment Mechanism shall apply as set out under "Change in Service User's Financial Status").

Termination of Block Placement on Default

- 29.4 The Council may terminate a Block Placement by giving written notice to the Provider with immediate effect or with effect from such other date specified in such notice if the Provider has committed a Default in relation to a Service User's requirements as set out in the Service User's Individual Placement Form and/or Council Care and Support Plan and if:
- 29.4.1 the Provider has not remedied the Default to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied;
- 29.4.2 the Default is not, in the opinion of the Council, capable of remedy; or
- 29.4.3 the Default is a Material Breach.

Provider Termination of Block Placements

- 29.5 The Provider shall only be entitled to terminate a Block Placement (whether or not the Block Placement is an Emergency Block Placement or a Trial Placement and, in respect of a Trial Placement, whether during the Trial Period or otherwise) if the Provider and Council both agree that the Provider cannot reasonably meet the Service User's needs because the complexity of the Service User's requirements are outside of the Services Specification. The Provider shall provide a minimum of 28 days' written notice where it is terminating a Block Placement under this Clause 29.5. If the Council, using reasonable endeavours, is unable to identify another provider for the Service User before the expiry of the notice, the notice may be extended by agreement of the Parties, until another provider has been commissioned by the Council and the provisions of Clause 30.1 shall apply.

Automatic Termination of Block Placements without Notice

29.6 A Block Placement shall terminate automatically with immediate effect without notice:

29.6.1 if the Court or other competent authority decides that the Service User should be placed in a secure hospital, or other place of lawful detention for more than 72 hours. This may include a condition of a court order or legal case conference, which requires residence outside a particular geographic area;

29.6.2 if the relevant Service User dies; or

29.6.3 if the relevant Service User gives notice to the Provider and/or the Council that they no longer wish to receive Services from the Provider. The Provider and the Council shall use their reasonable endeavours to encourage the Service User to give at least seven days' notice of such cancellation.

30 CONSEQUENCES OF TERMINATION OF A BLOCK PLACEMENT

30.1 Notwithstanding the service of any notice to terminate a Service User's Block Placement, the Provider shall continue to provide the Services in respect of the relevant Service User, and any additional support and resources deemed necessary and agreed between the Provider and the Council, until that Service User leaves the Home.

30.2 From the date the relevant Service User leaves the home, the relevant Block Placement shall be treated as a Void Placement and, provided such Void Placement is an Available Placement, the Price applicable to a Void Placement shall apply unless a suspension applies pursuant to Clause 27.

30.3 The termination of a Block Placement shall not prejudice the rights of either Party or any Service User that have arisen on or before the effective date of termination of that Block Placement.

31 TERMINATION OF BLOCK CONTRACT

Good Faith

31.1 The Parties shall act in good faith to ensure that in the event of the termination of this Block Contract there is smooth transition between the Services provided for the Service User(s) by the Provider and any services provided by a New Provider and/or the Council (as the case may be).

Termination by Notice

31.2 Either Party may terminate this Block Contract at any time by giving the other Party at least three months' written notice.

31.3 The Council may terminate this Block Contract by serving written notice on the Provider with immediate effect or with effect from such other date specified in such notice if:

- 31.3.1 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
- 31.3.2 the Provider suffers an Insolvency Event;
- 31.3.3 the Council has been notified of a change of ownership of the Home pursuant to Clause 12.1.2 or the Council becomes aware of a change or proposed change of ownership of the Home;
- 31.3.4 the Provider fails to be registered or maintain registration with the Registration Authority; or
- 31.3.5 the Council has been notified of a change to the registration of the Home pursuant to Clause 8 or the Council becomes aware of a change or proposed change to the registration of the Home.

Termination on Change of Control

31.4 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Council may terminate this Block Contract by giving notice in writing to the Provider with immediate effect within six months of:

- 31.4.1 being notified that a Change of Control has occurred; or
- 31.4.2 where no notification has been made, the date that the Council becomes aware of the Change of Control,

but the Council shall not be permitted to terminate where the Council gave its written approval prior to the Change of Control.

Termination by the Council on Default

31.5 The Council may terminate this Block Contract by giving written notice to the Provider with immediate effect or with effect from such other date specified in such notice if the Provider commits a Default and if:

- 31.5.1 the Provider has not remedied the Default to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 31.5.2 the Default is not, in the opinion of the Council, capable of remedy; or
- 31.5.3 the Default is a Material Breach.

31.6 A "**Material Breach**" under this Block Contract shall mean a Default by the Provider as follows:

- 31.6.1 a Default of a serious nature and which has, or is likely to have a significant impact on the delivery of the Services to the Service Users;

- 31.6.2 the Provider repeatedly commits a Default (whether of the same or similar nature or otherwise) so as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Block Contract;
- 31.6.3 the Provider is in breach of Clause 8 (Registered Status), Clause 10.5, Clause 14 (Health and Safety), Clause 15 (Non-Discrimination), Clause 16 (Service User's Rights), Clause 17 (Staff), Clause 18 (Safeguarding), Clause 25 (Notifiable Events), Clause 30.1 (Consequences on Termination of a Block Placement), Clause 38 (Warranties and Representations), Clause 39 (Confidentiality), Clause 40 (Freedom of Information), Clause 41 (Data Protection and Caldicott Principles), Clause 44 (Corrupt Gifts and Payments of Commission), Clause 45 (Safeguard against Fraud) or Clause 52 (Transfer and Sub-Contracting);
- 31.6.4 the Provider has offered any improper inducement or exerted unreasonable pressure upon potential Service Users, or others with an interest, to attempt to encourage the potential Service Users to use the Provider or has taken unreasonable financial advantage of its relationship with a Service User;
- 31.6.5 if the Provider is aware that a member of Staff or someone living in the premises within which the Service is delivered has been identified as posing a risk, or potential risk, to a Service User and the Provider has failed to notify the Council;
- 31.6.6 if the Provider is aware that a member of Staff has had allegations made against them of a serious nature, resulting in a safeguarding case review or safeguarding investigation being carried out by their designated safeguarding officer, and the Provider has failed to notify the Council; or
- 31.6.7 if the Provider has refused to implement (or fails to implement) any change to this Block Contract which is necessary to implement a change to the Service User's Council Care and Support Plan.

Termination by the Provider on Default

- 31.7 The Provider may terminate this Block Contract by serving written notice on the Council with immediate effect or from such other date specified in such notice if the Council commits a Council Breach and if:
- 31.7.1 the Council has not remedied the Council Breach within 10 Working Days, or such other period as may be specified by the Provider, after issue of a written notice specifying the Council Breach and requesting it to be remedied; or
- 31.7.2 the Council Breach is not, in the reasonable opinion of the Provider, capable of remedy.

32 DUTY TO CO-OPERATE ON TERMINATION

- 32.1 On the termination of this Block Contract for any reason and for a period of six months thereafter the Provider shall assist and co-operate fully to ensure an orderly transition of the provision of the Services from the Provider to a New Provider or (as appropriate) the Council.

- 32.2 The assistance and co-operation referred to in Clause 32.1 shall be provided free of charge and the Provider shall:
- 32.2.1 liaise with the Council and/or the New Provider so as to provide reasonable assistance and advice concerning the Services and their transfer to the Council or (as appropriate) the New Provider;
 - 32.2.2 provide to the Council and/or a New Provider all information concerning the provision of the Services which may be reasonably requested by the Council and which may be necessary for the efficient transfer of responsibility for its obligations under this Block Contract; and
 - 32.2.3 use all reasonable endeavours to assign or otherwise transfer the benefit of any Sub-contract or other contract related to the performance of the Service if so required by the Council and so permitted by relevant third parties to the relevant Sub-contract or other contract.
- 32.3 The Provider shall not act at any time during the Contract Period or thereafter in a way which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult the transition of the provision of the Services to the Council or (as appropriate) the New Provider.

33 RECOVERY UPON TERMINATION

- 33.1 Upon termination of this Block Contract for any reason, the Provider shall immediately return to the Council all Confidential Information, Commissioner Data and Personal Data in its possession or in the possession or under the control of any permitted Sub-contractors, which was obtained or produced in the course of providing the Services;
- 33.2 If the Provider fails to comply with Clause 33.1 Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Sub-contractors where any such items may be held.

34 SURVIVAL OF TERMS

- 34.1 Save as otherwise expressly provided in this Block Contract:
- 34.1.1 termination or expiry of this Block Contract shall be without prejudice to any rights, remedies or obligations accrued under this Block Contract prior to termination or expiration and nothing in this Block Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - 34.1.2 termination of this Block Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses 19 (Records and Access), 28 (Charges and Payment), 32 (Duty to Co-Operate on Termination), 33 (Recovery upon Termination), 34 (Survival of Terms), 35 (Indemnity and Insurance Requirements), 36 (Liability), 39 (Confidentiality), 40 (Freedom of Information), 41 (Data Protection and Caldicott Principles), 42 (Information Management and Security Policies), 43

(Intellectual Property Rights), 44 (Corrupt Gifts and Payments of Commission), 45 (Safeguard against Fraud), 54 (Notices), 56 (Transfer of Undertakings (TUPE)) together with Schedule 4, 57 (Third Parties), 60 (Severability), 61 (Cumulative Remedies), 62 (Waiver), 63 (Rights and Duties Reserved), 64 (Entire Agreement) and 65 (Governing Law).

35 INDEMNITY AND INSURANCE REQUIREMENTS

35.1 The Provider shall at its own expense implement and maintain (and ensure that any Sub-contractors involved in the Services implement and maintain) insurance with a reputable insurer to cover each of the types of liability which are set out below, with each policy to provide cover comprising the minimum sum per claim which is specified opposite thereto, in relation to any legal liability for which the Provider may become responsible pursuant to the performance (or defective performance) of its obligations under this Block Contract:

35.1.1 public liability: £10,000,000 (ten million pounds);

35.1.2 employer's liability: £10,000,000 (ten million pounds);

35.1.3 professional indemnity: £5,000,000 (five million pounds).

35.2 The Provider shall also implement and maintain (and ensure that any Sub-contractors involved in the Services implement and maintain) with a reputable insurance company such other policy or policies of insurance as are necessary for providers of services that are the same as or similar to the Services to comply with the Law.

35.3 The Provider's shall maintain professional indemnity insurance as required in Clause 35.1.3 for a minimum of six years following expiration or earlier termination of this Block Contract.

35.4 Within five Working Days of being requested to do so, the Provider shall provide the Council with a true and legible copy of each of the insurance policies which have been effected by it pursuant to the requirements of this Block Contract together with a true copy of the Provider's receipt(s) for the current premium payments. The Council may accept other appropriate documentation provided that it confirms that the Provider's insurance arrangements comply with the requirements of Clause 35.

35.5 The onus is on the Provider to ensure that its insurance policies are adequate at all times to cover eventualities pertaining to its business. The Provider shall ensure that the Council is informed immediately should the Provider become aware of a potential claim that would not be covered by the Provider's insurance policies. The Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

36 LIABILITY

36.1 Neither of the Parties excludes or limits liability to the other Party for:

36.1.1 death or personal injury caused by its negligence; or

36.1.2 fraud or fraudulent misrepresentation.

36.2 Subject always to Clause 36.1, each Party's total aggregate liability in connection with this Block Contract in each 12-month period during the Contract Period (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to 10,000,000 (ten million) pounds.

36.3 The Provider shall indemnify and keep indemnified the Council and its officers and servants against all losses, claims, proceedings, actions, damages, costs and expenses (including legal costs and 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 (including its Staff) of its obligations under this Block Contract including in respect of any breach of its obligations, 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.

36.4 The Council shall not be liable for any expense, liability, loss or claim resulting from actions of the Service User unless it can be shown that the Council knowingly provided incorrect information or knowingly withheld relevant information which was directly attributable to such loss or damage.

37 ONGOING COMPLIANCE WITH SELECTION REQUIREMENTS

37.1 The Provider shall notify the Council in writing with immediate effect upon the occurrence of any of the following circumstances:

37.1.1 the Provider undergoes a Change of Control;

37.1.2 the Provider is subject to an Insolvency Event;

37.1.3 any change in any consortium structure or sub-contracting arrangements to which the Provider is party for the purposes of the Framework Agreement;

37.1.4 any change in relation to the information included in the Tender or the SQ Response that may result in the Provider no longer complying with the selection requirements met by the Provider in the Tender or the SQ Response; and/or

37.1.5 any other reason that the Provider becomes aware of that may affect compliance of the Provider with the selection requirements referred to in Clause 37.1.

38 WARRANTIES AND REPRESENTATIONS

38.1 The Provider warrants and represents that:

38.1.1 this Block Contract is executed by a duly authorised representative of the Provider;

38.1.2 as at the Commencement Date, all information, statements and representations contained in the

Tender and the SQ Response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to execution of this Block Contract and it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

- 38.1.3 it has obtained all registrations, licences, authorisations, or permits required to perform its obligations under this Block Contract as required by the Registration Authority and/or the Law;
- 38.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Block Contract;
- 38.1.5 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Block Contract;
- 38.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 38.1.7 the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence; and
- 38.1.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Block Contract.

39 CONFIDENTIALITY

39.1 Each Party:

- 39.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- 39.1.2 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 this Block Contract or except where disclosure is otherwise expressly permitted by the provisions of this Block Contract.

39.2 The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with this Block Contract:

- 39.2.1 is given only to such of the Staff and professional advisers engaged to advise it in connection with this Block Contract as is strictly necessary, and to the extent necessary, for the performance of this Block Contract, and shall ensure that such Staff and professional advisers are subject to equivalent confidentiality obligations as under this Clause 39; and
 - 39.2.2 is treated as confidential and not disclosed or used (without the Council's prior written approval) by the Provider, any of its Staff or such professional advisers otherwise than for the purposes this Block Contract.
- 39.3 The provisions of Clause 39.2 shall not apply to any Confidential Information received by one Party from the other:
- 39.3.1 which is or becomes public knowledge (otherwise than by breach of this Clause 39);
 - 39.3.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - 39.3.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 39.3.4 is independently developed without access to the Confidential Information; or
 - 39.3.5 which must be disclosed pursuant to a statutory, legal, parliamentary or regulatory obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, pursuant to Clause 40.
- 39.4 Nothing in this Clause shall prevent the Council disclosing any Confidential Information:
- 39.4.1 for the purpose of the examination and certification of the Council's accounts;
 - 39.4.2 for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - 39.4.3 to the Auditors to the extent required for an Audit or in accordance with Clause 50.2;
 - 39.4.4 to its employees, officers, agents and professional advisers for the purpose of the Council performing its obligations under, and gaining the full benefit of, this Block Contract;
 - 39.4.5 to any Contracting Authority or Regulatory Body;
 - 39.4.6 to any person engaged in providing any services to the Council for any purpose relating, or ancillary, to this Block Contract;

39.4.7 other authorities and organisations which handle or oversee public funds (in the interest of public probity); or

39.4.8 in accordance with Clause 52.4,

provided that, in disclosing Confidential Information, the Council discloses only the Confidential Information which is necessary for the purpose concerned and requires that the information is treated in confidence.

40 FREEDOM OF INFORMATION

40.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with these Information disclosure requirements.

40.2 The Provider shall and shall procure that any Sub-contractors shall:

40.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

40.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

40.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act 2000.

40.3 The Council shall be responsible for determining, at its absolute discretion and notwithstanding any other provision in this Block Contract, whether the Commercially Sensitive Information and/or any other Information:

40.3.1 is exempt from disclosure in accordance with the FOIA; and/or

40.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

40.4 The Provider acknowledges that the Council may, acting in accordance with the FOIA, disclose Information:

40.4.1 without consulting with the Provider; or

40.4.2 following consultation with the Provider and having taken its views into account.

40.5 The Provider shall ensure that all information produced in the course of, or relating to, this Block Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

40.6 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of

indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 40.4.

- 40.7 The Provider shall take no action which is intended, or would reasonably be expected, to harm the reputation of the Council or which would reasonably be expected to lead to unwanted or unfavourable publicity to the Council or bring the Council into disrepute.

41 DATA PROTECTION AND CALDICOTT PRINCIPLES

- 41.1 The Provider and the Council shall each adhere to the Caldicott Principles and in particular shall:
- 41.1.1 before using Personal Data relating to the Service User, justify according to Principle 1 Health and Social Care Organisations the purpose(s) for using such Personal Data;
 - 41.1.2 use Personal Data relating to the Service User only when absolutely necessary;
 - 41.1.3 use only the minimum amount of Personal Data relating to the Service User that is necessary;
 - 41.1.4 ensure that access to Personal Data relating to the Service User is provided on a strict “need to know” basis;
 - 41.1.5 ensure everyone with access to Personal Data relating to the Service User is made aware of his or her responsibilities; and
 - 41.1.6 ensure everyone with access to Personal Data relating to the Service User understands and complies with all legislation that governs the use and processing of such Personal Information.
- 41.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council and the Provider are Joint Controllers in respect to the data under this Block Contract.
- 41.3 The Provider shall notify the Council immediately if it considers that any of the Council’s instructions infringe the Data Protection Legislation.
- 41.4 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- 41.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 41.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 41.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

41.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

41.5 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Block Contract:

41.5.1 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures), having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

41.5.2 ensure that:

- (a) the Staff do not process Personal Data except in accordance with this Block Contract (and in particular Schedule 7 (Processing, Personal Data and Data Subjects));
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Provider's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Provider;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless permitted by this Block Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (c) not transfer Personal Data outside of the EU unless the following conditions are fulfilled:
 - (i) the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Provider complies with its obligations under the Data Protection Legislation providing an adequate level of protection to any Personal Data that is transferred; and:

(d) within the terms of this Block Contract, delete or return Personal Data (and any copies of it) to the Council on termination of this Block Contract (as the case may be) unless the Data Processor is required by Law to retain the Personal Data.

41.6 Subject to Clause 41.7, the Provider shall notify the Council immediately if it:

41.6.1 receives a Data Subject Request (or purported Data Subject Request) which requires the input of personal data held by the Council;

41.6.2 receives any communication from the Information Commissioner or any other Regulatory Body in connection with Personal Data processed jointly under this Block Contract;

41.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

41.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Block Contract;

41.6.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

41.6.6 becomes aware of a Data Loss Event. The Provider's obligation to notify under Clause 41.6 shall include the provision of further information to the Council in phases, as details become available.

41.7 Taking account the nature of the processing each party shall provide with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 41.6 (and insofar as possible within the timescales reasonable required) including by promptly providing:

41.7.1 the other Party with full details and copies of the complaint, communication or request;

41.7.2 such assistance as is reasonably requested by either Party to enable them to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

41.7.3 the other Party, at its request, with any Personal Data it holds in relation to a Data Subject;

41.7.4 assistance as requested by the either Party following any Data Loss Event; and

41.7.5 assistance as requested by the other party with respect to any request from the Information Commissioner's Office, or any consultation by either Party with the Information Commissioner's Office.

- 41.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- 41.8.1 the Council determines that the processing is not occasional;
 - 41.8.2 the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 41.8.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 41.9 Where appropriate the Provider shall allow for audits of its Data Processing activity related to this Block Contract by the Council or the Council's designated auditor.
- 41.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 41.11 Before allowing any Sub-processor to process any Personal Data related to this Block Contract, the relevant Data Controller must:
- 41.11.1 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 41 such that they apply to the Sub-processor; and
 - 41.11.2 provide the other Party with such information regarding the Sub-processor as the other Party may reasonable require.
- 41.12 The Provider shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 41.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Block Contract).
- 41.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Provider amend this Block Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 41.15 Where the Parties include two or more Joint Controllers in accordance with GDPR Article 26, those parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 7 (Processing, Personal Data and Data Subjects), covering the Personal Data under joint control.
- 41.16 Each Party shall be wholly liable for any penalty or claim made against them where such penalty or claim has any basis in either Party having failed to apply the terms of this Block Contract or where the requirements of the Data Protection Act 2018 have not been complied with.

41.17 The Provider shall have and shall maintain in place throughout the Term and the Contract Period its own policies and procedures to ensure its compliance with this Clause 41 and shall provide copies thereof for the Council on request.

41.18 The Provider shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause 41 by the Provider and/or any act or omission of any Sub-contractor.

42 INFORMATION MANAGEMENT AND SECURITY POLICIES

42.1 The Provider shall (and shall procure that its Staff shall) comply with and provide the Services in all respects in accordance with the policies, procedures, measures, controls, mechanisms and systems described in its SQ Response in response to the Information Governance Questions.

42.2 The Provider shall promptly notify the Council in writing if it becomes aware during the performance of this Block Contract of any inaccuracies in or changes to the policies, procedures, measures, controls, mechanisms and systems described in Clause 42.1.

43 INTELLECTUAL PROPERTY RIGHTS

43.1 General

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

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Council upon creation.

43.2 Copyright

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

43.3 Intellectual Property owned by the Provider

43.3.1 Where, in connection with the provision of the Services by the Provider, the Provider uses any Intellectual Property which does not fall within Clauses 43.1 and 43.2 and which is owned by the Provider or any company within the Provider's Group, the Provider shall grant to the Council, or shall procure that the Council is granted (without charge to the Council) a perpetual, non-exclusive, royalty-free licence to use, adapt, maintain and support such Intellectual Property, which licence shall include the right for any person providing services to the Council to use, adapt, maintain and support such Intellectual Property for the benefit of the Council.

43.4 Third Party Licences

43.4.1 The Provider shall obtain the consents of third parties to the use by the Provider of any third party software, documentation and other materials ("**Third Party Products**") (including, without limitation, software and know-how) which is required by the Provider for the provision of the Services.

43.4.2 The Provider shall assume all liability to third parties in respect of its use of any Third Party Products in accordance with Clause 43.4.1 as from the Commencement Date and shall indemnify the Council against all costs, claims, damages or expenses arising from the Provider's failure to adhere to the terms and conditions of agreements between the Council and such third parties in respect of such Third Party Products

43.4.3 The Provider shall use all reasonable endeavours to procure that any licences for Third Party Products (as defined in Clause 43.4.1) reasonably necessary for the provision of the Services are perpetual and contain terms which will allow the Council on termination of this Block Contract or any Services to use, adapt, maintain and support such Third Party Products or to engage a New Provider to do so.

43.4.4 The Provider acknowledges and confirms that all royalties, licence fees and similar expenses in respect of all Intellectual Property used in connection with this Block Contract are included in the Price and shall not be subject to any separate or additional charge to the Council.

44 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

44.1 The Provider shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

44.2 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of any Council or any other public body or person employed by or on behalf of a Council or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Block Contract or any other contract with a Council or any other public body or person employed by or on behalf of a Council or any other public body (including its award to the Provider, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.

44.3 Neither the Provider nor any of their Staff shall solicit or accept any gratuity, gifts or tip or any other form of money taking or reward, collection or charge for any part of the Services other than those notified to, and agreed by, the relevant Council.

45 SAFEGUARD AGAINST FRAUD

45.1 The Provider shall take all reasonable steps in accordance with Good Industry Practice to prevent Fraud by its Staff and/or the Provider (including its shareholders, members, directors) in connection with the receipt of monies from the Council.

45.2 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.

45.3 The Provider shall safeguard the Council's funding of this Block Contract against Fraud generally and, in particular, Fraud on the part of the Provider or its Staff. 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.

46 FORCE MAJEURE

46.1 A Party shall be released from its obligations in the event of national emergency, war, revolution, act of terrorism, riot or civil commotion, biological contamination or warfare, epidemic or other natural disaster, prohibitive Government regulation or any other unforeseeable cause beyond the reasonable control of the affected Party which renders the performance of this Block Contract impossible, provided that, where the Provider is the affected Party, the Provider has complied with Clauses 47 and 48 (a "**Force Majeure Event**"). However, if such Force Majeure Event prevents either Party from performing its material obligations under this Block Contract for a period in excess of 14 days, either Party may terminate this Block Contract with immediate effect by notice in writing

46.2 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, and failure to provide adequate premises, equipment, materials, consumables, and or staff or similar matters, which a prudent and diligent Provider could have avoided with the application of reasonable foresight, are not to be considered as Force Majeure Events.

46.3 If either Party becomes aware of a Force Majeure Event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in Clause 46.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

47 BUSINESS CONTINUITY

47.1 The Provider acknowledges that the Civil Contingencies Act 2004 requires the Council to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. The Provider shall ensure it is able to continue to provide the Services in the event of an emergency and shall therefore:

- 47.1.1 prepare a robust and viable business continuity plan (the “**Business Continuity Plan**”) in a form approved by the Council that ensures the continuation of the provision of the Services throughout the Contract Period;
 - 47.1.2 review and update the Business Continuity Plan annually, making such changes to the plan as the Council in its reasonable discretion may require;
 - 47.1.3 annually, and more frequently, if requested by notice from the Council, disclose to the Council the contents of its Business Continuity Plan (include any revisions made to it from time to time during the Contract Period);
 - 47.1.4 allow the Council (at its discretion) from time to time during the Contract Period to monitor the Provider’s business continuity arrangements;
 - 47.1.5 notify the Council immediately if an incident occurs which activates the Business Continuity Plan (such notification to be served prior to the issue by the Provider of any notification to the press or other media); and
 - 47.1.6 provide the Council with details of how the Provider managed any incident which resulted in the activation of the Business Continuity Pan and any consequential amendments made by the Provider to the processes and/or procedures in the Business Continuity Plan thereafter.
- 47.2 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 this Block Contract.
- 47.3 In the event of industrial action by Staff, the Provider shall seek approval to its proposals to continue to perform its obligations under this Block Contract.

48 TEMPORARY DUTY AND BUSINESS FAILURE

- 48.1 The Provider shall meet the duties of the Care Act 2014 with regards to temporary duty and business failure, under sections 48 to 52.
- 48.2 In circumstances where the Provider is unable to continue to provide the Service(s) under this Block Contract as a result of Business Failure, as defined in the Care Act 2014, the Provider shall assist the Council in meeting its Temporary Duty obligations under sections 48 to 52 of the Care Act 2014 and shall:
- 48.2.1 co-operate fully with and provide all reasonable assistance to the Council in assessing the most efficacious manner of meeting the needs of all Service Users affected by the Provider’s Business Failure;

48.2.2 make available all information that the Council, in its absolute discretion, considers reasonable and appropriate to enable the Council to meet the needs of, and minimise disruption to, all Service Users affected by the Provider's Business Failure; and

48.2.3 co-operate fully with and provide all reasonable assistance to any other Provider organisation(s) authorised by and working in partnership with the Council, to assist the Council in meeting its Temporary Duty as a result of the Provider's Business Failure.

48.3 The Provider acknowledges the Council's statutory duties under the Care Act regarding Market Oversight, Sustainability & Provider Failure. Where requested by the Council for these purposes, the Provider shall provide to the Commissioner appropriate information regarding the Provider's organisation and services and shall support local system resilience initiatives run by the Council.

49 CONFLICTS OF INTEREST

49.1 The Provider shall use all reasonable endeavours to protect the safety and well-being of the Service User by taking necessary measures to avoid any confusion of roles or situations in which a conflict of interest might arise.

49.2 The Provider shall ensure that it has a procedure in accordance with Good Industry Practice and which meets all relevant professional codes of practice relating to conflicts of interest (including, without limitation, receiving and/or offering gifts/presents) and, if necessary, shall make amendments to its practices to ensure that the Provider and its Staff continue to meet such professional codes of practice throughout the Contract Period. The Provider shall ensure that this procedure is observed at all times and that it prevents the occurrence of situations not only where a conflict has arisen, but where one is likely to arise. If required by the Council, a separation of duties shall be implemented by the Provider to prevent such conflicts of interest.

49.3 The Provider shall promptly disclose in writing to the Council the full particulars of any such conflicts or potential conflicts of interest which may arise.

50 PUBLICITY

50.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise this Block Contract in any way without the Council's prior written consent.

50.2 The Council shall be entitled to publicise this Block Contract in accordance with any legal obligation upon the Council, including any examination of this Block Contract by the Auditor or otherwise.

50.3 The Provider shall not do anything which may damage the reputation of the Council or bring the Council into disrepute.

51 COMPLAINTS

The Provider shall have a complaints policy and procedure that conforms to the requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care and Support Statutory Guidance – Care Act 2014 and shall comply with its policy and procedure for managing any complaint it receives in relation to the Services and/or Staff. Such procedure shall be made available upon request to the Council's Authorised Officer for review.

52 TRANSFER AND SUB-CONTRACTING

52.1 This Block Contract is personal to the Provider and the Provider shall not assign, sub-contract or otherwise dispose of this Block Contract or any part thereof without the prior written consent of the Council. Any such consent shall only be given in respect of a named and approved assignee or sub-contractor (as the case may be) and only on the basis that both the Provider and the assignee or sub-contractor (as the case may be) are jointly and severally fully answerable and responsible for such party's contribution to the Service.

52.2 The Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own. Sub-contracting any part of this Block Contract shall not relieve the Provider of any of its obligations or duties to the Council.

52.3 The Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Block Contract or any part thereof to:

52.3.1 any other Contracting Authority;

52.3.2 any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Council; or

52.3.3 any private sector body which substantially performs the functions of the Council,

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Block Contract unless agreed by the Provider in writing.

52.4 In circumstances where the Council enters into any assignment, or novation, or disposal pursuant to Clause 52.3, the Council shall be entitled to disclose to any transferee of this Block Contract any Confidential Information of the Provider which relates to the performance of this Block Contract by the Provider. In such circumstances the Council may authorise the transferee to use such Confidential Information for purposes directly relating to the performance of this Block Contract (and for no other purposes whatsoever) and the Council shall use reasonable endeavours to ensure that the transferee accepts an obligation of confidence.

53 DISPUTE RESOLUTION

53.1 The Council and the Provider shall seek to work together in the spirit of mutual cooperation in order to meet the

best interests of the Service User placed under this Block Contract. The Council and the Provider shall use their best endeavours to resolve by agreement any dispute arising between them and shall negotiate in good faith at all times.

- 53.2 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Block Contract within 10 Working Days of either Party notifying the other of the dispute, such efforts shall involve the convening of a meeting between representatives of both Parties within 10 Working Days, or such other period as agreed between the Parties.
- 53.3 If the dispute remains unresolved after the meeting referred to in Clause 53.2 then a further meeting involving senior representatives of the Parties may be requested within a further 10 Working Days, or such other period as agreed between the Parties.
- 53.4 If the dispute remains unresolved after the meeting referred to in Clause 53.3 then a further meeting involving more senior representatives of the Parties may be requested within a further 20 Working Days, or such other period as agreed between the Parties.
- 53.5 In a meeting taking place pursuant to Clause 53.4, where the dispute relates to a particular Service User the Proprietor/Regional Manager will represent the Provider and the Council's Authorised Officer will represent the Council.
- 53.6 In a meeting taking place pursuant to Clause 53.4, where the dispute relates to the general care standards or a contractual issue the Proprietor/Regional Manager will represent the Provider and the Director of Social Services will represent the Council.
- 53.7 For the avoidance of doubt, the Council may be represented in meetings taking place pursuant to Clause 53.2 and 53.3 by practitioners engaged by the Authorised Agents.
- 53.8 If the dispute is still not resolved after the meeting referred to in Clause 53.4 then the matter shall be referred to independent mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedures, as soon as reasonably practicable. The mediator's reasonable charges incurred by this shall be shared equally between the Parties.
- 53.9 Neither Party shall commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The Parties shall co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require.
- 53.10 If the matter cannot be satisfactorily resolved through mediation, it may be referred to an independent arbitrator who is agreed between both Parties, or in default of agreement, nominated by the President of the Institute of Arbitrators. The arbitrator shall be entitled to make such decision or award as he/she thinks just and equitable having regard to the circumstances then existing. The decision of the arbitrator (including as to costs) shall be final and binding upon both Parties except in the case of manifest error.

53.11 During any dispute, including a dispute as to the validity of this Block Contract, it is mutually agreed that the Provider shall continue its performance of the provisions of this Block Contract (unless the Council requests in writing that the Provider does not do so).

54 NOTICES

54.1 Except as otherwise expressly provided within this Block Contract, no notice or other communication from one Party to the other shall have any validity under this Block Contract unless made in writing by or on behalf of the Party sending the communication.

54.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 54.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail provided that the sender has not received an automated message that the electronic mail has not been delivered or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.

54.3 For the purposes of Clause 54.2, the address of each Party shall be:

54.3.1 For the Council: The address and contact details for the Council's contact for communications with the Provider identified in the Framework Agreement.

54.3.2 For the Provider: The address and contact details for the Provider's contact for communications with the Council identified in the Framework Agreement.

54.4 Either Party may change its address and contact details for service by serving a notice in accordance with this Clause 54.

55 TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

The Parties acknowledge and agree that this Block Contract constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of this Block Contract.

56 TRANSFER OF UNDERTAKINGS (TUPE)

The Parties agree that the provisions of Schedule 4 (TUPE, Exit and Service Transfer Arrangements) hereto shall apply to any Relevant Transfer of Staff under this Block Contract.

57 THIRD PARTIES

Both Parties agree and declare that nothing in this Block Contract either expressly or purportedly confers any rights upon any third parties within the meaning of or for the purposes of the Contracts (Rights of Third Parties) Act 1999. A party who is not a party to this Block Contract shall have no right to enforce any term of this Block Contract.

58 NO PARTNERSHIP OR AGENCY

58.1 The Provider or anyone employed by the Provider shall not hold him or herself out as being the agent or servant of the Council, or enter into any contract or bind the Council to any undertaking unless agreed in writing by the Council.

58.2 Nothing in this Block Contract shall create or be deemed to create a legal partnership between the Parties, or any relationship of principal and agent and the Parties are not pursuing a joint venture by entering into this Block Contract.

59 COUNTERPARTS

The Block Contract may be executed in more than one copy and such copies shall, taken together, constitute a single agreement.

60 SEVERABILITY

60.1 In the event that any term, condition, provision or Clause of this Block Contract shall be nullified or made void by any statute, regulation or order or by the decision or order of any court having jurisdiction, the remaining terms and conditions and provisions shall remain in full force and effect.

60.2 If any term, condition, provision or Clause contained in this Block Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Block Contract.

60.3 The termination or expiry of the Framework Agreement shall not affect the validity, legality or enforceability of any term, condition or provision of this Block Contract.

61 CUMULATIVE REMEDIES

61.1 Except as otherwise expressly provided by this Block Contract, all remedies available to either Party for breach of this Block Contract 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.

61.2 The exercise of any right or remedy under the Framework Agreement, or the termination or expiry of the Framework Agreement, shall not affect the remedies available to either Party under this Block Contract.

62 WAIVER

- 62.1 The failure of either Party to insist upon strict performance of any provision of this Block Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Block Contract.
- 62.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 54.
- 62.3 A waiver of any right or remedy arising from a breach of this Block Contract or from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Block Contract.

63 RIGHTS AND DUTIES RESERVED

All rights and duties which the Council has as a local Council or which the Council's officers have as local Council officers are reserved.

64 ENTIRE AGREEMENT

- 64.1 Subject to Clauses 60 to 62, the Framework Agreement, the Tender, this Block Contract and each Individual Placement Form constitute the entire agreement and understanding of the Parties in connection with their subject matter and supersede, cancel or nullify any other or previous agreement between the Parties in relation to such subject matter.
- 64.2 Each of the Parties acknowledges and agrees that in entering into this Block Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Framework Agreement, the Tender, this Block Contract and/or each Individual Placement Form. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Framework Agreement and/or this Block Contract.
- 64.3 Nothing in Clauses 64.1 or 64.2 shall operate to exclude fraud or fraudulent misrepresentation.

65 GOVERNING LAW

This Block Contract shall be governed, interpreted and enforced according to the law of England and Wales and subject to Clause 49 the Parties shall submit to the exclusive jurisdiction of the English courts.

THIS CONTRACT is for: [INSERT BLOCK CONTRACT NAME]

between

BATH AND NORTH EAST SOMERSET COUNCIL, Lewis House, Manvers Street, Bath, BA1 1JG (“the Council”) (1)

and

[insert provider name and address] (“the Provider”) (2).

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written.

The Common Seal of Bath and North East Somerset Council, was here unto affixed in the presence of

.....

Authorised Signatory

Name:

Position:

Executed as a deed on behalf of [insert provider] acting by a Director and its Secretary or two Directors

.....Director/Company Secretary

Name:

.....Director

Name:



**INDIVIDUAL SERVICE AGREEMENT FORM/INDIVIDUAL
PLACEMENT FORM
ARRANGEMENT FOR THE PURCHASE of SERVICE**

| | | | | |
|--|---|--|--|----|
| | Liquid Logic No: | | NHS No: | |
| 1. | THE SERVICE USER: | | | |
| | Full Name: | | Title: | |
| | | | Date of Birth: | |
| | | | Telephone: | |
| 2. | THE PROVIDER: | | | |
| | Name of Provider: | | | |
| | | | | |
| Address: | | | | |
| | Postcode: | | Telephone: | |
| 3. | THE PURCHASER: | | | |
| | Name of Care Manager arranging the placement: | | | |
| | Office Address: | | | |
| | Postcode: | | Telephone: | |
| | | | Fax: | |
| | Name of Authorised Officer making placement: | | | |
| Budget Code: | | | | |
| 4. | THE PLACEMENT PERIOD AND TYPE OF ARRANGEMENT | | | |
| | The Placement commences on the: | | and is EITHER (*delete as appropriate) | |
| | (a)* | Permanent Arrangement <i>until further notice</i> | Trial Period: from | to |
| <p><i>Is the Service User already being funded in another Nursing or Residential Care Home by Social Care?</i> Yes/No*</p> | | | | |

| | | | |
|--|------|--|----------------|
| | (b)* | Temporary / Fixed Term Arrangement: Respite arrangement until: or Other arrangement until: | |
| | (c)* | Is this a placement into a Block Contract? | Yes/No* |

5. SERVICE USER CARE CATEGORY

(The standard weekly rates for these categories of care are as published for the current financial year and represent the **MAXIMUM** amounts payable by Bath and North East Somerset Council). PLEASE TICK ONE CATEGORY ONLY.

| RESIDENTIAL CARE | | NURSING | |
|--|-----|--|-----|
| Older People (over 65) | () | Older People (over 65) | () |
| Older People Mental Illness (including dementia) | () | Older People Mental Illness (including dementia) | () |
| Mental Illness (under 65) | () | Mental Illness (under 65) | () |
| Learning Difficulties | () | Learning Difficulties | () |
| Physically Disabled (under 65) | () | Physically Disabled (under 65) | () |

6. DETAILS OF PAYMENTS IN ADDITION to the standard Council weekly rate (Fair Price for Care (Elderly only))

| | PERIOD | | Weekly Amount | | |
|--|--------|------------------|---------------|---|--|
| | From | To (where known) | £ | p | |
| Insert "Extra Needs", "Market Forces" or "Third Party" | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Name of Manager authorising Extra Needs or Market Forces payment:

Approval by Single Panel:

Third party who has accepted responsibility for a Third Party Top-Up Fee above, if any
Name:
Address:

Telephone Number:

Has the named third party signed the agreement on the information sheet "Care Homes – Third party Contributions" This must be signed and attached to this Schedule 1.

| |
|---|
| Signed and returned: |
| Uploaded to Liquid Logic: |
| Location of filed signed form: Liquid Logic |

7. PRIVACY MONITORING

| |
|--|
| Is the allocated room a single room? Y/N |
|--|

| 8. THE 'CONTRACT PRICE' | | | | Weekly rate | |
|-------------------------|-----|---|---------------------------------|-------------|---|
| | | | | £ | p |
| | (a) | Service User Care Category Price (for older people only) | (see section 5) | | |
| Add | (b) | Market Forces payments | (see section 6) | | |
| Add | (c) | Special Needs payments (Insert here full price payable by Council for placements without a Care Category Price) | | | |
| Equals | (d) | Total Price BEFORE any Third Party Top-Up | | | |
| Add | (e) | Third Party Top-Up Fee | (see section 6) | | |
| Equals | (f) | Contract Price* | (The TOTAL fee charged by home) | | |
| Note: | | Only enter the 'Client Care Charge' below if the amount has been assessed by the Client Finance Section | | | |
| | (g) | Client Care Charge | | | |
| | (h) | Council Charges (the difference between (d) and (g)) | | | |

*The Contract Price is EXCLUSIVE of the Funded Nursing Care element for Nursing Placements.

9. SERVICE USER'S REPRESENTATIVE (ONLY COMPLETE IF THE SERVICE USER IS NOT REPRESENTING THEMSELVES)

| | | | | | |
|---|--|--------------|--|--------|--|
| Surname: | | Forename(s): | | Title: | |
| Address: | | | | | |
| | | | | | |
| Postcode: | | | | | |
| Tel: | | | | | |
| Status: (Informal representative, Appointee, Power of Attorney) | | | | | |

10. SIGNATURES TO THE ARRANGEMENT

| | |
|---|--|
| The undersigned agree that this is form constitutes an ISA Form/Individual Placement Form documenting the agreed service between the Council and the Provider in accordance with the call-off procedure of the Flexible Framework for the Provision of Care for Adults in Care Homes. | |
| For the avoidance of doubt all references to the 'Authority' for the purpose of this Arrangement relate to Bath and North East Somerset Council. | |
| Dated: | |
| Signed by on behalf of the PROVIDER: | |
| Signed by on behalf of the AUTHORITY: | |

NOTES / DEFINITIONS

Please refer to the Payment Mechanism included in the Contract for detail regarding collection of Client Care Charges and Third Part Top-Ups.

(1) FIXED TERM ARRANGEMENTS:

In all such cases the Provider must claim the Contract Price 7(f). The Provider **MUST NOT** collect any Client Care Charges or Third Party Top-Ups as **the responsibility for collection remains with the Authority.**

(2) THIRD PARTY TOP-UP:

This is a contribution that another person, not being the Council or the Service User, has agreed to pay towards the total fee charged by the Home. Care Managers must ensure so far as is reasonably practicable, that the third party has read and understood the Adult Information leaflet "Care Homes - Third party Contributions" and has signed and returned the form at the end of the leaflet. The signed form must be kept on file or scanned into an electronic social care record.

(3) MARKET FORCES PAYMENT:

This is a sum authorised by the Council's Single Panel (or officer authorised by such panel) that the Council will pay in addition to the Care Category Price (Older People only) only because it is required in order to secure the service in the market conditions in force at the time and is not a reflection of the level of the Service User's assessed needs.

SCHEDULE 2 – Services Specification

Note: The Specification for the Provision of Care for Adults in Care Homes will apply to all block contracts in addition to any supplementary Specifications which apply specifically to this Block Contract and will be inserted in this Schedule 2.

[INSERT BLOCK SPECIFICATION]

SCHEDULE 3 – Indicative Payment Mechanism

Note: this schedule contains an indicative Payment Mechanism, which will be confirmed for each Block and will be made available with each Block Contract opportunity

1. Application and validity

- 1.1. This Payment Mechanism shall apply to Placements in the Guaranteed Block. Payments for any placement of a Service User at the Home outside the Guaranteed Block shall be governed by the Individual Service Agreement.
- 1.2. No charge or sum shall be payable to the Provider for the Services other than as set out in a Service User's Individual Placement Form and/or this Payment Mechanism.
- 1.3. The Council shall not be liable to pay for any Additional Services. The Council shall not be liable to make any payment that has not been expressly agreed in advance in writing with the Council. The Provider shall in the first instance consult the Council in relation to any service or facility that may be required or requested for a Service User and shall co-operate with the Council in case such service or facility is available to the Service User from the National Health Service or elsewhere.
- 1.4. No increase, update or variation to the Contract Price (or any component thereof or any other charge or sum) shall be valid except and until such increase, variation or update is expressly agreed in advance in writing with the Council.

2. Interpretation

- 2.1. Unless otherwise specified, the definitions and rules of interpretation set out in the Block Contract shall apply.
- 2.2. Additional Services – any services or facilities outside the scope of the Services including but not limited to domestic goods and services such as hairdressing, newspapers, drinks.
- 2.3. Client Care Charge – The amount that the Council has assessed that the Service User must pay from their income towards the Contract Price.
- 2.4. Contract Price – The total fee charged by the Provider, excluding any FNC Contribution, for the Service provided and taking into account any Annual Price Review, in accordance with Paragraph 14.
- 2.5. First Party – The Service User who makes a Top-Up Fee Payment in the circumstances outlined in Paragraph 5.
- 2.6. FNC Contribution – the contribution payable by the CCG for funded nursing care in accordance with Paragraph 7 of this Schedule.

- 2.7. Individual Service Agreement - the individual service agreement entered into between the Council and the Provider.
- 2.8. Payment Period – The two-week period as more fully described in Paragraph **Error! Reference source not found.** of this Schedule.
- 2.9. Personal Expenses Allowance – the weekly amount that a Service User at the Home is allowed to keep for their personal expenses.
- 2.10. Top-Up Fee Payment - an additional payment made by a Service User where eligible under Paragraph 5.
- 2.11. Void Rate – the weekly rate payable for a Void Placement in accordance with the Block Contract and this Schedule 1, and as detailed in Paragraph 0.

3. Block Contracts

- 3.1. The Council will pay the Contract Price plus any FNC Contribution to the Provider for each Payment Period for all Available Placements in the Guaranteed Block, adjusted to remove the charge for any Void Placements which are no longer Available Placements, in accordance with this Schedule.
- 3.2. Any payments for Void Placements shall be made exclusive of any additional payments which may apply to a particular Service User (such as FNC Contribution, or any 1:1 provision), which shall only be payable when a Service User is occupying the Placement.
- 3.3. Any payments for Void Placements shall be paid at the applicable rate for the particular category of care specified in the Block Contract, even if the Placement has more recently been used for a higher category of care at a higher price.
- 3.4. The Provider shall invoice, in arrears on a two-weekly basis (a “Payment Period”). The Council shall pay the Provider any sums due under an invoice no later than a period of 28 days from the date on which the Council has determined that the invoice is valid and undisputed. **Confirm with Sara Shobbrook if this is appropriate for each block – arrangements may vary for each.**
- 3.5. The size of the Guaranteed Block and types of beds reserved in the Guaranteed Block shall be reviewed on an annual basis* (or more frequently where appropriate) and the size of the Guaranteed Block adjusted if appropriate. Where this leads to a downward revision of numbers of beds under the Guaranteed Block, the Provider shall be given at least 28/14* days’ written notice of this change [*** to be amended to suit the requirements of each particular block**].

4. Client Care Charges, Allowances and other costs

- 4.1. Any Client Care Charges shall be collected from the Service User (or such other person responsible for paying it on behalf of the Service User) by the Council.
- 4.2. The Service User shall not be permitted to use their Personal Expenses Allowance to pay any Client Care Charge.
- 4.3. The Provider shall not enter into a contract directly with either the Service User or any other party for payment or part-payment of Service(s) other than as permitted in this Payment Mechanism.
- 4.4. The Provider may agree with the Service User or anyone on his or her behalf to provide Additional Services to the relevant Service User. The Provider agrees and acknowledges that the Provider shall be responsible for agreeing and arranging payment for any such Additional Services directly with the relevant Service User or the relevant person on his or her behalf and that the Council shall not be responsible for any such payment or arrangements.
- 4.5. The Provider shall disclose to the Council on request details of any Additional Services in accordance with Paragraph 4.4 charged to any Service User as follows: the exact nature of any service or item provided, the price charged and in the case of regular payments, the frequency of payments.
- 4.6. The Provider shall not ask for or receive a deposit from any person in respect of the Service(s) provided under the Care and Support Plan and Individual Placement Form.
- 4.7. The Contract Price shall be inclusive of any maintenance, replacement or repair of décor, bedding, furniture, fixtures and fittings damaged as a result of challenging behaviour of the relevant Service User.
- 4.8. The Council may elect at its sole discretion to end any arrangement by which the Provider collects First Party Top-Up Fee Payments directly from the Service User and collect such charges directly from the Service User or any other party paying on his or her behalf in which case Paragraph 15 of this Schedule shall apply.

5. First Party Top-Up Fee Payments

- 5.1. At the Council's discretion, the Service User shall be able to make Top-Up Fee Payments only in the following circumstances:
 - 5.1.1. where they are subject to a 12 week property disregard;
 - 5.1.2. where they have sufficient savings to make the required payments;
 - 5.1.3. where they have a deferred payment agreement in place with the Council; or
 - 5.1.4. where accommodation is being provided under S117 of the Mental Health Act 1983 for mental health aftercare.
- 5.2. Where a Service User has agreed to make a Top-Up Fee Payment to be collected by the Provider, such charge will be specified on the relevant Service User's Individual Placement Form.

- 5.3. The Provider shall follow the procedure set out in Paragraph 6 where there is a Payment Default of First Party Top-Up Fee Payments.

6. Payment Default

- 6.1. Where the Provider collects the First Party Top-Up Fee Payment directly from a Service User, the Provider shall issue monthly invoices or arrange a monthly direct debit with the payee. In the case of Payment Default, the Provider shall follow the process set out below to recover the payments due.
- 6.2. The Provider shall retain copies of all invoices and correspondence issued to the Service User and shall provide copies thereof to the Council on request. The Provider agrees and acknowledges that without copies of all such invoices and correspondence claims to the Council for Payment Defaults cannot be made.
- 6.3. The Provider shall give the Service User notice in writing (Reminder Invoice) of the Payment Default and amounts due once the payment is thirty (30) days overdue. Where the Payment Default remains unpaid sixty (60) days from the payment due date, the Provider shall issue a further notice in writing to the Service User (First Overdue Payment Letter) and at the same time shall send a Notification of Risk of Default (in the form provided in Appendix A) to the social work team identified on the relevant Individual Placement Form.
- 6.4. If there is no satisfactory response from the Service User by day ninety (90) following the payment due date, the Provider shall send a Second Overdue Payment Letter to the Service User advising them that the Provider will now notify the Council formally of the Payment Default, that the Council may take action to recover the amount due, and that the Council reserves the right to move the Service User to alternative accommodation which is suitable to their assessed needs and which is affordable within their personal budget.
- 6.5. Within 21 days of issuing the Second Overdue Payment, the Provider shall make any formal claim to the Council for the Payment Default in writing (in the form provided in Appendix B) giving the amount, the names and addresses of payers, enclosing any invoices and correspondence not already provided. A claim for a Payment Default will not be accepted by the Council if it is received more than 111 days after the original payment due date.
- 6.6. The Council, on receipt of the formal notice, will seek to process such payment promptly within twenty one (21) days provided the amounts due are verified as due under the Contract in line with the Individual Placement Form for the individual Service User and the terms of this Payment Mechanism.
- 6.7. The Council shall not be held liable for any sums due in respect of First Party Top-Up Fee Payments unless notification in writing to the Service User has been made as specified in Paragraphs 6.2 to 6.4 above. For the avoidance of doubt, this shall also apply in the case where a Service User dies and they or their financial representative is in Payment Default (including any Payment Default which occurred before the death of the Service User).

- 6.8. Once the Council has been sent the Notification of Risk of Default, the Provider shall keep the Council informed of any payments on account made by the Service User and provide copies of any correspondence (including emails) received in respect of the debt.
- 6.9. The Council reserves the right to take action to pursue the matter through administrative and/or legal action directly against the Service User to recover any amounts that are subject to a Payment Default and any action taken or not taken by the Council under this Payment Mechanism shall be without prejudice to any other right, action or remedy available to the Council whether arising under the Block Contract, Framework Agreement or otherwise.

7. FNC Contributions

- 7.1. Any FNC Contributions shall be paid on the CCG's behalf by the Council, acting as the CCG's payment agent. The Council will only pay the FNC Contribution specified by the CCG for the relevant Service User.
- 7.2. FNC Contributions are reviewed under arrangements made by the CCG. If the Council has overpaid the Contract Price as a result of late notification of changes to the FNC Contribution or for any other reason, the Council may recover this either by deduction from future payments due to the Provider or by invoicing the Provider.

8. Temporary absences from the Home

- 8.1. The Contract Price payable in respect of a Service User's Placement shall continue to apply (without variation unless expressly agreed in writing otherwise by the Council and Provider) during the period of absence that the relevant Service User's Placement is retained by the Provider with the Council's agreement in accordance with this Paragraph 8. Service Users shall remain responsible for any Top-Up Fee Payment applicable to the Services received by them during such absence period.
- 8.2. During any absence any additional 1:1 support payments applicable to the Service User shall not be paid.
- 8.3. If a Service User is absent but their Placement is retained by the Provider in accordance with this Payment Mechanism, his or her bed shall not be used by anyone else without written agreement of the Parties.

9. Death of a Service User

- 9.1. Upon the death of a Service User, the Provider shall ensure that the bed is available after the date of death plus one (1) clear day.
- 9.2. Any payments in respect of the relevant Service User which are paid in addition to the Guaranteed Block Contract Price will cease to be payable from the date of death.

10. Change in Service Users Financial Status

- 10.1. Where a change to the funding arrangements for a Service User results in that Service User funding their own care, that Service User's Placement in the Guaranteed Block shall be terminated.
- 10.2. In this case, the Provider will enter into a separate arrangement with the Service User directly, within 7 days of the Council confirming the change in the Service User's circumstances. From the effective date (and in any event no later than 7 days after receipt of notice from the Council) of such separate arrangement with the relevant Service User, the termination of that Service User's Placement shall be effective such that it shall no longer form part of the Guaranteed Block and the Provider shall provide an Available Placement in its place so that the Council has the benefit of the full size of the Guaranteed Block. In the event that the Provider is unable to do so, the Contract Price shall be reduced according to the Void Rate, applied on a pro rata basis.

11. Price Review process

- 11.1. The Council will review the Contract Price annually following consideration of the Council's current payment rates, inflation/deflation, costs of regulation, the Council's financial position and the interests of Service Users.
- 11.2. The outcome of the review will be communicated to Providers by the end of March, to take effect the following financial year.
- 11.3. The new rates will commence on the 1st April of the following financial year, as determined by the Government for the changes in welfare benefits.
- 11.4. This Paragraph 11 shall not apply to Continuing Healthcare Services and FNC Contributions or any other sums paid under Paragraph 7 of this Schedule. The rates for Continuing Healthcare Services and FNC Contributions are determined by the CCG and the Department of Health, respectively.
- 11.5. The Provider shall, on request, disclose to the Council in writing within 7 Working Days the amount of any Top-Up Payments which have been requested with regard to any Service User.

12. End of the Block Contract

- 12.1. In the event of termination or expiry of the Block Contract, the Contract Price payable for Service Users previously placed in the Guaranteed Block shall not increase within 12 months of the block ending, unless due to a re-assessment of need, in accordance with the Individual Service Agreement that will apply.

13. Late Payment of Commercial Debts (Interest) Act 1998

- 13.1. Interest on commercial debts is payable under the above Act. However, interest will only run on outstanding payments if a payment has not been issued within 30 days after the receipt of a valid invoice.

13.2. No sum shall be treated as due if in dispute or unascertained, until such time as any such dispute has been resolved, and the amount of such sum has been unequivocally ascertained and is known by the Party responsible for paying it; and in the interests of commercial certainty, no interest may be claimed in respect of any sum unless that claim is made within two months of the date when the sum was paid.

14. Annual Amendment

14.1. The Council reserves the right to amend any part of this Payment Mechanism on an annual basis. Any amendments shall be communicated in advance of 1st April for the year to which they will be relevant.

15. Variation to Pricing Mechanism

In the event that the Council elects to change the way that First Party Top-Up Fee Payments are collected, in accordance with Paragraph 4.8, this Payment Mechanism will be varied as follows:

Paragraph 5.2 and 5.3 to be deleted

Insert at 5.2: "Any First Party Top-Up Fee Payments shall be collected from the Service User by the Council."

Paragraph 6 to be deleted

Appendix A and B to be deleted

16. Contract Price and Size of Guaranteed Block

The following shall apply to this Block Contract for the Contract Term, unless varied in accordance with the terms of the Block Contract.

| | |
|---|----------|
| Contract Price (weekly) | £ |
| Void Rate (weekly) | £ |
| Number of beds in Guaranteed Block | |
| Care Category | |

Funded Nursing Care contributions shall not be available for the Service Users in these beds.

Confirm whether the SU's in the block will be eligible for FNC – note under these terms, the contract price will exclude FNC where payable? And the void rate will be exc FNC.

Appendix A - Notification of Risk of Default

Notification of Risk of Default

To: Purchasing Team Manager Name:

This is to give B&NES Council notification of risk of default in respect of Client Care Charge/Third Party Top-Up Fee (delete as appropriate)

To be completed and sent to Purchasing Team Manager (address as per Schedule 1) when contributions are 60 days overdue.

Name of Care Home:

Contact Telephone Number:

Name of person dealing with this matter:

Name of Service User:

The following amount is outstanding on contributions due for the above person's placement. £

The due date for payment was

A reminder invoice was sent on

Any response from payee/other relevant information

Please note in order to make a claim for defaults, copies of all relevant invoices/correspondence will be required.

Appendix B - Claim to the Council for Default Payment

Formal Notification of Default

To be completed and sent to Purchasing Team Manager (as per Schedule 1) when contributions are 90 days overdue.

To: Purchasing Team Manager Name:

This is formal notification of a claim for a default in respect of contributions due as follows:

Name of Care Home:

Name of person dealing with this matter:

Contact Telephone Number:

Name of Service User:

Name of Payee/Financial Representative:

This is to notify Bath & North East Somerset Council that the following amount £ is outstanding on contributions to the cost of above person's placement which started on (date)

Payment of the sums in default is formally requested pursuant to the Payment Mechanism.

Nature of contribution: Client Care Charge/Third Part Top-Up Fee (please delete as appropriate)

- The due date for payment was
- A reminder invoice was sent on
- A Notification of Risk of Default was sent to the Purchasing Team Manager on
- A second reminder was sent on

Any response from payee/other relevant information

Please enclose copies of all relevant invoices/correspondence.

SCHEDULE 4 - TUPE, Exit and Service Transfer Arrangements

1 DEFINITIONS

1.1 For the purposes of this Schedule 4, the following words and expressions shall bear the following meanings:

“Employee Liabilities” means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims whether in tort, contract or statute or otherwise, demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any expenses and legal costs on an indemnity basis.

“Outgoing Service Provider” means the party providing services to the Council similar or the same as the Services and which is being replaced by the Provider.

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Provider or any Sub-contractor to the Council or to a replacement service provider.

“Service Transfer Date” means the date of a Service Transfer.

“Staffing Information” means written information about each of the Provider’s or its Sub-contractor’s staff as referred to in paragraph 3.1.1 of this Schedule 4 including in particular: the percentage of working time spent by each of them in the provision of the services; job title, remuneration (meaning salary and benefits and any enhanced redundancy terms) pension entitlement, age, gender, length of service, notice period, particulars of employment in accordance with section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two years, details of any grievances raised by any of them in the preceding two years, any Court or employment tribunal proceedings brought by any of them in the preceding two years, any potential proceedings which the Provider’s or its Sub-contractor reasonably considers may be raised by any of them, and information about any of them who have been absent from work for one month or more regardless of the reason at the time the staffing information is requested.

“Transferring Outgoing Service Provider Employees” means those employees of the Outgoing Service Provider to which TUPE will apply on the Commencement Date.

“Transferring Service Provider Employees” has the meaning ascribed to it in Paragraph 3.1.2 of this Schedule 4.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive.

2 TUPE

- 2.1 The Council and the Provider agree that the commencement of the provision of the Services by the Provider under this Block Contract may be a “relevant transfer” to which TUPE will apply. The Council and the Provider further agree that, as a result of the operation of TUPE, the contracts of employment between the Outgoing Service Provider and the Transferring Outgoing Service Provider Employees (except in relation to any contract terms relating to occupational pension schemes) will, if applicable, have effect from the Commencement Date as if originally made between the Provider and each such Transferring Outgoing Service Provider Employee.
- 2.2 The Provider shall perform and discharge all its obligations in respect of all the Transferring Outgoing Service Provider Employees from and after the Commencement Date. The Provider shall indemnify the Council against all Employee Liabilities arising from the Provider’s failure to perform and discharge any such obligation.
- 2.3 The Provider shall indemnify the Council against all Employee Liabilities arising from the Provider’s failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Outgoing Service Provider Employees arising from or as a result of any act or omission by the Provider relating to a Transferring Outgoing Service Provider Employee occurring before the Commencement Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Outgoing Service Provider Employee and/or on or after the Commencement Date or any other matter, event or circumstance occurring or having its origin on or after the Commencement Date.
- 2.4 The Provider shall comply with all applicable obligations under the Pensions Act 2004 in respect of the Transferring Outgoing Service Provider Employees.

3 PRE-SERVICE TRANSFER OBLIGATIONS

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

3.1.1 within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer; or
- (b) receipt of the giving of notice of early termination of this Block Contract or any part thereof; or
- (c) the date which is six months or less before the due expiry date of this Block Contract,

it shall provide a list of those of its, or its Sub-contractors, employees who are wholly or mainly assigned to the provision of the Services which the Provider believes will transfer to the Council or the replacement service provider (as the case may be), together with Staffing Information in relation to such employees;

- 3.1.2 at least 10 Working Days prior to the Service Transfer Date, the Provider shall provide to the Council for itself or on behalf of any replacement service provider (as the case may be) a final list of employees which shall transfer under TUPE (the “**Transferring Service Provider Employees**”); and
- 3.1.3 the Council shall be permitted to use and disclose information provided by the Provider under Paragraph 3 of this Schedule 4 for informing any tenderer or other prospective replacement service provider.
- 3.2 The Provider warrants that the information provided under Paragraph 3 of this Schedule 4 shall be true and accurate.
- 3.3 From the date of the earliest event referred to in Paragraphs 3.1.1(a) to 3.1.1(c) of this Schedule 4, the Provider agrees that it shall not, and agrees to procure that its Sub-contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:
- 3.3.1 increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or
- 3.3.2 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise; or
- 3.3.3 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment).

4 APPLICATION OF TUPE ON A SERVICE TRANSFER

- 4.1 The Council shall determine whether or not based upon a reasonable assessment of the facts a Service Transfer is a situation to which TUPE may apply. In circumstances where it is so reasonably determined, it is agreed the Council or a replacement service provider would inherit liabilities in respect of employees of the Provider or any Sub-contractor engaged in the provision of the Services and, accordingly, the provisions in Paragraphs 5 to 6 of this Schedule 4 shall apply.

5 TUPE INDEMNITIES - EXIT

- 5.1 The Provider shall, and shall procure that any Sub-contractor shall, perform and discharge all its obligations in respect of all the Transferring Service Provider Employees up to and including the Service Transfer Date. The Provider shall indemnify the Council for itself and on behalf of any replacement service provider against all Employee Liabilities arising from the Provider's, or any Sub-contractor's, failure to perform and discharge any such obligation.
- 5.2 The Provider shall indemnify the Council for itself and on behalf of any replacement service provider against any Employee Liabilities in respect of the Transferring Service Provider Employees arising from or as a result of:

- 5.2.1 any act or omission by the Provider or any Sub-contractor occurring on or before the Service Transfer Date;
 - 5.2.2 any claim made by or in respect of any person employed or formerly employed by the Provider or any Sub-contractor other than a Transferring Service Provider Employee for which it is alleged that the Council or any replacement service provider may be liable by virtue of the Block Contract and/or TUPE; and
 - 5.2.3 any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the Provider or any Sub-contractor in relation to its or their obligations under Regulation 13 of TUPE except to the extent that the liability arises from the Council's or any replacement service provider's failure to comply with Regulation 13(4) of TUPE.
- 5.3 If any person who is not a Transferring Service Provider Employee claims, or it is determined, that his contract of employment has been transferred from the Provider or any Sub-contractor to the Council or any replacement service provider pursuant to TUPE, then:
- 5.3.1 the Council will and shall use its reasonable endeavours to procure that the replacement service provider will, within five Working Days of becoming aware of that fact, give notice in writing to the Provider; and
 - 5.3.2 the Provider may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Council or the replacement service provider or take such other steps as it considers appropriate to deal with the matter.
- 5.4 If such offer is accepted, or if the situation has otherwise been resolved by the Provider, the Council shall and shall use its reasonable endeavours to procure that the replacement service provider shall immediately release the person from his employment.
- 5.5 If, after 15 Working Days period specified in Paragraph 5 of this Schedule 4 has elapsed:
- 5.5.1 no such offer of employment has been made; or
 - 5.5.2 such offer has been made but not accepted; or
 - 5.5.3 the situation has not otherwise been resolved,
- the Council may and shall advise the replacement service provider that it may within five Working Days give notice to terminate the employment of such person.
- 5.6 Subject to the Council or the replacement service provider acting in accordance with the provisions of Paragraph 5 of this Schedule 4, the Provider shall indemnify the Council for itself and on behalf of the

replacement service provider against all Employee Liabilities arising out of termination pursuant to the provisions of Paragraph 5.5 of this Schedule 4.

5.7 If any such person as is described in Paragraph 5.3 of this Schedule 4 is neither reemployed by the Provider or any Sub-contractor nor dismissed by the Council or replacement service provider within the time scales set out in this Paragraph 5 of this Schedule 4, such person will be treated as a Transferring Service Provider Employee.

5.8 The Council shall, and shall use its reasonable endeavours to procure that the replacement service provider shall indemnify the Provider against all Employee Liabilities arising from the Council's or a replacement service provider's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Service Provider Employee arising from or as a result of any act or omission by the Council or a replacement service provider relating to a Transferring Service Provider Employee occurring before the Service Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Service Provider Employee or on or after the Service Transfer Date or any other matter, event or circumstance occurring or having its origin after the Service Transfer Date.

6 **THIRD PARTY RIGHTS**

6.1 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 ("**CRITPA**") shall apply to Paragraph 5 of this Schedule 4 to the extent necessary that any replacement service provider shall have the right to enforce the obligations owed to, and indemnities given to, the replacement service provider by the Provider under that Paragraph 5 in its own right pursuant to clause 1(1) of CRITPA.

SCHEDULE 5 - Variations Process

Introduction

- 1.1 This Schedule 5 details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Block Contract.
- 1.2 No variations may be made to the Block Contract unless signed by the Council's Authorised Officer.
- 1.3 The Council may propose a variation to the Block Contract under this Schedule 5 only where the variation does not amount to a material change to the Services.

2. Procedure for proposing a Variation

- 2.1 The Council may propose a variation to the Block Contract using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Council shall serve on the Provider a written notice of the proposal to vary the Block Contract ("**Notice of Variation**").
- 2.3 The Notice of Variation shall:
 - 2.3.1 contain details of the proposed variation providing sufficient information to allow the Provider to assess the variation and consider whether any changes to the Price set out in this Block Contract are necessary; and
 - 2.3.2 require the Provider to notify the Council within 7 days of any proposed changes to the Price set out the Block Contract.
- 2.4 Upon receipt of the Notice of Variation, the Provider has 7 days to respond in writing with any objections to the variation.
- 2.5 Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve the Provider with the variation form set out below to be signed and returned by the Provider within 7 days of receipt.
- 2.6 Upon receipt of a signed agreement from the Provider, the Council shall notify the Provider in writing of the commencement date of the variation.

3. Objections to a Variation

- 3.1 In the event that the Council receives a written objection to a variation, the Council may:
 - 3.1.1 withdraw the proposed variation; or

3.1.2 propose an amendment to the variation.

4. **Changes to the Price**

4.1 Where the Provider can demonstrate that a variation would result in a change to the Price set out in this Block Contract, the Council may require further evidence from the Provider that any additional costs to the Provider will be kept to a minimum.

4.2 The Council may require the Provider to meet and discuss any proposed changes to the Price that would result from a variation.

4.3 Where a change to the Price set out in this Block Contract is agreed by the Council, the Council shall notify its acceptance of the change to the Provider in writing.

4.4 In the event that the Council and the Provider cannot agree to the changes to the Price set out in this Block Contract, the Council may:

4.4.1 withdraw the variation; or

4.4.2 propose an amendment to the variation.

Variation Form

PARTIES TO THIS VARIATION AGREEMENT

THIS VARIATION AGREEMENT is made on _____ (*insert date*) **BETWEEN: BATH & NORTH EAST SOMERSET COUNCIL** (“the Council”) and _____ (“the Provider”).

The Council and the Provider are entering into this Variation Agreement to vary the Block Contract (the “Block Contract”) dated _____ and made between the Council and the Provider relating to [insert title of Block Contract].

The Council and the Provider agree that:

1. The Block Contract is varied as detailed below:

[]

2. The Block Contract shall as from _____ be deemed to have been varied in accordance with the terms of this Variation Agreement.
3. Words and expressions in this Variation Agreement shall have the meanings given to them in the Block Contract.
4. The Block Contract, including any previous variations, shall remain effective and unaltered except as amended by this Variation Agreement.
5. This Variation Agreement shall be governed, interpreted and enforced according to the laws of England and Wales.

Authorised to sign for and on behalf of the Council:

Name:

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Designation:

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Signature:

| |
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|--|

Dated:

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Authorised to sign for and on behalf of the Provider:

PROVIDER:

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|--|

Name:

| |
|--|
| |
|--|

Designation:

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| |
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Signature:

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Dated:

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SCHEDULE 6 – Safeguarding Requirements

Note: Hyperlinks and URLs in this schedule are provided for reference only. It shall be the Provider’s responsibility to ensure it is in compliance with the most up-to-date information and guidance throughout the Contract Period in relation to the matters set out below.

1. Safeguarding Policies and Procedures

- 1.1 The Provider shall ensure that its safeguarding policies, procedures and related guidelines are reviewed at least every three years and updated in light of changes to legislation, national and local guidance (this will include guidance on safeguarding adults from the Department of Health, Home Office, CQC and ADASS).
- 1.2 These policies and procedures shall be in line with the multi-agency policy in place for B&NES – see: <https://www.safeguarding-bathnes.org.uk/adults>.
- 1.3 The Provider shall include in the policy a named person in the organisation that all staff can identify as the lead for safeguarding adults and who deals with relevant concerns. The Provider must also identify a lead for Prevent, Mental Capacity Act, FGM, Self-Neglect and Human Trafficking. This can be the same or different people within the organisation.
- 1.4 The Provider shall have clear procedures which include details of how individual Staff who are concerned that an adult or child is at risk, has or may have been abused, is required to report this immediately to the identified named person within its organisation and consider with them a referral to the relevant social care team and document that decision.
- 1.5 The Provider shall detail in its policy and procedures how it will ensure effective multi-agency working around safeguarding including but not limited to compliance with all relevant B&NES multi-agency policy and procedures including but not limited to the Safeguarding Adult Review Process and Serious Untoward Incident Process where required.
- 1.6 The Provider shall have a clear policy regarding safeguarding children, in the context of the provision of Care Home services and Working Together to Safeguard Children 2018. This policy shall be in line with the multi-agency policy in relation to the safeguarding of children that is in place within B&NES.

2. Effective Supervision

- 2.1 The Provider shall have a supervision policy / statement setting out the arrangements for Staff. This will include details on the frequency and ensure opportunities are provided to discuss safeguarding prevention and safeguarding concerns where relevant for adults or children at risk. Supervision shall be delivered by suitably skilled and experienced supervisors who have access to their own supervision.

3. Safe Recruitment and Retention of Staff

- 3.1 The Provider shall have in place a Safe Recruitment Policy and ensure this is in line with statutory guidance and B&NES multi-agency policies. The Provider shall ensure those Staff responsible for interviewing staff, volunteers and agency staff have undertaken appropriate safer recruitment training.
- 3.2 The Provider shall include in the Safe Recruitment Policy:
 - 3.2.1 details of the recruitment process for paid staff, volunteers and agency staff;
 - 3.2.2 details of how the Provider will comply with Government criteria for Disclosure and Barring Service (DBS) checks (including validation of certificates). <https://www.gov.uk/disclosure-barring-service-check/overview>
 - 3.2.3 a section on managing a positive DBS disclosure. This will include how the Provider deals with convictions, relevant ‘soft’ information and third party information; and

- 3.2.4 that any positive disclosures or relevant information on DBS checks will be reported to the Council's Authorised Officer(s) using the Council's risk assessment tool. Where the Provider is concerned about the DBS check and the appropriateness of the person to work with vulnerable adults, it shall discuss this with the Council safeguarding team.
- 3.3 The Provider shall ensure that the Council's Authorised Officer (and LADO where necessary) is promptly kept advised at all times of any "Relevant Personnel" who subsequent to his/her commencement of employment as a member of staff receives a conviction or caution.
- 3.4 The Council reserves the right to verify the existence and/or substance of any DBS disclosure, or criminal record, or DBS adults' barred list disclosure, or certificate of good conduct, in relation to any member of Staff and the Provider shall immediately provide the Council with any information that the Council reasonably requests to enable it to be satisfied that the obligations under this Schedule and Clause 16 have been met.
- 3.5 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to a Service User.
- 3.6 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to a Service User.
- 3.7 The Provider shall ensure that the Council is kept advised at all times of any Staff, or other persons employed/engaged in the performance of any part of the Services if subsequent to the commencement of his/her employment/engagement hereunder their previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to a Service User.
- 3.8 The Council reserves the right to issue a notice to the Provider requiring it to no longer employ or use the services of any person in the provision of any part of the Services if in the reasonable opinion of the Council the employment or use of such person poses a risk of harm to a Service User. Any such decision by the Council shall be final conclusive and binding on the Provider and the Council shall not (unless it is willing to do so voluntarily and at its absolute discretion) be required, at any time, to disclose to the Provider the reasons for its decision.
- 3.9 On receiving the notice described in Paragraph 3.8 above, the Provider shall forthwith remove such member of Staff from the provision of the Services and shall immediately provide a replacement.

4. Managing Allegations against Paid, Volunteers and Agency Staff

- 4.1 The Provider shall ensure that it includes in its policies and procedures sections which demonstrate its compliance with national and local guidance on allegations management.
- 4.2 The Provider shall designate a lead member of staff with responsibility for managing allegations of abuse against people who work with adults at risk and children, liaising with the Council's safeguarding adults service and designated adult safeguarding manager in accordance with statutory guidance.
- 4.3 With regard to allegations against those Staff working with adults at risk, the B&NES multi-agency procedure will be implemented and the Provider shall ensure it works within this.

5. Knowledge and Use of the Multi-Agency Escalation Policy

- 5.1 The Provider shall ensure the Multi-Agency Escalation Policy is made available and training provided as required to its entire Staff to implement the policy as detailed on the multi-agency web pages:

https://www.safeguarding-bathnes.org.uk/sites/default/files/lsab.lscb_escalation_protocol_.pdf

6. Whistleblowing Policy

- 6.1 The Provider shall have a Whistleblowing Policy with a clear process for raising concerns about individuals or organisational culture at all levels in the organisation.

7. Policy for the Use of Social Networking

- 7.1 The Provider shall have a Use of Social Media Policy for Staff use of social networking. This Policy should detail expectation regarding an individual's behaviour, conduct and interaction when using all social media including social networking sites. This includes contact with adults, parents and children who use the Services.

8. Knowledge and Use of other Policies

- 8.1 The Provider to ensure it is aware of the other policies and guidance the B&NES multi-agency body have in addition to the Multi-Agency Safeguarding Policy and Procedures. See: <https://www.safeguarding-bathnes.org.uk/adults>

9. Single Central Record

- 9.1 The Provider shall maintain records of checks in compliance with DBS guidance, in order to ensure they can provide evidence of any checks (including the DBS) if requested to do so by the Council and reviewed annually.

<https://www.gov.uk/government/publications/handling-of-dbs-certificate-information>

10. Safeguarding Audit and Monitoring

- 10.1 The Provider shall complete the range of audits and monitoring as required by the Council's Authorised Officer and the B&NES multi-agency body when requested. These will be shared with the Council's Authorised Officer who will discuss at your contract review to ensure remedial actions identified are being addressed.
- 10.2 The Provider shall participate in case audits (single or multi-agency) or case reviews and completing relevant actions in order to demonstrate compliance as required.

11. Training and development of staff/volunteers relevant to their role within the organisation

- 11.1 The Provider shall ensure that a safeguarding training needs analysis is undertaken of relevant staff and reviewed annually and that the multi-agency training audit is specifically completed as requested.
- 11.2 The Provider will report Staff training through its annual audit and will maintain the Single Central Record as set out above.
- 11.3 The Provider shall ensure:
- 11.3.1 all Staff are made aware of safeguarding and the law in relation to the Mental Capacity Act 2005 (for agencies providing support to individuals over the age of 16 years) during their induction;
 - 11.3.2 all Staff understand the Provider's safeguarding policies and procedures;
 - 11.3.3 all relevant new Staff will complete safeguarding awareness training either through the Council's Common Induction Training or sourced by the Provider;

- 11.3.4 safeguarding awareness training (referred to as Level 2 training) is completed by all Staff (this is available via the Council or must be sourced independently by the Provider);
- 11.3.5 that relevant staff have the appropriate level of investigation training;
- 11.3.6 that Safeguarding adults training is updated at regular intervals in compliance with current applicable Law and local multi-agency policies including Multi-agency Safeguarding Adults Policy and Procedures in place from time to time, which at the date of this Individual Service Agreement is at least every three years for Staff working with adults;
- 11.3.7 that relevant Staff undertake Mental Capacity Act training during their induction and that this is appropriately refreshed.

SCHEDULE 7 – Processing, Personal Data and Data Subjects

| Description | Details |
|---|---|
| Providing information to data subjects under Article 13 and 14 of the GDPR | <i>Each Party is responsible for ensuring that the Data Subject is informed regarding the processing activity at the point of collecting personal data from the Data Subject in accordance with Article 13 and 14 of the GDPR. Such information shall include relevant information regarding any sharing of personal data.</i> |
| Responding to data subject requests under Articles 15-22 of the GDPR | <i>The Provider shall respond to any Subject Access Request made in relation to data that they hold and forward any Subject Access request to the Council where such records are held separately by the Council.</i> |
| Notifying the Information Commissioner (and data subjects) where necessary about data breaches | <i>Either Party shall notify the Information Commissioner and Data Subject(s) where such a breach has occurred when such a breach is as a result of their party's processing activity and where they are a Data Controller in their own right.</i> <i>In any case where a Default is likely to result in a risk to Data Subjects for whose personal data the other Party is responsible as a Joint Data Controller, the other party must immediately inform the other when such risk has been assessed as being evident.</i> |
| Maintaining records of processing under Article 30 of the GDPR | <i>Both Parties shall maintain a record of processing activity where required in accordance with Article 30 of the GDPR. Such a record should upon request be available for either party to view for the purposes of ensuring the effective management and accountability of personal records.</i> |
| Carrying out any required Data Protection Impact Assessment (DPIA) | <i>Both Parties are responsible for conducting, in their own right, a DPIA where applicable in a format considered appropriate. Any Party which identifies any residual risk associated to jointly controlled records shall notify the other.</i> |
| The agreement must include a statement as to who is the point of contact for data subjects. | <i>Each Party will have a point of contact respectively for any individual wishing to make contact, such point of contact should direct the individual to the other Party where appropriate.</i> |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <i>Either Party shall provide the other with such data as is required for the continued provision of service. This may include transfer to a third party or return to the Council for onward transfer.</i> <i>The Provider will be responsible for informing Data Subjects with Active Cases in any situation where the provision will be moving to a Third Party.</i> <i>Either Party shall retain any such records as required by statute.</i> |