

BATH AND NORTH EAST SOMERSET COUNCIL
FLEXIBLE FRAMEWORK FOR THE PROVISION OF CARE FOR ADULTS IN CARE HOMES
FRAMEWORK AGREEMENT

between

BATH AND NORTH EAST SOMERSET COUNCIL

and

[THE PROVIDER]

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FRAMEWORK AGREEMENT

DATED _____ 2019

BETWEEN:

- (1) **BATH & NORTH EAST SOMERSET COUNCIL** of Lewis House, Manvers Street, Bath, BA1 1JG (the "**Council**"); and
- (2) **[NAME] [(company number [NUMBER])]** whose registered office is at **[ADDRESS]** (the "**Provider**")

WHEREAS:

- (A) The Council placed a contract notice 2019/S 188-457540 on 30/09/2019 in the Official Journal of the European Union seeking applications from potential providers for the provision of care home services under a framework agreement.
- (B) The Provider submitted its SQ Response.
- (C) On the basis of the Provider's SQ Response, the Council selected the Provider to provide care home services on a call-off basis in accordance with this Framework Agreement and the terms of the relevant Call-Off Contract.
- (D) This Framework Agreement sets out the award procedure and the procedure for requesting services which may be required by the Commissioners, the main terms and conditions for the Call-Off Contracts, and the obligations of the Provider during and after the term of this Framework Agreement.
- (E) It is the Parties' intention that there will be the right but no obligation for the Commissioners to call-off any Services under this Framework Agreement during its Term.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Audit"	means an audit carried out pursuant to Clause 12;
"Auditor"	means the National Audit Office or an auditor appointed by

	the Commissioners 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 Framework Agreement are Care Home Selection, Virgin Care Services Ltd and Avon & Wiltshire Mental Health Partnership NHS Trust;
“Authorised Officers”	means the individual(s) appointed by the Provider and the Council to represent them under this Framework Agreement;
“Block”	means the arrangement with a provider for an agreed number of places in a care home that are fully available to the Council to place Service Users;
“Block Contract”	<p>means a legally binding agreement for the provision of Services via a Block under a block contract for the Block specified in such contract made pursuant to the terms of this Framework Agreement:</p> <p>(a) in the case of Services called-off directly by the Council (as referred to in Clause 3.5), in the form set out in Schedule 3; and/or</p> <p>(b) in the case of Continuing Healthcare Services and fully health funded services called-off directly by the CCG (as referred to in Clause 3.6), in form of the NHS Standard Contract (Short Form) as set out in Schedule 4;</p>
“Block Contract Award Criteria”	means the qualitative and quantitative criteria applied to Offers received by the Commissioners in determining the award of a Block;
“Block Opportunity”	means the invitation to Suitable Framework Providers for formal offers to supply the Commissioners with the specified Block and services;
“Caldicott Principles”	means the general principles that health and social care organisations should apply relating to confidentiality and

	security of personal data held by it;
“Call-Off Contract”	means: (i) an Individual Service Agreement; and/or (ii) any Block Contract, in each case entered into between the Provider and the relevant Commissioner, and “Call-Off Contracts” shall be construed accordingly;
“CCG”	means Bath & North East Somerset Clinical Commissioning Group of Clara Cross Lane, Bath BA2 5RP or any successor body or bodies from time to time;
"Change of Control"	shall have the meaning given to it in Clause 19.4;
"Commencement Date"	means 16 th December 2019;
"Commercially Sensitive Information"	means any Confidential Information comprised of information which is provided in writing by the Provider to the Council in confidence and designated as Commercially Sensitive Information;
“Commissioner”	means the Council or CCG, as relevant, and "Commissioners" shall be construed accordingly;
“Commissioner Data”	means: (a) any Personal Data for which the Commissioner is the Data Controller; (b) any data which relate to deceased individuals who can be identified from those data which the Provider is required to collect, generate, process, store or transmit pursuant to this Framework Agreement and/or the Call-Off Contract(s); and (c) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic,

	<p>magnetic, optical or tangible media (including, without limitation, paperwork) and which:</p> <ul style="list-style-type: none"> (i) are supplied to the Provider by or on behalf of the Commissioner; and/or (ii) the Provider is required to collect, generate, process, store or transmit pursuant to this Framework Agreement and/or the Call-Off Contract(s);
<p>“Confidential Information”</p>	<p>means, in relation to this Framework Agreement and the Call-Off Contracts:</p> <ul style="list-style-type: none"> (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, rights in Intellectual Property, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Act 2018; (b) the Commercially Sensitive Information; and (c) the Commissioner Data;
<p>“Continuing Healthcare Services”</p>	<p>means a package of ongoing care that is arranged and funded solely by the National Health Service (NHS) specifically for individuals aged 18 or over who are found to have a ‘primary health need’ and require care to meet health and associated social care needs that have arisen as a result of disability, accident or illness, and which may be called-off under this Framework Agreement pursuant to Clauses Error! Reference source not found. and 3.7;</p>
<p>“Contract Period”</p>	<p>means the term of each Call-Off Contract in force as defined in each such Call-Off Contract;</p>

“Contracting Authority”	means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102);
“Contract, Risk Management and Quality Monitoring of Care Homes Policy”	means the contract, risk management and quality monitoring of care homes policy set out in Schedule 6;
“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;
“Council Default”	means a Default by the Council of a material nature which substantially deprives the Provider of the benefit of this Framework Agreement or which has a material adverse effect on the Provider’s ability to fulfil its obligations under this Framework Agreement;
“CQC Action Plan”	means an action plan drawn up by the Provider in response to an inspection by the Registration Authority in which it is identified that improvements need to be made or are recommended to be made at the specified care home managed by the Provider within a stipulated timeframe;
“Crown”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“Data Controller”	shall have the meaning set out in the Data Protection Act 2018;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Data Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this

	Agreement, including any Personal Data Breach;
“Data Processor”	shall have the meaning set out in the Data Protection Act 2018;
“Data Protection Impact Assessment”	means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	means the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
“Data Protection Officer”	shall have the meaning set out in the Data Protection Act 2018;
“Data Subject”	shall have the meaning set out in the Data Protection Act 2018;
“Data Subject Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“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 Framework Agreement and in respect of which such Party is liable to the other. For the avoidance of doubt, any

	reference in a Call-Off Contract to a default or breach shall be construed as a reference to a default or breach in accordance with the terms of that Call-Off Contract;
“Emergency Placement”	means a Placement that is made at short notice on an urgent basis;
“Extension Period”	means the period set out in Clause 2.2;
“Flexible Framework”	means the Flexible Framework advertised under contract notice 2019/S 188-457540 on 30/09/2019 in the Official Journal of the European Union that was established for the Council to award contracts for its care home services requirements;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Framework Agreement"	means this agreement and all Schedules and Annexes to this agreement;
“Framework Provider”	means the Provider and any other provider that has entered into a framework agreement with the Council as part of the Flexible Framework;
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Framework Agreement and/or (as applicable) any Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Commissioner;
“Good Industry Practice”	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced person engaging in a similar type of

	undertaking under the same or similar circumstances;
“Home”	means a care home from which the Services may be provided by the Provider, as set out in the Provider’s SQ Response and agreed by the Council to be in scope for this Framework Agreement, and as may be updated in writing from time to time between the Provider and the Council, and “Homes” shall be construed accordingly;
"Individual Service Agreement"	means a legally binding agreement for the provision of services (other than via a Block) under an individual service agreement for the Home specified in such agreement made pursuant to the terms of this Framework Agreement and entered into: (a) in the case of Services called-off directly by the Council (as referred to in Clause 3.5), between the Provider and the Council in the form set out in Schedule 2; and/or (b) in the case of Continuing Healthcare Services called-off directly by the CCG (as referred to in Clause 3.6), between the Provider and the CCG in form of the NHS Standard Contract (Short Form) as set out in Schedule 4;
"Information"	shall have the meaning given under Section 84 of the Freedom of Information Act 2000;
“Initial Term”	means the period set out in Clause 2.1.1;
“Insolvency Event”	means: (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or

	<p>amalgamation); or</p> <p>(c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or</p> <p>(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</p> <p>(f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or</p> <p>(g) being a "small company" within the meaning of Section 381 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>(h) any event similar to an event listed in paragraphs (a) to (g) above occurs under the law of any other jurisdiction;</p>
<p>“Intellectual Property”</p>	<p>means all intellectual and industrial property rights of any nature whatsoever, including without limitation:</p> <p>(a) patents, copyrights, database rights, domain names, internet web content including IP addresses and metadata, design rights;</p> <p>(b) all rights in or arising out of discoveries, inventions, improvements, know-how, confidential information, trademarks, designs and works;</p> <p>(c) the right to apply for any form of protection for any of these, applications for and registrations of any of these and</p>

	<p>all resulting registrations,</p> <p>which subsist now or will subsist in future in every part of the world for their full terms including any renewals and extensions, and the right to receive any income from them and any compensation in respect of their infringement;</p>
"ISA Form"	<p>means a document in the form set out in Schedule 1 to this Framework Agreement submitted by the relevant Commissioner in accordance with Clause 5.8 or Clause 5.10 (as the case may be) which sets out the description of the care home services to be supplied in relation to the Service User named in such document in each case;</p>
"ISA Opportunity"	<p>means the invitation to Suitable Framework Providers to engage in the referral procedure in accordance with Clauses 5.4 to 5.10 to provide a Placement for a Service User under the terms of an individual service agreement;</p>
"Joint Controllers"	<p>means where two or more Data Controllers jointly determine the purposes and means of Processing;</p>
"Law"	<p>means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;</p>
"LED"	<p>means the Law Enforcement Directive (Directive (EU) 2016/680);</p>
"Material Default"	<p>means any Default by the Provider:</p> <p>(a) that is of a serious nature and: (i) which has, or is likely to have a significant impact on the delivery of the Services to the Service Users; or (ii) which substantially deprives the Council of the intended benefit of this Framework Agreement;</p> <p>(b) which the Provider repeatedly commits (whether of the same or similar nature or otherwise) so as to reasonably</p>

	<p>justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of his Framework Agreement; or</p> <p>(c) constituting a failure to comply with Clause 7 (Statutory Requirements and Registered Status), Clause 10 (Warranties and Representations), Clause 11 (Corrupts Gifts and Payments of Commission), Clause 12 (Records and Audit Access), Clause 13 (Confidentiality), Clause 14 (Freedom of Information), Clause 15 (Data Protection and Caldicott Principles), Clause 22 (Ongoing Compliance with Selection Requirements) and Clause 25 (Transfer and Sub-contracting);</p>
“Offer”	means the offer documents submitted by Suitable Framework Providers in response to the Block Opportunity;
"Party"	means the Council and/or the Provider and “Parties” shall be construed accordingly;
“Personal Data”	shall have the meaning set out in the Data Protection Act 1998;
“Personal Data Breach”	shall have the meaning set out in the Data Protection Act 1998;
“Placement”	means the placement of a Service User at a care home to receive care home services;
“Placement Cost Breakdown”	means the breakdown of the costs of a Placement for the relevant Service User provided by the Provider in the form set out in Schedule 5;
“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;

“Process”	shall have the meaning given to it under the Data Protection Legislation but, for the purposes of a Call-Off Contract, it shall include both manual and automatic processing, and “Processing” shall be construed accordingly;
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Registration Authority”	means the Care Quality Commission or any successor body or bodies from time to time;
“Published Brokerage Policy”	means the Council’s published process for making Placements, as amended from time to time. The policy as at the date of this Framework Agreement is available at: [TO BE INSERTED];
"Regulatory Bodies"	means the Registration Authority and those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or (as applicable) a Call-Off Contract or any other affairs of the Council, and "Regulatory Body" shall be construed accordingly;
"Requests for Information"	means a request for information or an apparent request under the FOIA;
“Service User”	means an individual service user who the Commissioner has determined is to be placed in a care home to receive care home services, and “Service Users” shall be construed accordingly;

"Services"	means the services (including any Continuing Healthcare Services and/or fully health funded services pursuant to Clause Error! Reference source not found. or Clause 3.7, as applicable) called-off under this Framework Agreement by a Commissioner to be provided by the Provider pursuant to the terms of the relevant Call-Off Contract(s) and as specified in the relevant Services Specification;
"Services Specification"	means the Services Specification set out in each Call-Off Contract;
"SQ"	means the selection questionnaire issued by the Council to providers (including the Provider) who have requested to participate in the Flexible Framework;
"SQ Response"	means the response submitted by the Provider to the SQ ;
"Staff"	means all persons employed by the Provider to perform its obligations under this Framework Agreement and the Call-Off Contracts together with the Provider's servants, agents, suppliers, Sub-contractors, temporary staff, voluntary staff, trainees, students, and self-employed staff used in the performance of its obligations under this Framework Agreement and the Call-Off Contracts;
"Sub-contract"	means any contract or agreement (or proposed contract or agreement) between the Provider and any third party whereby that third party agrees to provide to the Provider all or any part of the Services, or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof, pursuant to this Framework Agreement or a Call-Off Contract (as relevant to the context);
"Sub-contractor"	means any third party with whom the Provider enters into a Sub-contract, or the servants or agents of that third party;

“Sub-processor”	means any third Party appointed to process Personal Data on behalf of that Data Processor related to this Framework Agreement and the Call-Off Contracts;
“Suitable Framework Provider”	means a Framework Provider that: (a) has been identified by the Council in accordance with the Published Brokerage Policy as capable of providing the relevant services and as managing a care home that is potentially suitable for the provision of the relevant Services; and (b) has not been excluded pursuant to Clause 5.14;
"Term"	means the period commencing on the Commencement Date and ending on the expiry of the Initial Term or on the expiry of any Extension Period or on earlier termination of this Framework Agreement;
“Trusted Assessor”	means an individual jointly employed by the Council and CCG who may support Framework Providers with Pre-Admission Assessments;
“VAT”	means value added tax; and
"Working Days"	means Monday to Friday, excluding bank holidays, between the hours of 9 a.m. and 5:30 p.m.

1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 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;

- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7 references in this Framework Agreement to any Clause or Sub-Clause or Schedule or Annex without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule or Annex to this Framework Agreement so numbered;
- 1.2.8 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered;
- 1.2.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.10 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules; and
- 1.2.11 in the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

2. **TERM OF FRAMEWORK AGREEMENT**

- 2.1 This Framework Agreement shall take effect on the Commencement Date and (unless terminated earlier) shall terminate at:
 - 2.1.1 the end of five¹ years from the Commencement Date (the “**Initial Term**”); or
 - 2.1.2 if the Initial Term is extended in accordance with Clause 2.2, at the end of the Extension Period.
- 2.2 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 agree to extend the duration of this Framework Agreement by a period of two years from the end of the Initial Term (the “**Extension Period**”) by agreement in writing.

¹ The maximum initial term will be 5 years from completion of the initial procurement of the framework. A provider may be awarded a lesser term if it joins the framework at a later date.

3. **SCOPE OF FRAMEWORK AGREEMENT**

- 3.1 This Framework Agreement governs the relationship between the Commissioners and the Provider together with the Call-Off Contracts in respect of the provision of the Services by the Provider.
- 3.2 Pursuant to this Framework Agreement but subject always to Clause 4 and Clause 5.1, the Provider shall be eligible to receive ISA Opportunities and Block Opportunities in accordance with Clause 5 during the Term.
- 3.3 The Council and (subject to the following provisions of this Clause 3 and Clause 5.15) the CCG may, at their absolute discretion and from time to time, request Services from the Provider in accordance with award procedure set out in Clause 5 during the Term. The Parties acknowledge and agree that the CCG has the right to request Services pursuant to this Framework Agreement provided that it complies with the award procedure set out in Clause 5.
- 3.4 The Provider and Commissioners shall enter into an Individual Service Agreement for each Home. The entry into an Individual Service Agreement shall not oblige any Commissioner to make any Placements at any Home and the Provider acknowledges and agrees that no undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council or the CCG that any Placements will be awarded or made by entering into an Individual Service Agreement.
- 3.5 Any Placement(s) awarded to the Provider by the Council pursuant to an ISA Opportunity under this Framework Agreement shall be subject to the Individual Service Agreement for the relevant Home entered into between the Provider and the Council in accordance with Clause 5.9. Any Block awarded to the Provider by the Council pursuant to a Block Opportunity under this Framework Agreement (and the placement of Services Users in such Block) shall be subject to the Block Contract for the relevant Block entered into between the Provider and the Council in accordance with Clause 5.13.
- 3.6 Any Placement(s) awarded to the Provider by the CCG pursuant to an ISA Opportunity under this Framework Agreement shall be subject to the Individual Service Agreement for the relevant Home entered into between the Provider and the CCG in accordance with Clause 5.9. Any Block awarded to the Provider by the CCG pursuant to a Block Opportunity under this Framework Agreement (and the placement of Services Users in such Block) shall be subject to the Block Contract for the relevant Block entered into between the Provider and the CCG in accordance with Clause 5.13.
- 3.7 Where the Council and the CCG have entered into a Section 75 agreement (pursuant to the National Health Service Act 2006) delegating responsibility for commissioning Continuing Healthcare Services and/or fully health funded services to the Council, Continuing Healthcare Services and/or fully health funded services may be called-off under this Framework Agreement by the Council and the provision of such services shall be governed

by the relevant Call-Off Contract entered into between the Provider and the Council.

- 3.8 Where, by exception, the CCG itself requests Continuing Healthcare Services and/or fully health funded services pursuant to this Framework Agreement, the provision of such services shall be governed by the NHS Standard Contract (Short Form) in the form set out in Schedule 4 as amended from time to time.

4. **NON-EXCLUSIVITY AND NO GUARANTEE**

- 4.1 The Provider acknowledges that there is no obligation for the Commissioners to purchase any Services from the Provider during the Term.

- 4.2 The Provider acknowledges and agrees that, in entering this Framework Agreement:

4.2.1 no undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council or the CCG in respect of any Placements being made, the total number of Service Users or Placements, length of Call-Off Contracts, or values of the Services to be requested by it pursuant to this Framework Agreement;

4.2.2 no form of exclusivity or volume guarantee, has been granted by the Commissioners for Services from the Provider;

4.2.3 the Commissioners are entitled to enter into any contracts and arrangements with other providers (including issuing an ISA opportunity and/or making a direct award of an individual service agreement) for the provision of any services which are the same as, or similar to, the Services or any part of the Services, whether or not such other providers are Framework Providers; and/or

4.2.4 any Service Users in receipt of personal budgets and/or direct payments from the Commissioners for their care pursuant to the Care Act 2014 shall at all times be entitled (with or without the Commissioner's assistance) to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

5. **REFERRAL PROCEDURE**

- 5.1 The Parties acknowledge that, notwithstanding the remainder of this Clause 5, the Commissioner shall be entitled at all times to alter, cancel, postpone, delay or end the referral procedure set out in this Clause 5 and may decline to make an award or call-off any Services (whether pursuant to an ISA Opportunity or Block Opportunity or otherwise) at any time. Nothing in this Framework Agreement shall oblige any Commissioner to award a Placement or a Block.

- 5.2 Where the Provider advises that it cannot meet the relevant Service User's needs or the Commissioner declines to make an award pursuant to an ISA Opportunity or Block

Opportunity (as applicable) under this Clause 5, the Commissioner shall have no obligations toward the Provider and shall be free to award the relevant Services to another provider.

- 5.3 The Provider agrees and acknowledges that the referral procedure outlined in Clauses 5.4 to 5.10 may be conducted by the Commissioners' agents on their behalf. For the avoidance of doubt, the Council and CCG have contracts with the Authorised Agents who may make assessments of Service Users' needs and referrals on their behalf. The Provider shall assist and co-operate with the Authorised Agents. 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 or the CCG, it shall notify the Council's Authorised Officer promptly.

Referrals under this Framework Agreement for Placements

- 5.4 Clauses 5.5 to 5.9 shall apply to the award of Placements under the Flexible Framework save that, in respect of Emergency Placements, Clause 5.10 shall apply.

- 5.5 If a Commissioner decides to source a Placement through the Flexible Framework then it shall:

5.5.1 issue an ISA Opportunity to Suitable Framework Providers and invite their proposals to deliver the requirements of the ISA Opportunity;

5.5.2 identify the preferred Suitable Framework Provider in accordance with the Published Brokerage Policy; and

5.5.3 issue the Service User's Council Care and Support Plan to the preferred Suitable Framework Provider.

- 5.6 Where the Provider is selected as the preferred Suitable Framework Provider pursuant to Clause 5.5, the Provider shall:

5.6.1 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

5.6.2 within 24 hours of conducting the Pre-Admission Assessment:

(a) confirm to the Commissioner whether or not it is able to meet the Service User's needs; and

(b) if it is able to meet the Service User's needs, submit its Placement Cost Breakdown to the Commissioner.

- 5.7 The Commissioner shall consider the Placement Cost Breakdown submitted by the Provider pursuant to Clause 5.6.2(b) and shall confirm its final decision to the Provider as to whether

or not the Placement shall be awarded to the Provider.

5.8 Where the Commissioner has decided to make the award to the Provider pursuant to Clause 5.7, the Commissioner shall issue the ISA Form to the Provider and the Provider shall return the signed ISA Form to the Commissioner. The Parties agree that any document or communication (including any document or communication in the apparent form of an ISA Form) which is not in the form set out in Schedule 1 shall not constitute an ISA Form under this Framework Agreement.

5.9 The Parties acknowledge and agree that the Placement of a Service User and the ISA Form for that Service User shall be legally binding on the Provider and the relevant Commissioner from the date that is the earlier of:

- (a) the date on which the Provider returns the ISA Form signed by it to the relevant Commissioner; and
- (b) the date on which the Provider accepts admission of the relevant Service User to the relevant Home,

and the terms of the Individual Service Agreement for the relevant Home with the relevant Commissioner shall apply from such date in respect of that Placement and ISA Form.

5.10 Emergency Placements

5.10.1 In exceptional circumstances as determined by the Commissioner, it may request Services in respect of a Service User from Suitable Framework Providers on an urgent basis and without provision of that Service User's Council Care and Support Plan and/or an ISA Form prior to the commencement of such Emergency Placement. In such case, the Commissioner shall conduct a provisional assessment of the Service User's needs and shall provide the relevant Service User's Council Care and Support Plan and/or ISA Form (as applicable) to the Provider no later than five Working Days after commencement of the Emergency Placement.

5.10.2 Where the Commissioner requests to make an Emergency Placement with the Provider, the Provider shall co-operate and assist the Commissioner in respect of that Emergency Placement, and shall as soon as possible, and in such manner possible in the circumstances:

- (a) carry out a Pre-Admission Assessment and confirm to the Commissioner whether or not it is able to meet the Service User's needs; and
- (b) if it is able to meet the Service User's needs, submit its Placement Cost Breakdown for that Emergency Placement to the Commissioner.

- 5.10.3 The Commissioner shall confirm to the Provider if it wishes to proceed with the Emergency Placement with the Provider. The Emergency Placement shall be legally binding on the Provider and the relevant Commissioner in accordance with Clause 5.9.

Referrals under this Framework Agreement for Block Contracts

- 5.11 If a Commissioner wishes to establish a Block through the Flexible Framework then it shall:
- 5.11.1 issue a Block Opportunity to all Suitable Framework Providers;
 - 5.11.2 set a time limit for receipt by it of the Offers;
 - 5.11.3 keep each Offer confidential and unopened until the expiry of the time limit for the receipt by it of Offers;
 - 5.11.4 apply the Block Contract Award Criteria to any compliant Offers and then; and
 - 5.11.5 award the Block to the Framework Provider ranked highest in accordance with the Block Contract Award Criteria; and
 - 5.11.6 if the Framework Provider who is ranked highest is no longer able to provide the relevant Block and/or Services, award the Block to the Framework Provider ranked next highest.
- 5.12 The Provider agrees that all Offers submitted by it in response to a Block Opportunity shall remain open for acceptance for such period specified in the relevant Block Opportunity.
- 5.13 The Parties acknowledge and agree that the issue of a Block Opportunity is an "invitation to treat" by the Commissioner. Accordingly, the Provider's Offer shall constitute its offer to the Commissioner in respect of the relevant Block. The Commissioner shall confirm its acceptance of the Provider's Offer in writing such that the Provider's Offer shall be legally binding on the Parties in respect of the relevant Block and the Provider and the relevant Commissioner shall enter into a Block Contract for the relevant Block.

Exclusion from consideration

- 5.14 Each Commissioner shall be entitled (but not obliged), at its discretion, to exclude a particular Framework Provider from the referrals procedure under Clause 5 and/or from any other consideration for particular Services in any of the following circumstances:
- 5.14.1 the participation of the Framework Provider in the referrals procedure under Clause 5 has been suspended by the Council under Clause 20; or
 - 5.14.2 the Commissioner considers that the awarding of the relevant Services to the Framework Provider in question would create an actual or potential conflict between the pecuniary or personal interests of that Framework Provider and the

duties that would be owed to the Commissioner under the relevant Call-Off Contract.

Responsibility for Awards

5.15 The Provider acknowledges that each Commissioner is independently responsible for the conduct of its award of any Placements and Blocks, and the Call-Off Contracts entered into by it, under this Framework Agreement and that the Council is not responsible or accountable for and shall have no liability whatsoever in relation to:

5.15.1 the conduct of the CCG in relation to this Framework Agreement; or

5.15.2 the performance or non-performance of any Individual Service Agreements and/or Block Contracts between the Provider and the CCG entered into pursuant to this Framework Agreement.

6. CALL-OFF CONTRACT PERFORMANCE

6.1 The Provider shall perform all Call-Off Contracts entered into in accordance with:

6.1.1 the requirements of this Framework Agreement;

6.1.2 Good Industry Practice; and

6.1.3 the terms and conditions of the respective Call-Off Contracts.

7. REGISTERED STATUS

7.1 The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and all Call-Off Contracts.

7.2 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 Framework Agreement and the Call-Off Contracts to provide the relevant 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.

7.3 In the event of the Provider receiving from the Registration Authority any notice or order concerning a 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.

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

- 7.5 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.
- 7.6 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.
- 7.7 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 each of its Homes.

8. AUTHORISED OFFICERS

- 8.1 On or before the Commencement Date, the Provider and the Council shall each appoint a person to act as its Authorised Officer in connection with this Framework Agreement and also any deputy authorised by the Provider and Council respectively to act on behalf of their Authorised Officer in connection with this Framework Agreement. Each Party shall notify the other in writing of the name, address and telephone number of its Authorised Officer(s) and its deputy within 14 days of the appointment. Any change of the Authorised Officer(s) and/or deputies shall be notified in writing to the other Party from time to time as appropriate.
- 8.2 The Provider shall ensure that its 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 Services. 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.

9. PRICES FOR SERVICES

- 9.1 The price payable for the Services shall be as set out in the relevant ISA Form for the relevant Service User or, in respect of a Block, the relevant Block Contract which shall supersede any prices previously offered by, or discussed with, the Provider. The Provider acknowledges and agrees that payment for Services under an Individual Service Agreement shall be subject to the Provider returning the relevant signed ISA Form to the relevant Commissioner.
- 9.2 All sums payable under this Framework Agreement unless otherwise stated are exclusive of VAT and other duties or taxes.
- 9.3 The Provider shall take part in care fee analysis exercises conducted by or on behalf of the Council, such as 'Fair Price of Care'.

10. **WARRANTIES AND REPRESENTATIONS**

10.1 The Provider warrants and represents to the Commissioners that:

10.1.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Framework Agreement;

10.1.2 this Framework Agreement is executed by a duly authorised representative of the Provider;

10.1.3 in entering into this Framework Agreement or the Call-Off Contracts it has not committed any Fraud;

10.1.4 it has obtained all registrations, licences, authorisations, or permits required to perform its obligations under this Framework Agreement and the Call-Off Contracts;

10.1.5 as at the Commencement Date, all information, statements and representations contained in the SQ Response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Commissioners prior to the execution of this Framework Agreement and it will promptly advise the Commissioners 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;

10.1.6 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Framework Agreement;

10.1.7 it has not caused or induced any person to enter such agreement referred to in Clause 10.1.6 above;

10.1.8 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under this Framework Agreement;

10.1.9 it has not paid commission nor agreed to pay any commission to any Commissioner or any other public body or any person employed by or on behalf of a Commissioner or any other public body in connection with this Framework Agreement, the Call-Off Contracts or any other contract with a Commissioner or any other public body or person employed by or on behalf of a Commissioner or any other public body;

10.1.10 it has not committed any offence under the Bribery Act 2010;

10.1.11 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 any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and the Call-Off Contracts which have been or may be entered into with the Commissioners;

10.1.12 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and the Call-Off Contracts which have been or may be entered into with the Commissioners; and

10.1.13 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.

11. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

11.1 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.

11.2 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of any Commissioner or any other public body or person employed by or on behalf of a Commissioner 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 Framework Agreement, the Call-Off Contracts or any other contract with a Commissioner or any other public body or person employed by or on behalf of a Commissioner 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.

11.3 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 Commissioner.

12. RECORDS AND AUDIT ACCESS

12.1 The Provider shall keep and maintain during the Term and until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement or the date of expiry or termination of the final Call-Off Contract in force full and accurate records and accounts in accordance with good accountancy practice of:

12.1.1 the operation of this Framework Agreement including the Services provided under it;

- 12.1.2 the Individual Service Agreements and the amounts paid under them by the Commissioners;
 - 12.1.3 any Block Contracts entered into with the Commissioners and the amounts paid under them by the Commissioners; and
 - 12.1.4 the number of Staff engaged by it from time to time on zero hours contracts.
- 12.2 The Provider shall afford the Commissioners and/or the Auditor such access to such records and accounts as may be required from time to time for the duration set out in Clause 12.1.
- 12.3 The Commissioners 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 pursuant to the Call-Off Contracts, 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 Commissioners.
- 12.4 Subject to the Commissioners' rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- 12.4.1 all information requested by the Auditor within the scope of the Audit;
 - 12.4.2 reasonable access to sites controlled by the Provider and to equipment used in the provision of the Services; and
 - 12.4.3 access to the Staff.
- 12.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 12, unless the Audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

13. **CONFIDENTIALITY**

13.1 Each Party:

- 13.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- 13.1.2 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 Framework Agreement and the Call-Off Contracts or except where disclosure is otherwise expressly permitted by the provisions of this Framework Agreement and the respective Call-Off Contracts.

- 13.2 The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Commissioners under or in connection with this Framework Agreement and the Call-Off Contracts:
- 13.2.1 is given only to such of the Staff and professional advisers engaged to advise it in connection with this Framework Agreement and the Call-Off Contracts as is strictly necessary, and to the extent necessary, for the performance of this Framework Agreement and the Call-Off Contracts, and shall ensure that such Staff and professional advisers are subject to equivalent confidentiality obligations as under this Clause 13; and
 - 13.2.2 is treated as confidential and not disclosed or used (without the relevant Commissioner's prior written approval) by the Provider, any of its Staff or such professional advisers otherwise than for the purposes this Framework Agreement and the Call-Off Contracts.
- 13.3 The provisions of Clauses 13.1 and 13.2 shall not apply to any Confidential Information received by one Party from the other:
- 13.3.1 which is or becomes public knowledge (otherwise than by breach of this Clause 13);
 - 13.3.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - 13.3.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 13.3.4 is independently developed without access to the Confidential Information; or
 - 13.3.5 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 14.
- 13.4 Nothing in this Clause shall prevent the Council disclosing any Confidential Information:
- 13.4.1 for the purpose of the examination and certification of the Council's accounts;
 - 13.4.2 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;
 - 13.4.3 to the Auditors to the extent required for an Audit or in accordance with Clause 18.2;
 - 13.4.4 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 Framework Agreement and the Call-Off Contracts;

- 13.4.5 to any Contracting Authority, Regulatory Body or the other Commissioner;
- 13.4.6 to any person engaged in providing any services to the Commissioners for any purpose relating, or ancillary, to this Framework Agreement and the Call-Off Contracts;
- 13.4.7 other authorities and organisations which handle or oversee public funds (in the interest of public probity); or
- 13.4.8 in accordance with Clause 25.4,

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.

14. **FREEDOM OF INFORMATION**

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

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

- 14.2.1 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;
- 14.2.2 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
- 14.2.3 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.

14.3 The Council shall be responsible for determining, at its absolute discretion and notwithstanding any other provision in this Framework Agreement and the Call-Off Contracts, whether the Commercially Sensitive Information and/or any other Information:

- 14.3.1 is exempt from disclosure in accordance with the FOIA; and/or
- 14.3.2 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.

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

14.4.1 without consulting with the Provider; or

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

14.5 The Provider shall ensure that all information produced in the course of, or relating to, this Framework Agreement and the Call-Off Contracts is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

14.6 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 14.4.

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

15. **DATA PROTECTION AND CALDICOTT PRINCIPLES**

15.1 The Provider and the Council shall each adhere to the Caldicott Principles and in particular shall:

15.1.1 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;

15.1.2 use Personal Data relating to the Service User only when absolutely necessary;

15.1.3 use only the minimum amount of Personal Data relating to the Service User that is necessary;

15.1.4 ensure that access to Personal Data relating to the Service User is provided on a strict "need to know" basis;

15.1.5 ensure everyone with access to Personal Data relating to the Service User is made aware of his or her responsibilities; and

15.1.6 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.

- 15.2 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 Agreement and the Call-Off Contracts.
- 15.3 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 15.4 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:
- 15.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 15.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 15.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 15.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.5 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement and all Call-Off Contracts:
- 15.5.1 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;
 - 15.5.2 ensure that:
 - (a) the Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 7);
 - (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 Agreement; 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 Agreement, delete or return Personal Data (and any copies of it) to the Council on termination of this Agreement and/or the relevant Call-Off Contract (as the case may be) unless the Data Processor is required by Law to retain the Personal Data.

15.6 Subject to Clause 15.7, the Provider shall notify the Council immediately if it:

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

15.6.2 receives any communication from the Information Commissioner or any other Regulatory Body in connection with Personal Data processed jointly under this Agreement and/or a Call-Off Contract;

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

15.6.4 receives any communication from the Information Commissioner or any other

- regulatory authority in connection with Personal Data processed under this Agreement;
- 15.6.5 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
- 15.6.6 becomes aware of a Data Loss Event. The Provider's obligation to notify under Clause 15.6 shall include the provision of further information to the Council in phases, as details become available.
- 15.7 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 15.6 (and insofar as possible within the timescales reasonable required) including by promptly providing:
- 15.7.1 the other Party with full details and copies of the complaint, communication or request;
- 15.7.2 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;
- 15.7.3 the other Party, at its request, with any Personal Data it holds in relation to a Data Subject;
- 15.7.4 assistance as requested by the either Party following any Data Loss Event; and
- 15.7.5 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.
- 15.8 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:
- 15.8.1 the Council determines that the processing is not occasional;
- 15.8.2 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
- 15.8.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 15.9 Where appropriate the Provider shall allow for audits of its Data Processing activity related to this Agreement and/or the Call-Off Contracts by the Council or the Council's designated

auditor.

- 15.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 15.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement or a Call-Off Contract, the relevant Data Controller must:
- 15.11.1 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 15 such that they apply to the Sub-processor; and
- 15.11.2 provide the other Party with such information regarding the Sub-processor as the other Party may reasonable require.
- 15.12 The Provider shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 15.13 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 Agreement).
- 15.14 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 Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 15.15 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, covering the Personal Data under joint control.
- 15.16 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 Agreement or where the requirements of the Data Protection Act 2018 have not been complied with.
- 15.17 The Provider shall have and shall maintain in place throughout the Term its own policies and procedures to ensure its compliance with this Clause 15 and shall provide copies thereof for the Council on request.
- 15.18 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 15 by the Provider and/or any act or omission of any Sub-contractor.

16. **INFORMATION MANAGEMENT AND SECURITY POLICIES**

16.1 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 in the SQ.

16.2 The Provider shall promptly notify the Council in writing if it becomes aware during the performance of this Framework Agreement and/or the Call-Off Contracts of any inaccuracies in or changes to the policies, procedures, measures, controls, mechanisms and systems described in Clause 16.1.

17. **INTELLECTUAL PROPERTY**

17.1 All Intellectual Property whatsoever owned by either the Council or the Provider before the Commencement Date shall remain the property of that party.

17.2 The Provider shall not acquire any right, title or interest in or to the Intellectual Property provided by the Council to the Provider pursuant to this Framework Agreement save as expressly provided in this Framework Agreement.

17.3 The Council grants to the Provider a fully paid-up, worldwide, non-exclusive, non-transferable, royalty-free licence during the Term to use the Intellectual Property owned by the Council and provided to the Provider pursuant to this Framework Agreement to the extent required for the Provider to fulfil its obligations under this Framework Agreement. The Provider shall not sub-license its right to use the Intellectual Property under this Clause 17.3 without the prior written consent of the Council.

17.4 The Provider grants, or shall procure the grant, to the Council a fully paid-up, worldwide, non-exclusive, royalty-free licence with the right to sub-licence during the Term to use, copy and modify the Intellectual Property provided by the Provider to the Council pursuant to this Framework Agreement to the extent required for the Council to receive the full benefit of this Framework Agreement.

17.5 The Provider grants, or shall procure the grant, to the Council a fully paid-up, worldwide, non-exclusive, royalty-free licence with the right to sub-licence during the Term and Contract Period to use, copy and modify the Intellectual Property provided by the Provider to the Council pursuant to this Framework Agreement to the extent required for the Council to receive the Services under the Call-Off Contracts.

17.6 Where the Council has provided the Provider with any of its Intellectual Property for use in connection with this Framework Agreement, the Provider shall, on termination or expiry (as applicable) of this Framework Agreement, cease to use such Intellectual Property immediately and shall either return or destroy such Intellectual Property as requested by the Council.

17.7 In respect of Intellectual Property licensed to the Council under Clause 17.4, the Council shall, on termination or expiry (as applicable) of this Framework Agreement, cease to use such Intellectual Property immediately and shall either return or destroy such Intellectual Property as requested by the Provider. In respect of Intellectual Property licensed to the Council under Clause 17.5, the Council shall, on termination or expiry (as applicable) of the Contract Period, cease to use such Intellectual Property immediately and shall either return or destroy such Intellectual Property as requested by the Provider.

17.8 The rights of the parties in respect of Intellectual Property used or created in the course of the provision of the Services shall be determined by the terms of the relevant Call-Off Contracts.

18. **PUBLICITY**

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

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

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

18.4 The Provider agrees that the Council may publish a list of Framework Providers, along with their relevant Homes and that this list and the status of Framework Providers shall be updated accordingly.

19. **TERMINATION**

Termination by Notice

19.1 Either Party may terminate this Framework Agreement at any time by giving the other Party at least six months' written notice.

Termination on Default

19.2 The Council may terminate this Framework Agreement by serving written notice on the Provider with immediate effect or from such other date specified in such notice:

19.2.1 where the Provider commits a Default and:

- (a) the Provider has not remedied the Default to the satisfaction of the Council within 20 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;
 - (b) the Default is not, in the reasonable opinion of the Council, capable of remedy; or
 - (c) the Default is a Material Default; or
- 19.2.2 the Provider fails to be registered or maintain registration with the Registration Authority;
- 19.2.3 where the Council terminates an Individual Service Agreement or Block Contract awarded to the Provider under this Framework Agreement as a consequence of default by the Provider under the terms of such Individual Service Agreement or Block Contract;
- 19.2.4 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
- 19.2.5 if the Provider, any of its employees or agents breaches Clause 11 and/or commits any offence under the Bribery Act 2010;
- 19.2.6 if the Provider or its personnel commits Fraud in relation to this or any other contract with a Contracting Authority (including the Commissioners);
- 19.2.7 if the Provider suffers an Insolvency Event; or
- 19.2.8 in accordance with Clause 28.2.
- 19.3 The Provider may terminate this Framework Agreement 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 Default and if:
- 19.3.1 the Council has not remedied the Council Default within 20 Working Days, or such other period as may be specified by the Provider, after issue of a written notice specifying the Council Default and requesting it to be remedied; or
 - 19.3.2 the Council Default is not, in the reasonable opinion of the Provider, capable of remedy.

Termination on Change of Control

- 19.4 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 Framework Agreement by giving notice in writing to the Provider with immediate effect within six months of:
- 19.4.1 being notified that a Change of Control has occurred; or

19.4.2 where no notification has been made, the date that the Council becomes aware of the Change of Control,

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

20. SUSPENSION OF PROVIDER'S APPOINTMENT

20.1 Without prejudice to any other rights that it may have (including, where applicable, any termination rights under Clause 19), the Council may suspend by notice in writing the Provider's appointment to supply Services to the Commissioners if any of the circumstances entitling the Council to terminate this Framework Agreement occurs under Clauses 19.2 or 19.4. If the Council provides notice to the Provider in accordance with this Clause 20.1, the Provider's appointment as a Framework Provider shall be suspended 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.

20.2 The Council may also suspend a Provider in accordance with the Council's Contract, Risk Management and Quality Monitoring of Care Homes Policy and publish the Provider's Framework status publicly.

20.3 Notwithstanding the provisions of this Clause 20, the Council shall be entitled to exercise its right to terminate this Framework Agreement in accordance with Clause 19 at any time whether during a suspension period or otherwise.

20.4 Suspension under Clause 20.1 or the Contract, Risk Management and Quality Monitoring of Care Homes Policy pursuant to Clause 20.2 shall mean that a Commissioner shall be entitled (but not obliged) at its discretion to exclude the Provider from any consideration for any particular Services or any referral procedure (including those set out in Clause 5) that may arise during that period.

20.5 Any suspension under this Clause 20 shall not automatically operate to suspend the provision of any Services remaining to be performed under a Call-Off Contract with the Provider, save that suspension under this Clause 20 may also operate as a suspension under a Call-Off Contract only if and to the extent expressly set out in the notice given by the Council to the Provider under Clause 20.1. Any suspension under this Clause 20 shall be without prejudice to any rights a Commissioner may have under a Call-Off Contract including its right of suspension under a Call-Off Contract and each Commissioner shall also be entitled (but not obliged) to exercise its right of suspension pursuant to the terms of a Call-Off Contract.

21. CONSEQUENCES OF TERMINATION AND EXPIRY

21.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Provider shall continue to fulfil its obligations under this Framework Agreement until the date

of expiry or termination of this Framework Agreement or such other date as required under this Clause 21.

- 21.2 Termination or expiry of this Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force and the Provider shall continue to provide the Services under the Call-Off Contracts unless and until they are terminated or expire in accordance with their own terms.
- 21.3 Within 30 Working Days of the date of termination or expiry of this Framework Agreement, the Provider shall return to the relevant Commissioner any Commissioner Data, Personal Data, Confidential Information and other data belonging to the Commissioner in the Provider's possession, power or control, either in its then current format or in a format nominated by the Commissioner, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Commissioner, save that it may keep one copy of any such data or information to comply with the Law and its obligations under this Framework Agreement.
- 21.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 21.5 The provisions of Clauses 11 (Corrupt Gifts and Payments of Commission), 12 (Records and Audit Access), 13 (Confidentiality), 14 (Freedom of Information), 15 (Data Protection and Caldicott Principles), 17 (Intellectual Property), 18 (Publicity), 21 (Consequences of Termination and Expiry), 23 (Liability), 24 (Insurance), 27 (Rights of Third Parties), 30 (Severability), 31 (Cumulative Remedies), 32 (Waiver), 33 (Entire Agreement), 34 (Notices) and 36 (Law and Jurisdiction) shall survive the termination or expiry of this Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

22. **ONGOING COMPLIANCE WITH SELECTION REQUIREMENTS**

- 22.1 The Provider shall notify the Council in writing with immediate effect upon the occurrence of any of the following circumstances:
- 22.1.1 the Provider undergoes a Change of Control;
 - 22.1.2 the Provider is subject to an Insolvency Event;
 - 22.1.3 any change in any consortium structure or sub-contracting arrangements to which the Provider is party for the purposes of this Framework Agreement;
 - 22.1.4 any change in relation to the information included in the SQ Response that may result in the Provider no longer complying with the selection requirements met by the Provider in the SQ Response; and/or

22.1.5 any other reason that the Provider becomes aware of that may affect compliance of the Provider with the selection requirements referred to in Clause 22.1.4.

23. LIABILITY

23.1 Neither Party excludes or limits its liability for:

23.1.1 death or personal injury caused by its negligence, or that of its Staff; or

23.1.2 fraud or fraudulent misrepresentation by it or its Staff.

23.2 The Council shall have no liability whatsoever for any acts, omissions, statements, representations or conduct of any kind of the CCG in relation to this Framework Agreement or any Call-Off Contract entered into between the Provider and the CCG.

23.3 Subject to Clauses 23.1 and 23.2, each Party's total aggregate liability in connection with this Framework Agreement in each 12 month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to 10,000,000 (ten million pounds). For the avoidance of doubt, the Parties acknowledge and agree that this Clause 23 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the relevant Call-Off Contract.

23.4 Subject to Clause 23.3 the Provider shall indemnify and keep indemnified the Council in full from and against all losses, claims, proceedings, actions, damages, costs and expenses (including legal costs and expenses) and any other liabilities whatsoever arising out of, in respect of or in connection with this Framework Agreement including in respect of any breach of its obligations including a Default or Material Breach, 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.

24. INSURANCE

24.1 The Provider shall effect and maintain (and ensure that Sub-contractors involved in the Services effect and maintain) policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under this Framework Agreement including death or personal injury, or loss of or damage to property as more particularly described in the Call-Off Contracts between the Provider and the Commissioner.

24.2 The Provider shall 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.

24.3 If, for whatever reason, the Provider fails to give effect to and maintain the insurances

required by this Framework Agreement then the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

25. TRANSFER AND SUB-CONTRACTING

25.1 This Framework Agreement is personal to the Provider and the Provider shall not assign, sub-contract or otherwise dispose of this Framework Agreement 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.

25.2 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 Framework Agreement shall not relieve the Provider of any of its obligations or duties to the Commissioners.

25.3 The Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to:

25.3.1 any other Contracting Authority;

25.3.2 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

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

provided that any such assignment, novation or disposals shall not increase the burden of the Provider's obligations under this Framework Agreement unless agreed by the Provider in writing.

25.4 In circumstances where the Council enters into any assignment, or novation, or disposal pursuant to Clause 25.3, the Council shall be entitled to disclose to any transferee of this Framework Agreement any Confidential Information of the Provider which relates to the performance of this Framework Agreement 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 Framework Agreement and the Council shall use reasonable endeavours to ensure that the transferee accepts an obligation of confidence.

26. MODERN SLAVERY ACT 2015

26.1 The Provider shall prepare a slavery and human trafficking statement for each financial year in accordance with the Modern Slavery Act 2015 showing:

26.1.1 a statement of the steps the Provider has taken during the financial year to ensure

that slavery and human trafficking is not taking place:

- (a) in any of its supply chains, and
- (b) in any part of its own business, or

26.1.2 a statement that the Provider has taken no such steps.

27. **RIGHTS OF THIRD PARTIES**

27.1 Any provision of this Framework Agreement which expressly or by implication is intended to grant a right and/or confer a benefit on the CCG shall be enforceable directly by the CCG pursuant to the Contracts (Rights of Third Parties) Act 1999.

27.2 Save as provided in Clause 27.1, a person who is not party to this Framework Agreement ("**Third Party**") has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any Third Party (including the CCG).

28. **VARIATIONS TO THIS FRAMEWORK AGREEMENT**

28.1 Save as otherwise expressly stated in this Framework Agreement, no variation of this Framework Agreement shall be valid unless expressly agreed in writing between the Parties.

28.2 If the Council requests a variation to this Framework Agreement as a result of a change in Law and if no agreement is reached in relation to the variation requested by the date 30 days after notification was given under this Clause 28, the Council may, by giving written notice to the Provider terminate this Framework Agreement with immediate effect.

29. **COUNTERPARTS**

This Framework Agreement may be executed in more than one copy and such copies shall, taken together, constitute a single agreement.

30. **SEVERABILITY**

30.1 If any provision of this Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Framework Agreement had been executed with the invalid provision eliminated.

30.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

31. **CUMULATIVE REMEDIES**

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

32. **WAIVER**

32.1 The failure of either Party to insist upon strict performance of any provision of this Framework Agreement, 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 Framework Agreement.

32.2 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 this Clause 32.

32.3 A waiver of any right or remedy arising from a breach of this Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Framework Agreement.

33. **ENTIRE AGREEMENT**

33.1 This Framework Agreement and the SQ Response constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

33.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement 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 this Framework Agreement and the SQ Response. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.

33.3 Nothing in this Clause 33 shall operate to exclude fraud or fraudulent misrepresentation.

34. **NOTICES**

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

34.2 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) or by electronic mail. Such letters shall be addressed to the other Party in the manner referred to

in Clause 34.3. 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.

34.3 For the purposes of Clause 34.2, the address of each Party shall be:

34.3.1 For the Council:

Contracts & Commissioner Officer

Address: Kempthorne House, St Martins Hospital, Clara Cross Lane, Bath.
BA2 5RP

For the attention of: Contracts & Commissioner Officer

Tel: 01225 477915 or 01225 477000

Email: asccommissioning@bathnes.gov.uk

34.3.2 For the Provider:

Address:

For the attention of:

Tel:

Email:

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

35. **DISPUTE RESOLUTION**

35.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Framework Agreement. For the avoidance of doubt, any dispute arising out of or in connection with a Call-Off Contract shall be addressed in accordance with the terms of the relevant Call-Off Contract.

35.2 Any dispute arising in connection with this Framework Agreement shall first be addressed by direct personal liaison between the Authorised Officers.

35.3 If any dispute has not been resolved by the Authorised Officers within 10 Working Days, the

matter shall be referred to be resolved by direct liaison between more senior officers representing both Parties.

35.4 If any dispute has not been resolved by such senior officers within a further 10 Working Days, the matter shall be referred to be resolved by direct liaison between the Proprietor/Chief Executive of the Provider and the Council Director of Social Services for the Council.

35.5 If any dispute has not been resolved by such Proprietor/Chief Executive and Council Director of Social Services within a further 20 Working Days, the matter may be referred at the option of either party to mediation in accordance with the Model Mediation Procedure for the time being of the Centre for Effective Dispute Resolution.

35.6 If a dispute is referred to the Centre for Effective Dispute Resolution the parties shall engage with the Model Mediation Procedure in good faith.

36. **LAW AND JURISDICTION**

Subject to the provisions of Clause 35, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that this Framework Agreement is to be governed by and construed according to English Law.

THIS CONTRACT is for: Care Homes Services

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:

Date:

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:

Date:

**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:			
	Name of the Home:			
	Address:			
	Postcode:		Telephone:	Fax:
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

	(b)*	Temporary / Fixed Term Arrangement: Respite arrangement until: or Other arrangement until:	Is the Service User already being funded in another Nursing or Residential Care Home by Social Care? Yes/No*
	(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))

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

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 – Form of Individual Service Agreement (Council)

<https://www.bathnes.gov.uk/services/care-and-support-and-you/commissioning-future>

SCHEDULE 3 – Form of Block Contract (Council)

<https://www.bathnes.gov.uk/services/care-and-support-and-you/commissioning-future>

SCHEDULE 4 – Form of NHS Standard Contract (Short Form) (CCG)

<https://www.england.nhs.uk/nhs-standard-contract/19-20/>

Short Form version will be used.

SCHEDULE 5 – Form of Placement Cost Breakdown

**Placement
Cost Breakdown**

Name of Service User	
Date of Birth	
Name of Organisation	
Name of Home/Provider	
Home Type	
Address	
Weekly Cost - Service User	
Extra costings	
Name of Person Completing Sheet	
Contact Number/E-mail	
Signature	

Direct Staffing Costs	Cost for client per week
Nurse	
Senior Carer/worker	
Support Worker/Carer	
Night Time	
Waking Night	
Sleep-in Night	
Staff in Support Functions	

Administration/Cleaning/Catering	
Management Staff Costs	
Training and recruitment	

Care Cost Subtotal	
---------------------------	--

Accommodation Cost	Cost for client per week
Room cost	
Non care cost	
Electricity/Gas	
Water	
Telephone/internet costs	
TV costs	
Food	
Vehicle Costs (incl fuel)	
Cleaning/Laundry Materials	
Renewal and Replacement of fixture and fittings	
Fees/ Insurance and Contracts	
Office/administration costs - not staff	
Other (please specify below)	

Non Care Cost Subtotal	
-------------------------------	--

Total	
--------------	--

For completion by B&NES Council/CCG:

Name of Manager authorising additional payments:

Third Party who has accepted responsibility for third Party Contribution above, if any

Name:

Address:

Telephone number/s:

Has the Third Party signed the agreement on the Information Sheet "Care Homes – Third Party Contributions"?

Signed and returned: Yes / Not Yet / Declined

Notes:

Location of filed, signed form:

Version: September 2019

SCHEDULE 6 - Contract, Risk Management and Quality Monitoring of Care Homes Policy



6. Contract risk
management and qua

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	<p><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></p> <p><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></p>
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>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p><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></p> <p><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></p>

	<i>Either Party shall retain any such records as required by statute.</i>
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