

**Dated**

**2019**

---

**BATH & NORTH EAST SOMERSET COUNCIL (1)**

**[NAME] (2)**

---

**INNOVATION CONTRACT  
for Independence at Home services in Bath and North  
East Somerset**

---

***THIS FORM OF CONTRACT WILL GOVERN ALL PART B  
ARRANGEMENTS***

---

© Bevan Brittan LLP

Toronto Square – 7<sup>th</sup> Floor | Toronto Street | Leeds LS1 2HJ  
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF  
T 0370 194 1000 F 0370 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ  
T 0370 194 1000 F 0370 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA  
T 0370 194 1000 F 0370 194 5001

## Contents

Item		Page
	<b>CONDITIONS OF CONTRACT</b>	<b>2</b>
1	DEFINITIONS	2
2	INTERPRETATION OF THIS CONTRACT	7
3	THE SERVICES AND PERSONNEL	8
4	THE SERVICES	8
5	PROVIDER'S RESPONSIBILITY AND KNOWLEDGE	11
6	THE COUNCIL'S AUTHORISED OFFICER	11
7	THE PROVIDER'S AUTHORISED OFFICER	11
8	STAFF	11
9	SAFEGUARDING	14
10	PROVIDER'S EQUIPMENT	15
11	FINANCIAL ARRANGEMENTS	15
12	ASSIGNMENT AND SUBCONTRACTING	15
13	VARIATIONS AND CHANGE CONTROL	16
14	PERFORMANCE MONITORING AND CONTRACT REVIEW	17
15	INTELLECTUAL PROPERTY RIGHTS	17
16	ICT AND COMPUTER SYSTEMS	18
17	AUDIT AND MONITORING RIGHTS	19
18	RECORDS	20
19	PUBLICITY	20
20	CORRUPT GIFTS AND PAYMENTS OF COMMISSION	21
21	EQUALITY	21
22	HEALTH AND SAFETY	22
23	MENTAL CAPACITY ACT AND DEPRIVATION OF LIBERTY SAFEGUARDS	22
24	INSURANCE	23
25	LIABILITY AND INDEMNITY	24
26	FORCE MAJEURE	25
27	BUSINESS CONTINUITY	25
28	COMPLAINTS	26
29	DEFAULTS AND REMEDIES	26
30	TERMINATION	27
31	CONSEQUENCES OF TERMINATION	29
32	EXIT AND HANDOVER ARRANGEMENTS	32
	<b>GENERAL PROVISIONS</b>	<b>33</b>
33	DISPUTE RESOLUTION PROCEDURE	33
34	THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999	34
35	LEGAL PROCEEDINGS	34
36	OMBUDSMAN	34

37	AGENCY	35
38	CONFLICT OF INTEREST	35
39	SEVERANCE	35
40	WAIVER	36
41	NOTICES	36
42	LAW AND JURISDICTION	37
	SCHEDULE 1 - SPECIFICATION	38
	SCHEDULE 2 – CONTRACT RISK MANAGEMENT AND QUALITY MONITORING OF INDEPENDENCE AT HOME POLICY	39
	SCHEDULE 3 – THE COUNCIL’S POLICY STATEMENTS	40
	SCHEDULE 4 – PRICE AND PAYMENT SCHEDULE	41
	SCHEDULE 5 – COMMISSIONING ORDER FORM (IF APPLICABLE)	42
	SCHEDULE 6 - TENDER RESPONSE DOCUMENT	46
	SCHEDULE 7 - NOT USED	47
	SCHEDULE 8 - EXIT PLAN	48
	SCHEDULE 9 - SAFEGUARDING	50

---

## BETWEEN

- (1) **BATH & NORTH EAST SOMERSET COUNCIL** of [ ]  
(**Council**); and
- (2) **[NAME]** (company registered number [number]) [etc] whose registered office is at [address] (**Provider**)

## WHEREAS

- (A) The Provider has been appointed by the Council as a provider pursuant to the Council's flexible framework for Independence at Home services.
- (B) The Parties entered into a framework agreement (the "**Framework Agreement**") on [ *INSERT DATE* ] 2020.
- (C) The Council has undertaken a further mini-competition for certain Part B services and the Provider has been selected to provide such services.
- (D) This Contract sets out the basis on which the Services are to be delivered.

## IT IS AGREED THAT:

### 1 FORM OF AGREEMENT

- 1.1 This agreement with the following attached documents will together form the Contract:

Conditions of Contract  
Schedule 1 - Specification  
Schedule 2 – Contract Risk Management and Quality Monitoring of Independence at Home Policy  
Schedule 3 - The Council's Policy Statements  
Schedule 4 - Price and Payment Schedule  
Schedule 5 – Commissioning Order Form  
Schedule 6 – Tender Response Document  
Schedule 7 – Not Used  
Schedule 8 – Exit Plan  
Schedule 9 – Safeguarding Requirements

- 1.2 The Provider shall provide the Services in accordance with the provisions of the Contract and subject to this, the Council shall make to the Provider the payments for the Services as set out in Schedule 4.

## CONDITIONS OF CONTRACT

### A DEFINITIONS AND INTERPRETATION

#### 1 DEFINITIONS

**Activity Indicator or AI** means the activity indicators as defined and set out in Schedule 1 (Specification);

**Affected Party** means a party affected by a Force Majeure Event;

**Authorisation** means an authorisation given by the Council after completion of the statutory assessment process in relation to a Service User, giving lawful authority to deprive a person of their liberty;

**Authorised Officers** means the individual(s) appointed by the Provider and the Council to represent them under this Contract;

**Best Value Duty** means the duty imposed on the Council by Part 1 of the Local Government Act 1999 ("1999 Act") (as may be amended from time to time) and under which the Council is under a statutory duty continuously to improve the way its functions are exercised having regard to a combination of economy efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Public Sector Audit Appointments Limited and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation;

**Bribery Act** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any related guidance or codes of practice issued by the relevant government department;

**Business Continuity Plan** means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;

**Change in Control** means any change in control as defined by section 416 of the Income and Corporation Taxes Act 1988;

**CHC Assessment** means the assessment prepared by or on behalf of the CCG which identifies the needs of the Service User;

**Commencement Date** means the date specified in Clause 3.1.1, which is the first date on which the Provider is obliged to provide the Services to the Contract Standard;

**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;

**[Commissioning Order or Order** means an order under which an individual Package of Care for Independence at Home Services may be ordered via a Commissioning Order Form;]

**[Commissioning Order Form** means a completed Order in the form as set out in Schedule 5 under which a Package of Care may be ordered;]

**Competent Body** means anybody that has authority to issue standards or recommendations with which either party must comply;

**Conditions of Contract** means these terms and conditions of contract;

**Confidential Information** means

(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 Council Data;

**Continuous Improvement Plan** means the plan at Clause 4.6;

**Contract** means these Conditions of Contract, the form of agreement to which they are attached and all attached schedules;

**Contract Period** means the period during which this Contract shall remain in force and effect pursuant to Clause 3 and shall be the period from the Commencement Date to the Expiry Date inclusive;

**Contract Standard** means that standard set out in Clause 4.1;

**[Council Care and Support Plan** means the plan prepared by the Council in accordance with Sections 24 and 25 of the Care Act 2014 or the CCG's CHC Assessment which sets out the support and care services which are necessary in order to meet the outcome requirements of the Service User;]

**[Council Data** means the Council Care and Support Plans;]

**Council's Equipment** means all fixed equipment and/or mechanisms provided by the Council at a Service User's home for use in connection with the Services;

**Council's Policy Statements** means those Policy Statements of the Council set out in Schedule 3

**Council's Safeguarding Requirements** means the Council's requirements and procedures on safeguarding set out in Schedule 9;

**Council's System** means the Council's computing environment as at the Commencement Date (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council in connection with this Contract which is owned by the Council, or licensed to the Council by a third party and which interfaces with the Provider's System or which is otherwise necessary for the Service Users(s) and/or Council to receive the Services;

**CQC** means the Care Quality Commission or any successor body to the CQC which has responsibility for the regulation of services like the Services;

**Critical Performance Default** means a Performance Default which significantly or materially affects the Provider's provision of the Services to the Contract Standard or undermines the fundamental purpose of the Contract;

**DBS** means the Disclosure and Barring Service;

**Deprivation of Liberty/DoL** means the framework of safeguards set out in Schedule A1 of the Mental Capacity Act 2005 (as amended and updated from time to time);

**Dispute Resolution Procedure** means the procedure set out in Clause 33 of this Contract;

**Environmental Information Regulations** means the Environmental Information Regulations 2004;

**Equalities Legislation** means all Law which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers

(Prevention of Less Favourable Treatment) Regulations 2000 as amended, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and / or any preceding, successor or amending Legislation concerning the same;

**Expiry Date** means the date specified in Clause 3.1.2;

**Exit Plan** means the exit plan set out in Schedule 8;

**Fellow Provider** means any other provider engaged to provide services to the Council;

**Force Majeure Event** means any of the following events that materially affecting the performance by a Party of its obligations under this Contract: fire, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; terrorist attack; nuclear, chemical or biological contamination; extreme adverse weather conditions; interruption or failure of utility service;

**Former Provider** means a provider previously appointed by the Council to provide all or any of the services but who is not a provider under the Framework Agreement or a Fellow Provider who ceases to be a provider under the Framework Agreement or who hands over responsibility for a Service User to another Fellow Provider;

**GDPR** means the General Data Protection Regulation as set out in Regulation (EC) 2016/679 as amended and or updated from time to time;

**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;

**Independence at Home** is an umbrella term used to describe the Services commissioned under this Framework Agreement whether via an Individual Service Agreement, a Part B Long Term Contract or a Part B Short Term Contract. The term supports the creative thinking needed by the Council and the providers to transform Services in order to meet future demand. References to "Independence at Home" also include references to "Homecare and Domiciliary Care", "Waking Nights" and "Sleep In Nights" and any other services which are added to the Framework Agreement including but not limited to "Live-in Care".

**Intellectual Property** means all intellectual and industrial property rights of any nature whatsoever, including without limitation:

- (d) patents, copyrights, database rights, domain names, internet web content including IP addresses and metadata, design rights;
- (e) all rights in or arising out of discoveries, inventions, improvements, know-how, confidential information, trademarks, designs and works;
- (f) the right to apply for any form of protection for any of these, applications for and registrations of any of these and all resulting registrations,

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;

**IR35** means the off-payroll working rules which apply to a worker providing services through an intermediary;

**Key Performance Indicators or KPI** means the key performance indicators as defined and set out in Schedule 1 (Specification);

**Law** 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;

**MCA** means the Mental Capacity Act 2005 (as amended and updated from time to time);

**Ombudsman** means a local commissioner (known as the Local Government and Social Care Ombudsman) who is responsible for conducting investigations for the Commission for Local Administration in England (CLAE), which is a body of commissioners established under the Local Government Act 1974 and which, has the power to investigate complaints about councils (and certain other bodies) in England;

**[Package of Care** means an arrangement for a Service User to receive care which supports their Independence at Home pursuant to the terms of the Framework Agreement and this Contract and in accordance with that Service User's Commissioning Order;]

**Party** means a party to this Contract and **Parties** shall be construed accordingly;

**Performance Default** means any negligent act or omission; and/or

- any breach of contract; and/or
- any failure by the Provider properly to perform any of the obligations, terms and Clauses of the Contract including (without limitation) any failure to perform the Services to the Contract Standard;

**Personal Data** shall have the meaning set out in the Data Protection Act 2018;

**Price** means the price for the Services as set out in Schedule 4;

**Provider's Authorised Officer** means such person nominated in writing by the Provider to act as the Provider's representative in relation to this Contract and approved by the Council's Authorised Officer;

**Provider's Equipment** has the meaning set out in Clause 10.1;

**Provider's System** means any computer or IT system used in the provision of the Services;

**Regulatory Body** means any body other than CQC carrying out regulatory functions in relation to the Provider and/or for which the Provider has legal responsibility;

**Replacement Provider** means any third party appointed by the Council from time to time to provide all or any of services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party;

**Serious Incident Report** means the report of a serious incident;

**Service(s)** means the Services to be provided pursuant to this Contract, more particularly described in the Specification and any reference to "Service" shall be construed accordingly;



**Service User** means an individual service user that the Council has determined shall receive Services to support Independence at Home, and **Service Users** shall be construed accordingly;

**Significant Decision** means a decision that needs to be made relating to serious medical treatment or change of accommodation of a Service User in circumstances in which there are no friends or family who it would be appropriate to consult on the decision;

**Specification** means the description of the Services to be provided under this Contract appearing in Schedule 1;

**Staff** means all persons employed or engaged by the Provider to perform this Contract 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 Contract and/or the provision of the Services;

**Sub-contract** means a contract between the Provider and a Sub-contractor;

**Sub-contractor** means any third party with whom the Provider enters into a Sub-contract, or the servants or agents of that third party;

**Tender Response Document** means the Provider's proposal to meet the Specification setting out the methods to be used by the Provider to provide the Services under this Contract as set out in Schedule 6;

**VAT** means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function;

**Variation** means any change to:

- (a) the terms and Conditions of Contract or Schedules;
- (b) the Services or any part of them; and/or
- (c) the standard of performance required of a Party materially over and above that expressly stated or provided for under this Contract; and

**Working Day** means Monday to Friday excluding bank holidays between the hours of 9 a.m. and 5.30 p.m..

## **2 INTERPRETATION OF THIS CONTRACT**

- 2.1 Except as otherwise expressly provided, the documents comprising this Contract are to be taken as mutually explanatory of one another.
- 2.2 Any references to any Act of Parliament or other Law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force.
- 2.3 Headings are included for ease of reference only and shall not affect the construction or interpretation of any provision to which they refer.
- 2.4 The expression 'person' used in this Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- 2.5 In this Contract, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.

- 2.6 References to Clauses or Schedules shall be to Clauses and Schedules of this Contract.
- 2.7 Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the control of the Provider.
- 2.8 Any reference to a month or day shall, unless otherwise specified, be to a calendar month or day respectively.
- 2.9 Words preceding “include”, “includes” or “including” shall be construed without limitation to the words which followed those words.
- 2.10 In the event of any inconsistency or conflict between the main body of this Contract and the Schedules, the order or precedence as set out below shall prevail:
- 2.10.1 the Conditions of Contract;
  - 2.10.2 Schedule 1 (Specification);
  - 2.10.3 the remaining Schedules of this Contract

### **3 THE SERVICES AND PERSONNEL**

#### **3.1 Duration of Contract**

- 3.1.1 The Contract shall commence on **[insert date]** (“Commencement Date”)
- 3.1.2 The Provider shall provide the Services to the Contract Standard from the Commencement Date until the soonest of:
  - The Contract is terminated in accordance with its terms
  - **[insert expiry date]** (“Expiry Date”)

3.2 The Provider shall execute the Contract promptly and shall not, save unless and to the extent that it may be expressly authorised in advance in writing by the Council, commence the provision of the Services or to be entitled to any part of the Price(s) or any remuneration whatsoever until it has so executed the Contract.

3.3 The Provider shall arrange and attend as many meetings with the Council, the Former Provider(s) and any Fellow Provider as are reasonably necessary for the successful mobilisation of the Services.

### **4 THE SERVICES**

4.1 The Provider shall provide the Services throughout the Contract Period:

- 4.1.1 in accordance with this Contract and in particular the Specification and the Tender Response Document, which forms part of the Contract;
- 4.1.2 [in accordance with the relevant Council Care and Support Plan(s);]
- 4.1.3 in co-operation with Fellow Providers and any other Council contractors as required to perform the Services;
- 4.1.4 in a manner that does not damage the Council’s reputation;
- 4.1.5 in accordance with Law;

- 4.1.6 in accordance with Good Industry Practice;
- 4.1.7 in accordance with the Council's Policy Statements and the Council's policies;
- 4.1.8 using all due skill care and diligence as would a competent provider carrying out services of the same scope or nature as the Services;
- 4.1.9 as a minimum, meeting (and with the aim of exceeding) the minimum thresholds (targets) of the KPIs and in a way that allows the Provider to provide information in response to the AIs;
- 4.1.10 where applicable, and subject to the Council's prior written consent, in accordance with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
- 4.1.11 responding, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
- 4.1.12 considering and responding to the recommendations arising from any audit, death, Serious Incident Report;
- 4.1.13 in compliance with the recommendations issued from time to time by a Competent Body; and
- 4.1.14 in accordance with the reasonable written instructions of the Council's Authorised Officer pursuant to or in connection with the Contract.

together "the **Contract Standard**":

In the event of any conflict between these requirements, the highest or most onerous of these shall apply.

- 4.2 The Provider shall obtain and maintain for the entire Contract Period such registration with any relevant bodies required by Law in order to provide the Services.
- 4.3 The Provider shall discharge its obligations under this Contract by deploying appropriate, competent, qualified and trained Staff. Except as otherwise specified in this Contract, the Provider shall provide a sufficient number of Staff, the Provider's Equipment, the Provider's System, information and data and anything else whatsoever required for the provision of the Services within the Price to the Contract Standard.
- 4.4 The Provider shall provide the Services in a manner that conserves energy, water, wood, paper and other resources to reduce waste and phases out the use of ozone depleting substances and minimises the release of greenhouse gases volatile organic compounds and other substances damaging to health and the environment.
- 4.5 The Provider shall be entitled to use the Council's Equipment as required for the provision of the Services. Where the Provider becomes aware that the Council's Equipment is not functioning as it should be or is broken or damaged the Provider will report this as soon as possible to the Council's Authorised Officer.
- 4.6 In recognition of the Best Value Duty, the Parties to this Contract shall work together to identify how the Services can be continuously improved. Reviews shall be conducted in accordance with Clause 17 (Performance Monitoring and Contract Review) and these Conditions of Contract generally. The Provider agrees to co-operate fully and assist the Council at no extra charge in any manner reasonably required by the Council in connection with the Council's performance of this duty. The Provider shall observe and facilitate the Council's request of cost savings. Where appropriate, a Variation shall then

be made in accordance with Clause 13 (Variations and Change Control), provided that such Variation does not constitute a material change to the Contract.

- 4.7 The Provider shall not undertake any act or omission which has or could reasonably be expected to have an adverse impact upon the provision of any of the Services or the Council's System, the Council's Equipment or services of the Council.
- 4.8 The Provider acknowledges the Council's statutory duties under the Care Act 2014 regarding market oversight, sustainability and provider failure. Where requested to do so by the Council for these purposes, the Provider shall provide the Commissioner with appropriate information regarding the Provider's organisation and services and shall support local system resilience initiatives run by the Council.

#### **Withholding and/or Discontinuation of Service**

- 4.9 Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:
- 4.9.1 who displays abusive, violent or threatening behaviour unacceptable to the Provider (acting reasonably and taking into account the mental health of that Service User);
  - 4.9.2 in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
  - 4.9.3 where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.
- 4.10 If the Provider proposes not to provide or to stop providing a Service to any Service User under Clause 4.9:
- 4.10.1 the Provider must inform the Council in writing without delay and wherever possible in advance of taking such action and the Council and the Provider will discuss the issue to explore if there is any alternative to the cessation of Services;
  - 4.10.2 where Services will no longer be provided and where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Working Days);
  - 4.10.3 the Provider must tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;

provided that nothing in this Clause 4.10 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

- 4.11 If the Provider gives a notification of a death or other incident to the CQC or any other Regulatory Body which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Council within five (5) Working Days.

#### **Exclusivity**

- 4.12 This Contract shall not be exclusive and the Council reserves the right to place work constituting all or any part of the Services with a Fellow Provider and/or a third party at

any time during the Contract Period or to carry out that work itself. The Council offers no warranties, guarantees or assurances in relation to the volume or value of any work to be carried out by the Provider under the Contract. The Council also reserves the right to omit any part or parts of the Services pursuant to the variation provisions in Clause 13.

### **Service Commencement**

- 4.13 This Contract shall commence upon the Provider commencing delivery of the Services.
- 4.14 The terms applicable to the Services shall comprise of the terms of this Contract[, and the Order (if applicable)] [and any relevant Council Care and Support Plans].

## **5 PROVIDER'S RESPONSIBILITY AND KNOWLEDGE**

- 5.1 The Provider shall be responsible for the accuracy of all documentation and information or anything else supplied to the Council by the Provider and the Provider shall pay the Council any extra costs incurred by the Council as a result of any discrepancies, errors or omissions therein.
- 5.2 The Provider shall alert the Council to the risk or the existence of any reason which may prevent the Provider from performing the Services as required in whole or in part as long in advance (and as fully) as reasonably practicable in the circumstances.
- 5.3 The Provider shall be deemed to have examined the documents constituting the Contract, including the Conditions of Contract, the Specification and the other Schedules and to have satisfied itself before tendering as to the correctness and sufficiency of its tender submission to cover all its obligations under this Contract and for all matters and things necessary for the proper completion of the Services.

## **6 THE COUNCIL'S AUTHORISED OFFICER**

- 6.1 The Council shall appoint an Authorised Officer to administer this Contract and act as its representative. The Council may from time to time replace the Authorised Officer and shall notify the Provider in writing of this change.
- 6.2 The Council's Authorised Officer shall upon written notice to the Provider be entitled to delegate their role to other persons as they see fit.
- 6.3 Where this Contract authorises the Council's Authorised Officer to instruct the Provider, the Provider shall comply with these instructions.

## **7 THE PROVIDER'S AUTHORISED OFFICER**

- 7.1 The Provider shall provide in writing the name, telephone number and contact address for the Provider's Authorised Officer who will be the Council's main point of contact for the Provider. Where there is a change to the Provider's Authorised Officer the Provider must notify the Council as soon as possible and in any event within 5 Working Days.
- 7.2 The Provider's Authorised Officer must be empowered by the Provider to take decisions in respect of this Contract and must be available to the Council during reasonable working hours. The Provider's Authorised Officer shall upon reasonable notice attend any meetings relating to the Services at the request of the Council.
- 7.3 The Provider's Authorised Officer must have sufficient knowledge of this Contract and the Services to act as the Provider's main representative.

## **8 STAFF**

- 8.1 The Provider shall ensure that the Staff shall be sufficient in number, be properly and suitably qualified, competent, skilled, honest, instructed, trained, experienced and supervised and shall at all times exercise due care in the execution of their duties as well as procuring that such Staff shall:
- 8.1.1 comply with the relevant provisions of the Contract;
  - 8.1.2 comply with all relevant Law; policies, codes, rules, procedures and standards of the Provider; and all relevant rules, codes, policies, procedures and standards of the Council notified to the Provider by the Council's Authorised Officer from time to time; and
  - 8.1.3 enable the Provider to perform its obligations under the Contract during periods of absence of staff due to sickness, parental leave, holidays, training or otherwise; and
  - 8.1.4 comply with the rules, regulatory and statutory requirements in relation to health and safety at work.
- 8.2 The Provider shall be liable for all costs relating to its Staff and any acts, omissions or defaults of its Staff howsoever arising in connection with the Services.
- 8.3 The Provider shall at all times during the Contract Period provide sufficient supervisory Staff to ensure that Staff are adequately supervised and able to perform their duties to the Contract Standard.
- 8.4 The Provider shall give the maximum possible advance warning of prospective industrial action and/or industrial dispute by its Staff likely to affect the performance of this Contract and shall take all reasonable steps to mitigate any impact on the Services. For the avoidance of doubt, industrial action by Staff shall not relieve the Provider of the obligation to provide the Services to the Contract Standard.
- 8.5 The Provider shall not (and shall take all reasonable steps to ensure that members of Staff shall not) in any circumstances solicit or accept gratuity, tips or any other form of money taking or reward, from any person in connection with the provision of all or any part of the Services other than pursuant to the terms of the Contract.
- 8.6 The commission of any act prohibited by Clause 8.5 by the Provider or any member of Staff will be regarded by the Council as a matter of serious misconduct and, without prejudice to any of the Council's other rights under this Contract or at law:
- 8.6.1 the Council shall be entitled in respect of the commission of any such act by a member of Staff to require the removal forthwith from the provision of the Services such member or members of Staff and the Provider shall comply with this requirement; and
  - 8.6.2 the Council shall be entitled in respect of the commission of any act by the Provider to terminate this Contract forthwith or on such period of notice as the Council may decide.
- 8.7 For the avoidance of doubt, Clause 8.6.1 shall operate without prejudice to any rights the Council may have under Clause 34 to terminate this Contract.
- 8.8 The Provider shall complete the Adult Social Care Workforce Data Set (ASCWDS) as applicable to its workforce on at least an annual basis in accordance with the timetable set out by the Council.

### **Pre-Employment Checks**

- 8.9 The Provider shall carry out appropriate pre-employment checks prior to the appointment of an individual in connection with the Services (including but not limited to references, medical clearance (if required), proof of right to work in the UK, professional registration/qualifications and the issuing of a satisfactory disclosure and barring certificate by the DBS, where relevant). Prior to making any offer of employment, the Provider shall carry out a risk assessment: in relation to any non-UK citizen and any UK citizen who requires a criminal records check and who has lived abroad for six (6) months or more in the five (5) year period prior to being considered for appointment in connection with the Services.
- 8.10 The Provider shall obtain consent prior to the commencement of any work by any Staff member employed to work in connection with this Contract, to carry out all necessary checks under Clause 8.9 and shall obtain consent of the Staff member to provide evidence upon the request of the Council that such checks have been carried out.
- 8.11 Without affecting the Provider's rights and obligations as an employer, the Council or the Council's Authorised Officer may, to the extent reasonably necessary to protect the standards and reputation of the Council and following consultation with the Provider, request the Provider to remove from the Services or relevant part of it any person or member of Staff (including the Provider's Authorised Officer) and the Provider shall forthwith comply with such request. The Council shall not in any circumstances be liable to any such person or member of Staff or to the Provider in relation to any such removal, and the Provider shall fully and promptly indemnify the Council in respect of any claims brought by any such person or member of Staff arising from it.
- 8.12 The Provider through monitoring of its compliance with this Clause 8 shall ensure that the Council is kept advised at all times of any Staff member who, subsequent to his/her commencement of and during employment as a Staff member, commits any criminal act whatsoever or whose previous convictions become known to the Provider or commits any act which puts or could put users of the Service or the Council at risk.

#### **Offer of Employment**

- 8.13 The Provider shall not, for the Contract Period or a period of twelve (12) months afterwards, employ or offer employment to any of the Council's employees and/or personnel who have been associated with the procurement and/or the contract management of the Services. This Clause shall not affect an offer of employment which results from a response by the employee and/or personnel member to any public advertisement.

#### **Status of Staff**

- 8.14 This Contract constitutes a contract for the provision of services and not a contract of employment.
- 8.15 For the avoidance of doubt, the Parties do not intend Staff working on or for this Contract to be off-payroll working through an intermediary for the purposes of IR35. The Provider must promptly notify the Council in writing if the status of any Staff changes in the case where they fall within IR35.
- 8.16 The Council may at its absolute discretion request from the Provider or Sub-contractor at any time throughout the Contract Period until six (6) years after the Contract has been terminated, information in order to determine whether Staff fall within IR35. The Provider or Sub-contractor shall provide the requested information promptly and in sufficient detail to the satisfaction of the Council.
- 8.17 The Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council for and in respect of:

- 8.17.1 any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where recovery is not prohibited by law;
- 8.17.2 all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
- 8.17.3 any liability arising from any employment related claim or any claim based on worker status or IR35 (including reasonable costs and expenses) brought by the Provider or Sub-contractor against the Council arising out or in connection with the provision of the Services.

## **9 SAFEGUARDING**

- 9.1 The Provider shall maintain and keep up to date appropriate policies on child protection and the protection of adults at risk. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health guidelines and also with policies, procedures and guidelines issued by the Council. The Provider shall ensure that these policies, procedures and guidelines are communicated to Staff and that appropriate training is provided to Staff in relation to them.
- 9.2 The Provider shall comply with the safeguarding obligations set out in Schedule 9.
- 9.3 The Provider shall have in place comprehensive procedures for reporting of and managing allegations against Staff which demonstrates the promotion of the safety and welfare of children and/or adults at risk and are compliant with statutory requirements. The Provider must be able to evidence safe and robust recruitment procedures and practice for all Staff working with children and/or adults at risk. The Provider shall ensure that Staff know about and comply with the requirements to make accurate, factual and contemporaneous records to ensure compliance with this Clause 9. The Provider shall comply with the procedures in the Council's Safeguarding Requirements in relation to this Clause 9:
- 9.4 The Provider shall:
  - 9.4.1 ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the DBS adults' barred list;
  - 9.4.2 monitor the suitability of the level, and validity, of the checks under this Clause 9.4 for each member of Staff; and
  - 9.4.3 ensure compliance with the Council's Safeguarding Requirements in relation to the recruitment and retention of its Staff.
- 9.5 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012 and any regulations made thereunder, as amended from time to time.

### **Requests for Information from the Disclosure and Barring Service (DBS)**

- 9.6 The Council shall be entitled under its duty to the DBS to respond to requests from the DBS for further information already held by the Council in relation to the Staff.



9.7 The Provider shall respond to requests from the Council within a reasonable time about criminal records checks in relation to the Staff and shall cooperate with the Council to enable the Council to comply with its duty to the DBS.

9.8 Failure by the Provider to comply with the safeguarding provisions of this Clause 9 shall entitle the Council to terminate the Contract in accordance with Clause 30.

## **10 PROVIDER'S EQUIPMENT**

10.1 The Provider shall ensure that throughout the Contract Period it supplies or makes available and maintains in good condition and in working order and within the Prices all such resources and equipment as may be necessary for the proper provision of the Services to the Contract Standard including, without limitation, Staff, labour, machinery, equipment, materials, transport and delivery facilities, consumables, premises, software, hardware and vehicles (the "Provider's Equipment").

10.2 The Provider shall ensure that all licence fees, consent fees, maintenance fees and royalties relevant to the provision of the Services are paid and up to date throughout the Contract Period and that the Provider's Equipment is properly maintained and replaced when necessary.

10.3 Any vehicles used in the performance of the Contract shall be maintained by the Provider in a safe condition, must be fully insured and must be certified as roadworthy.

10.4 Any specialist equipment used in the performance of the Contract shall be maintained by the Provider in accordance with the manufacturer's instructions, and must not be used or modified in such a way as to negate or diminish any insurance cover which may relate to the equipment or create an additional risk to users of that equipment.

10.5 The Provider shall be responsible for the security, insurance and storage of the Provider's Equipment and the Council shall be under no liability in respect thereof.

10.6 The Provider shall ensure that any hired or leased equipment is clearly marked with the name of the hirer or owner or that this information is provided to the Council's Authorised Officer.

10.7 The Provider shall keep all hazardous Provider's Equipment provided for use by the Provider under proper control and safekeeping and shall ensure that all Provider's Equipment is properly and clearly labelled.

10.8 Should the Provider engage, use or rely upon the equipment or resources of a Fellow Provider or other party then this shall be an arrangement between the Provider and that other party and the Provider shall be responsible for that equipment or resource as part of the Provider's Equipment and the risk of engaging, using or relying upon such equipment or resources shall for the purpose of this Contract be entirely the Provider's.

## **11 FINANCIAL ARRANGEMENTS**

11.1 The Council will pay the Provider for the Services delivered pursuant to this Contract in accordance with Schedule 4

## **12 ASSIGNMENT AND SUBCONTRACTING**

12.1 The Provider shall not sub-contract the whole or any part of the Services 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.

- 12.2 Any breach by the Provider of Clause 12.1 shall constitute a substantial and material breach of Contract by the Provider.
- 12.3 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 Contract shall not relieve the Provider of any of its obligations or duties to the Council.
- 12.4 In the event the Council consents to any assignment, sub-contracting, novation or other arrangement under this Clause 12, it shall be entitled to require and the Provider shall pay the reasonable administrative and legal costs to the Council of formalising this change, including without limitation relating to the new contractual relationship between the Council and the Provider or any third party. For the avoidance of doubt, any such costs may be set-off from sums due to the Provider pursuant to paragraph 5 of Schedule 4.
- 12.5 The Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:
- 12.5.1 any other contracting authority;
  - 12.5.2 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
  - 12.5.3 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 Contract unless agreed by the Provider in writing.

- 12.6 In circumstances where the Council enters into any assignment, or novation, or disposal pursuant to Clause 12.5, the Council shall be entitled to disclose to any transferee of this Contract any Confidential Information of the Provider which relates to the performance of this Contract by the Provider. In such circumstances the Council may authorise the transferee to use such Confidential Information for purposes directly relating to the performance of this Contract and the Council shall use reasonable endeavours to ensure that the transferee accepts an obligation of confidence.

### **13 VARIATIONS AND CHANGE CONTROL**

- 13.1 Subject to Clause 13.2 no Variation shall be effective unless it is recorded in writing and signed by duly authorised representatives of the Council and the Provider. Neither the Council nor the Provider shall implement a variation other than one which is in accordance with this Clause 13.

#### **Council Variations**

- 13.2 The Council may by notice in writing to the Provider, from time to time, require minor and/or non-substantial changes to the Services, the way the Services are provided or the Contract; such changes shall not be nor be considered to be a Variation to this Contract nor shall the Prices be affected thereby.
- 13.3 The Council may propose a Variation by giving written notice to the Provider (“the Council Variation Notice”).
- 13.4 The Council Variation Notice shall:

13.4.1 set out the Variation required in sufficient detail to enable the Provider to calculate and provide an estimate of any adjustment to the Prices in accordance with Clause 13.5 below;

13.4.2 state the date on or by which the Council wishes the Variation to be implemented.

13.5 The Council shall consult with the Provider with respect to the Variation, and the Provider shall provide the Council on or before the date falling ten (10) Working Days after the date of the Council Variation Notice with a reasonable estimate of the increase or reduction in the Prices (if any), or proposal of other changes to the terms set out herein, which it believes should occur as a result of the changes set out in the Council Variation Notice.

13.6 [Changes to the Package of Care for an individual Service User, will be effected by the Council issuing a revised Commissioning Order Form for that Service User and will not take effect as Variations.]

## **14 PERFORMANCE MONITORING AND CONTRACT REVIEW**

14.1 Contract review meetings will be held between the Provider's Authorised Officer and the Council's Authorised Officer at intervals specified in advance by the Council and monitoring visits shall also take place in order to monitor the Provider's performance both on this Contract as a whole and against the Specification, the Council's Contract Risk Management and Quality Monitoring of Independence at Home Policy, the Key Performance Indicators and the Activity Indicators.

14.2 The Council may undertake monitoring visits. The Council shall also be entitled to share information on the Provider's performance and other aspects of the Provider's delivery of the Services with other strategic partners.

14.3 The Council shall wherever possible provide five (5) Working Days' notice of monitoring visits but reserve the right to make unannounced monitoring visits at any time.

14.4 The Provider shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews (including procuring the attendance of the Provider's Authorised Officers at such meetings), monitoring visits and any further reasonable methods which the Council undertakes to assess the Provider's performance and contract compliance. The Provider shall provide all reasonable co-operation, facilitation and information required at no additional cost to the Council.

14.5 The Provider shall monitor and report to the Council its performance against any Key Performance Indicators and Activity Indicators and provide all information in the format required.

14.6 The Council may elect, at its own cost, to undertake its own performance monitoring at any stage for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract. The Provider will use its reasonable endeavours to assist the Council in such an exercise. The Council shall notify the Provider of the outcome of the performance monitoring exercise, and (without prejudice to the Council's other rights under this Contract) the Provider shall have due regard to the Council's findings in relation to the future provision of the Services.

## **15 INTELLECTUAL PROPERTY RIGHTS**

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

- 15.2 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 Contract save as expressly provided in this Contract.
- 15.3 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 to use, copy and modify the Intellectual Property provided by the Provider to the Council to the extent required for the Council to receive the Services.
- 15.4 Where the Council has provided the Provider with any of its Intellectual Property for use in connection with this Contract, the Provider shall, on termination or expiry (as applicable) of this Contract, cease to use such Intellectual Property immediately and shall either return or destroy such Intellectual Property as requested by the Council.
- 15.5 Save as provided in Clause 15.1, or otherwise agreed expressly in writing between the Parties, all Intellectual Property Rights in any data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or developed by the Provider in connection with provision of the Services shall vest in and be the property of the Council and the Provider hereby assigns all such Intellectual Property Rights to the Council provided that in the event that any such Intellectual Property Rights do not vest in the Council by operation of law, the Provider shall execute or cause to be executed, including by any employee or agent of its any and all deeds, documents and acts required to assign such Intellectual Property Rights to the Council.

#### **Intellectual Property Rights Indemnity**

- 15.6 The Provider warrants, undertakes and represents to the Council that:
- 15.6.1 it has not given and will not give permission to any third party to use any of the material to which Clause 15.5 relates nor any of the Intellectual Property Rights in such material; and
- 15.6.2 neither the provision of the Services by the Provider nor its receipt by the Council will infringe the Intellectual Property Rights of any third party.
- 15.6.3 The Provider agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any claim by any third party that their Intellectual Property Rights have been infringed by the provision of the Services or anything supplied, created or done by the Provider in connection with such provision.
- 15.6.4 The Provider waives any moral rights in relation to any materials it creates in connection with the provision of the Services to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such material or other materials, infringes the Provider's moral rights.

#### **16 ICT AND COMPUTER SYSTEMS**

- 16.1 The Provider shall ensure that the Provider's System(s) enables the Provider to comply with its obligations under the Contract and in particular (but without limitation) to perform the Services to the Contract Standard. On the reasonable instructions of the Council, the Provider shall ensure that the Provider's System is capable of being rendered compatible with and is in all respects capable of interfacing with the Council's System. The Provider shall be required to co-operate with the Council with the introduction of

any new system during the life of this Contract, such as a Provider portal or system for improving payment processes.

- 16.2 The Provider shall ensure that at all times during the Contract Period (and until any computerised Council Data has been returned to the Council in accordance with the provisions of the Contract) it has in place adequate and robust business continuity and disaster recovery procedures that are in accordance with good data management and security practice and that shall include as a minimum undertaking a full back up of all Council Data at least once per day so that in the event of the partial or total failure of the Provider's computer system the Provider shall be able to continue to provide the Services without interruption and comply with its remaining obligations under this Clause 16.
- 16.3 The Provider shall ensure that any licences in relation to software to be used in connection with the provision of the Services allow for the software to be tested by the Council on a machine and at a location to be determined by the Council and allow the Council to so test all such software before it is used operationally by the Provider if it so requests.
- 16.4 The Provider shall ensure that at all times during the Contract Period it has in place a good quality robust firewall and virus protection software so as to guard against any virus, worm, Trojan horse, logic bomb, time bomb, back door, trap, disabling device, malicious code, or other contaminants or similar form of code intended (or having that effect) to cause harm, damage, or to prevent or restrict the use of the Council Data, the Council's System or any other computer system relevant to this Service (together, "Contaminants"). The Provider warrants, undertakes and represents that it shall not introduce any Contaminants into the Council's System, nor any other systems which the Provider is provided access to for the purpose of performing the Services.
- 16.5 The Provider shall at all times ensure that the Staff use the Council's System and Council's Equipment in accordance with these Conditions of Contract and the Provider shall be solely responsible for any of the Staff's breach of this Contract.
- 16.6 The Provider shall indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, arising out of or in connection with the Staff's use of the Council's System and/or the Council's Equipment.

## **17 AUDIT AND MONITORING RIGHTS**

- 17.1 The Provider shall permit or procure permission for any authorised representative of the Council (including such other nominated officer and/or the Council's internal auditors and external auditors) and representatives of the Council's partners (at the Council's request), to have reasonable access for audit and monitoring purposes to information, documents, data, systems or the Provider's Equipment used in the provision of the Services and any information, documents, reports, Sub-contractors and their staff, assets or information, or anything else reasonably required for inspection by the Council and/or its authorised representatives.
- 17.2 Access shall include (without limiting the generality of the foregoing):
- 17.2.1 reasonable access to the Staff who are engaged in the provision of the Services;
  - 17.2.2 inspection of the processes, policies and arrangements being made by the Provider to comply with its obligations under this Contract;
  - 17.2.3 access to any office or base used by the Provider in connection with the delivery of Services; and

17.2.4 access to such financial and other records kept as part of the provision of the Services by the Provider as may be reasonably required from time to time by the Council to enable the Council to verify the sums due and payable under the terms of this Contract and how the Services are being provided. The Provider shall keep and maintain for a period of six (6) years after the end of the Contract Period, or a longer period as may be agreed between the Parties, full and accurate records of this Contract including Services provided under it, all expenditure reimbursed by the Council and all payments made by the Council. For the avoidance of doubt this Clause 17 is in addition to any legal requirement and does not negate the need for any such retention of records. If the Council's audit of financial records reveals that the Council has overpaid all or part of the Price then the Provider shall immediately pay the Council the balance of such overpayment and the reasonable cost of such audit.

17.3 Access may be at any time without notice, provided there is good cause for access without notice, and provided that the Council's Authorised Officer shall comply with all reasonable requirements of the Provider for the purpose of protecting the confidentiality of the information of third parties, and no information will be divulged to any third party save in pursuance of statutory or other legal obligations.

17.4 The Council reserves the right to jointly with the Provider audit or monitor the performance of a Sub-contractor.

## **18 RECORDS**

18.1 The Provider shall maintain current and accurate records of all work carried out in the provision of the Services and shall ensure that these records shall be available for inspection by an authorised representative of the Council at all reasonable times in accordance with Clause 17. Such records shall be provided to the Council in such searchable and identifiable form as the Council may request at any stage during the Contract Period. [In case of high value Part B Contract may request transparency in relation to a provider's costs and relevant management information].

18.2 The Provider shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of records irrespective of the storage media which are under the Provider's control as part of the Services including the Council Data.

18.3 The Provider shall ensure that access to records is only provided to Staff as is necessary in connection with the provision of Services. The Provider shall, prior to providing such access, ensure that those Staff members are made aware of the obligations upon the Provider in their dealings with the records, including the safeguards the Staff members must comply with.

18.4 If any records are accidentally or wilfully destroyed otherwise than by the Council or on the authorisation of the Council and in the event that the Provider does not have in place a method for reinstatement or replacement of such records, within five (5) Working Days of receipt of a notice from the Council and without prejudice to the Council's other rights at law, the Provider shall reimburse the Council's reasonable costs in restoring such records and/or the Council Data such costs are to be accounted for during the term of this Contract by way of rebate in subsequent invoices for the sums paid pursuant hereto.

## **19 PUBLICITY**

19.1 Except with the prior written approval of the Council, the Provider shall not make any press announcements or responses or publicise this Contract or any part thereof in any way.

- 19.2 Where requested, the Provider shall comply with the Council's local brand policy and guidelines, as revised, updated or re-issued from time to time.
- 19.3 The Provider shall take reasonable steps to ensure the observance of the provisions of this Clause 19 by all of its Staff.
- 19.4 The Council shall have the right to publish the results of the Provider's CQC ratings and the Provider's status under the Framework Agreement on its website and elsewhere and to publicly share information in relation to ratings and status (and the Provider acknowledges that such information is not Commercially Sensitive Information or Confidential Information).

## **20 CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 20.1 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.
- 20.2 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council or any other public body or person employed by or on behalf of the Council or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Contract or any other contract with the Council or any other public body or person employed by or on behalf of the Council or any other public body (including its award to the Provider, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.
- 20.3 Neither the Provider nor any of their Staff shall solicit or accept any gratuity, expensive 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 Council.
- 20.4 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- 20.5 The Provider shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency for the purpose of compliance with the Bribery Act 2010.
- 20.6 The Provider shall have an anti-bribery policy.
- 20.7 If any breach of this Clause 20 is suspected or known, the Provider must notify the Council immediately.

## **21 EQUALITY**

- 21.1 The Provider shall comply with Equalities Legislation in its performance of the Services.
- 21.2 The Provider shall:
- 21.2.1 not discriminate against any person or for any reason within the meaning and scope of Equalities Legislation;
  - 21.2.2 comply with any official guidance and codes of practice in relation to promoting equality in employment and the provision of services;

- 21.2.3 have an equal opportunities policy approved by the Council or shall have adopted the Council's own equal opportunities policy and procedures which is available on: <https://www.bathnes.gov.uk/services/your-council-and-democracy/equality-and-diversity>
  - 21.2.4 take all reasonable steps to secure the observance of this Clause 21 by its Staff employed in connection with the Contract; and
  - 21.2.5 provide such information as the Council may reasonably require for the purpose of assessing the Provider's continued compliance with this Clause 21 and to assist in the Council's reporting obligations in respect of equal opportunities.
- 21.3 If a Court, tribunal or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) shall make a serious finding of unlawful discrimination against the Provider in connection with similar services to the Services performed in the United Kingdom such that the Council would acting reasonably find it difficult to continue in contract with the Provider without a real and significant risk to its reputation, the Council shall:
- 21.3.1 have a right to terminate the Contract pursuant to Clause 30; or
  - 21.3.2 shall be entitled to require all reasonable steps from the Provider to mitigate such risks and ensure that any repetition of the circumstances leading to the finding does not occur.

## **22 HEALTH AND SAFETY**

- 22.1 The Provider shall at all times comply with the Health and Safety at Work etc Act 1974 and all other Law relating to the health and safety of Staff and others who may be affected by the Provider's acts or omissions in providing the Services under this Contract.
- 22.2 The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work etc Act 1974 and all relevant Law relating to health and safety and provisions within this Clause 22.

## **23 MENTAL CAPACITY ACT AND DEPRIVATION OF LIBERTY SAFEGUARDS**

- 23.1 In relation to the Mental Capacity Act 2005 (as amended) ("MCA"):
  - 23.1.1 the Provider, including all Staff, shall comply with the provisions set out in the MCA when delivering Services;
  - 23.1.2 the Provider shall have a clear written policy approved by the Council on its approach to the MCA. The policy may be reviewed by the Council from time to time and shall ensure that any reasonable amendments requested by the Council are incorporated into its equality/ diversity policy within twenty one (21) days of request by the Council;
  - 23.1.3 all Staff must be trained at induction to follow the reporting procedures specified in the policy and that training should be updated at least annually; and
  - 23.1.4 the Provider shall notify the Council immediately where a Service User may lack capacity and a Significant Decision is to be made.
- 23.2 In relation to the Deprivation of Liberty Safeguards (or any equivalent future safeguards):



- 23.2.1 the Provider shall have regard to the MCA Code of Practice including the supplementary DoL Safeguards Code of Practice in its role as a Managing Authority;
- 23.2.2 the Provider shall have a clear written policy approved by the Council and reviewed from time to time on its approach to the DoL, which includes but is not limited to the following:
  - 23.2.3 a clear procedure for the recording of information;
  - 23.2.4 the process for applying for an Authorisation to the Council; and
  - 23.2.5 the process once a Authorisation request has been made;
- 23.3 The Provider shall appoint a lead contact to act on behalf of the Provider for all purposes connected with the MCA and DoL (or any equivalent future safeguards). The Provider shall notify the Council in writing of the lead contact details prior to the Commencement Date;
- 23.4 The Provider shall forthwith give notice in writing to the Council of any change in the identity or contact details of the person appointed as lead contact; and
- 23.5 The Provider shall give maximum possible notice to the Council before changing its lead contact.

## **INSURANCE AND INDEMNITY**

### **24 INSURANCE**

- 24.1 Without prejudice to the general indemnity given at Clause 25 and without thereby limiting its responsibilities under this Clause 24 the Provider shall take out and maintain throughout the Contract Period as a minimum the following insurance cover with a reputable insurance company:

#### **Public Liability Insurance**

- 24.1.1 Public liability insurance of a minimum of five million pounds (£5,000,000) or such greater sum as the Provider may choose in respect of any one incident.

#### **Employers Liability Insurance**

- 24.1.2 Employers Liability Insurance of a minimum of ten million pounds (£10,000,000) or such greater sum as the Provider may choose in respect of any one incident.

#### **Professional Indemnity Insurance**

- 24.1.3 Professional Indemnity Insurance in respect of the Provider's obligations to provide the Services with reasonable skill care and diligence in an amount of not less than five million pounds (£5,000,000) for any one occurrence or a series of occurrences arising out of any one event for a period of twelve (12) years from the completion date of this Contract.
- 24.2 In the event that such insurance cover required by this Clause 24 ceases to be available to the Provider at all or on commercially reasonable rates, the Provider shall notify the Council immediately and the Parties shall acting reasonably consider alternative arrangements. In the event that there are no alternative arrangements that

are acceptable to the Council, the Council shall be entitled to terminate the Contract under Clause 30.

- 24.3 The Provider shall supply to the Council at the Commencement Date forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming that the Provider's insurance policies comply with each of the insurance requirements set out in Clause 24.1.
- 24.4 Where this is possible for the type of insurance cover, the insurance policies shall contain an indemnity to principal clause in favour of the Council.
- 24.5 If the Provider fails to comply with the requirements of this Clause 24, then without prejudice to the Council's other rights under this Contract in respect of such breach, the Council shall be entitled to obtain equivalent insurance cover for the Services on behalf of the Provider and shall be entitled to recover from the Provider as a debt those reasonable costs of obtaining and maintaining such cover.

## **25 LIABILITY AND INDEMNITY**

- 25.1 Neither Party shall exclude or limit its own liability for:
  - 25.1.1 death or personal injury caused by its negligence, or that of its own personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors);
  - 25.1.2 acts of fraud or fraudulent misrepresentation by it or its personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors);
  - 25.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 25.1.4 any other matter where such limit or exclusion is not permitted under Law.
- 25.2 The Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its employees and agents against all liabilities, demands, proceedings, actions, damages, costs (including legal costs), losses, fines, monetary penalty notices, claims, charges, expenses and any other liabilities whatsoever in any way arising out of or in connection with the Services and/or this Contract and including but not limited to:
  - 25.2.1 any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider;
  - 25.2.2 the Provider's failure to provide all or any part of the Services in accordance with the Contract or at all;
  - 25.2.3 any breach by the Provider of any of the provisions of the Contract; and/or the use by the Provider of the Council's Equipment; and
  - 25.2.4 any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Provider.
- 25.3 The liability set out in Clause 25.2 shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services so far as the management of, or instructions issued to, such third parties is the responsibility of the Provider.

## RELIEF

### 26 FORCE MAJEURE

- 26.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and for that reason it is prevented from carrying out all or a material part of its obligations under this Contract by that Force Majeure Event.
- 26.2 On the occurrence of a Force Majeure Event, the Party affected shall notify the other Party within twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 26.3 Within forty-eight (48) hours of the Force Majeure Event, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 26.4 If the Force Majeure continues for more than twenty one (21) days the Council shall be entitled to terminate this Contract under Clause 30.2.3.
- 26.5 The existence of an event of Force Majeure does not affect the Council's other rights to terminate this Contract set out in Clause 30.

### 27 BUSINESS CONTINUITY

- 27.1 The Provider shall prepare and maintain a Business Continuity Plan capable of acceptance by the Council which shall ensure that the Provider can restore or regenerate full business activity in the event of an internal or external threat within a reasonable period of time as specified by the Council.
- 27.2 The Business Continuity Plan shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of a major failure of the Services or any part thereof, as determined by the Council's Authorised Officer.
- 27.3 The Provider shall review and assess the Business Continuity Plan every twelve (12) months and produce a report to the Council within ten (10) Working Days of the success or failure. If the Council is not at that time satisfied with the Business Continuity Plan provided by the Provider, the Provider shall be required to take all reasonable steps to improve the Business Continuity Plan to the Council's satisfaction.
- 27.4 Any costs incurred in the preparation and implementation of the Business Continuity Plan shall be the responsibility of the Provider.
- 27.5 In the event of the following occurring in relation to any premises used to deliver services or homes of customers in receipt of services:
- 27.5.1 A Met Office Amber or Red weather warning, or;
  - 27.5.2 An Environment Agency Flood Warning or Severe Flood Warning, or;
  - 27.5.3 Industrial Action, or;
  - 27.5.4 Any police restrictions that might affect delivery of services

The following terms will apply;

- 27.5.5 The Provider will immediately notify the Council's contact centre (ASIST or EDT as appropriate or any alternative which replaces ASIST or EDT during the Contract Term) if any customers are, or will be, at risk of harm due to undeliverable services;
- 27.5.6 The Provider will contact the Council's contract manager to confirm implementation of a business continuity plan, with appropriate details and provisions agreed by both parties where required;
- 27.5.7 Within one (1) working day of the notice specified in Clause 27.5.5, the contract manager will confirm appropriate temporary suspension of Services for any affected Service Users. Payments will be adjusted in line with standard temporary suspension terms outlined in Schedule 4 The Council may at this point offer an exceptional or part payment, without indemnifying or providing warranty above the financial obligations contained elsewhere in this contract, to enable the Provider to maintain continuity of services.

## **28 COMPLAINTS**

- 28.1 The Provider shall ensure that it has a complaints procedure in place from the Commencement Date in respect of complaints about the Services, which is in accordance with the Ombudsman guidance on a complaints system, which shall be approved by the Council from time to time.
- 28.2 The Provider shall comply with and report against the Key Performance Indicators (and any relevant Activity Indicators) in respect of complaints.

## **29 DEFAULTS AND REMEDIES**

- 29.1 Remedies Available to the Provider:

### **Interest**

- 29.2 In the event that any undisputed invoice correctly rendered by the Provider remains unpaid by the Council after thirty (30) days the Provider shall notify the Council in writing giving the Council fifteen (15) further calendar days to pay such an invoice. If the invoice remains unpaid, the Provider shall be entitled to charge interest from the date on which the fifteen (15) day period expired at a rate of two per cent (2%) above the base lending rate published by the Bank of England. The Parties agree that this Clause constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998.

### **Relief from Liability**

- 29.3 The Provider shall not be liable to the Council for a Performance Default to the extent that it is directly caused by a breach of contract by the Council or Fellow Provider provided that the Provider has notified the Council in writing as soon as it has come to the Provider's attention that such an event has or will occur.

### **Termination by Provider**

- 29.4 Without prejudice to the Provider's rights pursuant to this Clause 29, if the Council commits a repudiatory breach of contract, the Provider shall be entitled to terminate the Contract by notice in writing provided it first notifies the Council in writing of the breach of contract, stating its intention to issue a termination notice and giving the Council a period to remedy the breach, such period being reasonable in the circumstances and, in any event not less than twenty (20) Working Days or such other longer period as may be reasonable in the circumstances having regard to the nature and effect of the

breach. If the Council remedies the breach within such period the Provider shall not be entitled to accept the repudiation and/or terminate the Contract.

#### **Remedies available to the Council:**

#### **Suspension**

29.5 If the Council determines the Provider to be in breach of the standards specified in Schedule 1 of this contract, it may enact a suspension of the Contract and/or any new Packages of Care. The Provider will be notified of this action within three (3) Working Days. The Council will communicate this outcome to local partner agencies and may publicise this information on its website. This will be reviewed and lifted entirely at the discretion of the Council.

### **30 TERMINATION**

30.1 The Council may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Contract in whole or in part if any one of the events set out in Clause 30.2 occurs.

30.2 The events are:

30.2.1 if the Provider breaches Clause 20 (Corrupt Gifts and Payment of Commission);

30.2.2 if an express right to terminate has arisen within Clause 24 (Insurance);

30.2.3 if an express right to terminate has arisen under Clause 26 (Force Majeure);

30.2.4 if the Provider:

(a) ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services;

(b) undergoes a Change in Control;

(c) suffers one or more of the following:

(i) the appointment of a liquidator, receiver, administrative receiver or administrator;

(ii) insolvency or winding up within the meaning of relevant Law;

(iii) having substantial distress attachment execution or other legal process levelled enforced, sued or threatened upon any of its property;

(iv) the suspension of any publicly offered equities;

(v) the freezing of substantial assets; or

(vi) any other event of incapacity rendering the Provider unable or potentially unable to carry out its obligations under the Contract and/or to meet any liability which may arise through the Provider's negligence or breach of contract;

- (vii) has a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of the Provider's affairs approved in accordance with the Insolvency Act 1986;
  - (viii) has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
- 30.2.5 commits a serious and material breach of contract;
- 30.2.6 fulfils those conditions under the Contract, Risk Management and Quality Monitoring of Independence at Home Policy which entitle the Council to terminate the Contract;
- 30.2.7 commits a serious breach of Clause 8 (including the commission of any act by Staff contrary to Clause 8.6) or Clause 21 (Equality);
- 30.2.8 loses any statutory licence or certification which is required for the performance of the Services or as otherwise required by the Contract;
- 30.2.9 commits an act or omission which means it would now be excluded from the procurement process for this Contract on a mandatory exclusion ground as specified in Regulation 57(1) of the Public Contracts Regulations 2015;
- 30.2.10 the majority of shares carrying a right to vote in the Provider or its holding or parent company are acquired by a person who is not at the Commencement Date a majority shareholder and the Council has reasonable concerns that it may suffer damage to its reputation as a result of any contractual association;
- 30.2.11 fails to comply with the safeguarding provisions of Clause 9;
- 30.2.12 is unable to provide alternative arrangements that are acceptable to the Council under Clause 24.2;
- 30.2.13 fails on repeated occasions to work with the Council in relation to the performance management process;
- 30.2.14 the Council has reasonable grounds to consider the Provider or Sub-contractor working on this Contract to fall within the scope of IR35 off-payroll working through an intermediary rules;
- 30.2.15 without prejudice to the Council's ability to terminate for material breach of the Contract, if any of the Provider's necessary registrations are cancelled by the CQC or other Regulatory Body as applicable.
- 30.3 If the Contract is determined in part, the Price shall be adjusted to reflect fairly the Services which remain and if the Parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt the Provider shall not be entitled to recover through the adjusted Price any profit that, but for the termination, would have accrued to the Provider in respect of the terminated Services.
- 30.4 The rights of the Council under this Clause 30 and Clause 31 below are in addition and without prejudice to any right that either Party may have for prior breach and to any right the Council may have against the Provider for the breach, default, negligence or event leading to the termination.

30.5 The remedies of the Council under this Clause 30 (and Clause 31 below) may be exercised successively in respect of any one or more defaults by the Provider.

#### **[Termination of a Package of Care**

- 30.6 Service packages shall terminate immediately on the death of the Service User.
- 30.7 The Council may terminate an individual Package of Care with immediate effect in the event of a failure by the Provider to deliver Services to a Service User in accordance with the Specification and/or the other terms of this Contract.
- 30.8 In all other cases the Council may terminate an individual Package of Care on giving the Provider not less than 7 days' notice in writing such notice to specify the date on which the Package of Care will end.
- 30.9 The Provider may terminate an individual Package of Care by giving the Council's Authorised Officer not less than 7 days' notice in writing such notice to specify the date on which the Package of Care will end.
- 30.10 Upon written notice by the Council to terminate this Contract and/or any Package of Care, the Provider shall continue to provide the Services in accordance with the terms of the Contract and/or any Package of Care for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the records and any Council Data in respect of that Service User to be successfully migrated to the Council's System or the systems of a third party. The Provider shall give all such assistance as is reasonably required by the Council and third party to ensure a smooth, successful and seamless transition of the Services and conversion and migration of the records and the Council Data. Insofar as such assistance is required after the Contract has expired, the Council shall pay the Provider's reasonable costs and expenses (the Council shall not pay should the Contract have been terminated in accordance with Clause 30).<sup>1</sup>

#### **Suspension of Services**

- 30.11 Without prejudice to any other rights that it may have (including, where applicable, any termination rights under this Clause 30), the Council may suspend by notice in writing the Provider's appointment to supply Services or some of them to the Council if any of the circumstances entitling the Council to terminate this Contract occur. If the Council provides notice to the Provider in accordance with this Clause 30.11, the 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.
- 30.12 The Council may also suspend the provision of Services or some of them by the Provider in accordance with the Council's Contract, Risk Management and Quality Monitoring of Independence at Home Policy and publish the Provider's status publicly.

### **31 CONSEQUENCES OF TERMINATION**

- 31.1 If the Contract expires or is terminated in accordance with Clause 30, the provisions of this Clause 31 and the Exit Plan shall apply.
- 31.2 Notwithstanding the provisions of the Exit Plan, upon termination or expiry:
- 31.2.1 subject to Clause 31.2.2, the Provider shall forthwith cease to provide the Services

---

<sup>1</sup> Council to consider whether there may be individual service packages that are capable of termination under the relevant Part B opportunity

- 31.2.2 the Council shall notify the Provider of the impact of expiry upon any Services in place at that time and the Provider shall provide the Council with all information which the Council shall reasonably require in order for it to make decisions. The Council shall decide, and the Provider shall comply with such a decision, as to whether the Provider shall continue to provide Services to the Service User(s) and any new terms and conditions of contract.
- 31.2.3 the Provider shall submit to the Council within five (5) Working Days of termination or expiry at the Provider's own cost a comprehensive status report which shall be current as at the date of submission relating to the Services;
- 31.2.4 the Provider shall cease to use the Council's Data and hand over to the Council a complete and uncorrupted version of all Council Data and all records, information, documents howsoever held and including any media used to store such data including, without limitation, correspondence with Staff, the Council's service departments, any users of the Services and any other relevant third party and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Council (in which event the Council shall reimburse to the Provider the Council's reasonable data conversion expenses) whether such Council Data is on hard copy or on a disk or on any computer systems;
- 31.2.5 the Provider shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with the specific instructions issued by the Council; for the avoidance of doubt, Personal Data shall include but not be limited to that data which is Personal Data;
- 31.2.6 the Provider shall allow the Council and any new provider, reasonable right of access to the Provider's and Sub-contractor's premises, systems, procedures and Staff, where appropriate;
- 31.2.7 the Provider shall deliver to the Council upon request all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted Sub-contractors, including any Service User records or Council Data and in default of compliance with this provision, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter for the purpose of any such recovery any premises of the Provider or its permitted Sub-contractors where any such documents, information or materials may be held. For the avoidance of doubt, this material identified by this Clause shall be in an identifiable and searchable format (and include metadata) and in such form and medium as the Council may reasonably request;
- 31.2.8 the Council shall immediately cease to be under any obligation to make further payment to the Provider until the costs, loss and/or damage to the Council resulting from or arising out of the termination shall have been calculated;
- 31.2.9 the Provider shall promptly pay in full the cost of providing the Service or having the Service provided or any part thereof as would have been provided by the Provider during the remainder of the Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to the Provider for providing the Services if the termination is due to an act, omission, default, negligence or breach of the Provider or any of its Staff;



- 31.2.10 the Provider shall continue to make the Provider's System available to the Council for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the Service User records and/or Council Data to be successfully migrated to the Council's System or the systems of one or more third parties. The Provider shall give all such assistance as is reasonably required by the Council and its Service Users to ensure a smooth, successful and seamless transition of the Services and Service Users and conversion and migration of the Service User records and/or Council Data. Insofar as such assistance is required after the Contract has expired, the Council shall pay the Provider's reasonable costs and expenses (the Council shall not pay should the Contract have been terminated in accordance with Clause 30). For the avoidance of doubt, the Provider's compliance with the provisions of this Clause shall include, inter alia, assistance by the Staff, access to the Provider's System and the provision of information and documentation;
- 31.2.11 if the Contract expires or is terminated early for any reason, the Provider shall immediately repay to the Council the full amount pre-paid by the Council in respect of the unexpired portion of the Contract;
- 31.2.12 at the Council's written request, the Provider shall transfer the Service User records to the Replacement Provider(s) and/or one or more third parties as determined by the Council; such transfer may be in whole or in part, howsoever determined by the Council;
- 31.2.13 the Council shall be entitled to give written notice to the Provider in accordance with its right under Clause 4.15 and the Provider shall comply with such notice.
- 31.3 If the Provider is unable or fails to provide the Services or any part thereof in accordance with this Contract, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due to the Provider under the Contract or shall be recoverable from the Provider by the Council as a debt. The Council's right under this Clause 31.3 shall be without prejudice to any other rights or remedies which it may possess.
- 31.4 The Council shall be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination of the Contract, to deduct the same from any sum or sums which would but for Clause 30 have been due from the Council to the Provider under the Contract or any other contract or be entitled to recover the same from the Provider as a debt. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof when the total costs, loss and/or damage resulting or arising out of the termination of the Contract have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would but for Clause 30 have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt or alternatively, the Council shall pay the Provider any balance due to the Provider;
- 31.5 Expiry or earlier termination of this Contract shall not affect the continuing rights and obligations of the Parties under Clauses 9**Error! Reference source not found.** Safeguarding), 11 (Financial Arrangements), 15**Error! Reference source not found.** (Intellectual Property Rights), 16 (ICT and Computer Systems), 18 (Records), 20 (Corrupt Gifts); 24 (Insurance); 31 (Consequences of Termination); 32 (Exit and Handover); and 42 (Law and Jurisdiction) or under any other provision of this Contract that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination.

- 31.6 When the total costs, loss and/or damage resulting from or arising out of such termination as is referred to in this Clause 31 have been calculated and deducted so far as practicable from any sum or sums which would but for Clause 30 have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Provider any balance shown as due to the Provider.

## **32 EXIT AND HANDOVER ARRANGEMENTS**

- 32.1 On expiry or termination of this Contract the Exit Plan shall apply and the parties shall comply with the provisions of the Exit Plan. The Provider shall not charge the Council or any Replacement Providers for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this Clause 32 and the Exit Plan on expiry or earlier termination (or for complying with any other provisions in Clause 31 above upon termination or expiry).
- 32.2 The plan for the orderly handover of the Services to the Council or its Replacement Providers following termination or expiry of this Contract shall include compliance by the Provider of the provisions specified in this Clause 32.
- 32.3 The Provider shall forthwith upon the request of the Council's Authorised Officer, supply to the Council any information reasonably specified by the Council as being necessary for the re-tendering of this Contract.
- 32.4 On giving written notice to the Provider and after twelve (12) months of the date of the expiry or earlier termination of this Contract unless the individual is responding to a job advert the Council shall have the right:
- 32.4.1 to offer any of the Staff who has previously been involved in performing the Services employment or a contract for services with the Council and the Provider agrees that if such person accepts such offer the Provider shall release such person from any contractual restriction with it which such acceptance may otherwise contravene; and
  - 32.4.2 to require the Provider to provide for a period of four (4) months following the date of expiry or termination such advice assistance and co-operation as the Council may reasonably require to enable the Council to provide the Services in-house or to procure their provision by a Replacement Provider.

### **TUPE Compliance on Termination**

- 32.5 During the twelve (12) months prior to the expiry of the Contract or after the Council has given notice to terminate this Contract and within ten (10) Working Days of being requested to do so, the Provider shall fully and accurately disclose to the Council any and all information in relation to all persons engaged in providing the Service including:
- 32.5.1 a list in electronic format of each employee employed by the Provider in the provision of the Service including each employee's start date;
  - 32.5.2 a list of agency workers, agents and independent contractors engaged by the Provider in the provision of the Services;
  - 32.5.3 the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of each employee included in the list to be provided under Clause 32.5.1; and
  - 32.5.4 the terms and conditions of employment of each Transferring Employee; their age and identity; the information that must be included in the employee's written statement of employment particulars under s.1 of the

Employment Rights Act 1996; information on any disciplinary procedure taken in relation to the employee or grievance procedure taken by the employee within the previous two (2) years in relation to which the ACAS code of practice on disciplinary and grievance procedures applies; information on any Court or tribunal claim brought by the employee against the transferor within the previous two (2) years and any potential claim against the transferee arising out of the employee's employment with the transferor; information about any collective agreements that will have effect after the transfer in relation to the Transferring Employee.

- 32.6 During the twelve (12) months prior to the expiry of the Contract or where notice to terminate this Contract for whatever reason has been given, the Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:
- 32.6.1 vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
  - 32.6.2 materially increase or decrease the number of employees employed in connection with the Services;
  - 32.6.3 increase the remuneration of employees;
  - 32.6.4 assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services; or
  - 32.6.5 otherwise improve terms and conditions of employment of any of its employees without economic justification towards the end of the Contract Period.

## **GENERAL PROVISIONS**

### **33 DISPUTE RESOLUTION PROCEDURE**

- 33.1 The Parties shall each use reasonable endeavours to resolve any dispute by means of prompt bona fide discussion first between the Council's Authorised Officer and the Provider's Authorised Officer. Failure to agree a settlement within ten (10) Working Days shall result in the dispute being escalated to both Parties' managerial level appropriate to the dispute in question. In the event that such a dispute is not resolved within ten (10) Working Days, thereafter it shall be escalated to each Parties' appropriate director for resolution. The respective directors shall meet within twenty (20) Working Days to resolve the dispute. Failure to reach a settlement shall invoke the rest of this Clause 33.
- 33.2 Nothing in this Clause 33 shall prevent the Parties from seeking from any Court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 33.3 If the dispute cannot be resolved by the Parties pursuant to Clause 33.1 the dispute may be referred to mediation pursuant to the procedure set out in Clause 33.5.
- 33.4 The performance of this Contract by the Provider shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its Staff shall comply fully with the requirements of this Contract at all times.
- 33.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 33.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a

Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he/she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator;

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

33.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

33.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be confirmed in writing and shall be binding on the Parties once it is signed by their duly authorised representatives; and

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

33.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

33.7 Unless agreed otherwise in any mediation each Party shall bear its own costs of such mediation

## **34 THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

34.1 Save where indicated under any clause set out in this Contract which relates to TUPE and pensions, no term of the Contract shall be enforceable by or confer any benefit on any person other than the Parties.

## **35 LEGAL PROCEEDINGS**

35.1 If requested to do so by the Council’s Authorised Officer the Provider shall provide to the Council within the timescale set by the Council’s Authorised Officer any relevant information or assistance (including but not limited to documents and statements from the Provider and/or its Staff) in connection with any legal inquiry, dispute resolution or Court proceedings in which the Council may become involved or any relevant Council internal disciplinary hearing arising out of the provision of the Services and shall give evidence in such inquiries, arbitration or proceedings or hearings.

35.2 Where the Provider or any of its Staff becomes aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services it shall notify the Council’s Authorised Officer immediately in writing. Such notification shall include all relevant information to enable the Council’s Authorised Officer to investigate the matter fully.

## **36 OMBUDSMAN**

- 36.1 In the event of a complaint to the Ombudsman involving activities the subject of this Contract, the Provider shall at its own expense give to the Council and to the Ombudsman every assistance in the investigation of the complaint.
- 36.2 Where any investigation by the Ombudsman takes place the Provider shall:
- 36.2.1 provide any information requested in the timescale specified; attend any meetings as required and permit its Staff to attend;
  - 36.2.2 promptly allow access to an investigation of any documents deemed to be relevant to the investigation and/or the complaint;
  - 36.2.3 allow itself and any Staff deemed to be relevant to be interviewed;
  - 36.2.4 allow itself and any of its Staff to appear as witness in any ensuing proceedings; and
  - 36.2.5 co-operate fully and promptly in every way required by the Ombudsman during the course of that investigation.
- 36.3 Where any financial redress, compensation or award is recommended by the Ombudsman in the course of or following any investigation, or is agreed to by the Council following a complaint to the Ombudsman, and which investigation or complaint arises directly or indirectly out of the provision of the Services or any other action or omission by the Provider and/or its Staff then the Council shall be entitled to recover the cost of that financial redress, compensation or award from the Provider.

### **37 AGENCY**

- 37.1 Neither the Provider nor its Staff shall say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Council. The Provider shall not be the agent of the Council.
- 37.2 The Provider shall make not any representations or give any warranties to third parties on behalf or in respect of the Council, or bind or hold itself out as having authority or power to bind the Council.
- 37.3 This Contract shall not create any relationship between the Parties of partnership, employment or landlord and tenant.

### **38 CONFLICT OF INTEREST**

- 38.1 The Provider shall take appropriate steps to ensure that neither it nor any of its Staff are placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Provider or such persons and the duties owed to the Council under the provisions of this Contract. The Provider shall disclose to the Council full particulars of any such conflict of interest which may arise and take all reasonable steps to remove any such conflict to the satisfaction of the Council's Authorised Officer.

### **39 SEVERANCE**

- 39.1 If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.
- 39.2 Pursuant to Clause 39.1, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which as nearly as possible validly gives effect to their intentions as expressed in this Contract.

**40 WAIVER**

- 40.1 The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 40.2 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 the provisions of Clause 40.
- 40.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

**41 NOTICES**

- 41.1 Except as otherwise expressly provided within this Contract, no notice from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
- 41.2 Any notice which is to be given by either Party to the other shall be given in writing (sent by e-mail, hand or signed for special delivery post) to the address set out in Clause 41.4; Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the e-mail was sent, the letter was hand delivered or posted or sooner where the Party acknowledges receipt of such letters.
- 41.3 Either Party may change its address for service by serving a notice on the other Party in accordance with this Clause 41.
- 41.4 For the purposes of Clause 41.2, the address of each Party shall be:

41.4.1 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: [ascommissioning@bathnes.gov.uk](mailto:ascommissioning@bathnes.gov.uk)

For the Provider:

[●●●●●]

Address: [●●●●●]

For the attention of: [●●●●●]

Tel: [●●●●●]

Email: [●●●●●]

## 42 LAW AND JURISDICTION

- 42.1 The Parties accept the exclusive jurisdiction of the English Courts and agree that the Contract, and all non-contractual obligations and other matters arising from or connected with the Contract, are to be governed and construed according to English Law.

DRAFT

**SCHEDULE 1 - SPECIFICATION**

DRAFT



**SCHEDULE 2- CONTRACT RISK MANAGEMENT AND QUALITY MONITORING OF  
INDEPENDENCE AT HOME POLICY**

DRAFT

## SCHEDULE 3 – THE COUNCIL’S POLICY STATEMENTS

Providers may access policy statements via the Council’s website at [www.bathnes.gov.uk](http://www.bathnes.gov.uk)

DRAFT

**SCHEDULE 4– PRICE AND PAYMENT SCHEDULE**

DRAFT

**SCHEDULE 5 – COMMISSIONING ORDER FORM (IF APPLICABLE)**

DRAFT

<b>COMMISSIONING ORDER FORM (COF)</b>
---------------------------------------

<b>COF Number</b>	[INSERT]
<b>COF Date</b>	[INSERT]
<b>Call off Contract Reference</b>	[INSERT CONTRACT NUMBER]
<b>Provider Details</b>	
Name	[INSERT]
Address	[INSERT]
Postcode	[INSERT]
Contact (tel. / email)	[INSERT]
<b>Services Requested by</b>	
Name / Team	[INSERT]
Contact Details	[INSERT]
On behalf of	[INSERT]

<b>S1</b>	<b>Service User Details</b>
<i>(</i>	
<b>Client / Service User (SU) details</b>	
<b>Provider to invoice in accordance with payment schedule in relevant contract</b>	
Service User / Client initials	[INSERT]
Client ID (Liquid Logic)	[INSERT]
Postcode	[INSERT]
Client / SU stated outcomes / preference for how they are cared for	SEE ACCOMPANYING CARE AND SUPPORT PLAN

<b>S2</b>	<b>Case Worker</b>
<i>(where applicable)</i>	
Case Worker at COF date	[INSERT]
Team	[INSERT]
Contact	[INSERT]

<b>S3</b>	<b>The Services</b>	
<i>(see 'Service Details' for further details)</i>		
Type of services being commissioned ( <i>type of care and support</i> )	[INSERT]	
Is the pattern of care delivery able to be varied? If not, please state why?	<p style="text-align: center;">[Yes / No] (delete as applicable)</p> <p>Please include the rationale for your response in the comment section below. NB: This may be used to inform specific guidance</p>	
Initial evaluation of services delivery schedule <i>(must be included for all IAH framework Part A contracts)</i>	<b>Day</b>	<b>Initial evaluation: times &amp; duration</b>
	MON	[INSERT]
	TUE	[INSERT]
	WED	[INSERT]
	THU	[INSERT]
	FRI	[INSERT]
	SAT	[INSERT]
	SUN	[INSERT]

	N/A	[INSERT]
Intended service commencement date	[INSERT]	
Intended Service duration	[Ongoing / Short Term / Fixed / Interim / Respite] (Delete as applicable)	
Intended end date if not ongoing?	[INSERT]	
<b>Further Comments</b> (including clarification on more flexible delivery arrangements, not readily identified by the initial evaluation above. e.g. including, but not limited to care home placements and some IAH Framework Part B packages of care)		
Further comments	[INSERT]	

<b>S4</b>	<b>Other Services</b>
Other care and support providers / agencies currently support the Client / SU should be listed below along with an indication of the type of care and support being offered. This is to facilitate coordinated care, improved outcomes and seeing the person as an individual. (add more rows if needed)	
<b>Provider / Agency</b>	<b>Type of care / support</b>
[INSERT]	[INSERT]
[INSERT]	[INSERT]
[INSERT]	[INSERT]

<b>S5</b>		<b>Service Detail (A)</b>						
Client initials:	SU	[INSERT]	Client ID:	[INSERT]	COF / PO No:	[INSERT]	COF / PO Date:	[INSERT]

Full details of the service will be set out in the person's care and support plan provided by the Council / CCG  
 These should be further developed by the provider and service user working together to develop the provider's plan

<b>Service Detail</b> (relates to initial evaluation of delivery schedule, where appropriate)	[INSERT]		
<b>Agreed Unit Cost (£)</b> As set out in payment schedule to contract	[INSERT]	Per [30 mins, 45 mins, hour, day, week, month, year]	[INSERT]
<b>Number of units</b>	[INSERT]	Per [hour, day, week, month, year]	[INSERT]
<b>TOTAL COST</b>	[INSERT]		
<b>Start Date</b>	[INSERT]		
<b>End Date</b>	[ONGOING / INSERT DATE] (delete as applicable)		
<b>Additional Comments</b>	[INSERT]		

S6		Provider Confirmation Form	
COF / PO Number		[INSERT]	
Date of Confirmation		[INSERT]	
<b>Provider Details</b>			
Name		[INSERT]	
Address		[INSERT]	
Postcode		[INSERT]	
Contact (tel. / email)		[INSERT]	
<b>B&amp;NES Details</b>			
For the attention of		[INSERT]	
Address		[INSERT]	
Postcode		[INSERT]	
Contact (tel. / email)		[INSERT]	
<b>Client / Service User (SU) Details</b>			
Client / SU initials		[INSERT]	
Client / SU ID (Liquid Logic)		[INSERT]	
Postcode		[INSERT]	
<b>The Services</b>			
Service Start Date		[INSERT]	
Service End Date (if relevant)		[INSERT]	
Service Detail	I am in agreement with the Service Detail & Service Cost as identified in the COF / PO. <input type="checkbox"/>		
Service Cost		[INSERT]	
<b>Authorisation</b>			
I am authorised on behalf of [INSERT PROVIDER NAME] to accept this Commissioning Order Form / Purchase Order. I understand my organisation's responsibilities are to provide services in accordance with the relevant terms & conditions from B&NES Council and/or CCG (as identified above).			
Signature	[INSERT]	Date	[INSERT]
Print Name	[INSERT]	Job Title	[INSERT]



**SCHEDULE 6 – TENDER RESPONSE DOCUMENT**

DRAFT

**SCHEDULE 7 – NOT USED**

DRAFT

## SCHEDULE 8 – EXIT PLAN

### 1 GENERAL

- 1.1 The Provider acknowledges that it is of critical importance to the Council to ensure on termination or expiry of this Contract an orderly transfer of the Services either back to the Council or to a Replacement Provider and for this reason the Council relies significantly on the Provider fulfilling its obligations under this Schedule.
- 1.2 If this Contract is terminated in whole or part or expires in accordance with its terms, the Provider will, during the Exit Period, co-operate with the Council and where applicable any Replacement Provider to ensure the orderly migration of, and transfer of responsibility for, the Services.

### 2 EXIT OBLIGATIONS

- 2.1 During the Exit Period the Provider shall:
- 2.1.1 provide all reasonable assistance and appropriate resources to the Council and any Replacement Provider to facilitate the orderly transfer of the Services to the Council or the Replacement Provider;
  - 2.1.2 continue to provide the Services in accordance with the Specification, any KPIs and the Contract;
  - 2.1.3 provide such information and assistance as is detailed in paragraph 4;
  - 2.1.4 provide such copies of the Council's Data in its possession as are requested by the Council and at no additional charge to the Council;
  - 2.1.5 carry out such security tasks necessary to identify security and operator risks inherent in the transfer of the Services and inform the Council of such risks and possible preventative and curative measures necessary to deal with such risks;
  - 2.1.6 immediately prior to the end of the Exit Period provide the Council with a detailed description and status report of all errors which have not been corrected, problems not resolved or agreed changes to the Services which have not been fully implemented at the termination of the Exit Period.

("the **Exit Obligations**")

- 2.2 The Provider shall carry out the Exit Obligations in such a manner so as to cause as little disruption as possible to the Council's business.

### 3 DOCUMENTATION AND DUE DILIGENCE

- 3.1 During the Exit Period, the Provider will comply with any reasonable request by the Council for any information in relation to the Services to ensure the smooth transition of the Services. Following such a request the Provider will within two (2) days of such request make the relevant information available to the Council for inspection or on the Council's authorisation to the Replacement Provider and shall within two (2) days of such inspection provide copies of the relevant information to the Council and/or (if so requested by the Council) the Replacement Provider.
- 3.2 The Provider shall promptly and diligently answer any questions about the Services which may be asked by the Council or by any Replacement Provider as necessary in order (i) to explain the manner in which the Services have been provided; and (ii) to allow the Council or Replacement Provider to conduct all such due diligence as is reasonably required to enable it to take over responsibility for the provision of the Services (or any part thereof).

- 3.3 The Council shall procure that any Replacement Provider agrees to be bound by (i) an obligation of confidentiality in respect of any confidential information of the Provider which is made available to it under this Schedule and (ii) an obligation to use any of the Provider's confidential information solely for the purpose of evaluating and/or providing to the Council the services which will replace the Services.

#### **4 EXIT MANAGER**

- 4.1 The Provider will appoint a person as Exit Manager at the commencement of the Exit Period and will notify the Council as soon as possible of the name and contact details of such person. The Council shall have the right to require the replacement of the Exit Manager if it reasonably believes that such person is unsuitable for the position.
- 4.2 The Exist Manager will be the Council's primary point of contact in connection with the matters referred to in this Schedule. The Provider shall ensure that the Exit Manager liaise with the Council in relation to all issues relevant to the termination (in whole or part) or expiry of this Contract and all matters connected with this Schedule.

#### **5 EXIT PERIOD**

- 5.1 The Exit Period shall be either:
- 5.1.1 A period of up to twelve (12) months prior to the end of the Contract Period; or
  - 5.1.2 In the event of early termination of the Contract the period from the date of the notice to terminate until termination occurs.

provided that the Council may terminate the Exit Period at any time by giving ninety (90) days' notice in writing to the Provider.

## SCHEDULE 9

### SAFEGUARDING REQUIREMENTS

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

#### 1. Safeguarding Policies and Procedures

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

#### 2. Effective Supervision

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

#### 3. Safe Recruitment and Retention of Staff

- 3.1 The Provider shall have in place a Safe Recruitment Policy and ensure this is in line with statutory guidance and B&NES multi-agency policies. The Provider shall ensure those Staff responsible for interviewing staff, volunteers and agency staff have undertaken appropriate safer recruitment training.
- 3.2 The Provider shall include in the Safe Recruitment Policy:

- 3.2.1 details of the recruitment process for paid staff, volunteers and agency staff;
- 3.2.2 details of how the Provider will comply with Government criteria for Disclosure and Barring Service (DBS) checks (including validation of certificates). <https://www.gov.uk/disclosure-barring-service-check/overview>
- 3.2.3 a section on managing a positive DBS disclosure. This will include how the Provider deals with convictions, relevant 'soft' information and third party information; and
- 3.2.4 that any positive disclosures or relevant information on DBS checks will be reported to the Council's Authorised Officer(s) using the Council's risk assessment tool. Where the Provider is concerned about the DBS check and the appropriateness of the person to work with vulnerable adults, it shall discuss this with the Council safeguarding team.
  
- 3.3 The Provider shall ensure that the Council's Authorised Officer (and LADO where necessary) is promptly kept advised at all times of any "Relevant Personnel" who subsequent to his/her commencement of employment as a member of staff receives a conviction or caution.
  
- 3.4 The Council reserves the right to verify the existence and/or substance of any DBS disclosure, or criminal record, or DBS adults' barred list disclosure, or certificate of good conduct, in relation to any member of Staff and the Provider shall immediately provide the Council with any information that the Council reasonably requests to enable it to be satisfied that the obligations under this Schedule and Clause 9 have been met.
  
- 3.5 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to a Service User.
  
- 3.6 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to a Service User.
  
- 3.7 The Provider shall ensure that the Council is kept advised at all times of any Staff, or other persons employed/engaged in the performance of any part of the Services if subsequent to the commencement of his/her employment/engagement hereunder their previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to a Service User.
  
- 3.8 The Council reserves the right to issue a notice to the Provider requiring it to no longer employ or use the services of any person in the provision of any part of the Services if in the reasonable opinion of the Council the employment or use of such person poses a risk of harm to a Service User. Any such decision by the Council shall be final conclusive and binding on the Provider and the Council shall not (unless it is willing to do so voluntarily and at its absolute discretion) be required, at any time, to disclose to the Provider the reasons for its decision.
  
- 3.9 On receiving the notice described in Paragraph 3.8 above, the Provider shall forthwith remove such member of Staff from the provision of the Services and shall immediately provide a replacement.

#### **4. Managing Allegations against Paid, Volunteers and Agency Staff**

- 4.1 The Provider shall ensure that it includes in its policies and procedures sections which demonstrate its compliance with national and local guidance on allegations management.

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

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

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

[https://www.safeguarding-bathnes.org.uk/sites/default/files/lsab.lscb\\_escalation\\_protocol\\_.pdf](https://www.safeguarding-bathnes.org.uk/sites/default/files/lsab.lscb_escalation_protocol_.pdf)

## **6. Whistleblowing Policy**

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

## **7. Policy for the Use of Social Networking**

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

## **8. Knowledge and Use of other Policies**

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

## **9. Single Central Record**

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

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

## **10. Safeguarding Audit and Monitoring**

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

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

- 11.1 The Provider shall ensure that a safeguarding training needs analysis is undertaken of relevant staff and reviewed annually and that the multi-agency training audit is specifically completed as requested.
- 11.2 The Provider will report Staff training through its annual audit and will maintain the Single Central Record as set out above.
- 11.3 The Provider shall ensure:
- 11.3.1 all Staff are made aware of safeguarding and the law in relation to the Mental Capacity Act 2005 (for agencies providing support to individuals over the age of 16 years) during their induction;
  - 11.3.2 all Staff understand the Provider's safeguarding policies and procedures;
  - 11.3.3 all relevant new Staff will complete safeguarding awareness training either through the Council's Common Induction Training or sourced by the Provider;
  - 11.3.4 safeguarding awareness training (referred to as Level 2 training) is completed by all Staff (this is available via the Council or must be sourced independently by the Provider);
  - 11.3.5 that relevant staff have the appropriate level of investigation training;
  - 11.3.6 that Safeguarding adults training is updated at regular intervals in compliance with current applicable Law and local multi-agency policies including Multi-agency Safeguarding Adults Policy and Procedures in place from time to time, which at the date of this Individual Service Agreement is at least every three years for Staff working with adults;
  - 11.3.7 that relevant Staff undertake Mental Capacity Act training during their induction and that this is appropriately refreshed.

DRAFT