

Bradford District and Craven
Health and Care Partnership



City of
BRADFORD
METROPOLITAN DISTRICT COUNCIL

City of Bradford Metropolitan District Council

**Bradford and District Residential and Nursing Care Homes
Provider List**

Reference: BMDC/DN420609

3. PROVIDER CONTRACT

MODEL SET OF TERMS AND CONDITIONS

Introduction (which does not form part of the terms and conditions)

- A. The Council is the Lead Commissioner of Residential and Nursing Care Services within the Bradford District. When it arranges contracts on behalf of the ICB the Council will act as the agent of the ICB under the lead commissioning arrangements, and although the contract will be between the Council and the Provider, it will be treated as a contract made between the Provider and the ICB.

- B. The Council as Lead Commissioner intends to procure both its and the Bradford ICB's future requirements for Residential and Nursing Care Services using a pseudo-dynamic purchasing system, which will be referred to as the Bradford and District Residential and Nursing Care Provider List.

- C. These Standard Terms and Conditions are part of the proposed Provider List arrangements, and are Document Number 3 in the Procurement Document Pack. As the Council and the Bradford ICB identify requirements for the provision of Residential and Nursing Care Services to individuals receiving services at approved locations during the operation of the Provider List, the Council as the Lead Commissioner will invite the Provider for that location by offering a Placement of that person at the chosen location. Only the Provider selected by the individual or on their behalf, will be invited to provide the services. Neither the Council nor the ICB will be responsible for selecting the Provider and their officers and agents will not provide advice or guidance to people who may prospectively use the services on the selection of any provider save for factual information that is either provided by the provider or by the CQC concerning the facilities and services provided by each provider. Should the selected Provider agree to provide the services then it will be invited to enter into an Individual Service Contract (ISC) for that placement. The terms of the ISC shall comprise two documents: the Individual Service Agreement (ISA) and these Standard Terms of Contract.

- D. The Individual Service Agreement will record the specific arrangements that have been made between the commissioner of the services, the selected Provider and the person for the services to be provided, which services will be provided and how both will be paid for, including any contribution or top-up arrangements that may be applicable to such services.

- E. These Standard Terms and conditions of Contract govern membership and operation of the Provider List and shall be applicable to each placement made under the Provider List. The ISA and the Standard Terms and Conditions of Contract will together constitute the Individual Service Contract between the Parties and will supersede all prior contracts, negotiations, representations or understandings whether written or oral.

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SCHEDULE 1 – Schedule of Processing, Personal Data and Data Subjects

This overarching agreement covers admission to and membership of the Bradford & District Residential & Nursing Care Homes Provider List, as well as services provided under an Individual Service Contract pursuant to it. The date of each Individual Service Contract shall be deemed to be the date of the Individual Service Agreement to which it relates.

Between:

- (1) City of Bradford Metropolitan District Council (as the Lead Commissioner) of City Hall, Bradford, West Yorkshire BD1 1HY (the Council),
- (2) [Insert [Legal Entity] name and address of selected Provider]

The Council and the Provider hereby agree as follows:

Agreed terms and Parties

1 Definitions and Interpretation

1.1 Definitions

- 2014 Regulations** means the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
- Admission Body** means a transferee admission body for the purposes of regulation 5A of the Local Government Pension Scheme Regulations 2013, and in the case of contracts undertaken on behalf of the ICB shall mean the equivalent arrangements for the relevant NHS Pension Scheme referenced in Schedule 14;
- Administering Council** means the body designated to maintain and administer the relevant Local Government Pension Scheme as currently described in Regulations 2 and 53 of the Local Government Pension Scheme Regulations 2013, and in the case of contracts undertaken on behalf of the ICB shall mean the equivalent arrangements for the relevant NHS Pension Scheme referenced in Schedule 14.
- Affected Party** means the party seeking to claim relief in respect of a Force Majeure Event;

Assessment and Support Plan

This means either

- an assessment carried out by the Council under the Care Act which identifies a person's eligible needs. From this a Support Plan is developed which identifies how these needs are met
- a nursing assessment carried out by a health professional which contributes to a decision support tool to determine eligibility for health funding. From this a Personalised Care and Support plan is developed which identifies how these needs are met.

Best Value Duty

means the duty imposed on the Council by Section 3 of the Local Government Act 1999 in relation to, inter alia, any one (1) or more of the Services;

Business Continuity Plan

means the Provider's plan that complies with the requirements of the Civil Contingencies Act 2004 and the Council's relevant Business Continuity Policy which relates to continuity of the Services, as agreed with the Council by the Commencement Date and as may be amended by the Provider thereafter from time to time;

Business Day

means a day other than a Saturday, Sunday or public holiday in England;

Business Hours

means between the hours of 09:00 and 17:00 on any Business Day;

Caldicott Guardian

means the senior health professional responsible for safeguarding the confidentiality of information of people using the service;

Caldicott Principles

means the 1997 Committee report chaired by Dame Fiona Caldicott setting out the principles to govern the use of information about people who use the service to ensure that the minimum amount of person identifiable information is exchanged, and only when absolutely necessary, as further updated by the 2014 Caldicott 2 (information to share or not to share) report;

Contract

Means this agreement for the overarching provision of services under the Provider List;

Call-Off Process

means the call-off process used under the Provider List and the administrative arrangements set out in the ISA in Provider List Document 3.1;

Call-Off Terms and Conditions	means the Conditions set out in this Agreement applicable to the Services supplied to the person who uses the service, the administrative arrangements set out in the ISA in Provider List Document 3.1 and any special conditions arising from a Managed Service arrangement
Care Plan	<p>means a daily plan for care and support for an individual developed by the Provider, in accordance with CQC requirements and in partnership with that individual and/or their Carer or Legal Guardian (as appropriate), and in association with other relevant providers of health and social care which:</p> <p>(i) records the health and wellbeing outcomes which the person using the service wishes to achieve, following a personalised conversation about what matters to them;</p> <p>(ii) records the support available to them, whether through NHS or Local Authority services, local voluntary and charitable sector services, through personal connections or otherwise, to help them build the knowledge, skills and confidence to manage their health and well-being;</p> <p>(iii) pays proper attention to the preferences, culture, ethnicity, gender, age and sexuality of the person using the service;</p>
Carer	means a family member or friend of the person using the service who provides day-to-day support to that person without which they could not manage as the same is identified for each Call-off Contract in the ISA in Provider List Document 3.1;
Care Quality Commission or CQC	means the Care Quality Commission established under the Health and Social Care Act 2008;
Cessation Date	means any date on which the Provider ceases to be an Admission Body other than as a result of termination of this Agreement or because it ceases to employ Eligible Employees;
Change in Control	means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the ability to control the exercise of 50% or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters), provided that a Change in Control will be deemed not to have occurred

if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation;

Change in Control Notification	means a notification in the form to be provided to the Provider by the Council and to be completed as appropriate by the Provider;
Change in Law	means any change in Law, which impacts on the performance of the Services which comes into force after the Effective Date;
Charges	means the charges payable by the Council to the Provider as recorded in Provider List Document 5.1 and in the completed ISA form set out in Provider List Document 3.1;
CHC	Means Community Health Care services commissioned by the ICB under the Provider List
Clinician	means doctors, consultants and nurses;
Code of Practice on the Prevention and Control of Infections	the Health and Social Care Act 2008: Code of Practice on the prevention and control of infections and related guidance, available at: https://www.gov.uk/government/publications/the-health-and-social-care-act-2008-code-of-practice-on-the-prevention-and-control-of-infections-and-related-guidance
Commencement Date	means the date shown in the Council's notification to the Provider that it has been placed upon the Provider List;
Council	means City of Bradford Metropolitan District Council acting as Lead Commissioner on its own behalf or on the behalf of the ICB, and the Council shall be deemed to be the agent of the ICB when making any Contract under the Provider List arrangements
Confidential Information	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and Providers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 2018;

Conflict of Interest	means any actual or potential conflict of interests between the personal or pecuniary interests of two or more Parties to this Contract;
Consents	means any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services;
Contract Manager	has the meaning given in clause 61;
CQC Regulations	means the Care Quality Commission (Registration) Regulations 2009 as amended or revised from time to time;
Data Protection Legislation	means: <ul style="list-style-type: none"> (i) the UK General Data Protection Regulation (ii) the Data Protection Act 2018 (iii) all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations 2003
Deductions	means those amounts to be deducted from the Charges as set out in Provider List Document 5.1;
Deputy Authorised Officer	has the meaning given in clause 61;
Deputy Contract Manager	has the meaning given in clause 61;
DBS	means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012;
Eligible Employees	means the Transferring Employees who are active members of the LGPS or the NHS Pension Scheme on a Relevant Transfer Date;
Emergency	means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual,

or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;

Employee Liability Information

means the employee liability information to be provided pursuant to Regulation 11 of TUPE;

Enhanced DBS & Barred List Check

means an Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (child & adult) (as appropriate);

Enhanced DBS & Barred List Check (adult)

means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult's barred list;

Enhanced DBS Check

means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for;

Enhanced DBS Position

means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted;

Expiry Date

means, subject to termination provisions below, 31 October 2031;

Fundamental Standards of Care

means the requirements set out in regulations 9 to 19 of the 2014 Regulations/CQC Regulations;

Force Majeure Event

means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, being acts of God, riots, war or armed conflict, acts of terrorism, acts of

government, local government or Regulatory Bodies, fire, earthquake, or disaster but excluding

i. any outbreak of an infectious or communicable disease or infestation unless the same shall be the subject of Regulations made under the Public Health (Control of Diseases) Act 1984 that require the Provider to take measures that substantially prevent it from supplying:

a. the Services; or

b. such amended services and terms as the Council shall propose in writing to the Provider in consequence of such Regulations in order to enable the Contract to remain substantially capable of performance

but so that a. shall be disregarded for the purposes of this definition in the event that the Council makes proposals under b.

ii any industrial dispute relating to the Provider or any other failure in the Provider's supply chain;

Good Clinical Practice and/or Good Healthcare Practice

means using standards, practices, methods and procedures conforming to the Law and reflecting up-to-date published evidence and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services Provider and a person providing services the same as or similar to the Services at the time the Services are provided, as applicable;

Guidance

means any applicable health or social care guidance, guidelines, direction or determination, framework, code of practice, standard of requirement to which the Council and/or the Provider have a duty to have regard (and whether specifically mentioned in this Contract or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by the Council and/or any relevant Regulatory Body including any document published under section 73B of the NHS Act 2006;

Good Industry Practice

means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced

	operator (engaged in the same type of undertaking as that of the Provider) under the same or similar circumstances;
Healthcare Professional	a person qualified in a healthcare-related profession;
Healthwatch England	the independent consumer champion for health and social care in England;
Holding Companies	has the definition given to it in section 1159 of the Companies Act 2006;
ICB	means NHS West Yorkshire Integrated Care Board;
Individual Service Agreement (ISA)	means the completed document at Provider List Document 3.1 which sets out the details of the services and funding arrangements that have been made between the Council, the Provider and the person using the service. The ISA is not a contract, but is intended to record administrative details that are subject to contractual arrangements.
Individual Service Contract (ISC)	<p>means each contract that shall be made under the Provider List arrangements between the Council and the Provider for the provision to an individual using the services described in the standard ISA for contained in Provider List Document 3.1 which has been completed for that Service User; and which shall be deemed to include:</p> <ul style="list-style-type: none"> i The completed ISA form for that person; and ii The standard terms, conditions and sub conditions set out in this Contract, and iii The requirements of that person's Care and Support Plan. <p>ISAs for people using the services can be made either following the Call-Off Process for a Spot Purchase or the mini-competition process undertaken to procure a Managed Services arrangement;</p>
Information governance	is the management of all information by an organisation in order to meet its immediate and future regulatory, legal, risk and environmental obligations under this Contract.
Institutional Investor	means an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pension fund, private equity firm, venture capitalist, insurance company or investment trust;
Intellectual Property	means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design,

Rights	know-how, confidential information, the right to sue for passing off, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Provider for the purposes of providing the Services and/or otherwise for the purposes of this Contract;
Law	means: <ul style="list-style-type: none"> (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation; (ii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (iii) Guidance; and (iv) any applicable code, in each case in force in England and Wales;
Legal Guardian	means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs;
Lessons Learned	experience derived from provision of the Services or otherwise, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider's provision of the Services;
LGPS Regulations	means the Local Government Pension Scheme Regulations 2013 and Guidance as amended from time to time;
Local HealthWatch	means an organisation established under section 222 of the Local Government and Public Involvement in Health Act 2007;
Losses	means all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses);

Managed Services	means Services required to be available for multiple people using the services on a shared basis as agreed between the Commissioners and the Provider from time to time using the Call-Off Process, This may result in a Managed Service contract for the Service as a whole or broken down into multiple Individual Service Contracts
Never Event	an event or occurrence in relation to a person who uses the service as so defined in the Never Events Policy Framework from time to time;
Never Events Policy Framework	the Never Events Policy Framework available at: https://www.england.nhs.uk/publication/never-events/ ;
NHS	means the National Health Service in England;
NHSCFA	the NHS Counter Fraud Authority, the special health authority charged with identifying, investigating and preventing fraud and other economic crime within the NHS and the wider health group;
NHS Constitution	means the constitution for the NHS in England which establishes the principles and values of the NHS in England and sets out the rights, pledges and responsibilities for patients, the public and staff (and including the Handbook to the NHS Constitution, available at: https://www.gov.uk/government/publications/supplements-to-the-nhs-constitution-for-england)
NHS England	means the National Health Service Commissioning Board established by section 1H of the 2006 Act, also known as NHS England;
NHS Serious Incident Framework	means NHS England's serious incident framework, available at: https://www.england.nhs.uk/patient-safety/serious-incident-framework/
NICE	means the National Institute for Health and Care Excellence;
Non-Collusion Certificate	has the meaning given to it in clause 55;
Outcomes	means the impacts or end results of the Services on the life of a person who uses the service, and as described in the Specification;

Party	means either the Council or the Provider as applicable, and in the case of contracts undertaken in respect of CHC services shall mean either the ICB or the Provider;
Patient Safety Incident	means any unintended or unexpected incident that occurs in respect of a person who uses the service during and as a result of the provision of the Services, that could have led or did lead to harm to that person;
Personal Budget	means an assessment by the Council and/or across agencies responsible for a number of support funding streams, resulting in the transparent allocation of resources to an individual, in cash or in kind, to be spent in ways which support them;
Personal Data	has the meaning given to it in the Data Protection Legislation;
Personalisation	means starting with the person as an individual with strengths, preferences and aspirations and putting them at the centre of the process of identifying their support needs, and also enabling the individual to make choices about how and when they are supported to live their lives;
Personnel	means all employees, workers, staff, agents and consultants of the Council or the ICB engaged in the provision of the Services at any time;
Person/people who use the service(s)	means the individual(s) who is/are the recipient of the Services supplied under this contract
Premises	means the premises provided by the Provider for the provision of the services to the person who uses the services under this Contract and any ancillary premises where the Provider's personnel may undertake work or other activities that are ancillary to the services; and in this context 'premises' includes any garden or other external space to which the person who uses the services may reasonably gain access during the provision of the services;
Prohibited Act	means: <ul style="list-style-type: none"> (i) offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation the obtaining of execution of the agreement or any other contract with the Council;

(ii) showing, or forbearing to show, favour or disfavour to any person in relation to any person in relation to this Council or any other agreement with the Council or if any like acts shall have been done by any person employed by the Provider, or acting on the Provider's behalf (whether with or without the knowledge of the Provider);

(iii) in relation to any contract with the Council the Provider, or any person employed by the Provider, or acting on the Provider's behalf commits any offence under the Bribery Act 2010 or any amendment to it;

(iv) gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972;

(v) paying commission or agreeing to pay any commission to any employee or representative of the Council, or any employee or representative of the Provider doing the same;

(vi) offering, giving or agreeing to give to any employee, office or member of the Council any gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or

(vii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other Agreement with the Council;

(viii) entering into this Agreement or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;

(ix) committing any offence:

a) under the Prevention of Corruption Acts 1889-1916;

b) under Law creating offences in respect of fraudulent acts;

c) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or

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

Provider Admission Contract

means an admission contract entered into in accordance with regulation 5A of the LGPS Regulations by the Administering Council, the Council and the Provider (or in the case of call-off contracts for CHC services commissioned by the ICB, the equivalent arrangements under the NHS Pension Scheme as appropriate as provided for in Schedule 14);

Provider Authorised Representative

means the person designated as such by the Provider within the completed Provider List Application Form;

Provider Change in Control

means any Change in Control of the Provider or any of its Holding Companies;

Provider List

Means the List of Providers approved by the Council to supply the services under the Provider List as it may change from time to time as new providers are approved and existing providers exit the Provider List

Provider List Agreement

means the procurement arrangements made between the Council and the Providers to establish a Light Touch Pseudo-Dynamic Purchasing System for the provision of residential and nursing care. In this context the word 'Agreement' refers to the arrangements made by the Council to comply with the competition requirements imposed by the Public Contract Regulations 2015 and under which it has committed to purchasing the Services from the Providers who have successfully applied to be placed on the Provider List;

Provider List Documents

means the following separate documents:

The Instructions, Specification, Appendices, and Contract, including all schedules and policies referenced therein

the Individual Service Agreement (ISA) in Provider List Document 3.1

the Provider's Application to be placed on the Provider List and

any other documents referred to or incorporated therein;

Provider Personnel	means all employees, workers, staff, agents and consultants of the Provider engaged in the provision of the Services at any time;
Public Company	means a company which has shares that can be purchased by the public; and has an authorised share capital of at least £50,000 with each of the company's shares being paid up at least as to one quarter of the nominal value of the share and the whole of any premium on it; and has securities listed on a stock exchange in any jurisdiction;
Referral	the referral of any person who uses the service to the Provider by a Referrer or (for a Service for which a person who uses the services may present or self-refer for assessment and/or treatment in accordance with this Contract and/or Guidance) presentation or self-referral by a person who uses the service;
Referrer	(i) the Social Worker (ii) the authorised Healthcare Professional who is responsible for the referral of a person who uses the service to the Provider; and (ii) any organisation, legal person or other entity which is permitted or appropriately authorised in accordance with the Law to refer the person who uses the service for assessment and/or treatment by the Provider;
Regulatory Bodies	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council, ICB or the Provider and " Regulatory Body " shall be construed accordingly
Relevant Employees	means an employee who is subject to a Relevant Transfer;
Relevant Persons	has the meaning given to it in the 2014 Regulations;
Relevant Requirements	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

Relevant Transfer	means a relevant transfer for the purposes of TUPE;
Relevant Transfer Date	means the date on which an Eligible Employee transfers to the Provider whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise;
Relief / Relief Event	means (except to the extent that it is the result of any act or omission by the Provider OR where the Council have given their prior written consent to the application of a Relief);
Representative	means either the Authorised Officer or Contract Manager (or where applicable, either the Deputy Authorised Officer or the Deputy Contract Manager) as appointed in accordance with clause 61;
Returning Employees	means those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Agreement whose employment transfers to the Council, the ICB or a Future Provider pursuant to TUPE;
Request for Information	a request for information or an apparent request for information under the FOIA or the EIR;
Restricted Person	means: <ul style="list-style-type: none"> (i) any person, other than an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pension fund, private equity firm, venture capitalist, insurance company or investment trust, who has a material interest in the production of tobacco products or alcoholic beverages; or (ii) any person who the Council otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider;
Safeguarding Policies	means the Joint Multi-Agency Safeguarding Adults Policy and Procedures for West and North Yorkshire and York and any current Safeguarding Toolkit as amended from time to time;
Security	means shares, debt securities, unit trust schemes (as defined in the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing debt securities, warrants or options to subscribe or purchase

securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company;

Serious Concerns Policy

sets out the Council's protocol, for the suspension or termination of commissioning of placements or other services in the event of serious contractual concerns including poor quality and safeguarding;

Serious Incident

means an incident or accident or near-miss where a person who uses the service, member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Provider's Premises or where the actions of the Provider, the Provider Personnel or the Personnel are likely to be of significant public concern including any Serious Incident as defined in the NHS Serious Incident Framework;

Service(s)

means the provision of the requirements of the Specification in accordance with a Care and Support Plan as may from time to time be agreed in writing between the Council, the ICB and the Provider;

Service Commencement Date

means the date on which the Provider commences provision of the Services under this contract;

Service Transfer Date

means the transfer on a date agreed by the Parties to the Provider of responsibility for provision of the Services in accordance with this Contract;

Shared Decision-Making

The collaborative process of discussing options and the risks and benefits of various actions and courses of care or treatment based on the needs, goals and personal circumstances of a Service User, with that Service User and/or their Carer or Legal Guardian (as appropriate); further details are available at: <https://www.england.nhs.uk/shared-decision-making/>

Social Worker

means a social worker employed by the Council who is responsible for undertaking Assessments and producing Care Act Assessment and Support Plans for Service Users and for reviewing Service User needs

Specification

means the specification as set out at Document 2 of the procurement document pack.

Spot Purchase	Means an ISC purchased for a single service user under the Provider List arrangements including an ISC that is purchased as part of a Managed Service
Standard DBS Check	means a disclosure of information which contains certain details of an individual's convictions, cautions, reprimand or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions;
Standard DBS Position	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 197 (as amended) and in relation to which a Standard DBS Check is permitted;
Sub-Contract	means any contract entered into by the Provider with a third party for the provision of any of the Services or goods or equipment in relation to the Services;
Term	has the meaning given in clause 2 below or such reduced period as may be agreed between the Parties from time to time;
Termination Date	means the date on which this Agreement expires at the end of the Term or the date on which this Agreement terminates following termination in consequence of Part 3 and the other relevant provisions of this Contract;
Transfer under TUPE	means a transfer of an employment contract under Regulation 4 of the Transfer of Undertakings (Protection of Employment) Regulations 2006
Transferring Employee	means an employee of the Council or the ICB (excluding any person engaged by either of them as an independent provider) the identity of whose employer under their contract of employment is changed due to the application of TUPE to this Agreement

In this Contract, unless the context otherwise requires:

- 1.2 headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Contract;
- 1.3 all references to clauses, schedules, annexure or appendices are references to the clauses of and schedules, annexure or appendices to this Agreement unless otherwise stated;
- 1.4 If there is a conflict between the clauses and Schedules and/ or any Schedules and annexure or appendices, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.4.1 This Contract and the completed ISA at Provider List Document 3.1 shall have equal precedence

- 1.4.2 The other schedules to this Contract and the Provider List Documents, with priority in any event being given to the Specification
- 1.4.3 Any other schedules and annexes or appendices to this Agreement
- 1.5 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, documents or other instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.6 all references to any statutory provision shall include references to any statute or statutory provisions which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;
- 1.7 words importing the singular include the plural and vice versa;
- 1.8 words importing a gender include all genders;
- 1.9 "person" includes an individual, partnership, forum, trust, body corporate, government, governmental body, Council, agency or unincorporated body of persons or association;
- 1.10 the words "include" and "including" are to be construed without limitation and the rule of construction known as *ejusdem generis (of or as the same kind)* shall not apply to this Contract;
- 1.11 references to sub-contractors shall be to Sub-Contractors of any tier;
- 1.12 any obligation on a party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.13 subject to any express provisions of this Agreement to the contrary, the obligations of any party are to be performed at that party's own expense.

PART 1 CONTRACT ARRANGEMENTS & AWARD PROCEDURES

2 Contract arrangements:

The terms of the Contract relating to Term and Scope are as follows:

Term

- 2.1 This Contract shall commence on the Commencement Date and shall continue in effect until the Expiry Date or until it is otherwise terminated or extended in accordance with the provisions of this Agreement (the "**Term**").

- 2.2 The Provider List arrangements will not determine the duration of any Individual Service Agreement made under this Contract.

Scope

- 2.3 This Contract governs the relationship between the Council and the Provider in respect of the provision of the Services specified in the Service Specification at Document 2 of the Procurement Pack by the Provider to the Council and to the Service User for the period specified in the Individual Service Agreement.
- 2.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council and/or any Service User in respect of the total quantities or values of the Services to be ordered by them pursuant to the Provider List Agreement and the Provider acknowledges and agrees that it has not entered into this Contract on the basis of any such undertaking, statement, promise or representation.

Member of Provider List

- 2.5 The Council, having accepted the Provider's application to be an approved provider of the Services under the Provider List, as a current member of the Provider List, the Provider is eligible to supply the Services through an Individual Service Contract (ISC).

Managed Services

- 2.6 Whilst the primary route for services under this Contract will be via individual ISCs, the Council may also use the Provider List to procure ISCs under a Managed Services arrangement. The Council in establishing a Managed Services arrangement under the Provider List shall:
- 2.6.1 identify the relevant Services under which the requirement for a Managed Services arrangement will fall and any relevant Special Conditions that shall attach to any ISC made under it, both the Services and the Special Conditions then being recorded in the ISA for each ISC called off for that Managed Service,
- 2.6.2 supplement and refine the Terms and Conditions at the start of the mini-competition stage in order to ensure that the Managed Service arrangement is clearly defined and priced; and
- 2.6.3 offer, through a form of mini competition to enter into a Managed Services arrangement made with the Provider.
- 2.7 Notwithstanding the fact that the Council has followed the procedure set out above in this clause, the Council shall be entitled at all times to decline to make an award for their Services requirements whether for a Spot Purchase ISC or one that is made under a Managed Services arrangement. Nothing in

the Provider List arrangements shall oblige the Council or Service User to enter into a Contract with the Provider.

Non-Exclusivity

- 2.7.1 Although the Provider is an approved provider under the Provider List, this status confers no form of exclusivity or volume guarantee by the Council in relation to its (or the ICB's) requirements for Services to be provided by the Provider and
- 2.7.2 the Council, the ICB and the individual Service Users are at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

Services suitable for the Service User

- 2.8 Where the Provider has been requested by the Council to enter into an ISC, this shall be on the basis that the needs of the Service User that are recorded on the ISA can be suitably met by the provision of the Services in accordance with the terms of this Contract.

Provision of Support Plan:

- 2.9 The Council shall use reasonable endeavours to provide the Care Act Assessment and Support Plan appropriate for the Service User to the Provider prior to or on the date the Services commence.

Review of Contract

- 2.11 Reviews shall be undertaken by the Council in order to assess the performance of the Provider under this contract in delivering service quality and shall be conducted as follows:
- 2.11.1 The Provider shall afford all reasonable resources and facilities to allow the Council to carry out reviews under this Clause and provide all reasonable information that may be required by them from time to time for this purpose.
- 2.11.2 Reviews shall take place of the Provider List Documents from time to time during the PDPS term. These reviews shall be undertaken by the Council, ICB, and Providers individually, and collectively through the Service Improvement Board.

PART 2: CONTRACT SUSPENSION, INTERRUPTION AND DELAY

3 Duty to communicate and remedy detriment:

3 The Parties shall co-operate with each other in the following ways in order to facilitate efficient communication between them and to detect and remedy any detriment to the Service User, family, visitors, staff and professionals or members of the public:

3.1 If the Council or the Provider become aware of a detriment (which shall be the occurrence of any event, interruption, delay or other circumstance that may have an adverse effect upon the performance of the Services under the contract) then each shall immediately notify the other of the detriment in order to assess the situation and take any necessary remedial steps. This notification shall be without prejudice to the Council's right to invoke the Serious Concerns Policy in response to the detriment and to consider whether it may be appropriate and proportionate to impose any embargo on creating any further Individual Service Agreements with the same Provider. If the Provider shall become aware of such a detriment, then it shall immediately take all reasonable steps to mitigate its effects to enable it to comply with the requirements of the Contract.

Contract Suspension Notice:

3.2 The Council reserves the right to give written notice with immediate effect to suspend the Contract in relation to the Provider accepting new placements in the event that it reasonably considers this step is necessary due to the effect of any urgent operational, quality or safeguarding factor or because a properly constituted risk assessment identifies this step as appropriate. In the event that the Contract is suspended under this Clause then the Provider shall forthwith accept such notice, implement it as required and then shall promptly recommence the performance of the Services on receipt of a further written resumption notice from the Council ending the suspension.

3.3 Without prejudice to the generality of that provision, notice of suspension under Clause 3.2 may be served by the Council on the Provider in consequence of one or more of the following circumstances applying:

3.3.1 the Council reasonably considers that there has been an incident or cause for concern regarding the provision of support or where there is a threat to the health, safety, or welfare of any of the Service Users such that it is not appropriate for the Provider to provide any new Services;

3.3.2 the Provider is served with a Notice of Proposed Cancellation of Registration by the Care Quality Commission in relation to any Services of the kind that are to be provided to the Service User under Contract

3.3.3 the Service provided by the Provider under this contract is rated inadequate by the Care Quality Commission

3.3.4 the Council has initiated its local or regional safeguarding adults from abuse procedure in relation to the Provider;

3.3.5 there are unsatisfactory reports from statutory agencies (including but not limited to Registration Authority Environmental Health, Fire Authority) or

other Regulatory Bodies or the Council's Department of Adults & Community Service or Corporate Procurement Unit in relation to the Provider; or

- 3.3.6 where the Council has cogent evidence that the Provider may be unable to maintain standards of continuity, quality or outcomes of the Service and in its ability to maintain a satisfactory standard to Service Users already using its Services whether or not under other contracts under the Provider List
- 3.3.7 where the Council has cogent evidence that the Provider constitutes a significant financial risk in relation to its ability to deliver the Services in accordance with the terms of this contract
- 3.3.8 the Council invokes the Serious Concerns Procedure set out in Provider List Document 5.3.1 in relation to the Provider's services, whether or not in relation to the same services that are to be provided by it under this contract;
- 3.3.9 where the Council evidence that the Provider is or may be in material breach of the Law, or in material breach of any relevant quality requirements or regulatory compliance standards issued by a Regulatory or Statutory Body which could affect safety, service quality or financial stability
- 3.4 In the event that the Council serves a suspension notice then:
 - 3.4.1 no further ISAs shall be issued to or accepted by the Provider on or after the date of its service; and
 - 3.4.2 the Council shall, at its own absolute discretion, and in order to avoid the service user experiencing harm or abuse, be entitled to take alternative measures to provide some or all of the Service(s) to the service user that are specified in this contract, which shall include (without limitation) providing the Services itself or through its agents, or employing another person to do so on its behalf, for as long as the suspension notice is in force. The Council reserve the right, at its absolute discretion, to make a recharge for such services to the Provider in the event that it reasonably considers that the alternative measures were required due to the Provider's culpable negligence or recklessness. No charges may be made by the Provider under this contract to the Council or to the Service User or his or her representative during any period when this Clause 3.4.2 has been implemented by the Council
- 3.5 The Council shall if any of the following events occur, consider whether (acting reasonably) it should allow the Provider to resume provision of the suspended Service and give notice accordingly:
 - 3.5.1 After any conditions or requirements imposed by any safeguarding adults from abuse procedure have been met and after the specific serious concerns have been noted as formally closed within the approved and adopted minutes of the relevant meeting convened pursuant to provision in the Care Act 2014;
 - 3.5.2 After the Provider has been assessed by the Care Quality Commission as complying with Fundamental Standards of Care; and

- 3.5.3 When the Council or any other responsible statutory bodies or agencies have imposed any specific service standards or conditions upon the Provider in relation to the Contract that the Provider has failed or been unable to meet in the past (whether or not that failure has caused the suspension) and the Provider has taken such steps that it reasonably believes that it can demonstrate on the basis of objective evidence that it will be able to meet those standards in the future
- 3.5.4 If any:
- i. investigation by the Council into of the provision of services, including those provided under this Contract,
 - ii. review by the Council of the general provision of all services provided under the Provider List.
 - iii. formal review undertaken under a provision of the Care Act 2014 by any Safeguarding Adults Board (SAB) (including obtaining the views of the members of the SAB on the quality of the service provided under the Provider List)
- has been completed and has found that the quality of the services provided by the Provider has improved and that the improvement is sustainable
- 3.6 The Council shall ensure that any investigation is carried out as quickly as possible.
- 3.7 If the Council consider that the Provider is to resume provision of some or all of the suspended Service(s) then the Council shall serve on the Provider a resumption notice which shall set out the Service(s) to be resumed, the date upon which they are to be resumed, and any conditions.
- 3.8 If the Council considers that the Provider is not to resume provision of some or all of the suspended Service(s) then it will be entitled to give the Provider notice terminating this Contract with immediate effect and to give consideration to whether the Provider should be suspended or removed from membership of the Provider List.
- 3.9 In the event that the Council imposes an embargo on the Provider under the procedure set out in Provider List Document 5.3.1 then its removal will also be considered under the terms of that procedure and will not be solely dependent upon any outcome or subsequent change in rating provided by the CQC.

PART 3: CONTRACT TERMINATION

4 Termination Procedures:

Voluntary Termination by the Council

- 4.1 The Council may for any reason whatsoever terminate the Contract at any time on or before its Expiry Date by service of notice upon the Provider under clause 4.2.
- 4.2 If the Council wishes to terminate the Contract under clause 4.1, it must serve written notice in accordance with Clause 66 on the Provider stating:
- 4.2.1 that the Council is terminating the Contract under clause 4.1; and
- 4.2.2 the date that the Contract will terminate, such date to be a date falling not less than three (3) calendar months after the date of receipt of the notice by the Provider.
- 4.3 Upon the service of the notice specified in Clause 4.2 or by operation of law the Contract will then terminate on the date specified within it unless it shall be validly terminated at some earlier date by virtue of the effect of some other provision of this Contract

Grounds for summary termination

- 5 This Contract may be summarily terminated by the Council without affecting any other right or remedy available to it, by giving written notice to the Provider in accordance with Clause 66 in the event that in the reasonable view of the Council, any or more than one of the following circumstances have occurred or are likely to occur within 14 days of service of that notice:
- 5.1.1 the Provider fails to pay any amount due under this Contract on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment;
- 5.1.2 the Provider commits a material breach of any term of this Contract which breach is irremediable; or
- 5.1.3 if such breach is remediable fails to remedy that breach within a period of fifteen (15) Business Days after being notified in writing to do so, and for the purposes of this clause and 5.1.2 above, a material breach means a breach of the terms, liabilities or obligations of the contract (including any anticipatory breach) that has the effect (either when assessed with the other provisions of the Contract or by itself) of seriously and adversely affecting the benefit which the terminating party would otherwise reasonably expect to derive from this Contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding;

- 5.1.4 the Provider repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- 5.1.5 The Provider is served with a Notice of Decision to Cancel Registration by the Care Quality Commission in relation to any Services of the kind that are to be provided to the Service User under Contract;
- 5.1.6 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 5.1.7 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 5.1.8 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- 5.1.9 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 5.1.10 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- 5.1.11 the Provider (being an individual) is the subject of a bankruptcy petition or order;
- 5.1.12 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) Business Days;
- 5.1.13 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 5.1.7-5.1.11;
- 5.1.14 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

- 5.1.15 the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- 5.1.16 there is a change of control of the Provider (within the meaning of section 1124 of the Corporation Tax Act 2010);
- 5.1.17 this Contract has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
- 5.1.18 the Provider was, at the time when this Contract was awarded, in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 (or the equivalent legislation in force at that time) including as a result of the application of regulation 57(2), and therefore should not have been awarded this Contract;
- 5.1.19 any competent court makes an award for ineffectiveness of this Contract under the Public Contracts Regulations 2015 (or the equivalent legislation in force at that time); or
- 5.1.20 this Contract should not have been awarded to the Provider in view of a serious infringement of the obligations of the Public Contracts Directive 2014;

6 Consequences of termination/expiry

- 6.1 In the event that the Council terminates this Contract in accordance with Clause 5 (with the exception of Clause 5.1.18 where termination is in consequence of an infringement by the Council) the Council shall also and without prejudice to its other legal remedies (but not so as to permit double recovery of its losses) be entitled to recover from the Provider any and all costs, liabilities, financial losses or expenses that the Council shall incur both as a result of the circumstances giving rise to the Council's service of notice to terminate this Contract and (without prejudice to the overriding effect of Clause 6.2) in consequence of its termination under that notice rather than under Clause 4.1.
- 6.2 The Losses referred to in clause 6.1 shall include:
 - 6.2.1 any additional costs incurred by the Commissioners in procuring replacement services (including any difference in purchase price); and
 - 6.2.2 any costs incurred by the Commissioners in procuring an alternative supplier to provide goods similar to the Services.
- 6.3 In the event that this Contract is terminated in accordance with clause 5.1.18 each Party shall bear its own costs.

6.4 Not less than two (2) days after the service by either party of a notice of termination of this Contract or before the date of expiry of this Contract (whichever shall be the earlier date) the Provider shall (so far as is reasonably possible and with all necessary redaction in order to avoid breaching any of its data protection or confidentiality obligations) provide and continue to make available to the Council in both an accessible electronic format and in hard copy format all documents, materials, correspondence, papers, specifications, information contained within databases, manuals, guidance and other information in its control or possession which the Council may require or request in writing in order to:

- i. assist in the timely and efficient transfer of the services to any third party;
- ii. provide the same or similar services to the Services or
- iii. the adoption of such Services by the Council themselves.

6.5 The termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

7 Termination of Spot Purchases

The termination of Spot Purchase Call Off Individual Service Contracts (ISC) shall be undertaken in accordance with the following procedures which shall be deemed both in addition to and separate from any grounds from termination under Clauses 4 and 5:

7.1 If an ISC is for the provision of services over a fixed period then it will automatically terminate at the end of the period without any requirement for giving any notice to that effect.

7.2 The Service User, (or their Authorised Representative) may at any time for any reason inform the Council/ICB that he or she wishes the ISC to terminate and the Council shall in that event be entitled to terminate the Contract by giving the Provider a maximum period of fourteen (14) days' notice to that effect.

7.3 The Council may terminate the Contract on giving to the Provider fourteen (14) days written notice, or such lesser period as may be agreed between them in writing, if in the reasonable opinion of the Council the Service User no longer requires the Services.

7.4 Where, in the reasonable opinion of the Council following a Contract Review or notice being served under Clause 9.6 of this Contract, the Service User's care needs are such that the Provider is unable to provide Services of the appropriate quality under this contract then the Council may terminate the

Contract on giving to the Provider fourteen (14) days writing notice (a 14-day termination), or such lesser period as may be agreed between them in writing (an agreed date termination), but only in the circumstances described in Clause 9.6 shall no further payment then be due to the Provider during the notice period, whether 14 days or at an agreed date.

7.5 Where the Council reasonably considers that the care needs of the Service User are such that that:

7.5.1 the Provider is unable to provide him or her with Services of appropriate quality and

7.5.2 The Service User's best interests urgently require that an alternative service be arranged,

then it shall arrange an alternative service and after it has done so will give written notice to the provider that it has made such arrangements, and in such circumstances the Contract will be deemed to terminate one (1) day after the Council gives of such notice.

7.6 The Provider may terminate the Call-off Contract having given fourteen (14) days' notice in writing where the Council has persistently and seriously failed to comply with its responsibilities within the express terms of the Contract.

7.7 In the event that the Service User absents himself or herself from the place where the Provider is supplying the services under this contract for more than seven (7) consecutive days then the Provider shall immediately inform the Council of this in writing and the Council may then, at its discretion, terminate the Call-off Contract by giving seven (7) days' notice in writing to the Provider.

7.8 Either Party may terminate the Call-off Contract having received a clear and unequivocal request from the Service User to that effect upon having given at least fourteen (14) days' notice in writing to the other Party, subject to agreement being reached between the Council and the Service User on an alternative plan for his or her the future care of the Service User.

8. Termination of Call-Off Contracts for Managed Services

8.1 All Spot-purchase Contracts called off under a Managed Services provision shall terminate on the date specified in that Contract unless terminated earlier in accordance with this clause.

8.2 The Council may (without prejudice to any other rights which it may possess to terminate the contracts made under the Managed Service arrangement) by written notice with fourteen (14) days' notice end a Managed Service arrangement on written Notice to the Provider to that effect and the effect of such notice shall be to terminate all the Contracts called off under that Managed Service on the same termination date. The right to serve a termination notice in relation to a Managed Service shall only arise in the following circumstances:

- 8.2.1 the Provider has committed a breach of its obligations under the Provider List arrangements or the Managed Service Mini-competition in relation to the Managed Service, that breach being:
- 8.2.2 a Material Breach of one or more of the Contracts called off under the Managed Service (the term material breach bearing the same meaning as in Clause 5.1.2 of this Contract; or
- 8.2.3 a serious failure in the Provider's compliance with the Provider List arrangements, which, without prejudice to the generality of the term "serious failure" shall be deemed to include (as separate failures) both the cancellation or suspension of its CQC registration and also its failure to satisfy any terms imposed upon the Provider arising from the Council's due diligence into its financial status; or
- 8.2.4 the Provider persistently and unreasonably refusing to either accept referrals from the Council under the Managed Service or to continue to provide services to individual Service Users after the Managed Service arrangement has commenced.
- 8.3 When any Managed Service is ended under Clause 8.2 or in the event that all the Contracts called off under a Managed Service arrangement shall be terminated by any other provision of this contract then, in the event that in the reasonable opinion of the Council, the needs of one or more of the Service User provided for under the Managed Service are such that it is in her/his interests for an alternative service to be arranged urgently, then the notice period of 14 days referred to in Clause 8.2 may be unilaterally varied by the Council, which shall use its best endeavours to arrange the alternative service and the Contract for that Service User will terminate one (1) day (or such other period as the notice may specify) after the Council has given notice to the Provider to that effect.
- 8.4 For the avoidance of doubt a Managed Service is not itself a Contract but is one or more Contracts that are called off and then operated together for reasons of administrative or therapeutic convenience and a Managed Service is not a service contract for the purpose of the TUPE regulations.

PART 4: PROVIDERS OBLIGATIONS

9 Provision of the Services

The Provider shall provide the Services in accordance with the terms set out in this Contract, the Specification and in particular:

- 9.1 At all times shall have regard to the welfare and rights of the Service User and the Care Quality Commission's Fundamental Standards of Care as published from time to time on quality and safety and regard these as minimum standards of Services delivery.

9.2 Without prejudice to the provisions of the Service Specification and any special conditions as agreed from time to time, the Provider shall make the Services available to the Service User as required with effect from the Service Commencement Date.

9.3 The Provider must comply with the Council's local brand policy and guidelines, as revised, updated or re-issued from time to time.

Provider's equipment

9.4 The Provider must:

9.4.1 provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services;

9.4.2 ensure that all Provider Personnel using Equipment and all Service Users, Carers or Legal Guardian (as appropriate) using Equipment independently as part of the Service User's care or treatment, have received appropriate and adequate training and have assessed as competent in the used of that Equipment;

9.4.3 Comply with Guidance for provision of equipment in care homes

Withholding and/or temporary discontinuation of Services

9.5 The Provider shall not be required to provide or to continue to provide Services to any Service User (except where required by the Law and taking into account the NHS Constitution) in the following circumstances:

9.5.1 When, in the reasonable professional opinion of the Provider, the Service User's needs are unsuitable for the Services specified in the relevant Call-off Contract;

9.5.2 The Service User displays abusive, violent or threatening behaviour that the Provider:

i. acting reasonably,

ii. after taking into account the mental health of the Service User and the requirement on the part of the Provider to employ appropriately trained staff in accordance with Clause 42 and

iii. taking into consideration any requirements on the part of the Provider and the Council to comply with the relevant strategies of support devised by health and social care professionals

formally decides, in a multi-disciplinary meeting convened for that purpose to which all the relevant stakeholders and concerned parties including family, any

advocate, formal or informal (and having considered whether in the absence of an advocate, an IMCA should be commissioned) have been invited, and after fairly considering all the evidence, having made capacity assessment of the service user to understand and participate, is so challenging and potentially harmful to either the Service User or the Providers Personnel or its other service users that it is unable to safely provide the Services to the Service User under this contract

9.5.3 When the Provider's Personnel are expressly instructed not to do so by a representative of an emergency service provider (who shall be presumed, in the absence of any indication to the contrary, to have authority to give such instruction) for so long as that instruction applies; or

9.5.4 When no valid consent (where required) has been given by the Service User in accordance with the Provider's Service User consent policy and subject at all times to the compliance by the Provider with any lawful obligation to publish, maintain and operate that Policy.

9.6 In the event that the Provider proposes any cessation in service provision as described in Clause 9.5 of this Contract then provided that it is reasonably possible to do so (and applying an objective test to that proviso based upon a competent and well-run Provider of those Services operating with suitable staffing levels and with appropriate human and technical resources) the Provider must:

9.6.1 explain to the Service User, Carer or Legal Guardian (as appropriate) taking into account clause 9.6.2 below the action that it is taking, when that action will take effect, and the reasons for it (confirming that explanation in writing within two (2) Business Days);

9.6.2 tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;

9.6.3 give the Council written notice of such proposal without delay and wherever possible in advance of taking such action;

provided further that nothing in this clause shall entitle the Provider to cease to provide the Services where to do so would be contrary to the Law, and that, the Provider complying with the requirements set out in this Clause 9.6 of this Agreement, the Council shall pay the Provider in accordance with the terms of this Contract for any Services provided to the Service User up to the date of the temporary discontinuance. In the event that any notice is served under Clauses 9.5 or 9.6 then the Council shall be at liberty to immediately serve notice of termination of this Contract and in such circumstances no further payment shall be due to the Provider under this Contract.

Service User involvement

9.7 The Provider shall engage, liaise and communicate with the Service User, his or her Carers and Legal Guardians, including obtaining any consent, in an

open and clear manner in accordance with the Law, Good Clinical Practice and human rights.

- 9.8 As soon as reasonably practicable following any reasonable request from the Council, the Provider must provide evidence to the Council of the involvement of its Service Users, Carers and Provider Personnel in the development and delivery of its Services.
- 9.9 The Provider must carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Council in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in the Information-sharing Protocol referred to in Provider List Document 5.3.1 as otherwise agreed between the Parties in writing from time to time.
- 9.10 The Provider must review and provide a written report to the Council on the results of each survey carried out under this provision and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Council, the Provider must publish the outcomes and actions taken in relation to such surveys.
- 9.11 The Provider shall only be required to undertake one review and provide one such report if at that time it has more than one call-off Contract with the Council under the Provider List but the review and report must consider all the service users to whom the Provider is providing the services at that time.

Standard of Performance

- 10 The Providers must not be in breach of the requirements set out in the Quality Charter and their compliance with the required standards of service quality as set out in the Quality Charter shall be undertaken as follows:
- 10.1 The Provider will at all times ensure that the Services comply with and meet all the requirements of this Contract, the Service Specification, Good Industry Practice, Guidance, the applicable Council Policies and procedures referenced in the incorporated Policy and Procedures Schedule and with the Law with effect from the Service Commencement Date and shall continually review and evaluate the Services, must act on Lessons Learned from those reviews and evaluations from feedback, complaints, audits, clinical outcome review programmes, Patient Safety Incidents, Never Events and from the involvement of Service Users, Staff, GPs and the public (including the outcomes of Service User surveys).
- 10.2 The Provider shall ensure, and shall procure that any Provider Personnel shall ensure, that the Services are carried out in compliance with equality requirements.

- 10.3 The Provider will at all times ensure that the Services are performed by appropriately inducted qualified and trained personnel.
- 10.4 The Provider and Council shall co-operate fully and share information with each other and with any other commissioner or provider of health or social care in respect of the Service User in order to:
- 10.4.1 ensure that a consistently high standard of care for the Service User is maintained at all times;
- 10.4.2 ensure that a co-ordinated and integrated approach is taken to promoting the quality of care for the Service User across all relevant pathways;
- 10.4.3 achieve continuity of service that avoids that avoids inconvenience to, or risk to the health and safety of the Service User or members of the public;
- 10.4.4 seek to ensure that the Services and other health and social care services delivered to the Service User are delivered in such a way as to maximise the value for public money;
- 10.4.5 seek to ensure that any arrangement for or feature of the delivery of the services, or any provision of this Contract does not hinder or adversely affect the delivery of the Services or the provider's ability to perform this Contract;

Complaints

- 10.5 The Provider must establish and implement an internal complains procedure for Service Users under this contract that in all material respects (and so far as is practicable) complies with or replicates the Council's process for complaints and at the commencement of each complaints procedure shall inform any complainant that (as appropriate to the particular complaint) that at the conclusion of the procedure they will , if they are dissatisfied with the outcome, have the right to elect to refer the complaint onwards to the Council, the CQC or to another Regulatory Body and then to the relevant ombudsman. In operating such an internal complaints procedure the Provider shall at all times comply (so far as is reasonably practicable)with the same regulations governing complaints that apply to the Council, and in particular shall ensure that it includes:
- 10.5.1 publicising the complaints procedure by providing clear information to Service Users, their Carers and representatives and to the public, displayed prominently within the Premises as appropriate, on how to make a complaint or to provide other feedback on how to contact CQC or Local Healthwatch;
- 10.5.2 dealing with any complaints speedily;
- 10.6 If a complaint is received about the standard of the provision of the Services or about the manner in which the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this

Contract, then the Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, CQC or/and any Regulatory Body. Without prejudice to any other rights the Council may have under this Contract, the Council may, in their sole discretion, uphold the complaint and take any action specified in Clause 10.

- 10.7 The Provider undertakes to co-operate with the Council with any investigation into a complaint including providing such information that is reasonably necessary and in a timely manner.

Service User Records

- 10.8 The Provider must create, maintain, store and retain Service User records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance. For the avoidance of doubt this obligation to retain is not dependent on the expiry or termination of this Contract.
- 10.9 The Provider must at all times during the term of this Contract have appointed a Caldicott Guardian who shall notify the Council of their identity and contact details prior to the Services Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this Contract, it shall promptly notify the Council of the identity and contact details of such replacements.
- 10.10 Subject to Guidance and where appropriate the Provider must:
- 10.10.1 at the Council's reasonable request, promptly deliver to any third party provider of healthcare or social care services nominated by the Council a copy (or at any time following the expiry or termination of this Contract, the original) of the Service User record held by the Provider for any Service User for whom the Council is responsible;

Information and Data Quality Plan

- 10.11 The Provider must provide the Council with the information referred to in the Quality Schedule and in accordance with the Bradford Inter-Agency Information Sharing Protocol to enable the Council or the ICB to measure delivery of the Services in accordance with the Quality Charter in Provider List Document 5.2.
- 10.12 The Provider must deliver the information required under clause 10.11 in the specified format, manner, frequency and timescales specified and must ensure that the information is accurate and complete.
- 10.13 If the Provider fails to comply with any of the obligations in this clause 10 the Council (without prejudice to any other rights it may have under this Contract), may at its own absolute discretion, issue a Contract Query Notice or exercise its other rights arising where the Provider fails to satisfy the relevant obligation.

- 10.14 In addition to the information required under clauses 10.11-10.13 the Council may request from the Provider any other information it reasonably and lawfully requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

Information Governance

- 10.15 The Provider shall ensure that in order to discharge its obligations under this Agreement especially those in relation to information that its information governance meets all reasonable standards under Law, Good Clinical Practice, National Standards, Guidance or as directed by the Council or any Regulatory Body or CQC as applicable to the Provider and/or the Services and in accordance with the data sharing protocol referenced in Schedule 1

Data Quality Improvement Plan

- 10.16 Without prejudice to any other rights contained in this Contract, where directed by the Council in its absolute discretion, the Provider shall prepare and agree a Data Quality Improvement Plan with the Council.

11 Charges

- 11 The Council shall be responsible for paying the charges of the Provider in relation to the provision of the Services under the terms of this Contract, and shall discharge that responsibility as follows:

- 11.1 In consideration for the Provider's compliance with its obligations under this Contract the Council shall pay to the Provider the Charges that are detailed and calculated in accordance with the Pricing Mechanism set out in Provider List Document 5.1.

- 11.2 A client or personal choice contribution/third party top up, may also be payable by the individual named, and such administrative arrangements are set out in the sample Individual Service Agreement at Provider List Document 3.1 but shall not form part of this Contract.

- 11.3 Payment is exclusive of any applicable Value Added Tax which the Council shall be additionally liable to pay to the Service Provider if they are able to evidence that the CQC registered-company is providing a VAT-able supply.

Deductions:

- 11.4 The parties acknowledge and agree that any Deductions that arise in consequence of the application of the Pricing Arrangements specified in Provider List Document 5.1 are equal to loss in the circumstances where such Deductions are applicable pursuant to this Contract.

- 11.5 In the event that the Service User or responsible Carer has chosen to use some, or all, of a Personal Budget to purchase the Services then these arrangements are recorded in the ISA. For the avoidance of doubt the Parties both agree that any services provided under this contract that are paid for under a Personal Budget will be charged at the Provider List Pricing Arrangements set out in Provider List Document 5.1 and that the Service Specifications set out in Provider List Document 2 will apply without modification.
- 11.6 Any Third party top up payments that apply to the placement of the Service User under this contract will not be payments that are regulated by this contract.

Payment arrangements

- 11.7 The Council shall pay to the Provider the sum due under the Contract, taking account of: The Service provided in the Payment Period and the Contract provisions regarding Placements; the Contract Fee and provisions relating to payment; and any additions and deductions in accordance with the Contract.
- 11.8 The Provider should confirm payments due using the Provider Portal on the Monday following each scheduled period end date.
- 11.9 Prompt payment on behalf of the Council can only be expected if payments have been confirmed fortnightly through the Provider Portal. Any anticipated delays should be notified by the Provider to the Council at the earliest opportunity and failure to do so may result in payments being delayed
- 11.10 Any changes/adjustments should be forwarded to the FSS Contracts Team through an "Action" on the Provider Portal as soon as possible i.e. hospital stays/permanent discharges.
- 11.11 The Provider shall re-submit 3.1a of the contract should the Fee/Rate quoted in the contract change, including the details of any increased level of Service or other resources that has led to the increase. This Should be sent to the FSS Contracts Team (cca.contractsteam@bradford.gov.uk)
- 11.12 The Provider shall submit 3.1b Non Health and Social Care Contributions Agreement Variation in the event of any agreed changes to the Personal Choice Contributions. This should be sent to the FSS Contracts Team (cca.contractsteam@bradford.gov.uk)
- 11.13 Unless otherwise agreed in writing, payment shall be in accordance with the Council's 14 day payment system.
- 11.14 The Council will not be liable to make any additional payment or to pay interest attributable to any delay in payment caused by the Provider's failure to supply

correct documentation or deal expeditiously with any reasonable queries raised by the Council concerning compliance with its payment arrangements.

- 11.15 The Council will monitor payments against Service delivery, and in the event that such monitoring reveals that an under-payment or over-payment has occurred in relation to the Provider (including taking into account the Council recovering any recharge or any unpaid claim against the Provider for a costs indemnity under this Contract) then it reserves the right at its absolute discretion to adjust any future payments to it under this Contract in order to correct the accounting record.

12 Service Standards Failure

12 The following provisions shall apply in the event of a service standards failure:

12.1 If the Council is of the reasonable opinion that there has been a material breach by the Provider in compliance with any of the provisions of this Contract that describe how the Services shall be provided, including the service specifications set out in Provider List Document 2, then the Council may, without prejudice to any other rights or remedies that it may have under this Agreement including under Clause 13.7 (Contract Management Meeting), invoke the Serious Concerns Policy, consult with the Provider and then do any of the following:

12.1.1 require the Provider to submit a report detailing why the material breach has occurred and a Service Improvement Plan or CQC Action Plan in accordance with a Performance Improvement Plan and how it will be improved within such reasonable period of time as the Council may direct, or

12.1.2 without terminating this Contract, temporarily suspend the Providers obligations to provide the Services under it to the Service User and make other arrangements for their provision by a Third Party Provider, or

12.1.3 terminate this Contract by giving notice to that effect.

12.2 If the Council exercises its rights under clause 12.1 above then, the Provider must indemnify the Council for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council use its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services

13. Contract Management

13.1 The Council shall actively manage the Provider's compliance with the terms of this Contract and the provision of quality services to the Service User, and in particular

- 13.2 Where the Council decides to implement one or more of the service failure consequences described in Clause 12 in relation to the Provider failing to meet a service standard specified in the Quality Charter, the Council may exercise any of the consequences specified in Clause 12.1 immediately and irrespective of any other rights that it may have under this clause.
- 13.3 The provisions of clause 13.2 do not affect any other rights and obligations the Parties may have under this Contract.

Contract Management Meeting

- 13.4 On reasonable request the Council shall convene a contract management meeting and invite the Provider to attend. The meeting shall be at the Council's premises and shall be scheduled to take place within 10 working days of the date of the request to meet. Representatives of the Council and the Provider will attend at the meeting.

14 Failure to Agree Service Improvement Plan

Further to a Contract Management meeting if the Parties cannot agree a Service Improvement Plan within the relevant period specified under this Agreement then the Council shall then give consideration to terminating this Contract and to imposing an embargo on the Provider under the Serious Concerns procedure set out in Provider List Document 5.3.1.

15 Quality Charter Reporting

- 15.1 The Provider shall comply with the Quality Charter arrangements set out in Provider List Document 5.2 and deliver to the Council the information required under the Quality Charter specifications.
- 15.2 The Provider must submit the Quality Charter information in the form and manner set out in Provider List Document 5.2.

Quality Charter Performance Indicators

- 15.3 The Provider must demonstrate to the Council through the Quality Charter arrangements how the Provider will carry out the Services in accordance with the Law, Good Clinical Practice (where appropriate) and all relevant Policies of the Council and must provide this information as set out in Provider List Document 5.2 to enable the Council to monitor the Services provision including evidence that the Provider is, unless otherwise agreed (subject to the Law) with the Council in writing:
- 15.3.1 complying, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body and responding, where applicable, to all requirements and enforcement actions issued by them from time to time;

- 15.3.2 complying with submission requirements of annual performance information returns data to CQC and associated reporting to the Council's Commissioning Team
- 15.3.3 implementing the recommendations arising from any contract management audit, coroner's report, or Serious Incident report.
- 15.3.4 adhering to the standards and recommendations issued from time to time by a Competent Body and agreed in writing between the Council and the Provider;
- 15.3.5 have consideration of the recommendations from time to time contained in guidance and appraisals issued by NICE;
- 15.3.6 responding to any reports and recommendations made by Local HealthWatch;
- 15.3.7 responding to action plans submitted to CQC and/or the Council
- 15.3.8 formally and substantively responding within a maximum period of five (5) days to any safeguarding enquiries addressed to them and also promptly implementing any recommendations or 'lessons learned' that may be issued by the Bradford and Area Safeguarding Adults Board from time to time
- 15.3.9 The Provider shall evidence the above by producing the Service User's Care Plan. The Provider must comply with regulation 9 of the 2014 Regulations/CQC Regulations. In planning and reviewing the care or treatment which a Service User receives, the Provider must employ Shared Decision-Making, using supporting tools and techniques approved by the Council.
- 15.4 The Provider shall comply with the arrangements for delivering and monitoring Outcomes as defined by the Council in the Specifications in Provider List Document 2 and the Service User's Care Plan.

16 Unacceptable failure to comply with Quality Charter

- 16.1 The Service Specification at Provider List Document 2 and the Quality Charter arrangements at Provider List Document 5.2 detail the Services and the required quality of their delivery and the Provider's compliance with both of them is a fundamental condition of this Contract. Any significant failure to comply with them (meaning any failure that materially reduced the quality of the services delivered to the Service User under this Contract) will activate the Council's entitlement to consider making retentions and seeking its remedies for breach of this Contract.
- 16.2 In the event that the Provider fails to comply with the Specification or the Quality Charter then the Council shall be entitled to exercise any one or more of the rights set out in Part 3 of this Contract.

17. Contract Review

17. The Provider will comply with the Council's review requirements. The Parties will also attend contract management meetings with the Council's commissioning team, which may be convened at the request of either party giving the other notice of not less than 5 working days. Such period may be reduced if the party requesting the meeting reasonably believes there are safeguarding concerns and that it is necessary to meet earlier than 5 working days' notice in order to manage these concerns.

18 Co-operation in provision of services

- 18.1 During the period of this Contract the Parties shall discharge their obligations under this contract and in doing so they shall be under a general duty to act in good faith towards each other with the aims of securing the provision of high quality services to the Service User and protecting him or her from abuse or exploitation.
- 18.2 In order to achieve the aims set out in Clause 18.1 the Provider must co-operate fully and liaise appropriately (without prejudice to any obligations of confidentiality or data protection) with:
- 18.2.1 the Council;
- 18.2.2 any other provider that is at that time providing any care or services to the Service User, whether or not an approved provider under the Provider List.
- 18.2.3 any other provider to whose care the Service User may be or is likely to be transferred at the termination of this Contract, and whether before or after such termination; and
- 18.2.4 any provider of NHS health services (whether an NHS body or under a contract with such a body) and any social care services department of a local authority in order to:
- i. ensure that at all times the Service User receives a consistently high standard of care;
 - ii. ensure that any co-ordinated and integrated care arrangements between NHS, Community, Third Sector and Local authority care providers are effective and promote the provision of quality care to the Service User across all care pathways and include all actual or potential providers of care to the Service User; and
 - iii. achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of all Service Users, the Provider's Personnel, Employees of the Council and members of the public.

19. Scrutiny Board/Executive Board Assistance

- 19.1 The Local Council (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 places a duty on Providers of Health Services to attend before a Local Council when required.
- 19.2 If required or reasonably requested by the Council to do so, the Provider must throughout the period of this Contract and for a period of six (6) years after the expiry of this Contract give all reasonable assistance to the Council' Security Board and/or Executive Board and to any other board with a similar status, including attending the Council's Scrutiny and/or Executive Board in order to give a full, accurate and complete response to any questions that relate to the Providers care for the Service User and compliance with the terms of this Contract.

20 Access to and security of the Provider's Premises

- 20.1 The Provider shall take appropriate measures to ensure that the premises at which it provides the services under this contract are properly safe and secure. It shall also take appropriate measures to ensure that only service users and its duly authorised Personnel may enter upon the Premises.
- 20.2 The Provider shall:
- 20.2.1 ensure that its Personnel are all aware of and comply with its Health and Safety Policy and are aware of any potential risks to health and safety in relation to the Premises or any other land or premises to which access may be required by them for the purposes of providing the Services;
- 20.2.2 ensure that its Personnel are trained in the operation of all security measures implemented by the Provider in relation to its Premises;
- 20.2.3 issuing all its Personnel with a suitable form of personal identification which they shall be required to wear displayed visibly on their clothing at all times whilst they are on the Premises or other premises used for the provision of the Services;
- 20.2.4 immediately remove any Provider Personnel from the Premises or other premises used for the provision of the Services where the Council requests this;
- 20.2.5 Take appropriate steps to secure the privacy and security of the Service User, including ensuring that any electronic equipment in the premises is safe to use; and that any Service User's personal data kept on the Provider's equipment is kept securely, and ensure that the Service User is protected from any internet based crime (such as identity theft) or harassment in the event that the Provider makes any equipment available to the Service User that enables him or her to access the internet.

21 Contract delay

- 21.1 If, at any time, the Provider becomes aware of any circumstance or occurrence which may lead to a delay in the provision of the Services or otherwise adversely affect the Provider's performance of its obligations under this Agreement it shall immediately notify the Council in writing, providing details of the potential or actual delay.
- 21.2 The Provider shall use its best endeavours to avoid and mitigate the impact upon the Council of any circumstance or occurrence referred to in Clause 18.1.

22 Contract change

- 22.1 In the event that the Council proposes to make a significant change to any aspect of the provision of the Services by the Provider then it shall provide the Provider with written notice of the proposed change.
- 22.2 After receipt of the Notice referred in clause 22.1 the Parties shall take such steps such as are reasonably necessary to agree a variation to this Contract to reflect the change.
- 22.3 the Council shall be entitled to abandon or continue with the proposed change.
- 22.4 The Council shall not serve a notice under Clause 22.1 until it is reasonably satisfied that the proposed change represents a modification to the contract procured under the Provider List arrangements that is permitted under Regulation 72 of the Public Contract Regulations 2015

23 Best Value

- 23.1 The Provider acknowledges that:
- 23.1.1 the Council is subject to the Best Value Duty, which requires it to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to do so in compliance with published Central Government guidance
- 23.1.2 the provisions of this clause 23 are intended to assist the Council in discharging its Best Value Duty in relation to the Services; and
- 23.1.3 the provisions of this clause 23.1 shall apply in respect of the obligations of the Provider and the Council concerning the Best Value Duty.
- 23.2 The Provider shall, throughout the Term, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

- 23.3 The Provider shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with their Best Value Duty, including:
- 23.3.1 complying with all requests by the Council to procure the attendance of specific officers or employees of the Provider (or to procure attendance of any of its contractors) at any meetings of the Council at which the Services are to be discussed.
- 23.3.2 preparing an Annual Service Report in accordance with any instructions issued to it by the Council on its provision of the Services under this and any other Contract to which at the time it is a party under the Provider List.
- 23.3.3 permitting any officer or employee of the Council at all reasonable times and upon reasonable notice, access to any:
- i. document or data relating to the Services;
 - ii. Provider Personnel.
 - ii. Annual Service Report and Annual Service Plan
- 23.4 The Provider shall upon a written request from the Council promptly provide such written evidence or other supporting information as the Council may reasonably require verifying and auditing the information and other material contained in the Annual Service Report.
- 23.5 If, in the Council' reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Council may serve a written notice upon the Provider (a "Best Value Service Change Notice") stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Council desires.
- 23.6 The Provider shall, within twenty (20) Business Days of the date of receipt of the Best Value Service Change Notice make proposals for complying with the Notice and put them into effect.
- 23.7 If the Parties cannot agree on the contents of the Annual Service Plan or the timing of the implementation of any measures referred to within it then the dispute will be determined in accordance with the Disputes Resolution Procedure.
- 23.8 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the dispute resolution procedure the Council shall:
- ii. confirm in writing the Annual Service Plan; or
 - iii. withdraw the Best Value Service Change Notice.

- 23.9 If the Council confirm the Annual Service Plan then the Council shall issue a change notice (which shall include the information set out in the Best Value Service Change Notice) in accordance with clause 23.5
- 23.10 To the extent that the implementation of the proposals in the Annual Service Plan will result in a decrease in the costs of the Provider, the Charges shall be adjusted downwards.
- 23.12 To the extent that the implementation of the proposals in the Annual Service Plan will result in an increase in the costs of the Provider, the Charges shall be adjusted upwards.
- 23.13 The Provider shall take all reasonable steps to mitigate any costs and maximise any savings arising as a consequence of a Best Value Service Change Notice and a change notice served pursuant to clause 23.5.

24 Emergencies

- 24.1 If an Emergency arises during the Term which the Council considers is reasonably likely to adversely affect the performance of the Services, then the Council may instruct the Provider to work with its Emergency Duty Team to procure that such additional or alternative services are undertaken by the Provider as and when required by the Council to ensure that the Emergency is dealt with and normal provision of the Services resumes as soon as is reasonably practicable provided that the Provider shall not be obliged to provide any service which it is neither qualified nor competent to provide.
- 24.2 The Provider acknowledges clause 24.1 above and shall:
- 24.2.1 Assess the risk of emergencies occurring and use this to inform contingency planning;
- 24.2.2 Put in place emergency plans, exercise them to ensure they are effective, and offer training to Staff who may be involved in emergency response;
- 24.2.3 Put in place business continuity plans to ensure that they can continue to exercise critical functions in the event of an emergency; and
- 24.2.4 Allow the Council access to business continuity plans from time to time as requested.
- 24.3 The reasonable and properly incurred additional costs of the Provider of any additional or alternative services provided to the Council under clause 24.1 arising as a direct result of the Provider providing any additional or alternative services shall be borne by the Council. If such costs are not agreed, the Provider shall immediately comply with the Council's instructions and the costs liability issue shall be referred to the Dispute Resolution Procedure after the emergency has ended.
- 24.4 The Provider must notify the Council as soon as reasonably practicable and in any event no later than 5 Business Days following the activation of its Incident

Response Plan and/or Business Continuity Plan or any risk or any actual disruption to the Services.

- 24.5 The Provider must provide whatever support and assistance may reasonably be required by the Council and/or NHS England and in response to any national, regional, or local public health emergency or incident.

PART 5: Provider Warranties

25 Current Warranties

- 25.1 The Provider warrants, represents and undertakes to the Council and the Council relies upon such warranties and representations in terms that on the date hereof:
- 25.2 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 25.3 the information contained in the Provider's Application for membership of the Provider List remains true and accurate unless and to the extent that any changes have been notified to the Council and the Council have agreed to the provision of the Services on the basis of those changes and no others;
- 25.4 all action necessary on the part of the Provider to authorise the execution of and the performance of its obligations under this Contract has been taken or;
- 25.5 the obligations expressed to be assumed by the Provider under this Contract are legal, valid, binding and enforceable to the extent permitted by Law and is in the proper form for enforcement in England;
- 25.6 the execution, delivery and performance by it of this Contract does not contravene any provision of:
- 25.6.1 any existing Law either in force, or enacted but not yet in force binding on the Provider;
- 25.6.2 the Memorandum and Articles of Association of the Provider;
- 25.6.3 any order or decree of any court or arbitrator which is binding on the Provider;
or
- 25.6.4 any obligation which is binding upon the Provider or upon any of its assets or revenues;
- 25.7 the Provider has not, other than in connection with the Services, traded at any time since its incorporation as a company pursuant to the Companies Act 2006;

- 25.8 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Provider, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Provider to perform its obligations under this Contract;
- 25.9 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Provider to perform its obligations under this Contract;
- 25.10 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Provider, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
- 25.11 it has not paid commission or agreed to pay any commission to any employee, agent, Sub-Provider, officer or member of the Council either directly or through another on its behalf.

26 Warranties that shall continue throughout the Contract term:

The Provider warrants and undertakes to the Council that for so long as this Contract remains in full force:

- 26.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or relevant Council may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware the same may be threatened or pending) give the Council notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the delivery of the Services, the Provider's ability to perform its obligations under this Contract;
- 26.2 it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Provider to perform its obligations under this Contract;
- 26.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
- 26.4 it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself;
- 26.5 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) incorporate any company or purchase or

acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services;

- 26.6 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business; and
- 26.7 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.
- 26.8 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Provider in this Contract are cumulative and none shall be given a limited construction by reference to any other.

PART 6: Remedies other than termination

27 In the event that the Council is of the reasonable opinion that there has been a material breach of this Contract by the Provider, then the Council may, without prejudice to any other rights or remedies it may have under this Contract:

- 27.1 consult with the Provider and then do any of the following:
- 27.1.1 require the Provider to submit a report detailing why the material breach has occurred and a Service Improvement Plan and how it will be improved within such reasonable period of time as the Council may direct;
- 27.1.2 without terminating this Contract, suspend the affected Service in accordance with the suspension process and/or
- 27.2 If the Council exercises any of its rights under clause 27.1 the Provider must indemnify the Council for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council use their reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

28 Force Majeure

- 28.1 The following provisions shall apply on the occurrence of a Force Majeure Event:
- 28.1 Subject to the remaining provisions of this clause 28, either Party may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

- 28.2 The Provider cannot claim relief if the Force Majeure Event is attributable to its:
- 28.2.1 wilful act,
- 28.2.2 neglect; or
- 28.2.3 failure to take reasonable precautions against the relevant Force Majeure Event;
- 28.3 For the avoidance of doubt, it is agreed that neither occurrence of flooding (howsoever caused) nor any other form of adverse weather condition nor civil disturbance shall allow the Provider to cease providing the Service and shall not be deemed to be a circumstance that shall construed as Force Majeure. An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 28.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 28.5 As soon as practicable following the Affected Party's notification, 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 to facilitate the continued performance of this Contract. Where the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 28.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 28.7 Where reasonable in the circumstances and following consultation between the parties, the Charges payable by the Council shall be reduced to the extent that the Service User who is the subject of this Contract does not receive the Services as a result of the Force Majeure Event.
- 28.8 If the performance of the Affected Party's obligations under the Contract is prevented by circumstances of a Force Majeure Event for a period of twenty Business Days or more then the Council may by notice to the Provider

terminate the Contract upon giving five (5) Business Days' written notice to the Provider.

Survival of termination

29 Survival of termination

On termination or expiry of this Contract, the following clauses shall continue in force: 1,10, 11, 23, 25, 26, 30, 31, 32, 34, 36, 37, 40, 45, 47, 48, 49, 51, 52, 53, 55, 58, 59, 60, 67, 68, 69, 70 and 71.

30 Indemnities

30.1 Neither Party excludes or limits liability to the other Party for:

30.1.1 death or personal injury;

30.1.2 fraud; or

30.1.3 fraudulent misrepresentation.

30.2 The Provider shall indemnify the Council against all Losses suffered or incurred by the Council arising out of or in connection with:

30.2.1 the Provider's breach, negligent performance or non-performance of any of its obligations under this Contract;

30.2.2 any breach of statutory duty arising in relation to this Contract;

30.2.3 the enforcement of this Contract;

30.2.4 any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any act or omission by the Provider, Provider Personnel, professional advisors and consultants in the delivery of its obligations under this Contract; or

30.2.5 any claim made against the Council by a third party arising out of or in connection with this Contract to the extent that such claim arises out of the performance, breach, negligent performance or failure or delay in performance of this Contract by the Provider, Provider Personnel, professional advisors and consultants.

30.3 The Provider shall indemnify the Council against all Losses suffered or incurred by the Council arising out of or in connection with the provision of the Services.

31 Limitation on Liability

The Council's total aggregate liability, in addition to its obligation to pay the Charges under Provider List Document 5.1 as and when they fall due for payment, shall be limited to 100% of the aggregate annual Charges paid, due or which would have been payable under this Contract in the twelve (12) month

period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months).

32 Duty to mitigate

Both Parties shall at all times throughout the duration of this Contract use reasonable endeavours to mitigate any loss, damage, costs or expenses suffered as a result of any acts or omissions of the other Party in relation to the performance of obligations under this Contract.

33 Interest

33 Interest shall be payable on any sums due under this contract as follows:

33.1 Save where otherwise specifically provided, and subject to clause 11.14, if a Party fails to make any payment due to the other Party under this Contract within forty (40) Business Days of the due date for payment, the defaulting Party shall pay interest on the overdue amount at the Prescribed Rate from the due date until the date of actual payment.

33.2 In relation to any payments that are disputed in good faith, interest under this clause shall be payable only after such dispute is resolved, and only on any sums found to be outstanding, from thirty (30) Business Days after such dispute is resolved until the date of actual payment.

34 Right of Set-off

The Council may retain or set off any amount owed to it by the Provider against any amount due to the Provider under this Contract or under any other agreement between the Provider and the Council.

35 Insurance

35.1 The Provider shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adaptable to cover its liability under this Contract, and any other insurances required in order to comply with the Law for the duration of the Term. These insurances must be effective in each case not later than the date on which the relevant risk commences.

35.2 The insurances referred to at clause 35 shall include but not be limited to the following, in each case for any one occurrence or series of occurrences arising out of one event:

i. Employers' Liability Insurance to the value of £5 million

ii. Public Liability Insurance to the value of £10 million

35.3 The Provider shall provide to the Council on request, copies of all insurance policies referred to in this clause 35 or a broker's verification of insurance to

demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 35.4 The Provider shall not take any action or fail to take any reasonable action, or permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy referred to in clause 35.

36 Freedom of information and confidentiality

36 In respect of any Confidential Information it may receive from the other party (the “Discloser”) and subject always to the remainder of this clause 36, each party (the “Recipient”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:

36.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Contract;

36.2 The provisions of this clause 36 shall not apply to any Confidential Information which:

36.2.1 is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;

36.2.2 is obtained by a third party who is lawfully authorised to disclose such information;

36.2.3 is authorised for release by the prior written consent of the Discloser;

36.2.4 the disclosure of which is required to ensure the compliance of the Council with the Freedom of Information Act 2000 (the “FOIA”) the Environmental Information Regulations 2004 (the “EIR”) or the Local Government Transparency Code 2014/2015;

36.3 the Council may, at their sole discretion, elect to publish this Contract (including any variations to this Contract) in its entirety.

36.4 Nothing in this clause 36 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, provided that the information is subject to confidentiality undertakings equivalent to those set out in clause 36, to its professional advisors or insurers.

36.5 The Provider acknowledges that the Council are subject to the FOIA and the EIR. The Provider notes and acknowledges the FOIA, the EIR and the Codes of Practice under section 45 and 46 of the FOIA). The Provider will act in accordance with the FOIA, the EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Provider from time to time) to the extent that they apply to the Provider's performance under this

Contract.

36.6 The Provider agrees that:

36.6.1 without prejudice to the generality of clause 36, the provisions of this clause 36.6.1 are subject to the obligations and commitments of the Council under the FOIA and the Codes of Practice issued under section 45 and 46 of the FOIA.

36.6.2 where it considers that any information should not be available for disclosure, it will:

- i. identify it specifically; and
- ii. explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.

36.6.3 All decisions regarding disclosure of information following a Request For Information will be made at the sole discretion of the Council. The Provider acknowledges that, even where the Provider has indicated that information is commercially sensitive, the Council may be required to disclose it under the FOIA or EIA, with or without consulting the Provider and although the Council will use reasonable endeavours to consult with the Provider prior to any disclosure, the Council shall not be under any further obligation to consult the Provider prior to disclosure.

36.6.4 The Provider shall transfer to the Council any Request for Information it should receive, as soon as practicable after receipt and in any event within five (5) Business Days of receiving a Request for Information.

36.6.5 Where the Council are managing a request as referred to in clause 36.6.3, the Provider shall co-operate with the Council and shall respond together with copies of any documentation so requested within five (5) Business Days of any request by it for assistance.

36.6.6 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- i. in connection with any dispute resolution under clause 60 (Dispute Resolution);
- ii. in connection with any litigation between the Parties;
- iii. to comply with the Law;
- iv. to its staff, consultants engaged in the delivery and performance management of this Contract, who shall in respect of such Confidential Information be under a duty no less onerous than the original Party's duty;

- v. to comply with a Regulatory Bodies request.

37 Data Protection

37 In relation to all Personal Data:

37.1 For the purposes of this clause 37 the terms Data Controller, Processor, Data Subject, Personal Data, Processing, Personal Data Breach, Subject Access Request and “appropriate technical and organisational measures” shall have the meanings prescribed under the Data Protection Legislation.

37.2 It is agreed and acknowledged by the Parties that where the Provider Processes Personal Data in performance of the Provider’s obligations under this Contract, the Provider carries out such Processing as a Data Controller, and not as a Processor.

37.3 It is agreed and acknowledged that the Council is the Data Controller for the Personal Data that it holds and shares with the Provider under this Contract.

37.4 As Controllers in common the Council and the Provider agree to share and Process the Personal Data on the terms set out in this clause 37 and the schedules to this Contract and the Parties will comply with all the requirements of the Data Protection Legislation throughout the duration of this Contract.

37.5 The Parties agree that the sharing of Personal Data is necessary for the purposes of this Contract as defined in the Specification (“the Agreed Purpose”) and the Parties shall not Process Shared Personal Data other than for the Agreed Purpose.

37.6 Each Party will Process all Personal Data as set out in Schedule of Processing, Personal Data and Data Subjects at Schedule 1.

37.7 Each Party will implement appropriate technical and organisational measures to

37.7.1 prevent:

- i. unauthorised or unlawful Processing of the Shared Personal Data; and
- ii. the accidental loss or destruction of, or damage to, the Shared Personal Data; and

37.7.2 ensure a level of security appropriate to:

- i. the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and

the nature of the Shared Personal Data to be protected in such a manner that all Processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of Data Subjects.

- 37.8 Each Party shall ensure that it has legitimate grounds under the Data Protection Legislation for the Processing of Shared Personal Data.
- 37.9 Each Party in sharing Personal Data with the other, shall ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for such purposes and such other information as is required by Article 13 of the GDPR including, if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer.
- 37.10 Each Party in receiving Personal Data from the other, undertakes to inform the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the GDPR including, if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer.
- 37.11 The Parties each agree to provide such assistance as is reasonably required to enable the other Party to comply with requests from Data Subjects to exercise their rights under the Data Protection Legislation within the time limits imposed by the Data Protection Legislation.
- 37.12 Each Party is responsible for maintaining a record of individual requests for information from Data Subjects, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the Data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
- 37.13 Subject to any statutory or stated retention periods, the Parties shall not retain or Process Shared Personal Data for longer than is necessary to carry out the Agreed Purpose.
- 37.14 Any Personal Data that has been shared with a Party shall, at the direction of the other, disclosing, Party be returned or destroyed in the following circumstances:
- 37.14.1 on termination of the Contract;
- 37.14.2 on expiry of the Term of the Contract;
- 37.14.3 once Processing of the Shared Personal Data is no longer necessary for the Agreed Purpose for which it was originally shared;
- unless required by law to continue to store such Personal Data
- 37.15 If a Party appoints a third party Processor to Process the Shared Personal Data it shall comply with Article 28 and Article 30 of the GDPR and shall remain liable to the other Party for any breach, non-performance or non-observance of this clause 37 by such other Processor in the same way and to the same extent as if

such breach, non-performance or non-observance had been committed by the appointing Party.

- 37.16 A Party may not transfer Shared Personal Data to a third party located outside the EEA unless it;
- 37.16.1 complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint Controller); and
- 37.16.2 ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.
- 37.17 It is the responsibility of each Party to ensure that its staff members are appropriately trained to handle and Process the Shared Personal Data in accordance with the technical and organisational security measures together with any other applicable national data protection laws and guidance and have entered into confidentiality agreements relating to the Processing of Personal Data.
- 37.18 Each Party shall each comply with its obligation to report a Personal Data Breach to the other without undue delay and (where applicable) Data Subjects under Article 33 of the GDPR. The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner, including providing details of the nature of such Personal Data Breach, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned, together with details of the likely consequences of the Personal Data Breach, and the measures taken or proposed to be taken to address the Personal Data Breach including, where appropriate, measures to mitigate its possible adverse effects.
- 37.19 In the event of a dispute or claim brought by a Data Subject concerning the Processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims, and will co-operate with a view to settling them amicably in a timely fashion.
- 37.20 Each Party undertakes to indemnify the other and hold the other harmless from any claims, proceedings, actions, damages, costs, fines, expenses and any other liabilities which may arise out of, or in consequence of a breach or purported breach of the Data Protection Legislation or the performance or non-performance by that Party of its obligations under this Contract in relation to the Data Protection Legislation, including loss of or damage to property, financial loss arising from any breach of the Data Protection Legislation, or any other loss which is caused directly or indirectly by any act or omission of the Party arising from any breach of the Data Protection Legislation.

37.21 The provisions of this clause 37 shall apply during the Term of this Contract and indefinitely after its expiry.

38 Bribery and Fraud

38 The following provisions shall apply to prevent any incidents of bribery and fraud in the operation of the Contract

38.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider Personnel, have at any time prior to the Commencement Date:

38.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act;

38.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

38.2 The Provider shall not during the term of this Contract:

38.2.1 commit a Prohibited Act; and/or

38.2.2 do or suffer anything to be done which would cause the Council or any of the Council' employees, consultants, providers, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

38.3 The Provider shall during the term of this Contract:

38.3.1 establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements having regard to the NHSCFA Requirements and prevent the occurrence of a Prohibited Act; and

38.3.2 keep appropriate records of its compliance with its obligations under clause 38.1 and make such records available to the Council on request;

38.3.3 if requested by the Council, NHSCFA or any Regulatory Body, allow a person duly authorised to act on behalf of NHSCFA, on behalf of any Regulatory Body or on behalf of the Council to review, in line with NHSCFA Requirements, the counter-fraud measures put in place by the Provider. The Provider must implement any reasonable modifications to those arrangements required by that person in order to meet the NHSCFA Requirements.

38.4 The Provider shall immediately notify the Council and the NHSFCA in writing if it becomes aware of any breach of this clause or has reason to believe that it has or any of the Provider Personnel have:

- 38.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 38.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 38.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 38.5 If the Provider makes a notification to the Council pursuant to this clause the Provider shall respond promptly to the Council' enquiries, co-operate with any investigation, and allow the Council to Audit any books, Records and/or any other relevant documentation.
- 38.6 If the Provider is in default under this clause 38 the Council may by notice:
- 38.6.1 require the Provider to remove from performance of this Contract any Provider Personnel whose acts or omissions have caused the default; or
- 38.6.2 immediately terminate this Contract.
- 38.7 Any notice served by the Council under clause 38.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believe has committed the Prohibited Act and the action that the Council have elected to take (including, where relevant, the date on which this Contract shall terminate).

39 Health and Safety Requirements

- 39.1 The Provider shall (and shall ensure that all other related parties shall) at all times comply with all relevant health and safety procedures which shall include the requirements of the Health and Safety at Work etc. Act 1974, all other applicable Legislation, its own health and safety policies and safe working systems (to be produced to the Council on request), any relevant health and safety plans for the Premises and, in respect of the Council' Personnel and others who may be affected by the provision of the Services, the Council's health and safety policies and procedures.
- 39.2 The Provider shall promptly notify the Council of any incidents at the Premises or otherwise related to the provision of the Services which are or may give rise to a health and safety or an environmental hazard.

40 Safeguarding

- 40.1 The Parties acknowledge that the Provider may be providing regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006, and that the Council has duties in relation to safeguarding adults as set out in the Care and Support Statutory Guidance. The Provider will have responsibility for the management and control of any regulated activity provided under this Contract. The Provider must ensure that Service Users are protected from abuse, exploitation, radicalisation, serious violence, grooming, neglect and improper or degrading treatment, and must take appropriate action to respond to any allegation or disclosure of such behaviours in accordance with the Law.
- 40.2 The Providers, although not providing direct services to children and young people may, however, come into contact with them during the course of their business and as such, will adhere to requirement of Working Together to Safeguard Children, 2019 and the West Yorkshire Consortium Inter Agency Safeguarding and Child Protection Procedures
- 40.3 Where required by the Safeguarding Vulnerable Groups Act 2006 the Provider shall:
- 40.4 ensure that all individuals engaged or employed in the provision of the Services or in any activity related to, or connected with, the provision of the Services including locum staff and volunteers are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the barred lists; and
- 40.5 monitor the level, i.e. enhanced or standard, and validity of the checks under this clause 40 for each individual and/or member of Provider Personnel.
- 40.6 The Provider warrants that at all times for the purposes of this Contract no person who is or will be employed or engaged by the Provider or a sub-provider of the Provider including locum staff and volunteers in the provision of the Services or in any activity related to, or connected with, the provision of the Services is barred from the regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006.
- 40.7 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 or there may be a risk of unsuitability to carry out regulated activity or who may otherwise present a risk to Service Users.
- 40.7 The Provider shall ensure that Provider Personnel, temporary staff, agents, or volunteers do not abuse, neglect, harm or exploit Service Users, Carers or colleagues; any such concerns shall be immediately reported to the police and the Council.

41 Safeguarding – Policies and Procedures

- 41 The Provider shall undertake its safeguarding obligations under this Contract as follows:
- 41.1 It shall have in force and shall maintain a safeguarding adults policy which shall set out and require compliance by the Provider's Personnel with the obligations detailed in this clause 41 and the principles and procedures laid down in the policies cited in the following sub-clause 41.2 in order that there can be effective joint action to protect vulnerable adults from abuse and neglect. It shall ensure that the policies reflect and comply with legislation, Guidance and Council policies.
- 41.2 The Provider shall comply with the Safeguarding Adults Multi-Agency Policy and Procedures for West and North Yorkshire and York recognising the general duty to promote Well-being and to protect service users from abuse and neglect as set out under Section 1 of the Care Act 2014 . The Provider shall be compliant with the Human Rights Act 1998, the Mental Capacity Act 2005 and be aware of the requirements of the Deprivation of Liberty Safeguards (2009), as the same maybe updated or replaced throughout the Contract Term.
- 41.3 The Provider shall have in place a robust safeguarding training programme for all Provider Personnel (including volunteers) appropriate to their level of responsibility.
- 41.4 The Provider shall establish clear policies to deal with dangerous, exploitative or unsafe behaviour and practice and shall ensure that Provider Personnel are provided with training to develop appropriate skills and knowledge.
- 41.5 The Provider shall have and implement robust and up-to-date procedures, (including, disciplinary procedures, whistle-blowing policy and recruitment checks), for avoiding and responding to actual or suspected physical, sexual, psychological, financial or material and discriminatory abuse and acts of neglect or omission. Such procedures shall be reviewed by the Provider and will report to the Council that such procedures have been reviewed at least once every year.
- 41.6 The Provider will address employment/disciplinary issues when an allegation of abuse or neglect has been substantiated, and, where appropriate; report workers to the Disclosure & Barring service, CQC, and other statutory bodies where applicable, such as those responsible for professional regulation such as the General Medical Council, the Nursing and Midwifery Council and the Health & Care Professions Council (Care Act Statutory Guidance, 2016)

41.7 The Provider shall ensure that it has an effective system to manage all allegations of abuse against staff and that its disciplinary procedures are compatible with the Joint Multi-Agency Safeguarding Adults Policy and Procedures and which shall include the ability to suspend an employee pending the outcome of a safeguarding enquiry . The decision to suspend by the Provider shall take into account the best interests of the alleged victim of abuse, other service users at risk, and the employee. the outcome of a risk assessment, and consideration of the potential harms/dangers to the individual/individuals concerned, and any other relevant factors including those outlined the Multi-Agency Safeguarding Policy. Any decision to suspend shall be properly recorded in writing and a copy of this record shall be provided to the Council within 24 hours of any decision being made. The Provider shall respond to any safeguarding enquiry within five (5) days of the request being made.

Safeguarding - Monitoring, Investigation and Enforcement

41.8 The Provider shall immediately provide the Council with any information that the Council reasonably request to enable them to be satisfied that the obligations of this clause 41 (Safeguarding) have been met, and in any event no later than five (5) working days of the request being made. Failure to comply with a request within this timeframe may result in issue of notice of termination.

41.9 The Provider shall at all times co-operate with the Council' processes for inspection, monitoring, evaluations, quality audit and safeguarding in whatever way is reasonably requested by the Council. Accordingly, the Council may request access to premises and records held by the Provider regarding Service Users and the Provider's Staff where necessary under the Multi-Agency Policies.

41.10 The records held by the Provider referred to in Clause 41.8 may include the Care Plan of the Service User and (without creating any contractual obligation) the Parties agree that access to these records by the Council will assist in the early identification of safeguarding issues and in monitoring safeguarding concerns.

41.11 The Provider will be required to monitor and analyse safeguarding reporting and trends in line with Council requirements.

- 41.12 The Council reserves the right to undertake its own safeguarding enquiry without prejudice to any enquiry undertaken by the CQC or any other Regulatory Body. In the event that a safeguarding enquiry initiated by the Council it will be conducted in accordance with the local Multi-Agency Organisational Safeguarding Enquiry Policy and Procedure. The Provider agrees and acknowledges that any action taken by the CQC or Regulatory Body and which does not result in the deregistration of the Provider by the CQC will not be binding upon the Council nor will it require the Council to conclude its own enquiry (either by its own adult social care service or a Safeguarding Adult Review undertaken by its Safeguarding Adult Board). For the avoidance of doubt the Council shall be under no obligation to provide prior written or other notification of a safeguarding investigation by the Council to the Provider.
- 41.13 The Council may require the Provider's Personnel including locum staff and volunteers to be withdrawn from the provision of the services and an acceptable person substituted in the event of:
- 41.14 the Provider failing to comply with the provisions set out in this Contract in relation to the protection of vulnerable adults; or
- 41.14.1 the Provider's Personnel including locum staff and volunteers refusing to complete a disclosure statement/application; or
- 41.14.2 the disclosure at any stage of information which, in the reasonable opinion of the Council, indicates that any member of the Provider's Personnel (including locum staff and volunteers) is or are unsuitable for the work involved in this Contract;
- 41.15 In the event that the Council through the course of a safeguarding enquiry identifies that remedial action is required in respect of the Contract, the Council will follow the procedures set out in clauses 12 (Service Standards Failure) and 10 (Contract Management).
- 41.16 In the event that the Council receive any written notification from the CQC, or other Regulatory Body or other interested stakeholder concerning the Provider in relation to suspected or actual safeguarding issues the Council reserves the right to issue any relevant notice under clauses 12 (Service Standards Failure) and 13 (Contract Management) or to request further information under this clause 41 to carry out further investigations, and a risk assessment of the Provider and the Services.
- 41.17 The Council reserve the right to share any information received as part of any investigation with the CQC, relevant Regulatory Body, NHS partners, other Council of health and social care services, the police and emergency services where it is reasonably appropriate to do so.

41.18 The Provider shall accept and bear the costs of any learning interventions recommended by the Council to support improvements in safeguarding. The Provider will also accept any subsidised training and free learning resources offered by the Council.

Disclosure and Barring Service

41.19 The Provider must have policies and procedures which acknowledge and provide for on-going monitoring of Provider Personnel, including undertaking as good practice further DBS disclosures every three (3) years.

41.20 The Provider must keep and must procure that the Council are kept advised at all times of any Provider Personnel who, subsequent to their commencement of employment, receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider.

42 Provider Personnel

42.1 At all times, the Provider must ensure that with regard to its personnel involved in the provision of the services:

42.1.1 each of the Provider Personnel including locum staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

42.1.2 there is an adequate number of Provider Personnel to provide the Services properly in accordance with the provisions of the applicable Service Specification, set at Provider List Document 2.

42.1.3 where applicable, Provider Personnel including locum staff are registered with the appropriate professional Regulatory Body and that they work within their respective Codes of Professional Conduct at all times;

42.1.4 all clinical staff must abide by the Codes of Professional Conduct and standards of their appropriate Regulatory Body or professional association; and

42.1.5 Provider Personnel are aware of and respect equality and human rights of colleagues and Service Users.

42.2 If requested by the Council, the Provider shall as soon as practicable and by no later than ten (10) Business Days following receipt of that request, provide the Council with evidence of the Provider's compliance with the terms of this Contract.

- 42.3 The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Provider Personnel including locum staff involved in the provision of the Services receives, each in accordance with Good Clinical Practice, Guidance and the standards of any applicable relevant Regulatory Body or professional body or where necessary the requirements of the Council, the following training:
- 42.3.1 mandatory training to maintain
 - 42.3.2 Service User safety and so that Provider Personnel including locum staff understand all relevant policies including all aspects of infection prevention;
 - 42.3.3 proper and sufficient continuous professional and personal development, training and instruction; and
 - 42.3.4 full and detailed appraisal with peer review where appropriate (in terms of performance and on-going education and training);
- 42.4 Where applicable under section 1 F (1) of the National Health Act 2006 England, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.
- 42.5 Where required by the Council and in accordance with best practice, the Provider must carry out Provider Personnel staff surveys in relation to the Services at intervals and in the form set out as agreed with the Council in writing from time to time.
- 42.6 Before the Provider engages or employs any person in the provision of the Services, including locum staff or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation complete:
- 42.6.1 the Employment Checks; and
 - 42.6.2 where the Services are or include activity that is defined as regulated activity under the Safeguarding Vulnerable Groups Act 2006, then such Standard DBS Check or Enhanced DBS Check (as appropriate) as required by this Act.
- 42.7 The Provider must have policies and procedures which acknowledge and provide for on-going monitoring of any person engaged or employed in the provision of the Services or in any activity related to, or connected with, the provision of the Services including locum staff, including undertaking further DBS checks and disclosures and policies to support the employment of ex-offenders and such policy shall conform to the Council' policy on employing ex-offenders.
- 42.8 The Provider must keep the Council:

42.8.1 advised at all times of any Provider Personnel including locum staff who, subsequently to their commencement of employment, receives a relevant conviction, caution, reprimand; and/or

42.8.2 advised of previous relevant convictions, cautions, reprimands or warnings, which become known to the Provider including locum staff where the Services constitute regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006.

42.9 The Provider's Managers and senior staff must be fully aware of their responsibilities for responding to concerns of abuse or neglect under the The Safeguarding Adults Multi-Agency Policy and Procedures for West and North Yorkshire and York. They must also ensure that all staff access training and are aware of their responsibility to raise any concerns of abuse or neglect and of the process for doing so within the Service.

43 Discrimination

43.1 The Provider acknowledges the Council's obligations under equality Law and agrees to perform its obligations under this Contract, and agrees to procure that any Provider Personnel shall perform its obligations in relation to the Services with regard to:

43.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

43.1.2 the Council' equality and diversity policy asset out on the Council website and as updated from time to time; and

43.1.3 the Equality and Human Rights Commission's Code of Practice in Employment as updated from time to time;

43.1.4 any other relevant statutory code of practice in relation to equalities legislation or prevention of discrimination in the workplace.

43.1.5 any other requirements and instructions which the Council impose in connection with any equality obligations imposed on the Council at any time under applicable equality Law or under the Council' own policies or rules; and

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

43.3 To the extent that the Provider's obligations under this Contract involve the exercise of public functions of the Council, the Provider shall, and shall procure that any Provider Personnel shall comply to the extent permitted by Law with the provisions of:

- 43.3.1 Sections 28 and 29 of the Equality Act 2010, as if they were a body within the meaning of those Sections 28 and 29; and
- 43.3.2 Part 11 of Chapter 1 of the Equality Act 2010, as if they were a body within the meaning of Schedule 19 of that Act;
- 43.4 The Provider shall assist the Council in their performance of their obligations under the Equality Act 2010, including but not limited to the provision of information that the Council shall require in order to monitor:
 - 43.4.1 equality of access to the Services
 - 43.4.2 compliance with the Council' obligation under the equality Law
- 43.5 The Provider shall provide to the Council such information as the Council may require within ten (10) Business Days of receipt of a request from the Council' Representative.
- 43.6 The Provider shall ensure that any Provider Personnel engaged in the provision of the Services shall comply with the requirements of this clause 41.
- 43.7 Breach of this clause 43 by the Provider shall entitle the Council to terminate the Contract with immediate effect.

44 Sub-contracting

- 44.1 The Provider shall not, without the prior written consent of the Council, sub-contract, whether in whole or in part, any one or more of its obligations under this Contract. Where any subcontracting is deemed to have occurred:
 - 44.1.1 the Provider shall be responsible to the Council in Law or otherwise for all such sub-contracted Work and/or Services and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Provider under this Contract and/or at Law or otherwise;
 - 44.1.2 the Provider shall be liable to the Council for the acts and omissions of the person performing any sub-contracted work and/or services.

45 Human rights

- 45.1 The Provider shall, and shall procure that the Provider Personnel at all times comply with the provisions of the Human Rights Act 1998 (the "HRA 1998") in the performance of this Contract.
- 45.2 The Provider shall undertake or refrain from undertaking, and shall procure that the Provider Personnel and shall undertake or refrain from undertaking, such acts as the Council request in order to enable the Council to comply with their obligations under the HRA 1998.
- 45.3 In the event that the Provider, any Provider Personnel does or omits to do, or permits or allows anything to be done which is incompatible with the provisions

of the HRA 1998 which causes or may cause the Council to be in breach of their obligations under the HRA 1998 the Provider shall immediately notify the Council in writing and the Council may terminate this Contract immediately upon notice in writing in their absolute discretion.

45.4 The Provider shall indemnify the Council against any Losses or liability (including any interest, penalties or costs incurred) which arises as a result of a breach by the Provider of its obligations under this clause 45.

46 Conflict of interest

46.1 The Provider acknowledges and agrees that no Conflict of Interest exists between the Provider and the Council at the date stated on the face of this Contract. In the event that the Provider becomes aware of a Conflict of Interest between its own interests and the Council, it shall notify the Council of the full details of any such Conflict of Interest immediately.

46.2 The Council reserves the right to terminate this agreement immediately by notice in writing and/or take such steps as it shall deem necessary should it become aware of a Conflict of Interest between itself and the Provider.

47 Assignment/Novation

47.1 The rights and obligations of the Council under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Contract and having the legal capacity, power and Council to become a party to and to perform the obligations of the Council under this Contract being:

47.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

47.1.2 any Local Council which has sufficient financial standing or financial resources to perform the obligations of the Council under this Contract; or

47.1.3 means NHS West Yorkshire Integrated Care Board, or its successor organisation; or

47.1.4 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Provider) by the Council or a Minister of the Crown having the legal capacity, power and Council to perform the obligations under the guarantee and the obligations of the Council under this Contract.

47.2 The Provider shall not assign, novate, or otherwise transfer its rights and obligations under this Contract in whole or in part except with the prior written consent of the Council.

48 Records and Accounting

48.1 The Provider shall, on reasonable request from the Council, provide full details and record of financial information relating to the Services:

48.2 The Provider shall:

48.2.1 keep fully auditable records of the financial information relating to the Services; and

48.2.2 make those records available to the Council whenever reasonably requested.

48.3 Without prejudice to any other duty the Provider may have under this Contract the Provider shall maintain or shall procure that the following are maintained:

48.3.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and

48.3.2 full records of all maintenance procedures carried out during the term of this Contract;

and the Provider shall have the items referred to in clause 48.3 available for inspection by the Council (and their advisers) upon reasonable notice, and shall present a report of them to the Council as and when requested from time to time.

48.4 The records referred to in this clause 48 shall be retained for a period of at least six (6) years after the Provider's obligations under this Contract have come to an end.

48.5 Service User care records shall be retained for at least seven (7) years following the death of a resident, or transfer to another home.

48.6 All information referred to in this clause 48 is subject to the obligations set out in clause 36.

49 Audit

49.1 The Council, or any third party nominated by the Council (and notified to the Provider in accordance with the provisions of this contract), shall at any time within Business Hours and on request:

49.1.1 have access to the Premises and any other place of business at which the Provider is carrying out work in relation to this provision of the services under this Contract;

49.1.2 be able to inspect, audit and obtain free of charge all statistical data determined by the Council including copies of all records, invoices, accounts, reports, designs, drawings, manuals, estimates, bills of quantities, sub-contract quotations and other documents, used, intended to be used, or stored in

connection with work being carried out by the Provider under this Contract;
and

- 49.1.3 be able to inspect, audit and obtain copies of the Provider's quality management system and have access to any records and documentation relating to any management processes and procedures which are relevant to work being carried out by the Provider under this Contract.
- 49.1.4 The Provider shall provide the Council with all reasonable assistance in obtaining the right to such access and inspection, and shall provide any copies of records so required without charge.
- 49.1.5 The Authorised Officer may at any time interview any Staff member of the Provider in connection with the monitoring programme and/or any other regular service reviews and/or investigations arising from complaints or concerns.
- 49.1.6 The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's premises for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's premises where it would adversely affect the provision of the Services and/or, the privacy or dignity of a Service User. The Provider at its own cost unless otherwise agreed in writing by the Council shall be responsible for all and any required remedial action arising from an audit carried out by the CQC, or the National Audit Office unless the Council has in writing agreed to any other arrangement.
- 49.1.7 Within ten (10) Business Days of the Council' reasonable request, the Provider must send the Council a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- 49.1.8 The Council shall use their reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services. The financial auditing process may form part or whole of a planned monitoring visit. Any irregularities in the financial records of people using the service will be subject to an investigation.
- 49.1.9 The Provider shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Services provided under it, all payments made by the Council and any financial expenditure of the Service User, specifically personal money and his or her belongings.

50 Resources, Training and Policies

- 50.1 The Provider shall procure that:

- 50.1.1 there shall be at all times a sufficient number of Provider Personnel (including all relevant grades of supervisory personnel) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient Provider Personnel to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for the Services; and
- 50.1.2 all employees receive such training and supervision as is necessary to ensure the proper performance of the Services under this Contract.
- 50.2 The Provider shall procure that there are set up and maintained by it personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Provider shall procure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Council.
- 50.3 The Provider shall ensure that each of the Provider Personnel shall comply at all times with each of the Council' policies (which shall include rules, codes of practice, procedures and standards) referenced in the Schedule of incorporated Policies and Procedures and shall access them at the Council' websites as amended or updated from time to time and any additional policies which the Council may adopt from time to time and shall give notice to the Provider are also incorporated into this contract .

51 Change in Law

- 51.1 The Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the Charges as the result of:
 - 51.1.1 a General Change in Law; or
 - 51.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.
- 51.2 If a Specific Change in Law occurs or will occur during the Term the Provider shall notify the Council of the likely effects of that change, including:
 - 51.2.1 whether any Change is required to the Services, the Charges or this Contract; and
 - 51.2.2 whether any relief from compliance with the Provider's obligations is required
- 51.3 A soon as practicable after any notification in accordance with clause 51.2, the Parties shall discuss and seek to agree the matters referred to in that clause and any ways in which the Provider can mitigate the effect of the Specific Change of Law, including:

- 51.3.1 providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs;
- 51.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Provider before it occurred;
- 51.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

Compliance with policies

- 51.4 The Provider shall ensure that each of the Provider Personnel shall comply at all times with all sector relevant Council policies (which shall include rules, codes of practice, procedures and standards as set out on the Council' websites) as amended or updated from time to time and any additional policies which the Council may adopt from time to time.
- 51.5 If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
- 51.6 If the Provider gives a notification to or receives a notification from 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) Business Days.
- 51.7 The Parties must act in an open and transparent way with Relevant Persons in relation to Services provided to Service Users, comply with their obligations under regulation 20 of the 2014 Regulations/CQC Regulations and the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Service User Safety Incidents and non-Service User Safety Incidents that are agreed between the Provider and the Council and set out in the Serious Concerns Procedure set out in Provider List Document 5.3.1.
- 51.8 Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this clause 51 (Incidents Requiring Reporting).
- 51.9 Services from the Premises before entering into this Contract.

52 TUPE and Employees

- 52.1 Where applicable under the circumstances of this Contract, the Council and the Provider agree that the following events;
 - 52.1.1 the Service Transfer Date; and

52.1.2 where the identity of a provider (including the Council) of any service which constitutes or which will constitute one of the Services is changed whether in anticipation of changes pursuant to this Contract or not,

may constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 4(7) of Transfer of Undertakings (Protection of Employment Regulations 2006 as amended (“TUPE”)) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity or survivors’ benefits (subject to the provisions of Clause 52). On the occasion of a Relevant Transfer (save on expiry or termination of this Contract) the Provider shall procure that the former and new Sub-Contractor shall both comply with their obligations under TUPE.

52.2 The Council shall comply with its obligations under TUPE (if any) in respect of each Relevant Transfer pursuant to this Contract and the Provider shall comply and shall procure that each Sub-Contractor shall comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Contract and each of the Council and the Provider (to the extent that either is in default of its obligations under TUPE) shall indemnify the other against any Losses sustained as a result of any breach of this clause (Relevant Transfers) by the party in default save that there shall be no obligation on the Council to indemnify the Provider for any breach by the Council of its obligations under Regulation 13 of TUPE, or any award of compensation under Regulation 15 where such failure arises from the failure of the Provider or any Sub-Contractor to comply with its or their duties under Regulation 13 of TUPE.

52.3 The Council shall be responsible for or shall procure that any:

52.3.1 other employer of a Relevant Employee or is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees/Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date; or

52.4 The Provider shall be responsible for or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Service Transfer Date.

Employment Costs

- 52.5.1 The Council shall and the Provider shall and shall procure that each and every Sub-Contractor shall take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the services of the Council including the Services and to the employees who transfer.
- 52.5.2 Without prejudice to clause 52.5.1 the Council shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant Sub-Contractor of the Council shall:
- (a) provide the Employee Liability Information to the Provider at such time or times as are required by TUPE; and
 - (b) update the Employee Liability Information to take account of any changes as required by TUPE. The Council gives and shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Council or any of its relevant Sub-Contractors.

Union Recognition

- 52.5.3 The Council shall and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant Sub-Contractor of the Council shall supply to the Provider no later than 10 working days prior to the Service Transfer Date true copies of its union recognition Contract(s) and the Provider shall and shall procure that each and every Sub-Contractor shall in accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each Sub-Contractor) after the transfer to the same extent as they were recognised by the Council or the relevant Sub-Contractor before the Service Transfer Date.
- 52.5.4 The Provider shall procure that, on each occasion on which the identity of a Sub-Contractor changes pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Contractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the change of identity of the Sub-Contractor in respect of the provision of the Services at the Council's locations.

52.6 Indemnities

- 52.6.1 The Council shall indemnify and keep indemnified in full the Provider (for itself and for the benefit of each relevant Sub-Contractor) against all Losses incurred by the Provider or any relevant Sub-Contractor in connection with or as a result of:
- (a) a breach by the Council of its obligations under clause 52.2 above;

(b) any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the Council in relation to any Transferring Employee prior to the date of the Relevant Transfer (save where such act, fault or omission arises as a result of the Provider's or any of its Sub-Contractor's failure to comply with Regulation 13 of TUPE) and any such claim is not in connection with the Relevant Transfer.

52.6.2 Where any liability in relation to any Transferring Employee, in respect of his or her employment by the Council or its termination which transfers in whole or part in accordance with TUPE and/or the Directive arises partly as a result of any act or omission occurring on or before the Service Transfer Date and partly as a result of any act or omission occurring after the Service Transfer Date, the Council shall indemnify and keep indemnified in full the Provider or the relevant Sub-Contractor against only such part of the Losses sustained by the Provider or any Sub-Contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Service Transfer Date.

52.6.3 The indemnities contained in clause 52.6.2 shall apply as if references in those clauses to any Transferring Employee also included a reference to any Relevant Employee and references to any act, fault or omission of the Council also included a reference to the relevant third party Provider employer of the Relevant Employee prior to the Service Transfer Date to the extent that the Council recovers any sum in respect of the subject matter of those indemnities from such Third Party Provider under any indemnity or other legal entitlement it has against such Third Party Provider. The Council will use all reasonable endeavours to recover any such sums under any such entitlement as in mentioned in this clause.

52.6.4 The Provider shall indemnify and keep indemnified in full the Council, and at the Council's request each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Contract ("Future Provider") against:

(a) all Losses incurred by the Council or any Future Provider in connection with or as a result of any claim or demand against the Council or any Future Provider by any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor after the Service Transfer Date;

(b) all Losses incurred by the Council or any Future Provider in connection with or as a result of a breach by the Provider of its obligations under clause 52.4 above; and

(c) all Losses incurred by the Council or any Future Provider in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Provider and/or the relevant Sub-Contractor in respect of all or any of the Relevant Employees) arising from

or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date.

52.6.5 The Provider shall indemnify and keep indemnified in full the Council, against all Losses incurred by the Council in connection with or as a result of:

- (a) the change of identity of employer occurring by virtue of TUPE to the Provider or the relevant Sub-Contractor being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Service Transfer Date as a result of the change in employer and whether such claim arises before or after the Service Transfer Date;
- (b) any proposed or actual change by the Provider or any Sub-Contractor to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Provider or the relevant Sub-Contractor which are to any of the Relevant Employee's material detriment (Material Breach) or to the material detriment (Material Breach) of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Service Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Service Transfer Date; and
- (c) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Provider or Sub-Contractor to the Relevant Employees or their representatives whether before on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.

52.6.6 For the avoidance of doubt, the indemnities in clauses 52.6.2 and 52.6.4 shall not apply in respect of any sum for which the Council is to indemnify the Provider or a relevant Sub-Contractor pursuant to clause 52.6.1 or to the extent that the claim arises from a wrongful act or omission of the Council or any Future Provider.

52.7 The Provider shall as soon as reasonably practicable and in any event within five 14 Business Days following a written request by the Council provide to the Council details of any measures which the Provider or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Council against all Losses resulting from any failure by the Provider to comply with this obligation.

52.8 The Provider shall (and shall procure that any Sub-Contractor shall) within fourteen (14) Business Days of a request by the Council or following the

service of a termination notice under clause 4 or as a consequence of the Council notifying the Provider of its intention to retender this Contract:

- 52.8.1 on receiving a request from the Council provide in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services (the Assigned Employees) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Provider or of any Sub-Contractor as the case may be until immediately before the Termination Date, would be Returning Employees (the Retendering Information);
- 52.8.2 provide the Retendering Information promptly and at no cost to the Council;
- 52.8.3 notify the Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- 52.8.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees;
- 52.8.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Council's prior written consent; and
- 52.8.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent.
- 52.8.7 shall provide and shall procure that any Sub-Contractor shall provide the Employee Liability Information to the Council at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE.
- 52.8.8 The Provider shall indemnify and shall keep indemnified in full the Council and at the Council's request any Future Provider against all Losses arising from any claim by any party as a result of the Provider or Sub-Contractor failing to provide or promptly to provide the Council and/or any Future Provider where requested by the Council with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Provider by the Council and was materially inaccurate or incomplete (Material Breach) when originally provided.

52.9 Termination of Contract

52.9.1 On the expiry or earlier termination of this Contract, the Council and the Provider agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.

52.9.2 Upon expiry or termination of this Contract for whatever reason (the "Return Date"), the provisions of this clause 52.9.2 will apply:

(a) The Provider shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Provider or the Sub-Contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Provider or Sub-Contractors up to the Return Date are satisfied;

(b) Without prejudice to clause 52.9.2(a), the Provider shall:

(i) remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Provider's or Sub-Contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Council and any Future Provider against all Losses incurred by the Council or any Future Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Provider's or Sub-Contractor's employees who do not constitute the Returning Employees;

(ii) in respect of those employees who constitute Returning Employees indemnify the Council and any Future Provider against all Losses incurred by the Council or any Future Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Provider or any Sub-Contractor to comply with its or their obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Provider.

(c) The Council shall be entitled to assign the benefit of this indemnity to any Future Provider.

52.10 In the event that the Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this clause 52 and shall procure that the Sub-Contractor complies with such terms. The Provider shall indemnify

and keep the Council indemnified in full against all Losses, incurred by the Council or any Future Provider as a result of or in connection with any failure on the part of the Provider to comply with this clause and/or the Sub-Contractor's failure to comply with such terms.

- 52.11 For the avoidance of doubt, the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 52.1 to 52.10, to the extent necessary to ensure that any Future Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Future Provider by the Provider or the Council in its own right under section 1(1) of the 1999 Act.
- 52.12 Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.
- 52.13 The Council regards compliance with this clause 52 (TUPE and Employees) as fundamental to this Contract. In particular, failure to comply with the requirements for the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment to the Provider until such information is provided or indefinitely. The maximum sum that may be retained under this Clause shall not exceed an amount equivalent to that payable in a three month period following the Provider's failure to comply with this Clause.

53 Pensions

- 53.1 In the event of a Relevant Transfer taking place where the employees transferring are not Eligible Employees the Provider undertakes to comply with the requirements of Part 1 of the Pensions Act 2008, Sections 257 and 258 of the Pensions Act 2004, and the Transfer of Employment (Pension Protection) Regulations 2005 in respect of those individuals.

53.2 Provider to Become an Admission Body

- 53.2.1 Where the Provider or a Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the Local Government Pension Scheme (the "LGPS"), the Provider shall procure that it and/or each relevant Sub-Contractor shall become an Admission Body. The Provider shall before the Relevant Transfer Date execute and procure that each relevant Sub-Contractor executes a Provider Admission Contract which will have effect from and including the Relevant Transfer Date;
- 53.2.2 The Provider undertakes to pay to the LGPS all such amounts as are due under the Provider Admission Contract and shall deduct and pay to the LGPS such employee contributions as are required by the LGPS; and
- 53.2.3 The Provider shall indemnify and keep indemnified the Council on demand against any claim by, payment to, or loss incurred by, the LGPS in respect of

the failure to account to the LGPS for payments received and the non-payment or the late payment of any sum payable by the Provider to or in respect of the LGPS.

53.3 Indemnity for a Breach of the Provider Admission Contract

Without prejudice to the generality of this clause 53, the Provider hereby indemnifies the Council and on the request of the Council any Future Provider and, in each case, their Sub-Contractors on demand from and against all Losses suffered or incurred by it or them which arise from any breach by the Provider or any Sub-Contractor of the terms of the Provider Admission Contract to the extent that such liability arises before or as a result of the termination or expiry of this Contract (howsoever caused).

53.4 Indemnity or Bond

Without prejudice to the generality of the requirements of this clause 53 the Provider shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Provider Admission Contracts.

53.5 Right of Set Off

The Council shall have a right to set off against any payments due to the Provider under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Provider or from any relevant Sub-Contractor (as applicable) under the Provider Admission Contract.

53.6 Provider Ceases to be an Admission Body

If the Provider or any Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and:

53.6.1 the Provider or any relevant Sub-Contractor does not wish to offer those Eligible Employees membership of the LGPS; or

53.6.2 the Council, the Provider or any relevant Sub-Contractor are of the opinion that it is not possible to operate the provisions of clauses 53.1 to 53.5 inclusive; or

53.6.3 if for any reason after the Relevant Transfer Date the Provider or any relevant Sub-Contractor ceases to be an Admission Body other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible Employees,

then the provisions of clauses 53.2 to 53.5 inclusive shall not apply (without prejudice to any rights of the Council under those clauses) and the provisions of clause 53.7 shall apply.

53.7 **Provider Scheme**

Where this clause 53.7 applies pursuant to clause 53.6, the following shall apply:

53.7.1 The Provider shall or shall procure that any relevant Sub-Contractor shall not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Council in writing the occupational pension scheme or schemes which it proposes shall be the Provider Scheme for the purposes of this clause 53.7. Such pension scheme or schemes must be:

- (a) established within three (3) months prior to the Relevant Transfer Date or Cessation Date (as the case may be) and maintained until any payment to be made (Bulk Transfer Terms) is made;
- (b) reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
- (c) registered within the meaning of the Finance Act 2004; and
- (d) certified by the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS;

53.7.2 The Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall and shall procure that any relevant Sub-Contractor shall procure that:

- (a) the Eligible Employees shall by three (3) months before the Relevant Transfer Date or the Cessation Date (as the case may be) be offered membership of the Provider Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
- (b) the Provider Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the LGPS had they continued in membership of the LGPS;
- (c) on and from the Relevant Transfer Date or Cessation Date (as the case may be) until the earlier of:
 - (i) three 3 months after the date on which the Eligible Employees are first able to join the Provider Scheme; and

- (ii) the date on which the Eligible Employee joins the Provider Scheme, the Provider shall provide death benefits for and in respect of the Eligible Employees which are certified by the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as being broadly comparable to those that would otherwise have been provided in respect of those Eligible Employees by the LGPS;
- (d) if the Provider Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Provider or relevant Sub-Contractor. The replacement scheme must comply with this clause 51.7 as if it were the Provider Scheme;
- (e) before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Provider Scheme shall undertake by deed to the Council and to the Administering Council that they shall comply with the provisions of clauses 53.7.1 to 53.7.2(d), 53.8.1 and 53.8.2; and
- (f) it shall ensure that as a term of their contracts of employment, the Eligible Employees shall be able to enforce the right to such broadly comparable benefits as described in clause 53.7 above against the Provider.

53.7.3 Where applicable the parties shall set out and attach as a further Schedule to this Contract, the terms for bulk transfers from the LGPS to the Provider's Scheme following the Relevant Transfer Date and any subsequent bulk transfers on termination or expiry of this Contract.

53.8 **Undertaking from the Provider**

The Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:

- 53.8.1 all information which the Council or the Administering Council or their respective professional advisers may reasonably request from the Provider or any relevant Sub-Contractor for the administration of the LGPS or concerning any other matters raised in clause 53.7 and clause 53.8 or related Schedule shall be supplied to them as expeditiously as possible;
- 53.8.2 it shall not and shall procure that any relevant Sub-Contractor shall not, without the consent in writing of the Council (which shall only be given subject to the payment by the Provider or the relevant Sub-Contractor of such reasonable costs as the Council or the Administering Council may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
- 53.8.3 until the Relevant Transfer Date, it shall not and shall procure that any relevant Sub-Contractor shall not issue any announcements (whether in writing or not)

to the Eligible Employees concerning the matters stated in clauses 53.2 to 53.6 inclusive without the consent in writing of the Council and the Administering Council (not to be unreasonably withheld or delayed).

53.8.4 it shall not and shall procure that any relevant Sub-Contractor shall not take or omit to take any action which would materially affect the benefits under the LGPS or under the Provider Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written consent of the Council (not to be unreasonably withheld or delayed) provided that the Provider and/or such Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and

53.8.5 it shall and shall procure that any relevant Sub-Contractor shall offer any of its Eligible Employees who cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of the LGPS membership of the Provider Scheme immediately after ceasing to be so engaged.

53.9 **NHS Pensions**

53.9.1 Where the Provider employs, in the provision of the Services, any Provider Personnel who are members of or eligible to be members of the National Health Service Pension Scheme (NHSPS) immediately before the Service Commencement Date (the Eligible Staff) the Provider must offer continued access to the NHSPS. In particular, the Provider will follow the principles and the procedures prescribed within HM Treasury Guidance "Fair Deal for staff pensions: staff transfer from central government"(October 2013) and the Department of Health Guidance "Fair Deal for Staff Pensions: staff transfers from Central Government" (March 2014) to ensure this is done on accepting staff consequent upon entering into this Contract and/or in the event of any subsequent transfer of staff consequent upon the Services or part thereof being provided by a new Provider following the expiry or termination of this Contract or termination of a Service and the provisions of TUPE applying to that transfer.

53.9.2 Prior to the commencement of the Services, the Provider (and any Sub-Contractor to whom staff are transferring) must obtain a Pension Direction in respect of the Eligible Staff.

53.9.3 The Provider must comply (and ensure that its Sub-Contractor complies) with the terms of the Pension Direction. The Pension Direction should in all cases be addressed to the employer of the relevant staff, which may be a subcontractor, or member organisation.

53.9.4 The Provider must provide (and ensure that its Sub-Contractor provides) Transferred Staff with continued access to the National Health Service Pension Scheme (NHSPS) for as long as they continue to be engaged in relation to the relevant contract. That access must be in accordance with the Pension Direction.

- 53.9.5 The Provider's contracts of employment and those of its Sub-Contractors, with Transferred Staff must give such staff the right to continued access to the NHSPS for as long as they continue to be engaged in relation to the Services.
- 53.9.6 The Provider must ensure that Transferred Staff have the right to continued access to the NHSPS on any subsequent transfer, as a result of sub-contracting or termination of a sub-contract, for as long as they continue to be engaged in relation to the Services or any of them.
- 53.9.7 Failure by the Provider or its Sub-Contractor to comply with its obligations in relation to the NHSPS (including those under any Pension Direction), as notified to the Authority by NHS Pensions, will constitute an event of default entitling the Authority to terminate this Contract.
- 53.9.8 If the Provider or its Sub-Contractor is in arrears in respect of contributions due to the NHSPS, as notified to the Authority by NHS Pensions, the Authority may deduct the amount overdue from sums due to the Provider under this Contract and pay that amount to NHS Pensions.
- 53.9.9 Subject to clause 53.15, the Provider is required to comply with the provisions of Schedule 7 of the Standard NHS Contract.
- 53.9.10 Clause 53.14 will not apply if the Provider and Replacement Provider are either an NHS body or independent sector Provider already offering the NHS Pension Scheme.
- 53.10 **Discretionary Benefits**
- 53.10.1 Where the Provider or a Sub-Contractor is an Admission Body, the Provider shall and/or shall procure that any relevant Sub-Contractor shall:
- 53.10.1.1 award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council; and
- 53.10.1.2 Where the award of benefits in clause 53.10.1.1 is not permitted under the Compensation Regulations and/or the LGPS or the Provider and/or a Sub-Contractor is not an Admission Body, the Provider shall and/or shall procure that any Sub-Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- 53.10.1.3 Under clause 53.10.1.1 and 53.10.1.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Provider shall and/or shall

procure that any relevant Sub-Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

53.11 Claims from Eligible Employees or Trade Unions

The Provider hereby indemnifies the Council and/or any Future Provider and, in each case, their Sub-Contractors from and against all Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Provider and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

53.11.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or

53.11.2 arise out of the failure of the Provider and/or any relevant Sub-Contractor to comply with the provisions of this clause 53 before the date of termination or expiry of this Contract.

53.12 Liability for Costs

The costs of the Council necessarily and reasonably incurred in connection with the Provider Admission Contract and/or of obtaining the necessary certification of comparability in accordance with clause 53.7 shall be borne by the Provider.

53.13 Transfer to another Employer

Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Provider shall procure that any relevant Sub-Contractor shall:

53.13.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and

53.13.2 procure that the employer to which the Eligible Employees are transferred (the "New Employer") complies with the provisions of this clause 53 provided that references to the "Sub-Contractor" will become references to the New Employer, references to Relevant Transfer Date will become references to the date of the transfer to the New Employer and references to Eligible Employees will become references to the Eligible Employees so transferred to the New Employer.

53.14 Pension Issues on Expiry or Termination

The Provider shall procure that any relevant Sub-Contractor shall:

53.14.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged

or employed by the Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);

53.14.2 promptly provide to the Council such documents and information which the Council or the Administering Council may reasonably request in advance of the expiry or termination of this Contract; and

53.15 fully co-operate (and procure that the trustees of the Provider's Scheme shall fully co-operate) with the reasonable requests of the Council or the Administering Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.

54 Carbon reduction

54.1 The Provider acknowledges and agrees to support the Council' commitment to reduce CO2 emissions, which shall include compliance with the Council' environmental policy and Sustainable Community Strategy as available from time to time on the Council website;

54.2 Where requested by the Council, the Provider shall provide to the Council any such information as may be required by the Council in order to demonstrate the Provider's compliance with clause 54.1

52.3 The Provider shall participate in the development of local or regional multi-agency climate change quality indicators and or carbon reduction plans where required by the Council.

55 Collusion

The Provider warrants that, in accordance with the Non-Collusion Certificate submitted in its application to be a member of the Provider List that until the date of this Contract it has not engaged in collusion of any kind with any of the other approved Providers under the Provider List in relation to this Contract.

56 Canvassing

The Provider warrants that, up until the date of this Contract, it has not directly or indirectly canvassed any member, official or employee of the Council or their advisers in relation to this Contract or its subject matter.

57 Capacity

Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in their capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of their duties and powers in any other

capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Provider.

58 Contractual Co-Operation

Each Party agrees to co-operate, at its own expense (but without being compelled to incur material additional expenditure), with the other Party in the fulfilment of the purposes and intent of this Contract. To avoid doubt, neither Party shall be under any obligation to perform any of the other's obligations under this Contract.

59 Public Relations and Publicity

59.1 The Provider shall not make any announcement (including advertisements) in relation to or publicise in any way either its status as a member of the Provider List register of approved providers, this Contract (or any part thereof) or its activities under this contract without obtaining the prior approval of the Council. Such approval shall not be unreasonably withheld and, if applicable, will be notified to the Provider in accordance with the provisions of the Provider List arrangements and this Contract.

59.2 The Provider shall ensure that Provider Personnel, and professional advisors and consultants comply with the provisions of this clause 59.

59.3 In circumstances where an announcement is required by Law, any governmental or regulatory Council, or by any court or other competent Council, the Party required to make the announcement shall notify the other Party as soon as is reasonably practicable. The Party subject to the requirement shall use reasonable endeavours to agree the content of the announcement with the other Party before making it.

59.4 The provisions of this clause 59 shall apply throughout the duration of this Contract and indefinitely beyond either its expiry or termination.

60 Dispute resolution

60.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute (a "**Dispute**") between them arising out of or in connection with the Agreement within ten (10) Working Days of either Party notifying the other of the dispute. In the event that the Dispute cannot be resolved within in ten (10) Working Days of notification being provided the Parties shall then escalate the dispute through negotiations between the Chief Executive of the Council and the most senior manager or owner (or equivalent) of the Delivery Partner.

60.2 In the event that these negotiations are unsuccessful, or not concluded within twenty (20) Working Days of commencement, the parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within fourteen (14) days of notice of the dispute to CEDR, the mediator will be nominated by CEDR. For the avoidance of doubt, nothing

in this Clause 60 shall be construed as prohibiting either party from applying to a court of England and Wales for interim injunctive relief.

61 Representatives

61.1 The Council shall, prior to the Commencement Date, appoint both an Authorised Officer and a Deputy Authorised Officer (to act in those instances where the Authorised Officer is unavailable).

61.2 The Provider shall, prior to the Commencement Date, appoint a Contract Manager and, when so requested by the Council, shall also appoint a Deputy Contract Manager (to act in those instances where the Contract Manager is unavailable).

61.3 The contact details for the Authorised Officer, the Deputy Authorised Officer, the Contract Manager and the Deputy Contract Manager shall be communicated by the Provider to the Council from time to time.

61.4 Any changes to the contact details under clause 61.2 shall be notified to the other Party as soon as is reasonably practicable in accordance with the provisions of clause 66.

61.5 The Authorised Officer and the Contract Manager (and where applicable the Deputy Authorised Officer and the Deputy Contract Manager) shall have authority to act on behalf of the Council and the Provider respectively for all purposes in connection with this Contract unless otherwise notified to the other Party in accordance with clause 66.

61.6 The Authorised Officer shall be entitled to give directions to the Contract Manager from time to time for any purpose under or in connection with this Contract.

61.7 The Council reserve the right to reject the appointment of any individual as Contract Manager or Deputy Contract Manager who, at the absolute discretion of the Council, either does not possess the necessary experience in the provision of the Services or is any other way unsuitable for the role.

62 Business Continuity

62.1 The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.

62.2 The Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan (the first of which shall be provided to the Council at the Commencement Date) which shall be reviewed and such revisions as required by the Parties shall be concluded by no later than 30 days after each anniversary of the Commencement Date. The Provider must notify the Council as soon as reasonably practicable of its activation and in any event no later than (3) days from the date of such activation.

63 Parent Company Guarantee/Bond

Where so required by the Council under the Provider List arrangements as a condition of being an approved provider under the Provider List, the Provider shall attach a copy of it to this Contract as a further Schedule.

64 Change In Control

64.1 This clause applies to any Provider Change in Control but not to a Change in Control of a company which is a Public Company.

64.2 The Provider must, as soon as possible on, and in any event within five (5) Business Days following, a Provider Change in Control, notify the Council of that Change in Control and submit to the Council a completed Change in Control Notification.

64.3 If the Provider indicates in the Change in Control Notification an intention or proposal to make any consequential changes to its operations then, to the extent that those changes require a change to the terms of this Contract in order to be effective, they will only be effective when a Variation is made in accordance with the applicable Variation provision of this Contract. The Council will not and will not be deemed by a failure to respond or comment on the Change in Control Notification to have agreed to or otherwise to have waived its rights in respect of that intended or proposed change.

64.4 The Provider must specify in the Change in Control Notification any intention or proposal to make a consequential change to its operations which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract. If the Provider does not do so it will not be entitled to propose a Variation in respect of that for a period of six (6) months following the date of that Change in Control Notification, unless the Council agree otherwise.

64.5 If the Provider does not specify in the Change in Control Notification an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Provider's Premises as a result of or in connection with the Change in Control then, unless the Council provide their written consent to the relevant action, the Provider must:

64.5.1 ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract; and

64.5.2 continue providing the Services from the Provider's premises,

in each case for at least twelve (12) months following the date of that Change in Control Notification. The provisions of this clause will not apply to an assignment by way of security or the grant of any other similar rights by the Provider consequent upon a financing or re-financing of the transaction resulting in Change of Control.

- 64.6 The Provider must supply to the Council, whatever further information relating to the Change in Control the Council may, within twenty (20) Business Days after receiving the Change in Control Notification, reasonably request.
- 64.7 Notwithstanding any other provision of this Contract:
- 64.7.1 a Restricted Person must not hold, and the Provider must not permit a Restricted Person to hold, at any time 5% or more of the total value of any Security in the Provider or in the Provider's Holding Company or any of the Provider's subsidiaries (as defined in the Companies Act 2006); and
- 64.7.2 a Restricted Person must not hold, and the Provider must not permit a Restricted Person to hold, at any time 5% or more of the total value of any Security in a Sub-Contractor or in any Holding Company or any of the subsidiaries (as defined in the Companies Act 2006) of a Sub-Contractor.
- 64.8 In accordance with the provisions of this clause 64 the Council may by serving written notice upon the Provider to require the Provider replace a relevant Sub-Contractor within five (5) Business Days; or) whatever period may be reasonably specified by the Council (taking into account any factors which the Council consider relevant in their absolute discretion, including the interests of Service Users and the need for the continuity of Services), and the Provider must replace the relevant Sub-Contractor within the period specified in that notice.
- 64.9 Nothing in this clause will prevent or restrict the Provider from discussing with the Council a proposed Change in Control before it occurs. In those circumstances, all and any information provided to or received by the Council in relation to that proposed Change in Control will be Confidential Information.
- 64.10 Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.

65 No Agency

- 65.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Council and the Provider.
- 65.2 Save as expressly provided otherwise in this Contract, the Provider shall not be, or be deemed to be, an agent of the Council and the Provider shall not hold itself out as having Council or power to bind the Council in any way.
- 65.3 Without limitation to its actual knowledge, the Provider shall for all purposes of this Contract, be deemed to have such knowledge in respect of the provision of the Services as is held (or ought reasonably to be held) by any Provider Personnel.

66 Notices

- 66.1 A notice (or any other communication) from one Party to the other under or in connection with this Contract shall be:

- 66.1.1 in writing;
- 66.1.2 signed on behalf of the Party giving it;
- 66.1.3 marked for the attention of the Representative of the receiving Party; and
- 66.1.4 sent by a delivery method listed in clause 66.2.

66.2 The table below sets out the delivery methods by which a notice (or any other communication) in connection with this Contract may be sent as well as the corresponding dates and times of deemed delivery that shall apply:

Delivery Method	Deemed Delivery
By hand	On signature of a delivery receipt.
By pre-paid first class post, recorded delivery or other next Business Day delivery service	At 09:00 on the second Business Day after posting.
By document exchange (DX)	At 09:00 on the second Business Day after being put into the DX.
By electronic mail	Save for when returned as undelivered, either at the time of sending or, if transmitted outside of Business Hours, at 09:00 on the next Business Day.

66.3 All references to the time of deemed deliveries in clause 66.2 are to local time in the place of deemed receipt.

66.4 This clause shall not apply to the service of proceedings or any other document in connection with any legal action or, if applicable, in connection with any other method of dispute resolution as provided for in clause 60.

67 Severability

If any term, condition or provision of 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 and enforceability of the other provisions of or any other documents referred to in this Contract.

68 Waiver

68.1 A waiver of any right or remedy either by Law or under this Contract shall only be effective if it is notified to the other Party in accordance with the provisions of clause 66 and is expressly stated to be a waiver.

68.2 No waiver of any right or remedy arising from a breach of this Contract shall be deemed to be a waiver of any right or remedy relating to any subsequent breach of this Contract.

68.3 Any failure or delay by a Party to exercise any right or remedy either by law or under this Contract shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy either by law or under this Contract shall prevent or restrict the further exercise of that or any other right or remedy.

69 Assistance in legal proceedings

69.1 The Provider shall, when reasonably requested to do so by the Council, provide all information that is relevant to the performance of its obligations under this Contract to the Council free of charge in connection with any actual or expected legal proceedings in which the Council are or may be involved or any relevant internal disciplinary hearing.

69.2 The Provider shall ensure that its servants, employees, agents, professional advisors and consultants are available to be interviewed in connection with or to give evidence in relation to such proceedings or hearings.

69.3 In circumstances where:

69.3.1 it is reported that Losses (incurred by any person or body) have either been caused by or have been contributed to by an act or omission on the part of the Provider; and

69.3.2 the Council decide to, in light of such finding, make a payment to or provide some other benefit to such person or body;

then the Provider shall either reimburse the Council the amount of any such payment or pay to the Council the reasonable cost of any such benefit as is applicable and proportionate to the act or omission of the Provider. The Council may also deduct any such amounts from any payment otherwise due to the Provider under this Contract.

70 Third Party Rights

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.

71 Entire Agreement

71.1 The Contract together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters.

71.2 The Provider acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.

72 Governing Law

72.1 This Contract shall be governed by and construed in accordance with English Law. In respect of any dispute under or arising out of the Contract, the Council and the Provider hereby agree to submit to the jurisdiction of the English Courts.

72.2 Both Parties shall in all matters relating to the performance of the Contract comply with all relevant statutes, rules, regulations and bylaws of the Council.

73 Double recovery

Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to the provisions of this Contract or otherwise.

74 Counterparts

74.1 This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

74.2 No single counterpart shall be effective until each Party has executed and delivered at least one counterpart.

This Contract is agreed between the Parties and delivered on the date stated at the beginning of this Contract

IN WITNESS WHEREOF the Parties have signed this Contract on the date shown above

SIGNED:

for and on behalf of **City of Bradford Metropolitan District Council** by

(Full name of signatory in capitals)

Title

SIGNED:

on behalf of **[Provider]**

(Full name of signatory in capitals)

Position (Director/Secretary)

Schedule 1 - Schedule of Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the processing	Contract for the provision of Residential and Nursing Care
Duration of the processing	Duration of the Contract or the Individual Service Contract, whichever is later.
Nature and purposes of the processing	Personal information is processed to enable providers to provide care to service users, and to maintain their accounts and records, including sending contract and quality management information to the Council and to support and manage their employees.
Type of Personal Data	<p>Information is processed relevant to the above reasons/purposes. This information may include:</p> <p>Name, Address, Date of birth, Contact details (telephone, e-mail), Next of kin, Bank account details, National Insurance Number, NHS Number, spoken language, Transfers information, Falls history, Personal Cares, Nutrition Requirements, Behaviour, Care Needs, Key Safe Number, Advocate details, GP details, Family/carer details & dynamics, Benefits/Income information, POA information, Employment Details</p> <p>Sensitive classes of information may also be processed. These may include:</p> <p>Gender, Health Conditions, Medication, Capacity Assessment. Mental Health, Cognition, Mobility, Falls history, Personal Cares, Nutrition Requirements, Behaviour, Care Needs, Communication and sensory functionality, DoLS information</p>
Categories of Data Subject	<p>Service Users</p> <p>Staff (including volunteers, agents, and temporary workers)</p>

<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>In line with the Council's Adult and Community Services Document Retention Schedule, records are to be retained for the following periods and subsequently destroyed:</p> <ul style="list-style-type: none"> Case management records (care plans, assessments) – 6 years from last contact Contracts (with service user/family) – 6 years from last contact Financial information (payment records, bank details) – 7 years from last contact DoLS Information/Assessments – 7 years from last contact Mental health/illness (if the service user has a diagnosed MH condition) – 10 years from last contact Safeguarding information (enquiry reports, case notes, minutes from meetings) – 10 years from last contact
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